THE UNIVERSITY OF GLAMORGAN

DIVISION OF THE BUILT & NATURAL ENVIRONMENT

ADR DAY

School of Technology
University of Glamorgan, Treforest, Mid Glamorgan
Friday 7th May 2004

Presented by Jeff Hodgeson

"ADR DAY OPENING ADDRESS"

by Annie McCartney
School of Technology
University of Glamorgan

CIArb Wales

Law School & School of Technology

Thursday 6th May 2004

"Partnering Day"

10.00-12.00	Site trip to Partnering Project at New Tredegar with Colin Jones, Project Manager Caerphilly County Borough Council
01.00-03.00	Meet & Greet with students and trip around the campus facilities
04.00-05.00	Hudson Prize Competition Paper on "***Parallel Partnering, Background and Benefits"*** David Evans, Ove Arup & Partners Cardiff room G611

Friday 7th May 2004

"ADR Day"

MORNING SESSION – DIVISION OF THE BUILT & NATURAL ENVIRONMENT

EVENT CHAIRMAN Annie McCartney

		Room
08.30-09.00	Teas and Coffees for guests	**G310**
09.00-09.30	"***Welcome and Opening Address***" - Jeff Hodgson	**G311**
09.30-09.50	"***What is a dispute for adjudication and arbitration?"*** - Annie McCartney	**G311**
09.50-10.30	"***Arbitration in the construction industry - UK and Ireland***" Prof Geoffrey M Beresford Hartwell	**G311**
10.30-11.00	"***Over-view of ADR***" – Corbett Spurin	**G311**
11.00-11.20	Coffee / Teas for guests	**G310**
11.20-12.15	"***Partnering Case Study***" - Colin Jones	**G311**
12.15-1.00	Lunch Buffet for invited guests of the University of Glamorgan	**G310**

AFTERNOON SESSION – CHARTERED INSTITUTE OF ARBITRATORS FORUM

EVENT CHAIRMAN Corbett Haselgrove-Spurin

01.00-01.30	Registration in the **Glamorgan Business Centre**
01:30-01:45	"***Welcome and Opening Address***" – Professor Richard Neale
01:45-02.00	"***Key note Speech***"- Professor Geoffrey M Beresford-Hartwell
02.00-02.20	"***Payment provisions under the HGCRA 1996*** " - Corbett Spurin
02.20-02.40	***"Adjudication – The Changed Model"-*** Tony Bingham
02.40-03.00	"***Decision making-can it be judicial?***" - Daniel Atkinson
03.00-03.30	Coffee / Teas for delegates and guests
03:30-05:25	"***Adjudication Moot : Plumberama Ltd v Dream Home Builders***" – Moot Master Dennis Baldwin and featuring Gwyn Owen as Assessor, with Dr Mair Coombes-Davies, Paul Newman, Robert Shawyer and Graham Read for the Claimants and Respondents
05.25-05.30	Housekeeping Matters

"ADR DAY OPENING ADDRESS"

The theme for both this morning's session and this afternoon's Chartered Institute of Arbitrators Forum is "Construction Disputes their avoidance and resolution". Various speakers throughout the day will review the various methods which are now being adopted to ***resolve*** construction disputes in the industry. Colin Jones (Project Manager at Caerphilly County Borough Council) will talk to us about his experiences of a partnering project at New Tredegar and whether he considers a collaborative approach to project procurement does indeed ***avoid*** disputes and more importantly the development of a claims and adversarial culture which has for so long been a feature of our industry both during the project and post project completion.

ADR – Alternative Dispute Resolution is itself a term which now needs some clarification as a plethora of definitions exist both within industry, academia and the legal profession. For the purposes of today's proceedings we will treat ADR as meaning key forms of dispute resolution **alternative to** established litigation/court based resolution and will include discussion of ADR methods such as Arbitration, Adjudication, Mediation/Conciliation, Mini Trial and Expert Determination. Geoffrey (Former Chairman of the Chartered Institute of Arbitrators) will focus his attention on arbitration and Corbett (senior lecturer in ADR in the Law School) will carry out a general review of ADR methods set out above.

So why has ADR been embraced so widely by our industry – the cynics amongst us would say because the Government via the Construction Act 1996, the Arbitration Act 1996 and the Woolf Reforms forced the industry to look beyond litigation and arbitration to more informal, speedier and inexpensive methods of dispute resolution. The courts too have played their part in giving effect to such legislation and increasing judicial opinion finds judges advising parties who have opted in contracts to resolve their disputes via e.g. mediation to go to mediation and stay out of the courts. See e.g. the case of ***Dunnett v Railtrack.***

The JCT, have in their most recent industry standard form of contract namely Major Projects Contract 2003 provided for mediation, adjudication and interestingly litigation if the dispute remains unresolved . Other industry standard form construction contracts such as the ECC (formerly NEC contract), PPC2000 Partnering Contract , ICE 7th etc all provide for detailed dispute resolution provisions to resolve disputes outside the court process.

ADR developed in this country because the litigation process, in short, was failing to meet the needs of an ever increasingly sophisticated and litigious construction industry – the courts had gained a reputation for being expensive, slow and providing judicial opinion from judges who sometimes lacked the technical skills to decide difficult and complex construction disputes. There was a need for a speedier response to resolving disputes handled by experts with the necessary technical skills. Arbitration too was perceived as equally not responding to the needs of the industry and was considered by many as nothing more or nothing less than litigation but with the added expense of having to pay for both the Arbitrator and the venue. Geoffrey may well take issue with this point! Mediation / Conciliation was slowly developing as an alternative to litigation and arbitration but critics in the industry considered such methods did not readily lend themselves to the resolution of construction disputes – a view very much open to discussion.

Coupled with this dissatisfaction of what was on offer in terms of resolving disputes the Government also recognised the need to address the difficulties of why disputes occur so frequently on construction projects which leads to a culture of blame. Further the Govt wished to discover why projects in the UK are frequently over budget , over time and are often of poor quality with an uneven allocation of risk and responsibility amongst Client and construction team. The result was the development and publication of two industry reports by Sir Michael Latham and Sir John Egan entitled "Constructing the Team" and "Rethinking Construction". Both Latham and Egan reported on an industry in need of more effective methods to resolve disputes and proposed **adjudication** as a speedy and effective dispute resolution method aimed at preserving the ever difficult cash flow crisis especially for those further down the supply chain. Corbett and various speakers at this afternoon's Forum will cover in detail what adjudication involves both generally and under the Housing Grants Construction and Regeneration Act 1996 but briefly it is a form of dispute resolution where an impartial third party is given approximately 28 days to reach a decision on the dispute referred to him by a party under a Construction contract (the latter being defined in the Act). What promised to be a simple process of dispute resolution to meet the needs of the industry has provided lawyers with the opportunity for much legal debate on the interpretation of the adjudication legislation and for my immediate purposes and the opening presentation – ***" What is a dispute"*** for the purposes of adjudication and arbitration.

Latham and Egan also recognised that the industry would be better served if the culture could change from focusing on blame allocation to avoiding disputes altogether – the latter would and will present the greater challenge for our industry as it will require much culture change from an industry which has been driven in the past by the old adversarial approach by Contractors of " tender low and claim high" to more collaborative based working where the project itself is the focus. Partnering philosophy and values such as working in mutual trust and confidence to ensure the project is delivered in accordance with 'Best Value', 'Best Time', 'Best Quality' and placing the risk on parties best able to manage the it are today's new buzz words and we look forward to Colin's views on the workings of the partnering arrangements and whether indeed partnering can help in the procurement of construction projects without adversarial disputes and claims.