

The Dispute Board Federation

Geneva

Excellence in Dispute Resolution since 2001

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Issue: 39

Conger Dam Project



In This Issue

[Interview with Clive Hassett](#)

[New Rates](#)

Featured Events

Future combined
FIDIC -DBF
and
International Finance Corporation
related programmes
and events include:

London

DBF Dinner Meeting
for Professional Members
6 February 2009

Luxembourg

DAB Training
24 -25 February 2009

Saigon

DAB Training
25 - 26 March 2009

Sarajevo

ADR Practical Training
Programme
31 March - 1 April 2009

Dubai

DAB Training
15 -16 April 2009

Dubai

DBF Dinner Meeting
for Professional Members
16 April 2009

Australia

Mediation Training
28 - 30 April 2009

Singapore

Mediation Training
5 -7 May 2009

Hong Kong

DAB Training
12 - 14 May 2009

Tokyo

New Adjudication Frontiers

The use of adjudication as an alternative method of dispute resolution continues to grow and expand internationally. The newest development to the growing use of DAB's is the combination of dispute boards/adjudication and early mediation to both prevent disruption of construction projects and also to assist in the delay-free and on-budget completion of infrastructure projects. The DBF's efforts to establish a uniform method for dispute avoidance through international mediation coupled with adjudication are proving to be effective in the meaningful resolution of potentially complex disputes and are being implemented, in both developing and developed nations worldwide.

In this future issues of the Newsletter we learn what the leaders in various related construction sectors are doing to position dispute boards and ADR as a way of assisting the overall dispute avoidance/prevention process.

Interview with Clive Hassett



This month's interview is with Clive Hassett. In addition to being a member of the DBF Advisory Panel, Clive is Director of Operations for Major Risks at ACE European Group Ltd based at their European Headquarters in the City Of London. He is a qualified accountant and has worked in the London Insurance Market for fifteen years. He is responsible for the development and implementation of the global insurance programmes for ACE's extensive customer base of

Multinational clients.

What is the ACE Group's Overview of Dispute Resolution in the Infrastructure Construction Market?

The ACE Group is one of the world's largest insurers of commercial risks with subsidiaries in over 50 countries and representation in more than 100 others. The provision of insurance products to all parties involved in construction is an important segment of our business and in one way or another we are involved in the underwriting of the majority of major infrastructure and construction projects wherever they are in the world.

Our view on dispute resolution and the proper use of dispute avoidance through dispute boards as represented by the Dispute Board Federation is quite straightforward. All disputes arising out of the performance of a construction project are likely to increase contract costs with the likelihood that some or all of these additional costs may be recoverable from Insurers. As such it is clearly in the interests of Insurers, including ACE to encourage a framework where disputes can be kept to a minimum and if they do arise to have in place an effective way to resolve them quickly.

Litigation or ADR - your view?

All industries seek to control their costs and it is a fact that the Insurance Industry is at the very top of the list when it comes to spending on litigation - with Construction not too far behind!

It is not by accident that the majority of commercial insurance contracts contain a clause for the resolution of disputes between the Policyholder and Insurer to be settled by arbitration. This is in itself, a strong statement of the Insurers view that arbitration can be an effective process to resolve disputes.

The forum of a Dispute Board, for example, would invariably be a cheaper, more efficient means of resolving a dispute than litigation and arguably deliver a more equitable and workable solution and importantly, enable the contract to continue in a collaborative and positive fashion.

Dispute Boards and Underwriting - a good idea?

At the most basic level, Underwriters select and price a risk with the aim of ensuring that the portfolio they are writing will be profitable - i.e. the premium they receive will be more than the claims and expenses paid out.

A key challenge for Underwriters and a frequent demand from Risk Managers is that risks should not just be priced on the exposure that is being underwritten but on the likelihood of a loss arising under the policy. These are not the same thing and put simply, an Insurer should differentiate, in terms of price and possibly terms and conditions, between a risk that is well managed and one where there is little or no risk management on the part of the policyholder.

It therefore follows that an insured party involved in a contract where a Dispute Board or another robust ADR vehicle is mandated could reasonably make the case that such an arrangement is a valuable tool in its risk management kit and should be recognised by the insurer in the policy pricing and terms and conditions.

How can the Insurance Industry Help?

As a major stakeholder in the Construction Industry, the Insurance Sector has an interest in promoting efficiencies and reducing frictional costs and activities that can negatively impact the economic benefits that flow from Infrastructure and Construction projects.

In the short period of time that that I have been a member of the DBF Advisory Panel, I have discovered that awareness of Dispute Boards and ADR within the Insurance Sector is quite limited. It is also not just a question of Insurers being aware of DBs; this knowledge has to extend to the brokers and indeed the Risk Managers of all companies involved in the Construction Industry.

In my opinion all parties will take the view that Dispute Boards are a

DAB Training
19 - 20 May 2009

Sarajevo
DAB Training
9-10 June 2009

For a full listing of programmes and events, brochures and more information and/or to register please go to:

www.dbfederation.org



**Balkans ADR Programme
Sarajevo
March 31 - April 1, 2009**

The DBF in conjunction with the IFC present a unique programme on ADR in the Construction Sector. This practical training programme provides each participant with a thorough grounding in both mediation and dispute boards, their differences and operation and their use in various forms of contract particularly the FIDIC Conditions of Contract and is taught from the perspective of the construction professional.

The programme is open to government officials, procurement officers, consulting engineers, contractors, quantity surveyors, architects, legal advisors and all involved with the implementation and management of works contracts.

If you would like more information please email j.varoqui@dbfederation.org.

positive development and should be encouraged. The extent and speed at which this happens will depend, among other things, on how clearly we are able to define and measure and this benefit. That is probably the subject for a subsequent interview.



New Rates for DAB Members

The DBF has altered its rate structure for those Professional Members serving on Dispute Boards.

On appointments made by the Dispute Board Federation of Dispute Board Members the new minimum suggested rate is now € 2,750 per day for individual Members and the slightly higher rate of € 3,000 per day for the Chair of the DAB and reflects the increased amount of work usually done by the Chair of the DAB. This daily rate applies to Dispute Board Hearings, Site Visits and related work. In addition to this the Monthly Retainer Fees chargeable will be slightly increased to €2,500 per month.

The Appointments Committee would like to remind both Professional Members as well as potential users of Dispute Boards that these figures are the suggested minimum and due to the complexity of the project, the amount of time needed and other factors this price can be higher at the discretion and agreement of the Professional Member and the Employer and Contractor in any given project.

Other costs and reimbursements for Professional Members remain the same with the requirement that travel be reimbursed at Business Class rates for travel up to 5 hours from the residence of the Dispute Board Member and at First Class rates from travel in excess of 5 hours.

These new rates and reimbursements are effective from 1 March 2009 for all appointments made by the Dispute Board Federation. If you would like further information please send you requests to info@dbfederation.org

DISPUTE BOARDS AND BUSINESS IN VIETNAM

The DBF in conjunction with
FIDIC, IFC
and
ACE Insurance

are pleased to present a very
special programme in Saigon on
25 & 26 March 2009

In addition to the intensive DAB programme, those attending will participate with country leaders of Viet Nam as well as IFC officials for a discussion of current issues dealing with Oil & Gas, Construction, Mediation, and Business development both in the country and in the region.

Additionally there will also be a focus group discussion on the new IFC and DBF Initiatives in developing countries.

For early registration and to save a place at this important conference please go to programmes at:

www.dbfederation.org

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