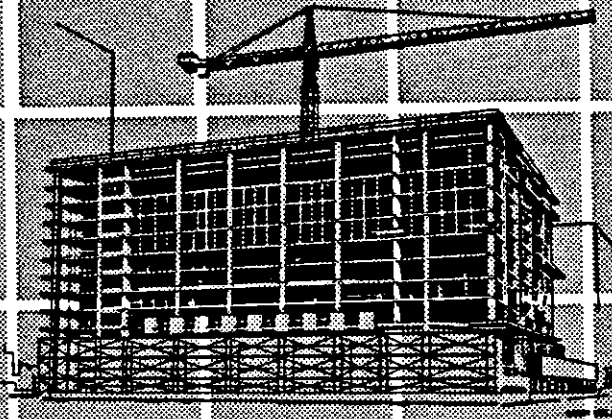


TECHNICAL PUBLICATION NO. 108

**PRACTICES IN THE CONSTRUCTION INDUSTRY
WHICH ARE SUBJECT TO LAWSUITS - PHASE 2**

*This research project was sponsored by
The Building Construction Industry Advisory Committee under a grant from the
State of Florida Department of Education*



Professor Wilson C. Barnes, AIA
Project Director

Professor Jose D. Mitrani, PE
Co-Project Director

Florida International University
Department of Construction Management
Miami, Florida

1992

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PHASE 2**

R 90-15

**PROJECT DIRECTOR
PROFESSOR WILSON C. BARNES, AIA**

**CO-PROJECT DIRECTOR
PROFESSOR JOSE D. MITRANI, PE**

**FLORIDA INTERNATIONAL UNIVERSITY
DEPARTMENT OF CONSTRUCTION MANAGEMENT
COLLEGE OF ENGINEERING & DESIGN**

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David Valdini
Graduate Research Assistant - Construction Management
Florida International University

W. Meade Collinsworth, CPU, ARM, AAI
President
Collinsworth, Alter, Nielson, Fowler & Dowling, Inc.

John M. Dye, CGC
Research Associate - Construction Management
Florida International University

Larry R. Leiby, Esq.
Leiby, Ferencik, Libanoff & Brandt
Adjunct Professor - Construction Management
Florida International University

Charles H. Nielson
Collinsworth, Alter, Nielson, Fowler & Dowling, Inc.
Adjunct Professor - Construction Management
Florida International University

Ronald S. Steiner, PE, CGC
District Construction Engineer
District Six, Florida DOT
Adjunct Professor - Construction Management
Florida International University

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I. EXECUTIVE SUMMARY

This project was conducted to complement and continue studies initiated under BCIAC Project R 89-6. The original study, which is referred to as Law I, examined practices in the construction industry that lead to lawsuits. Its objective was to identify causes rather than to fix blame or list legal winners and losers. Law I revealed a central theme of practitioner failure to tend to business. Both administrative and technical aspects of management were receiving inadequate attention, and practitioners were seen as losing control of their activities, projects, and companies.

The effort described in the remainder of this document which is to be called Law II, is an extension and expansion of that work. Under the Law II study, the research team surveyed a wider audience and has increased the specificity of inquiry to a substantial degree. The results of that survey reinforced the findings from Law I and raised the knowledge of relevant issues to a higher level. Although surveys are imperfect instruments of data generation, the research team was able to increase its reach to the problem sources and understand them better.

The principal effort of Law II was the development of four curriculum modules which can be used to explain and emphasize the lessons that were learned through investigating how practitioners get into trouble due to the way they go about the business of construction. Through the medium of instructional modules, the research team has tried to develop a theme of how to stay out of trouble. The four modules all can stand alone as instructional packages or be grouped together for presentation.

II. FINDINGS, CONCLUSIONS, and RECOMMENDATIONS

A. Findings

1. The research team conducted a statewide survey of general contractors and sub-contractors. Firms were chosen at random from Blue Book listings and sent a questionnaire to fill out and return. The number of responses was satisfying from general contractors but disappointing for sub-contractors. The average business volume was five and four million dollars annual respectively for the two groups. Most firms had regular attorneys who were knowledgeable in construction. The cause or reason for getting into trouble that dominated responses to questions about the nature of problems was "poor workmanship." The high scoring result across all reasons for problem activity was that the contractor "lost money." The question concerning modes of resolution for problems revealed that claims/disputes over "design documents" and "getting paid" were experienced most frequently. All categories of claims/disputes were resolved overwhelmingly by "negotiation without formal proceedings." These findings were consistent with and extended those from the Law I study.

2. The instructional modules reflect four areas of concern to the industry. They were prepared with the intent that they should be informative and also be helpful to practitioners in their day-to-day conduct of affairs. This project has focused as much on telling people how to do better as on telling them what they are doing wrong. The handout booklets, therefore, are intended to serve not only as instructor guidelines, but also as student or reader reference manuals. The modules were presented through local

sponsorship of two different industry groups. Attendance at the various sessions was consistent with that of other industry association seminars in this geographical region. The team found that attendance can be increased through aggressive marketing. Response of the attendees to the material has been positive with a high level of interest shown for the booklets.

B. Conclusions

The conduct of the study was unquestionably worthwhile. It was possible to develop four discrete modules of instructional material to serve the industry. Each module has been presented to industry groups on two occasions for a total of eight instances. In addition, two outside presentations of combined Law I/Law II material have been made to date at regular industry association meetings. The research results have substantially upgraded the data base supporting the impact of legal issues on the construction industry. It has generated information leading to a far better understanding of the problem causes and preventive measures which are applicable. The project promoted greater industry interaction and action by drawing on industry associations to sponsor the presentations. Through this medium the team not only obtained involvement but provided a forum for interaction of participants. Finally, project activities enhanced the awareness of State agency backing for this project and other related activities by describing the role of BCIAC and Department of Education whenever possible.

C. Recommendations

1. That the content of this project be made available in the form of presentations to the construction industry associations or

groups around the State. Such presentations could be cast viably as continuing education or continuing professional development sessions. All members of the industry, no matter what their affiliation, would benefit.

2. That a project to continue expansion and upgrading of the data base be authorized. There is still much to be learned about the real economic impact of the industry problems the research team has been investigating. It is not inconceivable to imagine some restructurings of how the industry conducts business. It is obvious that there is a need to reduce internal strife and enhance the strength of the construction community's position versus strong external financial interests.

3. That a general Continuing Education Program be mandated for all licensed construction industry practitioners throughout the State of Florida.

III. PROJECTION

These courses or modules as the team has chosen to call them should be presented to a broader constituency than was reached in the study project. There is no reason why they should not be considered appropriate continuing education or development topics.

Each year, the instructional material (booklets) should be updated to reflect not only changes in the law but new information that emerges from continued data base development. This could be considered similar to a software maintenance activity. Such an activity on a regular basis would need some form of support.

The data base, instructional material, and research initiative in this area are unique and should not be abandoned.

IV. MAIN DISCUSSION

A. Background and Objectives

This project was originally conceived and proposed as a logical follow-on to the Law I Study funded by the BCIAC and the State Dept. of Education in May of 1990. That study had examined commonplace practices and modes of operation in the construction industry which are subject to or potentially lead to lawsuits. In addition to identification and subsequent verification of these features, the study attempted to quantify various levels of incidence among the features and/or their several sub-categories.

This basic assemblage and quantification of data provided the first known collection of statistical information in the field of construction looking at causes rather than outcomes. The initial effort identified the primary areas of concern in construction as it is practiced today and developed a basic curriculum designed to convey the nature and dimensions of the underlying causes for the high levels of legal intervention we experience.

A fundamental premise has been assumed for both the basic and this present study that the construction industry suffers from an unacceptably high level of dispute and litigation over practices and/or mispractices. Our objective has been to develop factual information on that issue and recommend measures to avoid/prevent similar occurrences. The basic study resulted in an educational module suitable to facilitate establishment of awareness. This present study which we shall call Law II, undertook to further the development of knowledge gained in Law I and to effect a broader dissemination of that knowledge through structure and presentation.

B. Approach, Technique and Scope

The approach to satisfying the requirements of this study was threefold. First to conduct a statewide survey building on the data generated in Law I. Second, to develop curriculum for the presentation of instruction on the four principal areas of business operation identified in Law I as sources of problems or disputes in the industry. And third, to present these modules of instruction to industry groups in an easily digestible format.

Survey The second survey was designed to increase and improve the data base developed in the first study. By organizing a set of questions directed at specific issues we had identified the first time, we were able to focus more directly and generate more data on: the basic operational factors which caused litigation, the nature of economic impact or results on contractors involved, and the immediate or first-level reasons for claims and/or disputes. Additionally, we sought data from respondents on levels of business volume to help us determine if responses to questions varied as a function of gross receipts; and on their use of attorneys to help us gauge the dimensions of the overall problem.

A random selection of contractors was made from the Blue Book listing of contractors in the State of Florida. Two mailings of four hundred and seventeen for general contractors and four hundred and sixty-nine for sub-contractors were made and sent out roughly thirty days apart. Response from the general contractors was significantly higher, approximately 21% against approximately 6% for sub-contractors. No attempt was made to determine if the

addressees were still viable businesses at the time of mailings and no preliminary screening was done to establish a minimum annual business volume for potential respondees. The low level of response compared to the level obtained for the survey in the first study leads us to suspect that several negative aspects may have been in force during the most recent effort.

The survey form is included in Appendix A. A short perusal will reveal that the format is somewhat more complex than a simple set of yes/no or fill-in-the-blank requirements. The graphic matrix which we used asked for a lot of information in a tight space. In retrospect, if it had been designed differently it might have appealed to more recipients and elicited more response. In surveys of this type, not every recipient is disposed to disclose information they may feel is sensitive, and some are still so angry from the process and outcome of legal action that their responses are less than accurate. Future surveys in the legal issues area would probably benefit from telephone contact to screen for appropriateness, as well as follow-up with the questionnaire, particularly outside the area where the inquiring party is generally known. Also, telephone contact could readily confirm whether an addressee is a viable business or not. A final, but very important, downside consideration is that this survey was conducted during the peak of the 1991-1992 recessionary times when some estimates placed unemployment in the construction industry as high as fifty percent and many listed businesses were simply no longer in business.

The data gleaned from the survey is presented in this report

in several ways. Raw data, a table of responses, data charts, and a copy of the survey itself are all part of the Appendices. Significant observations from the analysis are discussed in this section. Raw data for all of the questions as a body reveal a characteristic that is consistent throughout. Responses from the generals reflect a greater attempt to answer the questions accurately and provide unsolicited constructive comments. Perhaps this is a measure of their better grasp of the business aspects of contracting, or of their stronger business positions, or of the organizational role of the individual respondee allowing him greater detachment from the everyday operational problems. We do not know. So although the data is informative and intriguing, we are left with many questions yet to be asked that will lead us to the next level of knowledge.

The survey questions were focused on three areas. Responses to the questions have been compiled as raw data and presented in a format similar to the questionnaire. These raw data results are presented in Appendix B. and can be noted to clarify the following discussions. The graphs in Appendix D. augment this simple listing of the raw data count.

