



"PRELIMINARY"  
MEETING NOTICE

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**DATE:** Monday, 19 April, 1993

**PLACE:** Embers Restaurant  
1217 S. Mission  
Mt. Pleasant, Michigan

**TIME:** 5:30 PM Board Meeting  
6:00 PM Social Hour  
7:00 PM Dinner (One-pound chop!)  
8:00 PM Program

**COST:** \$15.00 Per person

**PROGRAM:** "Tales from the Front" : A brief overview of Design-Construction disputes.

By: Ralph J. Stephenson, PE

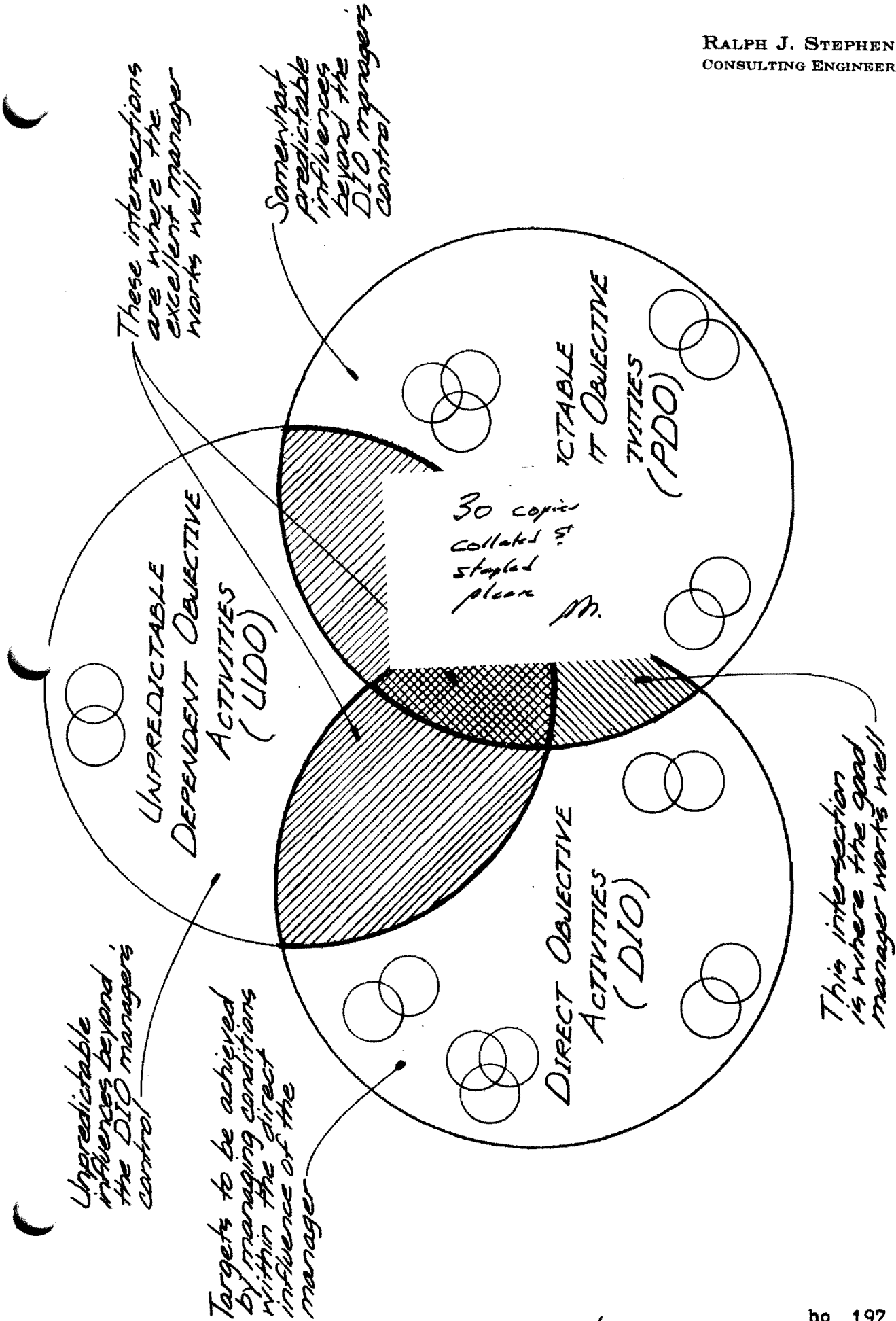
Design-Construction disputes are one of the most undesirable aspects of the profession of Architecture today. Unmanaged dispute resolution is leading to some very drastic actions against Architects. Disinterested third parties are settling our disputes for us, our liability insurance premiums go up as our profits tumble.