The first area of the survey questions had to do with nominal identification of respondee category, the size of his business volume and whether the respondees had customary (regular) or ad hoc relationships with attorneys, and whether those attorneys were knowledgeable in the field of construction. This allowed us to consider generals and sub-contractors separately, and also to observe the content and quality of responses as a function of

business dollar volume and of attorney relationships.

The second area dealt with causal factors that respondees felt problems they had experienced were traceable to. A listing of ten reasons and eight choices of results was given. Through this we hoped to gain some insight to the relative incidence of outcomes, or more plainly said to the relative incidence of the various impacts that disputable problems have had on contractors. The responses were strikingly consistent with what Law I had led us to suspect. "Poor workmanship" was the overwhelming leader of indicated reasons, with "defective estimates" and "defective materials" tied for second place. "Poor scheduling" and "failure to understand contracts" also scored high. In terms of resolution, most respondents said that they "lost money" followed by "agreement within the traditional client, A/E, contractor triangle." It is interesting to note that in the "lost money" category, the predominant causes were "defective estimate," "poor workmanship," and "failure to read/understand contract" ranked in that order.

The third area of survey had to do with problem resolution. Here we attempted to determine the kinds of issues respondees had claims or disputes over, and how these were resolved. Again we provided a choice: a list of twelve claim/dispute reasons combined with a list of six resolution types. The responses to this section continued to reinforce our findings from Law I at the same time that they gave us more detailed information about the interrelation of issues and resolutions.

"Design Errors and Omissions" has long been known as the leading cause of litigation in the industry. Here in the survey we

provided a spectrum of outcomes or resolutions leading up to litigation as the most complex and costly to the contractor. It is noteworthy that claims/disputes over design documents leads the list of problems as identified by contractors. We can postulate several possible reasons for this phenomenon. They have to do with professionalism, pressures of time and money, the role played by the designers. These are complex issues in themselves and merit considerable analysis and discussion beyond our present scope.

A close second in terms of designated problems was the category of "getting paid." This was the leading issue in Law I where we had asked for identification of issues as a function of involvement in litigation. When we look more closely at our data matrix here in Law II we see a similar leading count for the intersection of "getting paid" and the two types of litigation as modes of resolution. Perhaps the most striking revelation in the data is the overwhelming number of claims/disputes that were settled by "negotiation without formal proceedings." This, of course, is consistent with our posture of advocacy that claims/disputes should be settled in this manner if the parties to the issue find it at all possible to do so.

The survey questionnaire and the raw data counts are included under Appendices A & B. The raw data has been converted into a number of graphic charts providing a more visual representation of quantification and comparison. The charts are ideal for photocopying of overhead transparencies to assist in classroom or seminar discussion of the issues. The charts are included in this report under Appendix D.

Curriculum Development Four curriculum modules were developed in an instructional form that can also serve as class handouts or simply as self-tutorial booklets. These module areas correspond directly to the central theme identified in the Law I study and to the instructional module which it generated.

The four new modules and the topic contents are:

- | | |
|--------------------|---------------|
| 1. Contracts | 2. Bonds |
| Risk Shifting | Insurance |
| Retainage | Financing |
| Termination | Credit |
| 3. The Lien Law | 4. Scheduling |
| Waivers | Delays |
| Releases | Claims |
| Dispute Resolution | Change Orders |

In each case the modules were prepared as cooperative efforts with the lead writing role being filled by knowledgeable persons who later also made the initial presentations. The material was upgraded as a result of feedback in the presentation sessions and appears in that adjusted form in Section V. of this report.

Presentations Two series of presentations were scheduled and conducted for the modules. Each module is self-contained and can be presented independently of the others. The presentation material for each module is designed to cover about two and a half hours with time at the end to accommodate questions and answers. A decision was made to seek sponsors for these presentations in the hope that an audience that was wider and more representative of the

industry in South Florida could be reached.

The Broward Builders Exchange sponsored the first series as part of their regular monthly seminars and scheduled the four presentations over a five-month period. Extensive notices of the sessions were sent out to the four-hundred-plus person membership of the Exchange in the regular mailings every week or two. The sessions were held in the Exchange meeting room in Ft. Lauderdale. Attendance averaged twenty persons per session and the make-up of the attendees varied widely from one session to the next. Response to the presentations was very positive, with a number of subsequent requests in after weeks for additional copies of the handouts. We furnished these from the original printings which had included several dozen extra copies.

The second series of presentations was sponsored by the South Florida ABC. Once again we spaced the sessions out so we would not impose too great a demand on time for the audience we hoped to reach. These sessions were scheduled over a slightly different time, overlapping the first group somewhat but occurring in four months instead of five and being presented in a different location. The first of the sessions was presented in Miami in the vicinity of Miami Airport. This was a reasonably central location for Dade County and we had the largest turnout (over thirty registered attendees) of both series at this location. The remaining three sessions were conducted at Miami Lakes which is in North Central Dade close to the Broward line. This locational change was a concession to ABC who wanted to draw from the northern counties as well. Although we experienced extremely bad weather on two of the

three evenings in Miami Lakes, attendance seemed to suffer in contrast to the session farther down in Dade. Perhaps this was due to the previous series at the Builders Exchange drawing down on the market pool for Miami Lakes. In any event, attendance at the three remaining sessions averaged slightly under twenty persons. Despite this, the level of interest and expressed satisfaction in the sessions remained high and we continued to have requests for copies of the handout booklets after the last presentation.

Copies of the seminar announcements and registration forms that were mailed out to members of the sponsoring organizations are included under Appendix C. While the earlier notices reflect the identity of those organizations very prominently, on the guidance of BCIAC the announcement format was revised as illustrated for the latter half of the scheduled sessions. It should be noted that prior to the second series sponsored by ABC, an extra promotional flyer encouraging general participation was sent out. This was just prior to the seminar where we had the greatest attendance. There is probably some correlation between the two events and that could establish a strong argument for similar flyers in all future similar situations.

As a direct result of the presentations, the Project Director was invited to speak at the monthly dinner meeting of South Florida ABC in the month of May, and at the September dinner meeting of the Gold Coast Electrical Contractors Association. These engagements at request of the host organizations were consummated by presenting condensed versions of the Law I study augmented with partial data from Law II. The Project Director has been tentatively scheduled

to address the Gold Coast Electrical Contractors Association again.

C. Benefits

There are four distinct benefits that have accrued as a result of this study and its activities. They are identified and detailed as follows:

Defined Educational Packages - Four discrete modules of instructional material have been developed to serve the industry in several ways. The material can be used as an instructor's package to prepare and present seminars on the topics which have been addressed. The material can be used as a class handout to students as a teaching aid to facilitate their comprehension of the subject matter. And, the material can be used as a self-study guide by those wishing to refresh or update their knowledge, or by those first learners of the lessons.

Expanded Data Base - This study has expanded the data base for development of analysis and information in this important and little understood area of construction industry activities. It is not known how large a percent of industry dollar volume is consumed by the resolution of claims/disputes, or realistically how much of that could be avoided. It may never be possible to fully develop and comprehend these figures. However, it is of inestimable value to have data beginning to point direction for industry improvement and adjustment from a course that seems destined to paralyze the industry. The kind of data generated in Law I and Law II is not known to exist anywhere else. Considering the confidence it gave to our selection of instructional subject matter to develop, it is appropriate to believe that further benefit can be derived from

continued expansion and refinement of this data base focused on contractor actions: causes and results, problems and resolutions.

Greater Industry Interaction and Action - Under the mantle of this study and its products, we have consistently encouraged the industry, through those members we have contact with, to work as a single body toward common goals rather than as disparate units bent on maximizing their own parochial interests at the expense of all the rest. Each seminar provided a forum for the voicing of concerns and frustrations without fear of retribution. Many were expressed, especially about the perceived practices of financial manipulation and withholding of payment. The sharing of experiences and the ways problems have been resolved was a vocal extension of our survey and helpful to all who participated. When continuing education is finally mandated for all supervisory persons in the industry, it should conform to this unifying philosophy rather than perpetuating the industry's well-known fragmentation.

Enhanced State Agency Awareness and Initiatives - The seminars served as a medium to make the industry aware of BCIAC and its role in trying to address industry problems. They also reinforced the idea of the state as the dominant policy-making body that is able to most influence the conduct of business and the misconduct of its practitioners. When the state takes initiatives to examine problems, there is a hope in the citizenry that beneficial adjustment is not far behind. So it is with practices and pitfalls in the industry that lead to law suits. There is new hope in a small segment of the construction industry that the state is going to help make things better.

D. Conclusion

This study has expanded our knowledge of practices in the industry and problems that they generate. We have learned much more about the incidence of certain results of our deeds and misdeeds; also, we have learned much more about the nature of resolution for our various claims and disputes. This knowledge has been achieved by increasing the very useful data base started under Law I and adding to its dimensions as well as to its size. Finally, we have established a basic store of instructional material that can be updated and presented many times over to industry groups and individuals.

The product of this study responded to a real need in the industry. That need is for more knowledge about what we are doing wrong and the prescriptive medicine necessary to help us do better. The complexity of any game is a partial function of the number of players involved. Construction is a prime example. It is rarely possible to control adverse actions of the opposition, especially if they enjoy a number of players or are comprised of several opposing groups. It is possible, however, to gain advantage by winning over some of the opposition to become home-team players and to build team objectivity and unity of purpose. Industry progress in this direction will preclude much of the conflict and pursuit of vested interest that we see today. Real progress is gained through knowledge and we must foster a climate to continue development and dissemination of that knowledge.

V. THE COURSES

- A. Module I - CONSTRUCTION CONTRACTS AND RISKS
- B. Module II - BONDS, INSURANCE, CREDIT & FINANCE
- C. Module III - THE LIEN LAW, WAIVERS, RELEASES,
& DISPUTE RESOLUTION
- D. Module IV - SCHEDULING, DELAYS, CLAIMS & CHANGE ORDERS

B.C.I.A.C. SURVEY - LAW II

1 April 1992

Dear Construction Colleague: This survey is sponsored by the State of Florida Building Construction Industry Advisory Committee. It is intended to generate information to help you. Please complete this form and return it now. Your help will help us all.

PRACTICES & PITFALLS INQUIRY

PART I GENERAL INFORMATION

1. You are: A. General Contractor _____ B. Sub-Contractor _____
2. Your business dollar volume has been:
 - A. Last year _____
 - B. Average last three years _____
3. You have a regular attorney: A. Yes _____ B. No _____
4. Your regular attorney is knowledgeable in construction

-business: A. Yes _____	-litigation: A. Yes _____
B. No _____	B. No _____
C. Unknown _____	C. Unknown _____
5. You have no regular attorney but you use those knowledgeable in construction

-business: A. Yes _____	-litigation: A. Yes _____
B. No _____	B. No _____
C. Unknown _____	C. Unknown _____

PART II CAUSAL FACTORS

In the past three years, have you as an individual or firm in the construction industry been involved with a problem traceable to any of the reasons listed below? If so, please indicate how many times total for each reason in the "#" column, and the impact/s of those reasons in the "Result" columns.

REASON	#	RESULT*							
		a.	b.	c.	d.	e.	f.	g.	h.
1. Failure to Read/Understand Contract									
2. Defective Estimate									
3. Lack of Procedural Knowledge									
4. Poor Scheduling									
5. Poor Workmanship									
6. Defective Materials									
7. Procurement Delays									
8. Wilfull Negligence									
9. Lack of Financing-Self									
10. Lack of Experience									

***RESULT**

- a. Resolved within traditional client, A/E, contractor triangle
- b. Gained concessions
- c. Recovered from sub/sub-sub
- d. Made up loss elsewhere in project
- e. Lost money
- f. Terminated
- g. Business failed
- h. Unresolved

Please Turn Over

PART III PROBLEM RESOLUTION

Frequently construction problems escalate into formal disputes. Claims may be involved. Claims not resolved with a concession or change order become disputes. Documentation and legal advice are usually important features in both claims and disputes. Sometimes claims are originated by the contractor and sometimes claims are originated by the owner.

Please indicate your experience as an individual or firm in the following tables:

<u>CLAIM/DISPUTE</u>	<u>RESOLUTION*</u>					
	<u>a.</u>	<u>b.</u>	<u>c.</u>	<u>d.</u>	<u>e.</u>	<u>f.</u>
1. Incomplete, Defective, or Conflicting Design Documents	!	!	!	!	!	!
2. Unreasonable Personnel Attitudes	!	!	!	!	!	!
3. Delay in Shop Drawing Review	!	!	!	!	!	!
4. Differing Site Conditions	!	!	!	!	!	!
5. Change in Scope	!	!	!	!	!	!
6. Interence by Owner	!	!	!	!	!	!
7. Failure to be Paid	!	!	!	!	!	!
8. Non-performance by Sub-Contractor	!	!	!	!	!	!
9. Non-performance other than for Non-payment by owner or general	!	!	!	!	!	!
10. Defective Construction	!	!	!	!	!	!
11. Scheduling Delay	!	!	!	!	!	!
12. Personal Injury or Property Damage	!	!	!	!	!	!

*RESOLUTION

- a. Negotiation without formal proceedings
- b. Mediation - mutually agreed
- c. Mediation - court ordered
- d. Arbitration
- e. Litigation - settled without trial
- f. Litigation - court decision

PART IV COMMENTS - Optional

Law II

Construction Survey

Raw Data

PART I

Question 1. You are: A. General Contractor B. Sub-Contractor

Answers: Generals 88
Subs 29
All 117

Question 2. Your business dollar volume has been:

A. Last Year
B. Average last three years

Answers: Last Year (x1000)

	Generals	Subs	All
Maximum	100000	45000	100000
Minimum	95	108	95
Average	5091	4086	4837

Last 3 Years (x1000)

	Generals	Subs	All
Maximum	178000	40000	178000
Minimum	150	96	96
Average	5755	4009	5323

Question 3. You have a regular attorney:

A. Yes
B. No

Answers:

	Generals	Subs	All
Yes	74	24	98
No	15	5	20

Question 4. Your regular attorney is knowledgeable in construction -business:

Answers:

	Generals	Subs	All
Yes	69	23	92
No/Unknown	3	1	4

-litigation:

	Generals	Subs	All
Yes	62	21	83
No/Unknown	4	1	5

Question 5. You have no regular attorney but you use those knowledgeable in construction -business:

Answers:

	Generals	Subs	All
Yes	11	2	13
No/Unknown	4	3	7

-litigation:

	Generals	Subs	All
Yes	9	0	9
No/Unknown	3	3	6

Law II
Construction Survey
Raw Data

PART II CAUSAL FACTORS

Question: In the past three years, have you as an individual or firm in the construction industry been involved with a problem traceable to any of the reasons listed below?

Answers:

REASONS*

1. Failure to Read/Understand Contract	64
2. Defective Estimate	89
3. Lack of Procedural Knowledge	17
4. Poor Scheduling	71
5. Poor Workmanship	135
6. Defective Materials	89
7. Procurement Delays	32
8. Willful Negligence	12
9. Lack of Financing-Self	28
10. Lack of Experience	4

RESULTS**

	a.	b.	c.	d.	e.	f.	g.	h.
1.	14	5	1	5	10	1	-	4
2.	3	5	3	4	23	1	-	1
3.	2	2	1	1	4	-	-	2
4.	8	2	1	4	6	2	-	2
5.	12	3	15	3	13	3	-	3
6.	6	5	13	2	4	-	-	-
7.	3	4	3	3	2	-	-	2
8.	-	2	3	-	2	-	-	-
9.	2	3	1	-	1	-	2	4
10.	1	1	-	-	1	-	-	-

	51	32	41	22	66	7	2	18

- a. Resolved within traditional client, A/E, contractor triangle
- b. Gained concessions
- c. Recovered from sub/sub-sub
- d. Made up loss elsewhere in project
- e. Lost money
- f. Terminated
- g. Business failed
- h. Unresolved

*numbers based on total responses (#)
**each response counted as one incident

Law II

Construction Survey

Raw Data

PART III PROBLEM RESOLUTION

Question: Indicate your experience in claim/dispute resolution.

Answers:

1.	Incomplete, Defective, or Conflicting Design Documents	44
2.	Unreasonable Personnel Attitudes	33
3.	Delay in Shop Drawing Review	28
4.	Differing Site Conditions	25
5.	Change in Scope	33
6.	Interference by Owner	33
7.	Failure to be Paid	40
8.	Non-performance by Sub-Contractor	27
9.	Non-performance other than for Non-payment by owner or general	12
10.	Defective Construction	16
11.	Scheduling Delay	25
12.	Personal Injury or Property Damage	15

	a.	b.	c.	d.	e.	f.
1.	35	3	-	3	2	1
2.	22	4	-	2	2	3
3.	24	1	-	2	1	-
4.	21	1	1	1	1	-
5.	25	3	-	-	3	2
6.	22	2	1	2	4	2
7.	16	4	1	3	11	5
8.	18	2	-	-	4	3
9.	9	-	-	1	1	1
10.	14	-	-	1	-	1
11.	21	-	-	2	2	-
12.	8	-	1	3	3	-
	235	20	4	20	34	18

- a. Negotiation w/o formal proceedings
- b. Mediation - mutually agreed
- c. Mediation - court ordered
- d. Arbitration
- e. Litigation - settled w/o trial
- f. Litigation - court decision



BBE SEMINAR

CONSTRUCTION CONTRACTS AND RISKS

Module I of a four-part series focusing on practices and pitfalls in the construction industry that are subject to lawsuits. This seminar addresses the construction contract and the allocation of risk within the contract.

Thursday Evening
January 30th
6:30 - 9:30 p.m.

at the

Conference Room
Broward Builders Exchange
3550 NW 9th Avenue

This program is made possible through the efforts of the BBE Education Committee and the FIU/Broward School of Construction Management

The Broward Builders Exchange provides the construction industry with a strong collective voice in all matters effecting the building trade. Vital publications and opportunities to build business contacts are continually provided to firms in the Broward construction industry.



Tell Us What You Want Discussed

In the space provided below, please identify past or current problems and concerns that you would like covered during this seminar. These certainly can be specific or general. We will pass this information on to our speakers.



SEMINAR SCHEDULE

6:30 PM	Introductory Remarks Prof. Wilson C. Barnes, AIA
6:45 PM	Contracts
7:30 PM	Risk Shifting
8:00 PM	Retainage
8:45 PM	Termination
9:30 PM	Conclusion

WHO SHOULD ATTEND

The module discusses the basic concept of a "contract," the nature of risk in a contract, and the identification of risks within specific types of contract clauses. The following professionals will especially receive the most benefit from attending this seminar:

- Developers
- Business Owners/Principals
- Commercial/Residential Contractors
- Construction Managers
- Subcontractors
- Material Suppliers
- Service Suppliers
- Consultants

COST

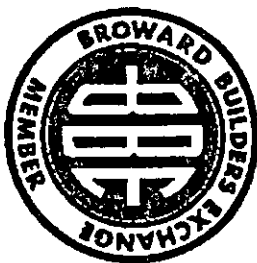
Registrations must be made in advance. The fee for members of the Broward Builders Exchange is \$710 which includes all hand-out materials. For those attending who are not members of the Exchange the fee shall be \$715. Pre-payment is required and the No-Show policy will be upheld.

SPEAKERS

Prof. Wilson C. Barnes, AIA
Dept. of Construction Management
FIU/Broward

Ronald S. Steiner, PE, CGC
Asst. District Construction Engineer
District Six, Florida DOT
Adjunct Prof. Construction
Mgt. FIU/Broward

(Ron Steiner formerly directed the Ft. Lauderdale office of Fogel & Associates, a consulting engineer firm specializing in construction dispute issues and expert witness testimony. He brings extensive knowledge and experience to bear on this subject area of significant interest and importance.)



This program has been developed under the auspices of the Building Construction Industry Advisory Committee of the State of Florida. The material in the module was prepared by engineering and construction professionals for use within the construction industry. It is not intended to substitute for legal counsel.

REGISTRATION FORM



Please reserve ___ seat(s) at the "CONSTRUCTION CONTRACTS AND RISK" Seminar on Thursday Evening, January 30.

Deadline for Registration is Wednesday, January 29.

Company: _____
Address: _____

Phone: _____
City: _____ Zip: _____

Our Check for \$ _____ is enclosed! Return this form with your check to: Broward Builders Exchange
3550 N.W. 9th Avenue
Ft. Lauderdale, FL 33309

For more information call 565-5900

SEE OTHER SIDE



BBE SEMINAR

**THE LIEN LAW,
WAIVERS, RELEASES &
DISPUTE RESOLUTION**

Module III of a four-part series focusing on practices and pitfalls in the construction industry that are subject to lawsuits. This seminar addresses the rights and duties you have under the Lien Law, and how you can improve your chances to win.

Thursday Evening
April 23rd
6:30 - 9:30 p.m.

at the

Conference Room
Broward Builders Exchange
3550 NW 9th Avenue

This program is made possible through the efforts of the BBE Education Committee and BBE Associate members.

The Broward Builders Exchange provides the construction industry with a strong collective voice in all matters affecting the building trade. Vital publications and opportunities to build business contacts are continually provided to firms in the Broward construction industry.



Tell Us What You Want Discussed



In the space provided below, please identify past or current problems and concerns that you would like covered during this seminar. These certainly can be specific or general. We will pass this information on to our speakers.

SEMINAR SCHEDULE

- 6:30 PM Introductory Remarks
Prof. Wilson C. Barnes, AIA
- 6:40 PM Lien Law
- 8:00 PM Waivers & Releases
- 9:00 PM Dispute Resolutions
- 9:30 PM Conclusion

SPEAKERS

Professor Wilson C. Barnes, AIA
Dept. of Construction Management
Florida International University

Larry R. Leiby, Esq.
Leiby, Ferencik, Libanoff & Brandt
Adjunct Professor - Construction Mgt.
Florida International University

John M. Dye, C.G.C.
Research Assoc. - Construction Mgt.
Florida International University

Larry Leiby, Author of the "Florida
Construction Law Manual" will share this
presentation with Jack Dye, a successful
General Contractor who has managed to stay
out of trouble.

WHO SHOULD ATTEND

The Lien Law, Waivers, Releases and Dispute Resolution. Who among us can claim a perfect understanding of these vital issues. When you are forced into litigation, it is too late to worry about avoidance. Start now and improve your competitive posture. The following professionals should attend:

- Developers
- Business Owners/Principals
- Commercial/Residential Contractors
- Construction Managers
- Subcontractors
- Material Suppliers
- Service Suppliers
- Consultants

COST

Registrations must be made in advance. The fee for members of the Broward Builders Exchange is \$10 which includes all hand-out materials. For those attending who are not members of the Exchange the fee shall be \$15. Pre-payment is required and the No-Show policy will be upheld.