But there is a better way. Please join us for an educational evening. Ralph Stephenson will take us through some case studies showing us where we have been and where we are going with design-construction disputes. Find out what steps we can take to control our own destiny.

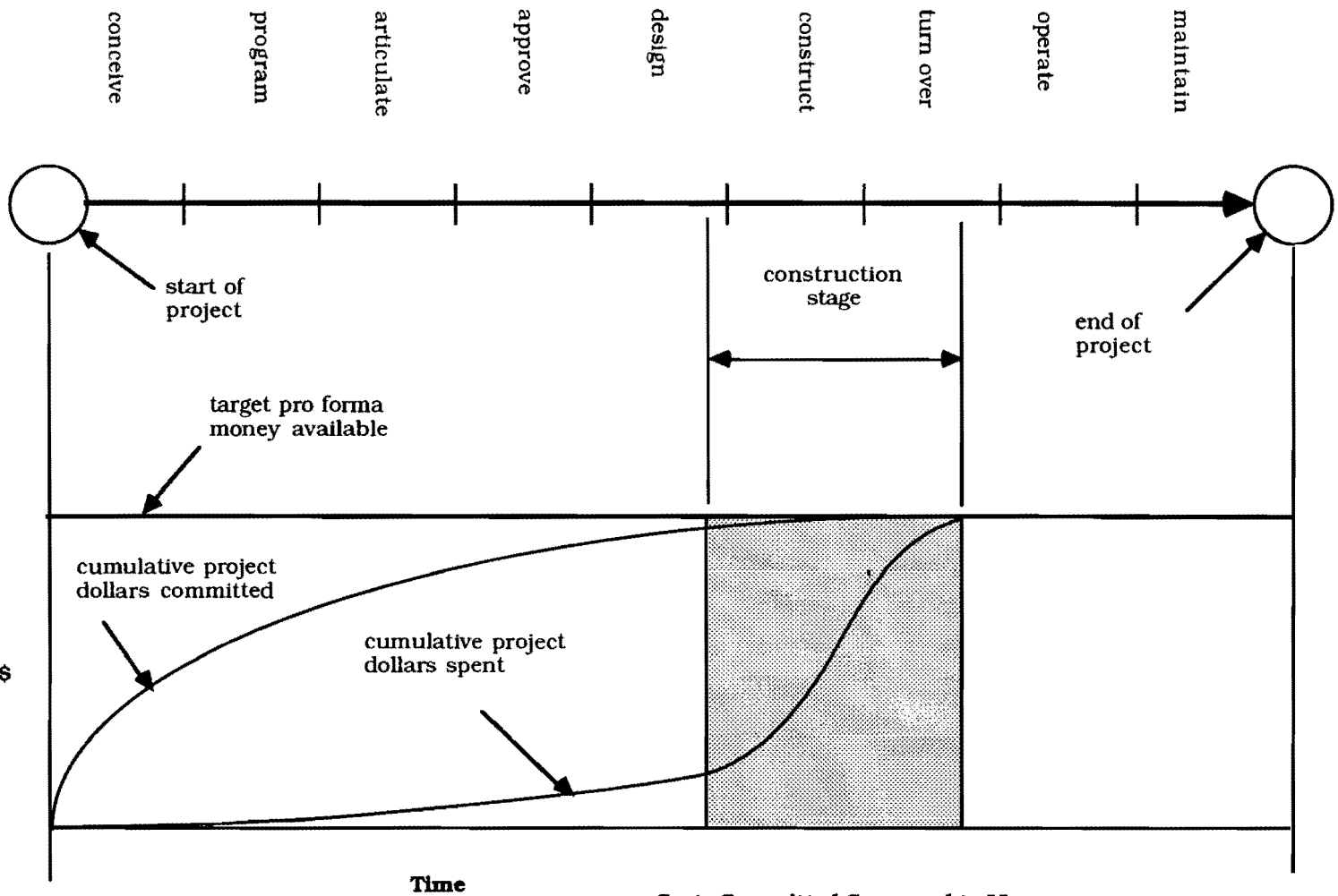
**RESERVATIONS FOR DINNER:**

All Areas: Amie or Karen .....752-8107

**RESERVATIONS MUST BE RECEIVED BEFORE 2:00 P.M., FRIDAY**  
**APRIL 16, 1993**



THE DIO/PDO/UDDO INTERSECTION



**Costs Committed Compared to Money Spent on Construction Projects**

Ralph J. Stephenson PE  
Consulting Engineer

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## COMMON CAUSES OF CONTESTED CLAIMS

Contested construction claims have increased over the past few years and now must be recognized as a serious road block to proper and profitable construction procedures.