This program has been developed under the auspices of the Building Construction Industry Advisory Committee of the State of Florida. The material in the module was prepared by engineering and construction professionals for use within the construction industry.



REGISTRATION FORM

Please reserve seat(s) at the "LIEN LAW, WAIVERS, RELEASES & DISPUTE RESOLUTION" Seminar on Thursday Evening, April 23.
Deadline for Registration is Wednesday, April 15.

Company: _____
Address: _____

Phone: _____
City: _____ Zip: _____

Our Check for \$ _____ is enclosed! Return this form with your check to: Broward Builders Exchange
3550 N.W. 9th Avenue
Ft. Lauderdale, FL 33309

For more information call 565-5900

SEE OTHER SIDE



Florida International University

13 April 1992

Dear Construction Colleague:

The enclosed registration forms are being sent in the interest of encouraging you and/or your associates to attend the announced presentation.

These seminars on practices and pitfalls in the construction industry that lead to law suits are timely, relevant, and full of good advice on how to stay out of trouble in an increasingly litigious environment.

The material has been developed under auspices of the State of Florida Building Construction Industry Advisory Committee. It was gathered and assembled by construction professionals working with attorneys and other specialists in the various subject fields.

A basic study identified the common problems and structured the approach to a presentation format. A second tier study took the four main subject areas and built a seminar curriculum around each one. These are now referred to as the four subject modules.

The modules are:

- I - Construction Contracts and Risk
- II - Bonds, Insurance, Credit and Finance
- III - The Lien Law, Waivers, Releases & Dispute Resolution
- IV - Scheduling, Change Orders, Delays and Claims

You will find the cost of attending to be quite modest since these pilot presentations are sponsored by the State as part of the overall program. If you are like most people in the construction industry, you will benefit greatly from participation.

Give your problems a rest and yourself a break. Join us and become more knowledgeable about effective control of your business.

Wilson C. Barnes, AIA
Asst. Professor
Dept. of Construction Management

The Broward Programs
3501 S.W. Davie Road, Davie, Florida 33314
(305) 948-6747 • (305) 475-4150 • FAX (305) 472-5174

CONSTRUCTION CONTRACTS & RISKS

Module 1, of a four-part series focusing on practices and pitfalls in the construction industry that are subject to lawsuits.

This seminar addresses the construction contract and the allocation of risk within the contract.

Thursday, April 30, 1992
6:30 p.m. - 9:30 p.m.

Radisson Hotel
711 NW 72nd Ave.
Miami

(by the intersection of 826/836)

Schedule

6:30 p.m. Introductory Remarks
6:45 p.m. Contracts
7:30 p.m. Risk Shifting
8:00 p.m. Retainage
8:45 p.m. Termination
9:00 p.m. Conclusion

Speakers:

Prof. Wilson C. Barnes, AIA
Dept. of Construction
Management, FIU

Ronald S. Steiner, PE, CGC
Asst. District Construction
Engineer, Florida DOT
Adjunct Prof-Construction, FIU

This program has been developed under the auspices of the Building Construction Industry Advisory Committee of the State of Florida.

The material in the module was prepared by engineering and construction professionals for use within the construction industry. It is not intended to substitute for legal counsel.

The module discusses the basic concept of a "contract", the nature of risk in a contract, and the identification of risks within specific types of contract clauses.

WHO SHOULD ATTEND? Business Owners/Principals, Commercial Contractors, Construction Managers, Subcontractors, Suppliers...

REGISTRATION FORM

Please reserve _____ seat(s) at the "Construction Contracts and Risk" Seminar on Thursday evening, April 30. Cost - \$ 15.00 per person.

COMPANY _____ PHONE _____

ADDRESS _____ FAX _____

Our check for \$ _____, is enclosed. (Deadline for reservations is 4/28/92.)

Return to:

ABC, 4700 NW 2nd Ave., Boca Raton, 33431
C-6



STATE OF FLORIDA
DEPARTMENT OF EDUCATION

THE BUILDING CONSTRUCTION INDUSTRY ADVISORY COMMITTEE

&

The Department of Construction Management
Florida International University

with

Sponsorship of Associated Builders and Contractors, Inc.

Present a
Seminar

**BONDS, INSURANCE,
CREDIT & FINANCE**

Module II of a four-part series focusing on practices and pitfalls in the construction industry that are subject to lawsuits. This seminar addresses the capital establishments and protective measures you need to operate and survive in construction.

Wednesday Evening
June 10th
6:30 - 9:30 p.m.

at the

Conference Room
Don Shula Hotel
Main Street, Miami Lakes

This program has been developed under the auspices of the Building Construction Industry Advisory Committee of the State of Florida. Program research and module material preparation have been done by the Department of Construction Management at Florida International University for use within the construction industry. It is not intended to substitute for legal counsel.

BETTY CASTOR
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Delray Beach
A C Contr Assn

Joseph Holland
Daytona Beach
Consultant

Harold Johnson
Winter Garden
Architect

Thomas Mack
Lakeland
FL Home Bldrs Assn

John Pistorino
Miami
Engineer

Bruce Simpson
Gainesville
ABC

Russell P. Smith
Boca Raton
FL Assn PHCC

Clifford I. Storm
Ft Lauderdale
Howard County Bd
Rules & Appeals

Warren Sutton
Hialeah
Construction Industry
Licensing Board

Eleste K. Valdez
Tampa
National Assn of
Women in Construction

Speakers

Professor Wilson C. Barnes, AIA
Dept. of Construction Management
Florida International University

Charles H. Nielson
Collinsworth, Alter, Nielson, Fowler &
Dowling, Inc.
Adjunct Prof. - Construction
Management
Florida International University

W. Meade Collinsworth, CPU, ARM, AAI
President
Collinsworth, Alter, Nielson, Fowler &
Dowling, Inc.

Chuck Nielson & Meade Collinsworth represent many years of experience in dealing with the issues of this seminar. Their knowledge and expertise in helping practitioners to stay out of trouble can be useful to all.

This program has been developed under the auspices of the Building Construction Industry Advisory Committee of the State of Florida. The material in the module was prepared by engineering and construction professionals for use within the construction industry.



**STATE OF FLORIDA
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THE BUILDING CONSTRUCTION INDUSTRY ADVISORY COMMITTEE

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Florida International University**

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**Present a
Seminar**

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Broward County Bd
Rules & Appeals**

**Warren Sutton
Hialeah
Construction Industry
Licensing Board**

**Celeste K. Valdez
Tampa
National Assn of
Women in Construction**

**SCHEDULING
DELAYS, CLAIMS
& CHANGE ORDERS**

**Module IV of a four-part series
focusing on practices and pitfalls
in the construction industry that
are subject to lawsuits. This
seminar addresses the construction
project schedule and how to make it
work to your advantage.**

**Thursday Evening
July 9th
6:30 - 9:30 p.m.**

at the

**Conference Room
Don Shula Hotel
Main Street, Miami Lakes**

**This program has been developed under the auspices of
the Building Construction Industry Advisory Committee
of the State of Florida. Program research and module
material preparation have been done by the Department
of Construction Management at Florida International
University for use within the construction industry.
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Speakers

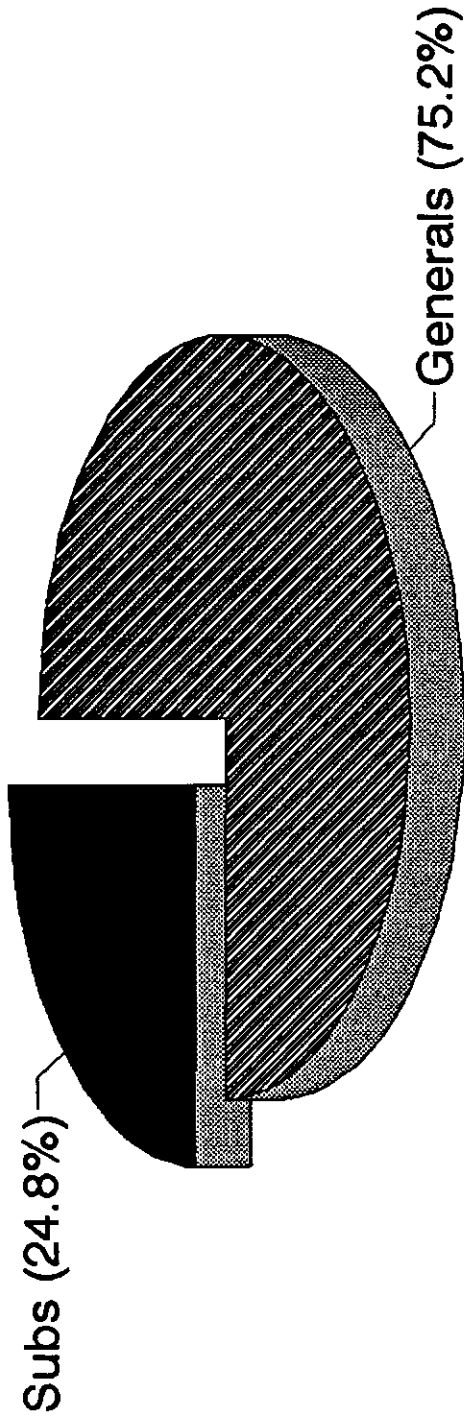
**Professor Wilson C. Barnes, AIA
Dept. of Construction Management
Broward Programs
Florida International University**

**Ronald S. Steiner, PE, CGC
Assistant District Construction Engineer
District Six, Florida DOT
Adjunct Professor - Construction Mgt.
Florida International University**

(Ron Steiner formerly directed the Ft. Lauderdale office of Fogel & Associates, a consulting engineer firm specializing in construction dispute issues and expert witness testimony. He brings extensive knowledge and experience to bear on this subject area of significant interest and importance.)

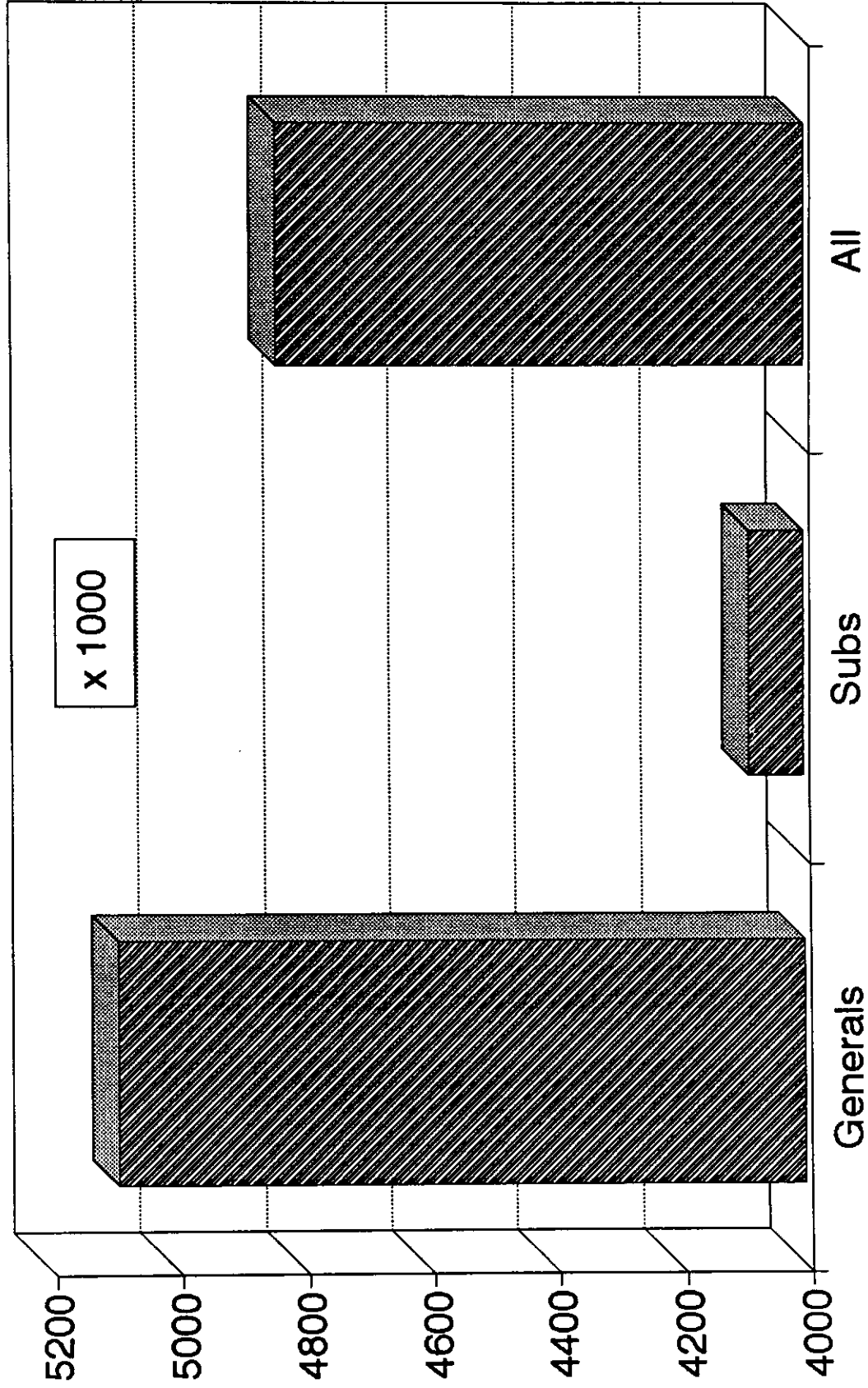
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construction professionals for use
within the construction industry.**

Breakdown of Respondents



Business Dollar Volume

Last Year

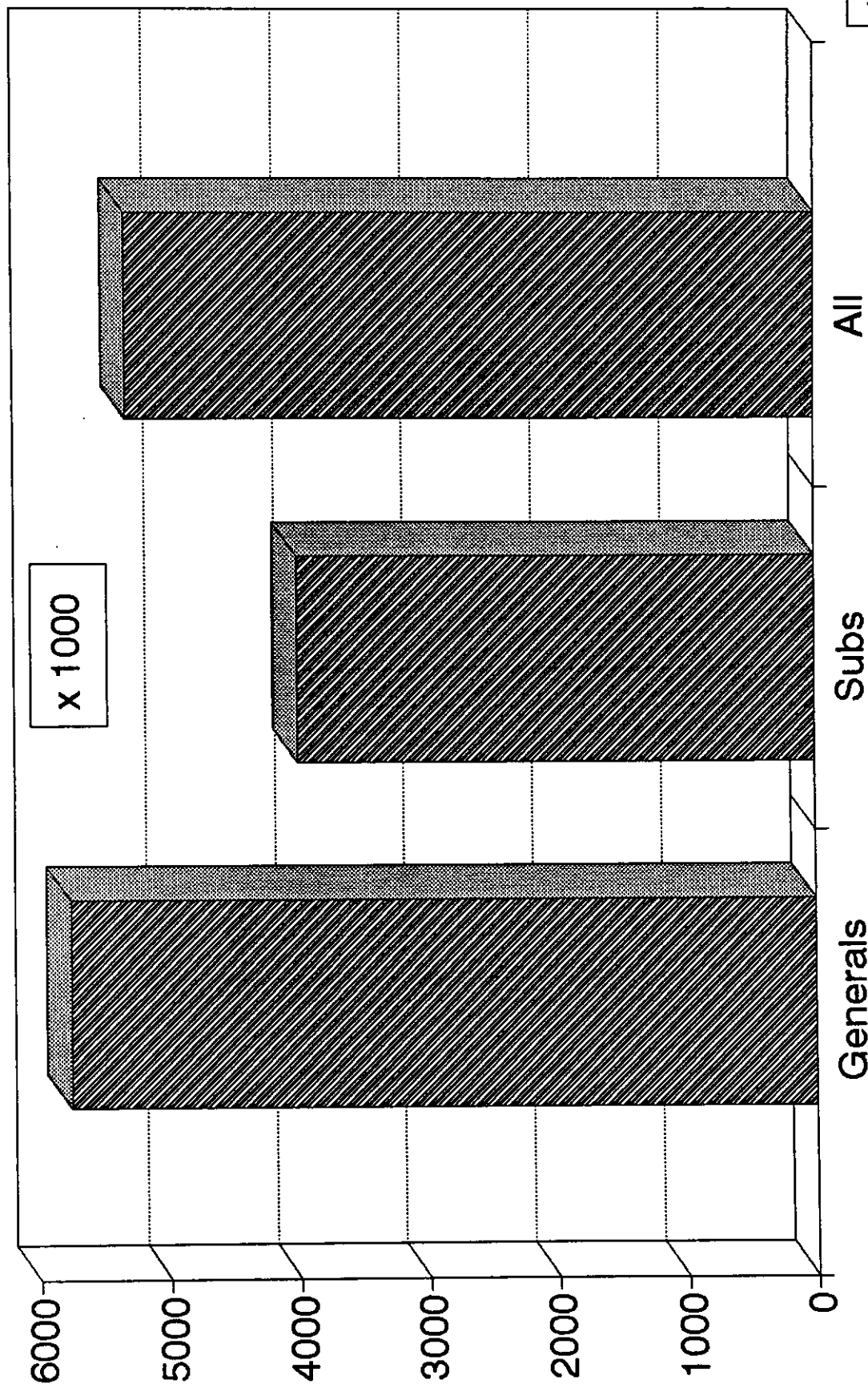


Law II

Part I Question 2.1

Business Dollar Volume

Average Last Three Years

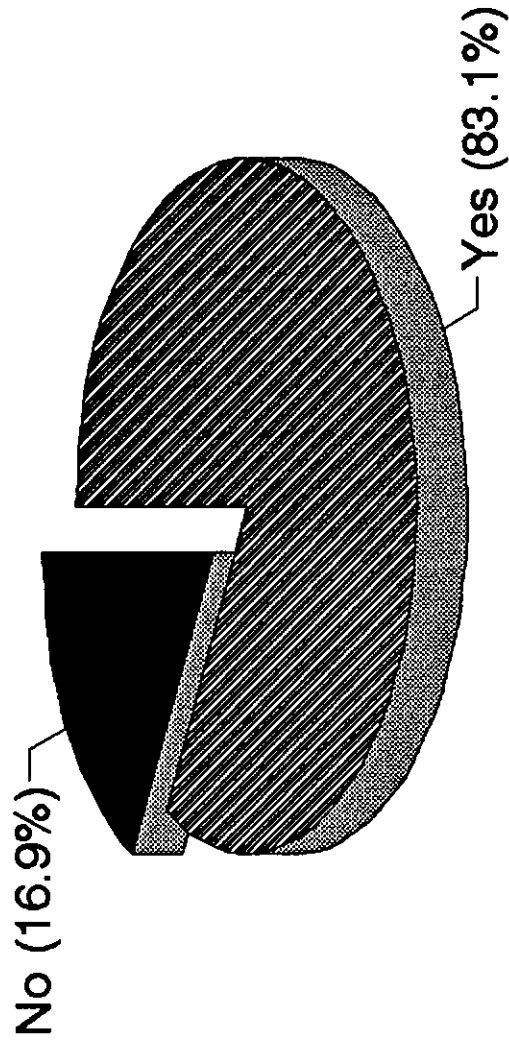


Law II

Part I Question 2.2

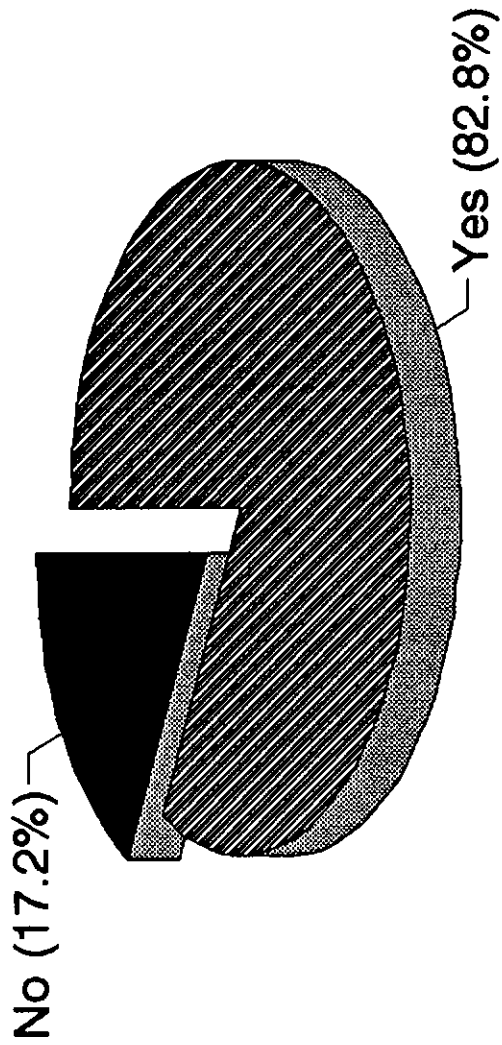
Do You Have A Regular Attorney?

Generals



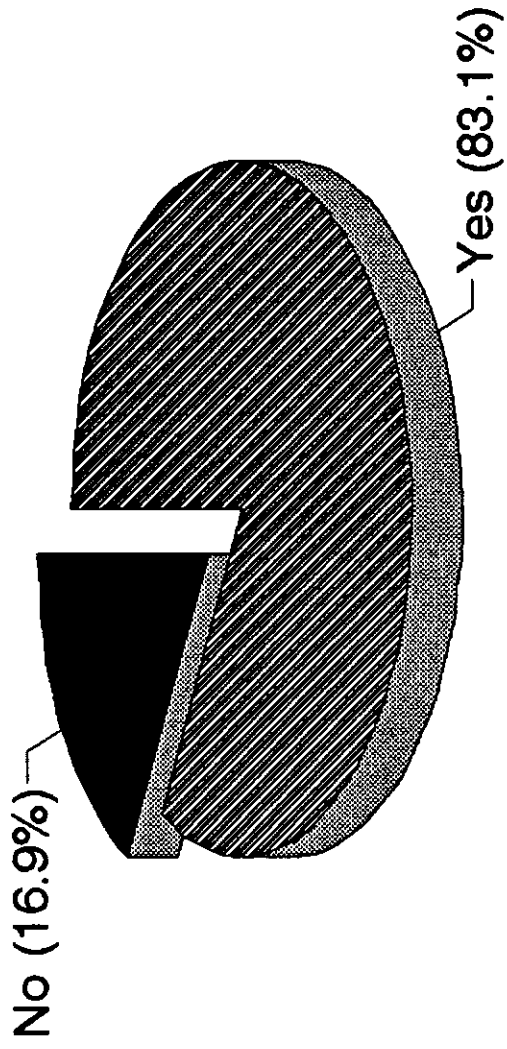
Do You Have A Regular Attorney?