The reasons for the increase in contested claims are many and must be understood in the sense that our society has become somewhat legalistic. That is to say, the recourse to legal resolution, as opposed to interpersonal, technical, or administrative resolution of problems has become a common fortunately shows some signs of diminishing as costs and time involvement in legal matters have increased astronomically.

However, there are claims, there always have been claims, and there will probably always will be contested claims. Those in construction should however, thoroughly understand the structure of the contested claim.

Specifically, contested claims lead to resolution by an administrative settlement, litigation, arbitration, or mediation. There are some common causes of conflict and it is these that stimulate the parties to go to a formal settlement by outsiders. It is important for those in construction to understand how to avoid the mistakes that cause wasteful contested claims.

Several years ago a firm specializing in construction claims and their settlements studied some of the most common causes of disputes. Of two hundred occurrence of contested claims the following percentages were found.

### 1. Directed Change - 48%

A legitimate change within the contract scope for which the owner must pay.

#### Examples

- Owner changes the door color after the door is painted.
- Owner revises size of electrical room door opening

#### Advice

- Required extensions of time should be stated in writing.
- Costs for extended general conditions should be agreed upon early.
- The client or owner is obligated to pay for the change, if there is a charge.
- Payment for the work should be explicitly agreed upon before starting.

### 2. Constructive change - 42%

An owner's action or inaction that has the same effect as a written order.

#### Examples

- Shop drawing corrections, showing additional work not covered in contract documents.
- Owner's representative tells a superintendent to relocate a wall with no payment intended.

#### Advice

- Don't assume changes will be free. Find out if there is a cost.

- Don't enrich contract documents.
- Don't enrich shop drawings.
- Make certain the scope and costs of additional work is clearly understood.

### **3. Defective or deficient contract documents - 41%**

Contract documents which do not adequately portray the true contract scope.

#### Examples

- A retaining wall shown dotted on the contract documents and expected by the architect/engineer and the owner to be built as part of the contract.
- Dimensional errors that cannot be resolved by verbal clarification.
- Contract documents that expect performance by default. For instance, specifying a miscellaneous iron ladder but not showing it on the drawings.

#### Advice

- Expect to pay your architect and engineer for good quality assurance in the production of contract documents.
- Select your design team on the basis of performance not cost.
- Clearly define design and construction delivery methods to be used.
- Don't expect your contractor to design the job unless it is a design/build project.
- Don't make unrecorded corrections to contract documents.

### **4. Delays - 41%**

A delay situation beyond the control and not the fault of the contractor.

#### Examples

- Rock encountered that delays the job but was not shown on the contract documents.

#### Advice

- Be as thorough as possible in defining physical conditions of the site upon which the facility is to be constructed.
- Specify weather standards when it is necessary to clarify time extensions that might be caused by inclement weather.
- Determine delay costs quickly and eliminate them as soon as possible.
- Don't stop field work without proper authority and a very good reason.

### **5. Constructive acceleration - 35%**

More work with no time extensions, or the same work and a shorter time period in which to do it.

#### Examples

- Owner refuses to grant time extension for work that will take longer to perform.
- Owner makes unauthorized use of critical path time without extension.
- Owner makes use of float time with the expectation that the contractor will not request or require a

time extension.

Advice

- Never assume the contractor will do extra work within the contract time.
- Work out an early agreement on the use of float time in the network model.
- Never assume a field order is a no cost, no time extension change.

**6. Maladministration - 35%**

Owner interference with the contractor's right to enjoy least cost performance.

Examples

- Owner directs contractor to provide a certain space in a facility early without such early turn over having been specified in contract documents.
- Owner directs contractor to start work on an encumbered site.
- Architect/engineer unresponsive to legitimate requests for information.

Advice

- Always allow the contractor to select construction methods and means.
- Make certain the site is fully available to the contractor before the job begins.
- Process submittals promptly.
- Clearly define the time frame and the sequence by which submittals are to be processed, and do it early in the job.