Subs



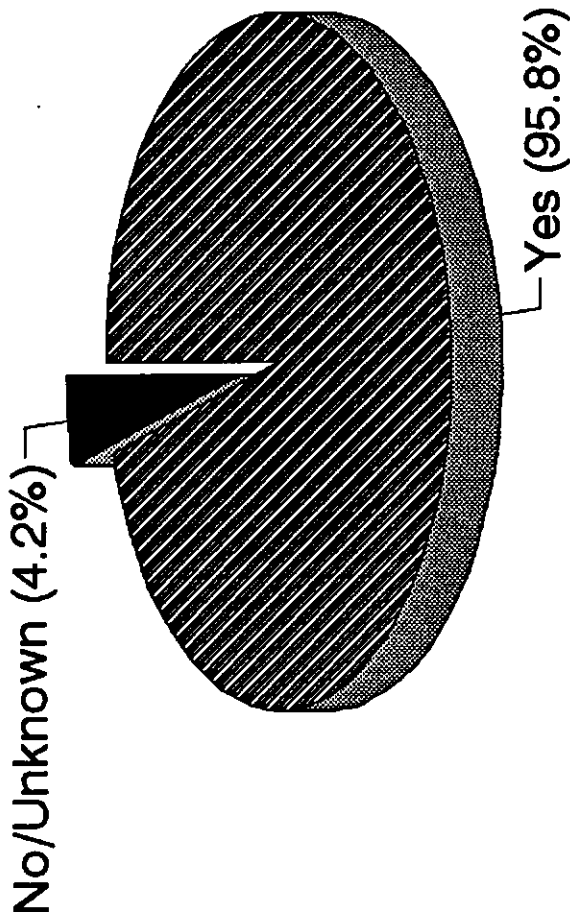
Do You Have A Regular Attorney?

All



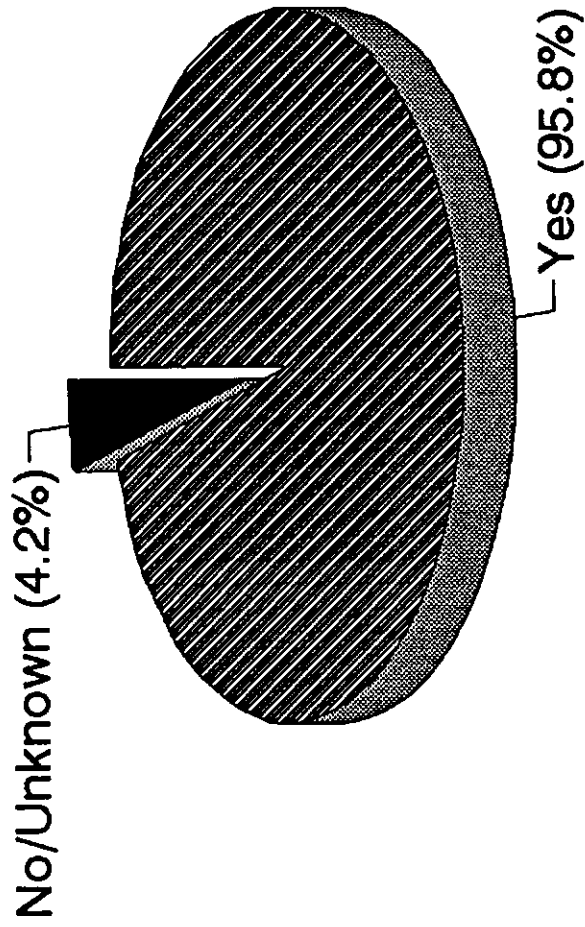
Attorney Knows Construction Business?

Generals



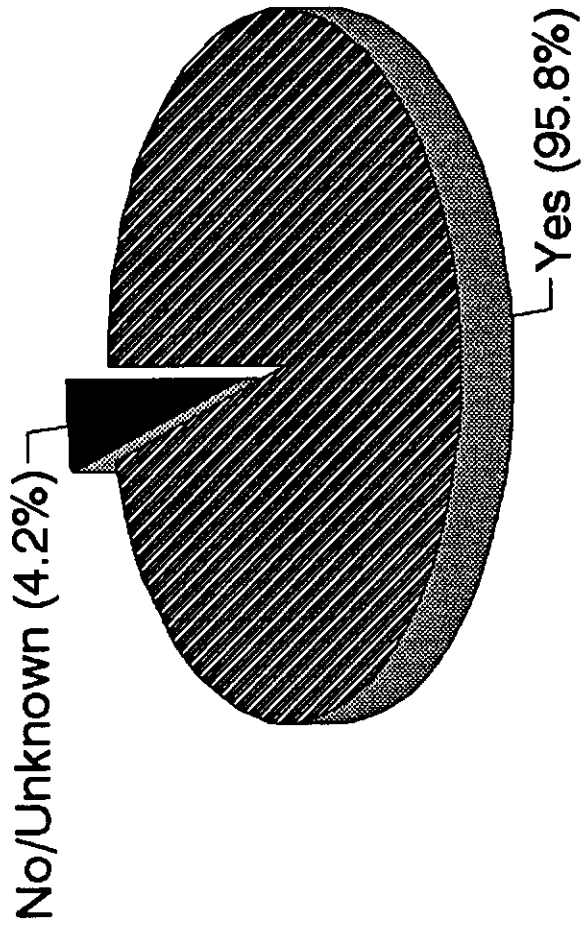
Attorney Knows Construction Business?

Subs



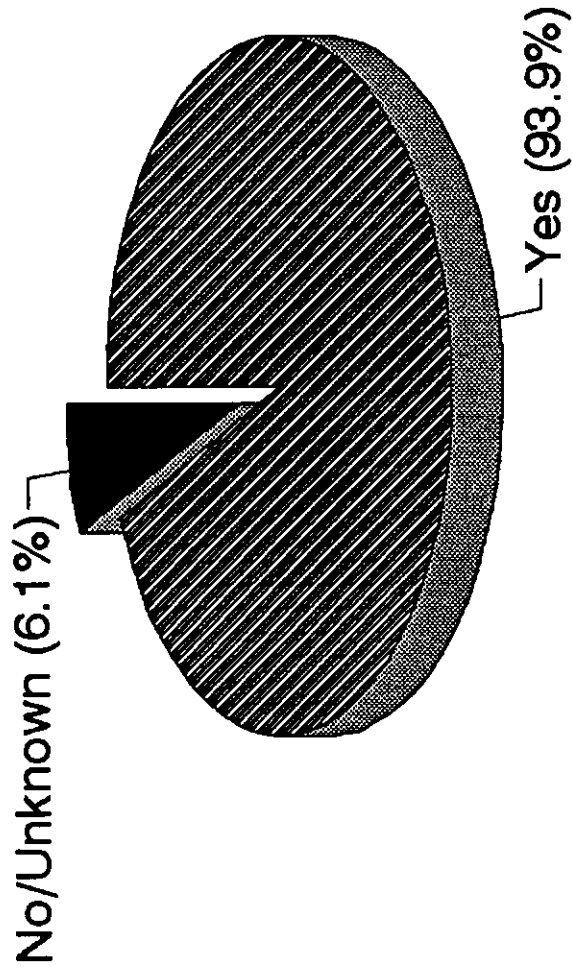
Attorney Knows Construction Business?

All



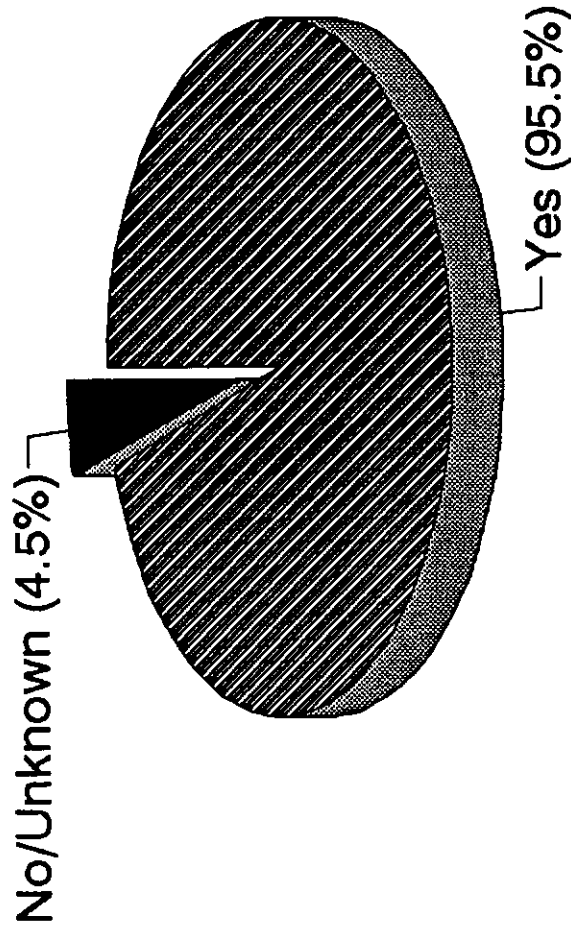
Attorney Knows Construction Litigation?

Generals



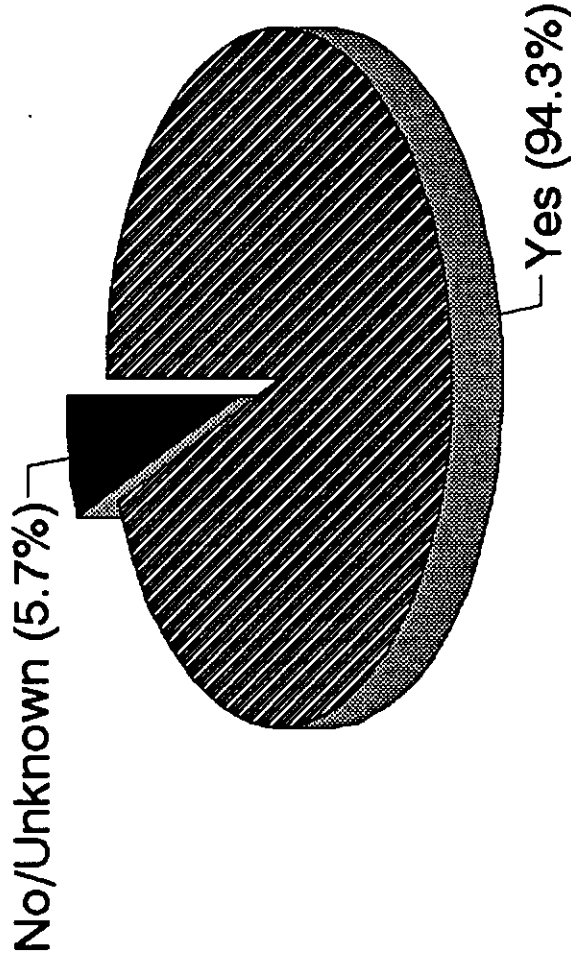
Attorney Knows Construction Litigation?