**7. Differing site conditions - 31%**

The actual site differs from that represented on the contract documents, or deviates from ordinary or normal expectations of such a site in that area.

Examples

- Artesian water encountered in sand seam outside of where soil borings were taken.
- Existing basements encountered but not indicated on contract documents.
- Restrictive easements or assessments on the property not made known to the contractor before contract execution.

Advice

- Expect to pay for and get a good site survey
- Make certain soil borings are adequate to show any unusual conditions.
- Locate and define all easements.
- Check the site history for unusual or restricted conditions.
- Take photos of any unusual conditions encountered.

**8. Impossibility of performance - 18%**

A situation where it is impossible to carry out the contract work.

Examples

- Expecting a contractor to work on an encumbered site.
- Owner refuses to move interfering utilities he is supposed to relocate by contract.
- Specifying installation of above ceiling work that won't fit in the space provided.

Advice

- Expect the design team to check their work thoroughly for interferences.
- Accept your legitimate design and administrative duties and responsibilities and take care of them.
- Resolve dimensional difference early.
- Do your homework to presolve expected problems and interferences.

**9. Superior knowledge - 18%**

Withholding data or information during the pre contract period, that affects construction on matters of importance.

Examples

- On a steel erection contract not telling the bidders that the steel had been refabricated from a previous job.
- Failing to tell bidders that there is a cost cap on the first two months costs
- Not telling bidders that there is a high pressure gas line through the site that must be accommodated during construction.

Advice

- Be certain all bidders know as much as they must know to propose properly.
- Be certain demolition contract documents specify all work to be done.
- Locate, to the best of your ability, all site obstructions before bidding.
- Don't expect the contractor or the architect and engineer to read your mind.

**10. Termination - 7%**

Dismissal from the project for convenience or default.

Examples

- The section of the project is no longer needed and is removed from the contract.
- The contractor is behind schedule.
- The contractor's performance is unsatisfactory.
- The owner doesn't like the way the superintendent talks back to him.
- The contractor doesn't manage submittals promptly and accurately.

Advice

- Be certain the cause for dismissal is legitimate and well defined.
- Don't dismiss for minor reasons. Dismissal is serious business.
- If dismissing, be certain proper notice is given.
- Insure the contract documents give you the right to dismiss.

Claim Prone Job Characteristics

During the profiling, proposing and negotiating period, it is often possible to gain a good insight into the expected nature of a job if one is fortunate (or unfortunate) enough to be the successful proposer. The problem job is becoming increasingly serious in our business and professional lives and it should be identified early. The problem job generally results in increased costs during the construction period and quite often requires arbitration or litigation to achieve resolution of costs and damages.

Thus, it is good policy for the perceptive owner, architect/engineer and contractor to become familiar with those characteristics that early identify a job as having potential for being a trouble project.

This list of characteristics is by no means complete, nor is it meant to imply that a job having these features will necessarily be claim prone. It is, on the other hand, an honest effort to state certain unique job features that have been identified in projects that have ended up in litigation or arbitration. The list is at random with no attempt to classify or characterize the features.

Claim prone job characteristics may include:

- a. A wide spread in proposal prices.
- b. Issuance of a large number of pre-bid addenda and instructions.
- c. For subcontractors, a poor general contractor reputation if the project is being built by one prime.
- d. For projects with separate primes, poor other prime contractor reputations.
- e. More than four to six prime contractors involved (applicable on normal building work only).
- f. Poor reputation of architect/engineer preparing contract documents.
- g. Excessive how-to-do-it emphasis in contract drawings and specifications.