Subs



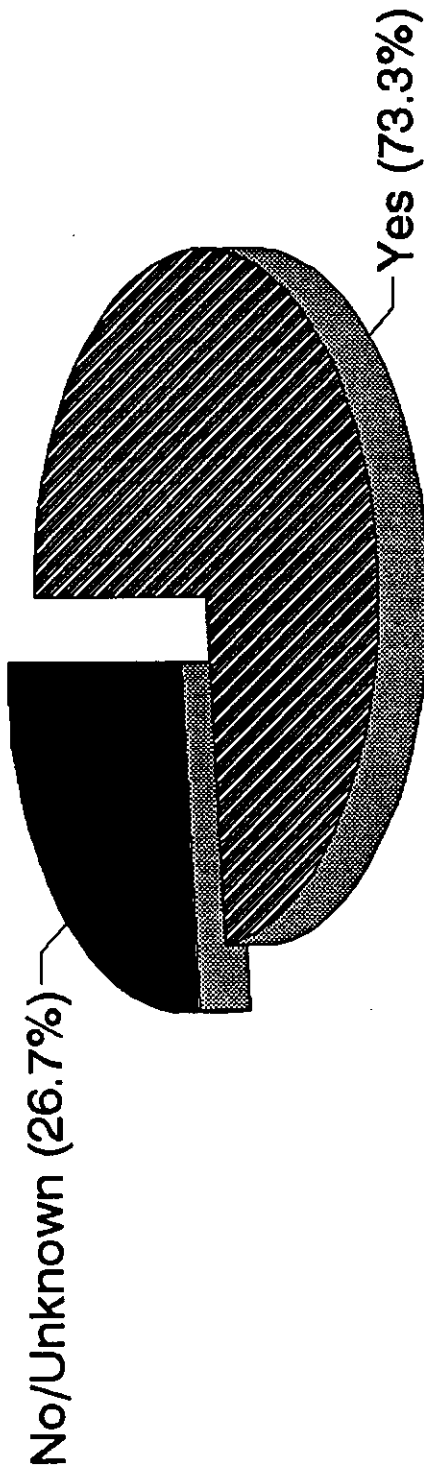
Attorney Knows Construction Litigation?

All



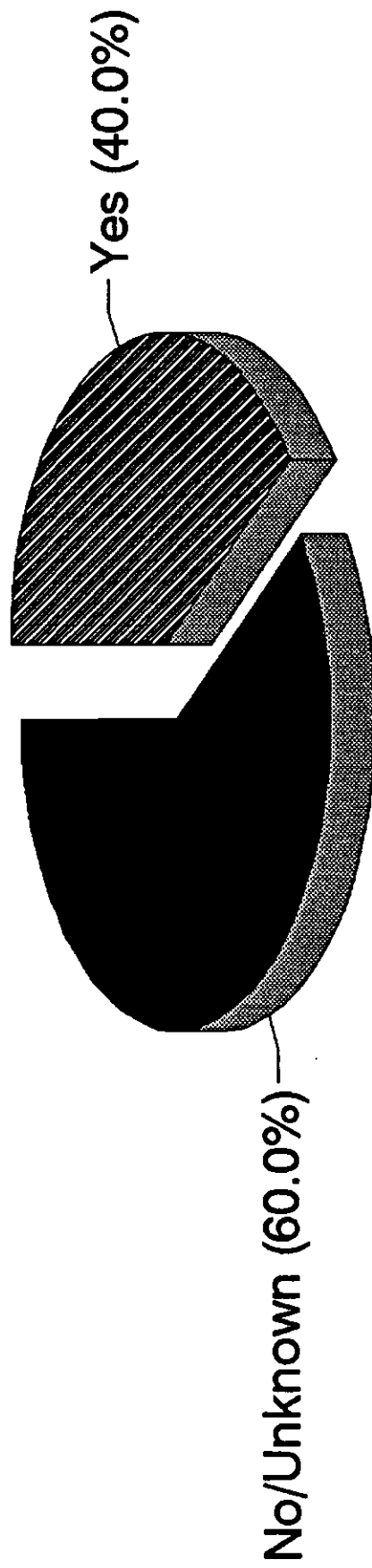
Consult Those Who Know Construction?

Generals



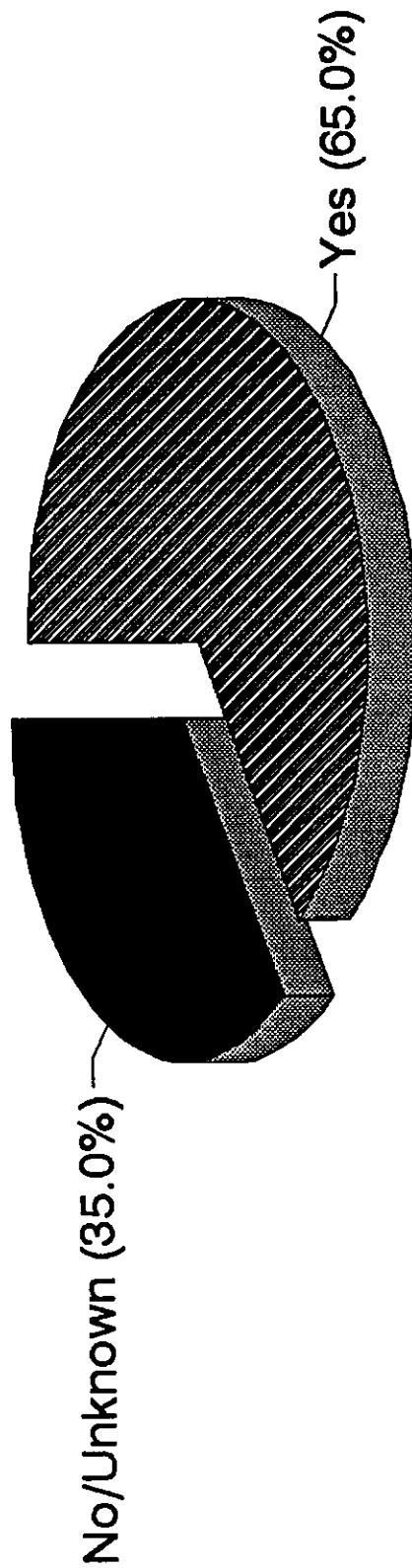
Consult Those Who Know Construction?

Subs



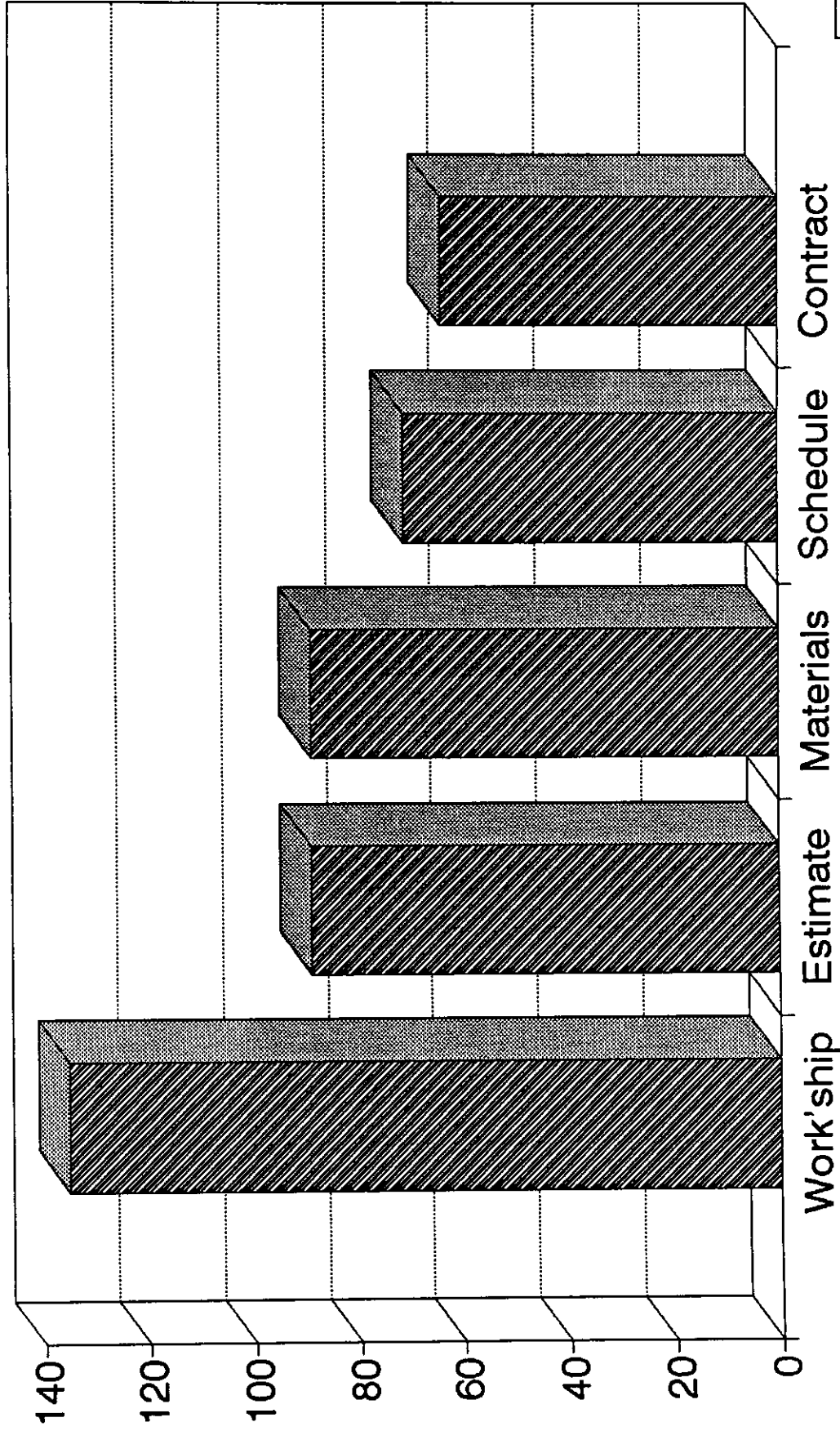
Consult Those Who Know Construction?