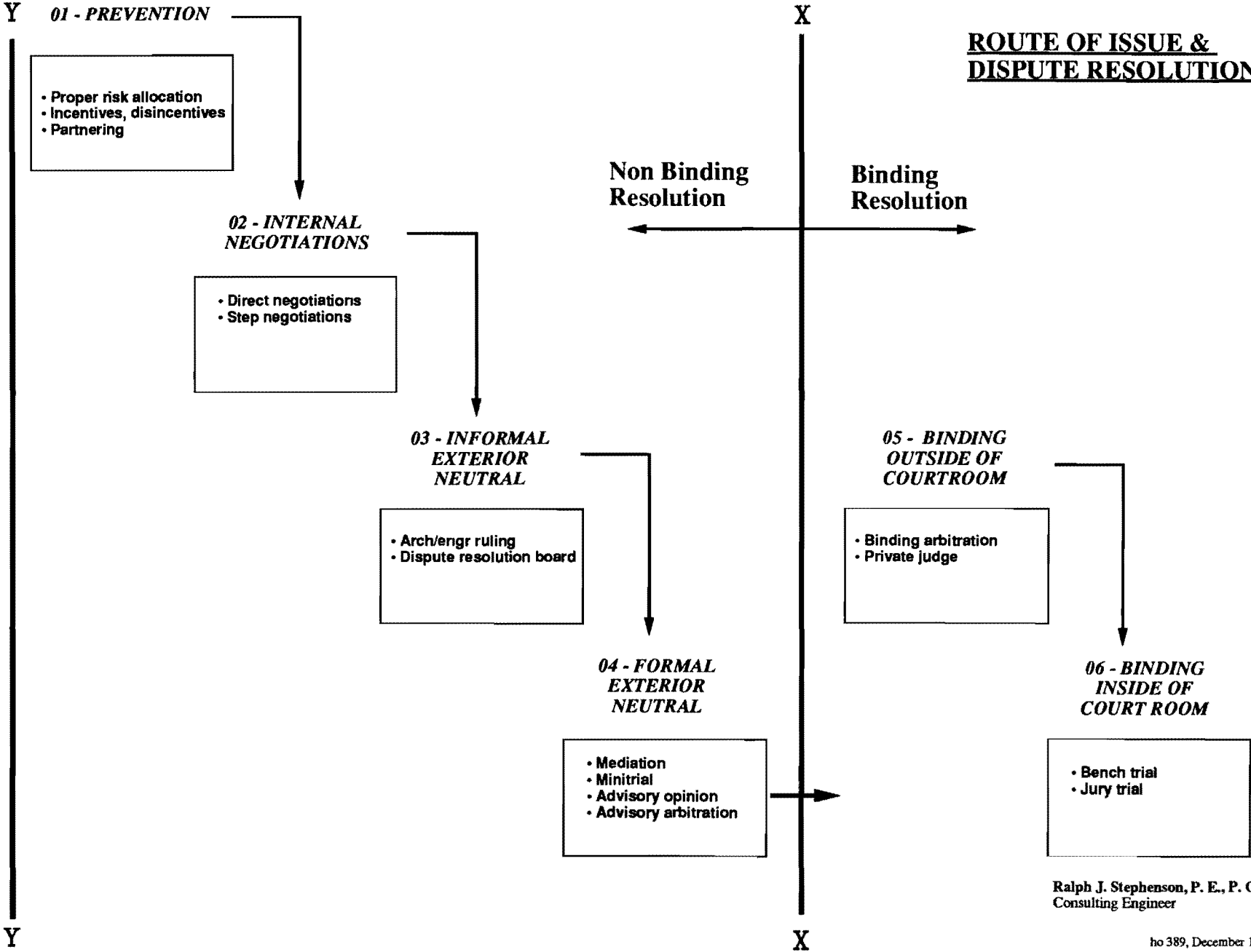


Claim Prone Job Characteristics  
(continued)

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CONSULTING ENGINEER

- h. Non-liable party involvement in responsible positions, i. e. non-liable construction manager.
- i. Large numbers of allowance items.
- j. Zero (or excessively small) tolerance specifications.
- k. Poorly defined authority and responsibility patterns in the offices of the architect/engineer, the owner, the general contractor or other prime contractors.
- l. Inexperienced specialty contractors.
- m. Excessive number of pre-selected suppliers for key material and equipment.
- n. Large dollar amount or numbers of owner purchased equipment.
- o. Location in strike prone areas.
- p. Location in jurisdictionally sensitive areas.
- q. Heavy use specified for untried products and equipment.
- r. Non-liable party involvement in establishing delivery commitments, i. e. construction manager, architect/engineer, owner representative.
- s. Involvement of politically accountable owners, architect/engineers or other contractors.
- t. Multi responsibility payment structures.
- u. Excessively long time periods to award contracts after a proposal.  
  
(Note: This often occurs in public work where many non-project approvals and agencies are involved.)
- v. Poor owner reputation.

**ROUTE OF ISSUE & DISPUTE RESOLUTION**



Ralph J. Stephenson, P. E., P. C.  
Consulting Engineer