All



Factors Which Cause Litigation

Top 5

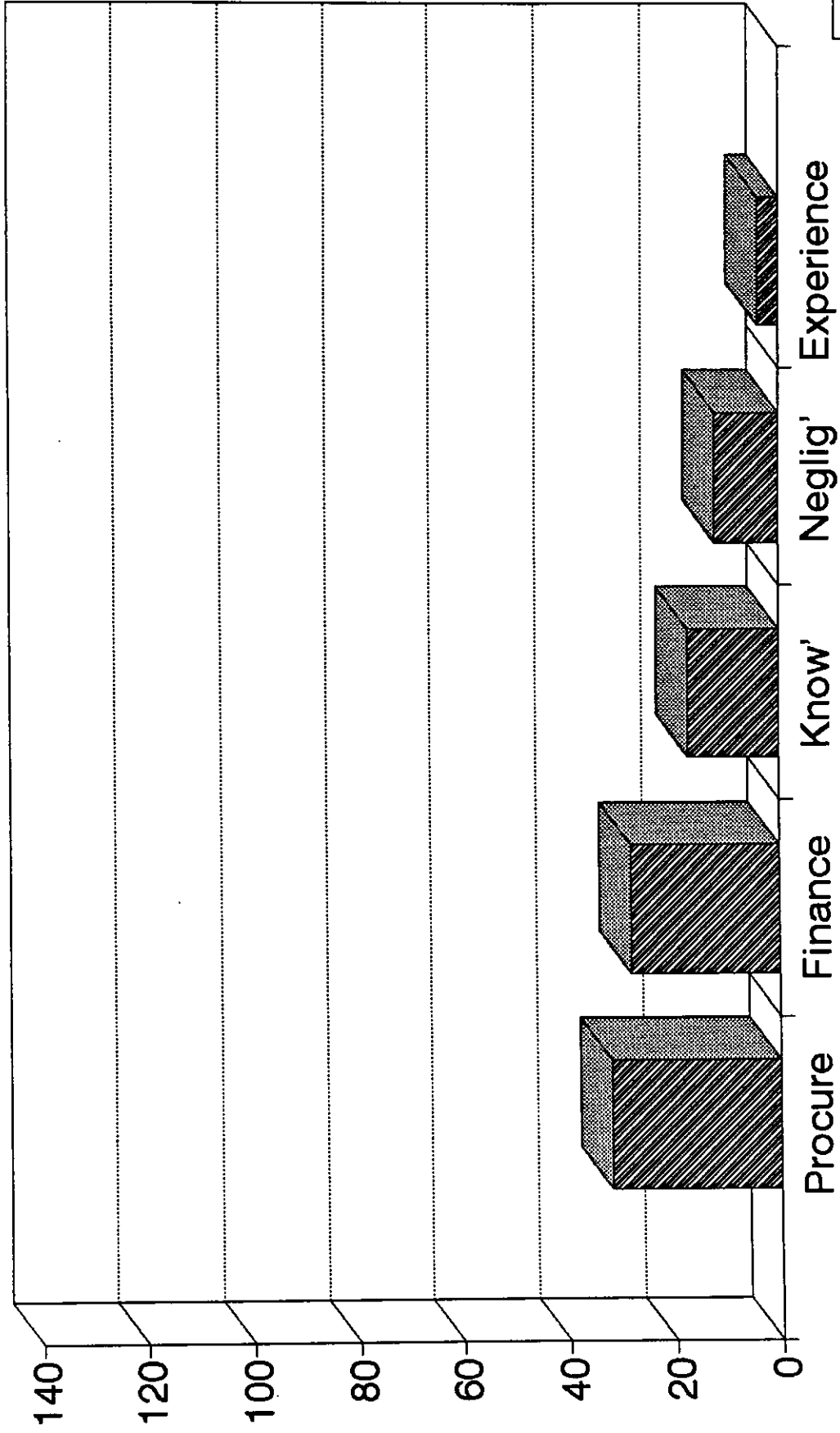


Part II Graph 1.1

Law II

Factors Which Cause Litigation

Bottom 5

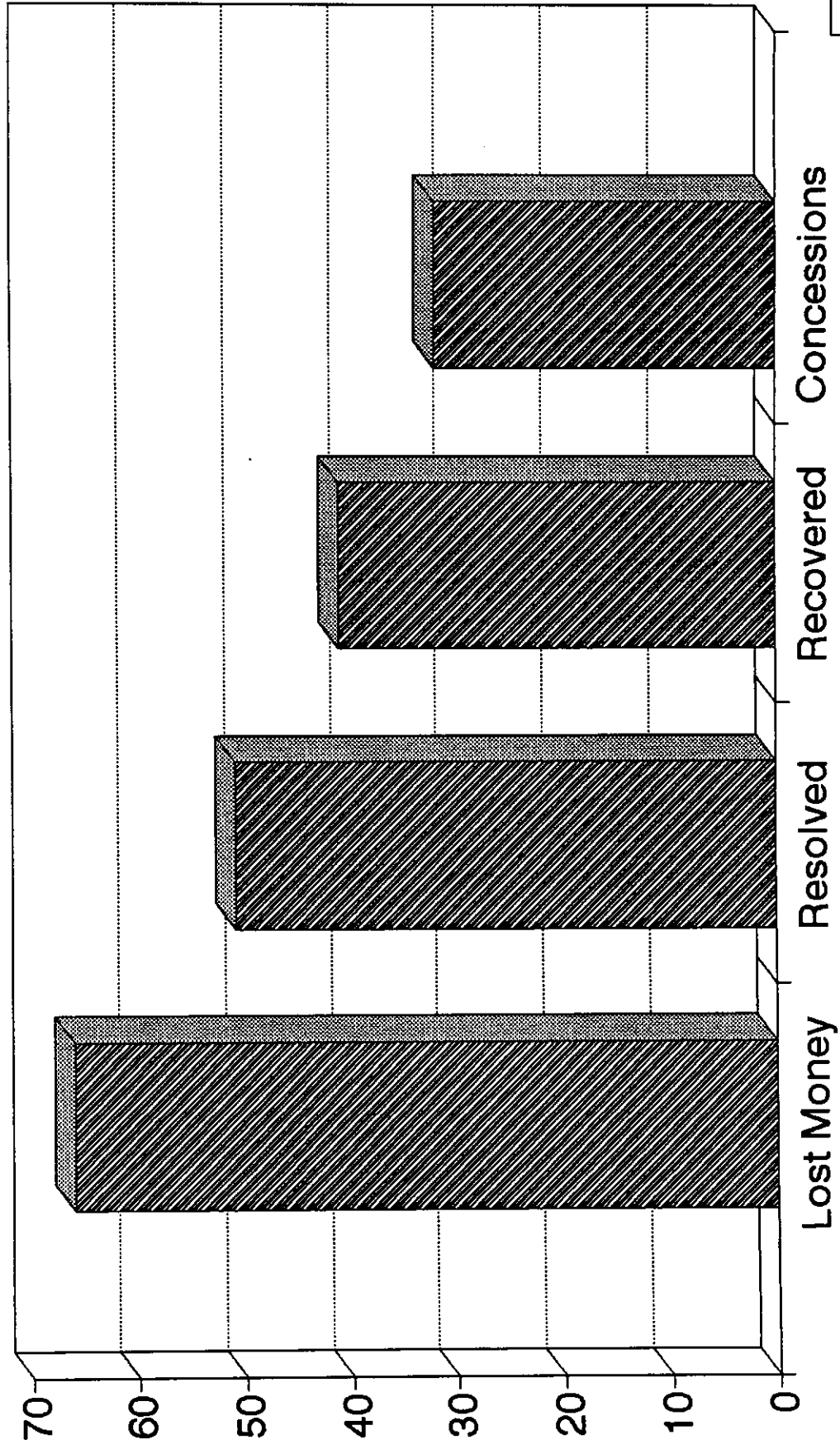


Part II Graph 1.2

Law II

Results of Construction Problems

Top 4

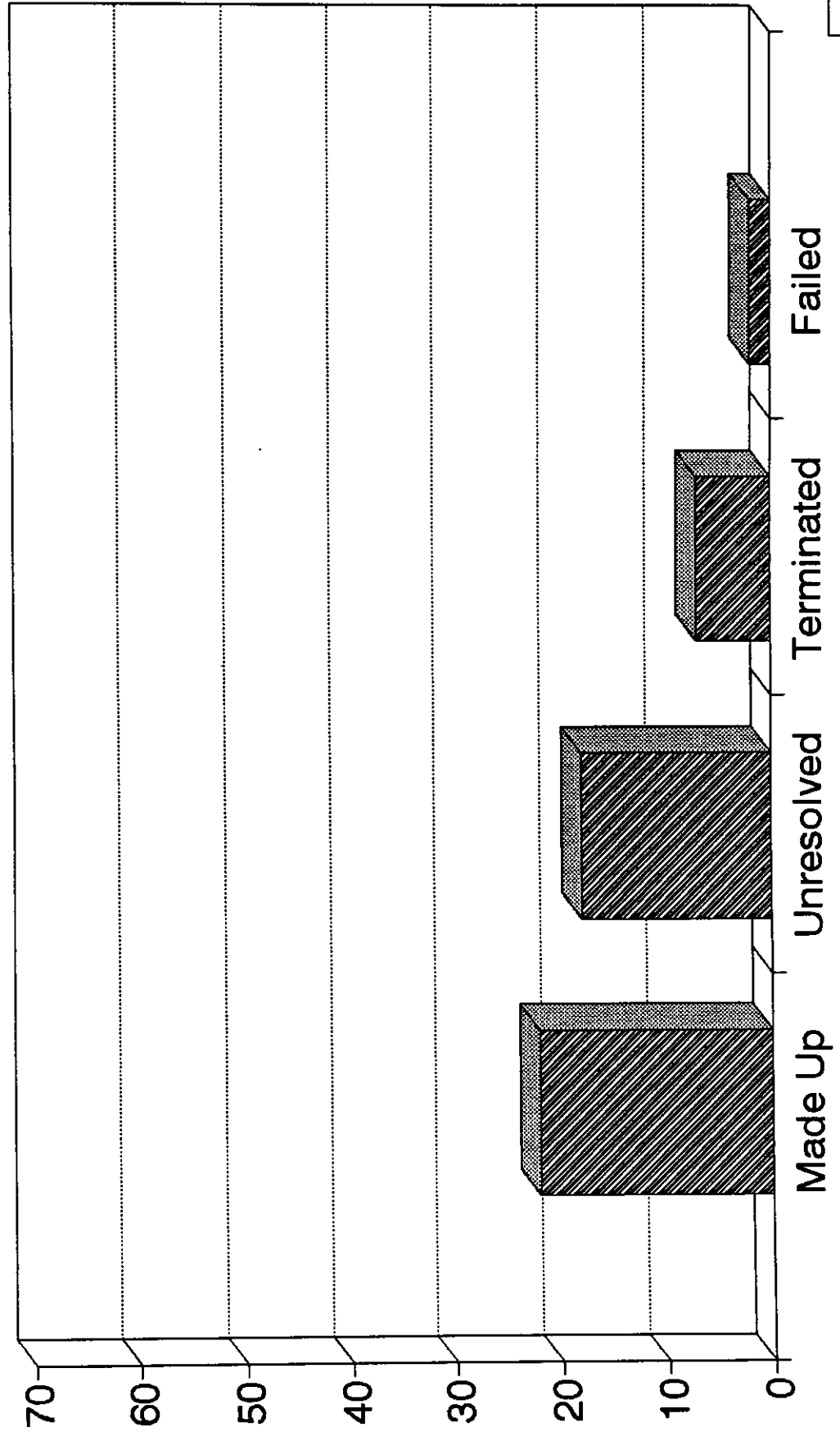


Part II Graph 2.1

Law II

Results of Construction Problems

Bottom 4

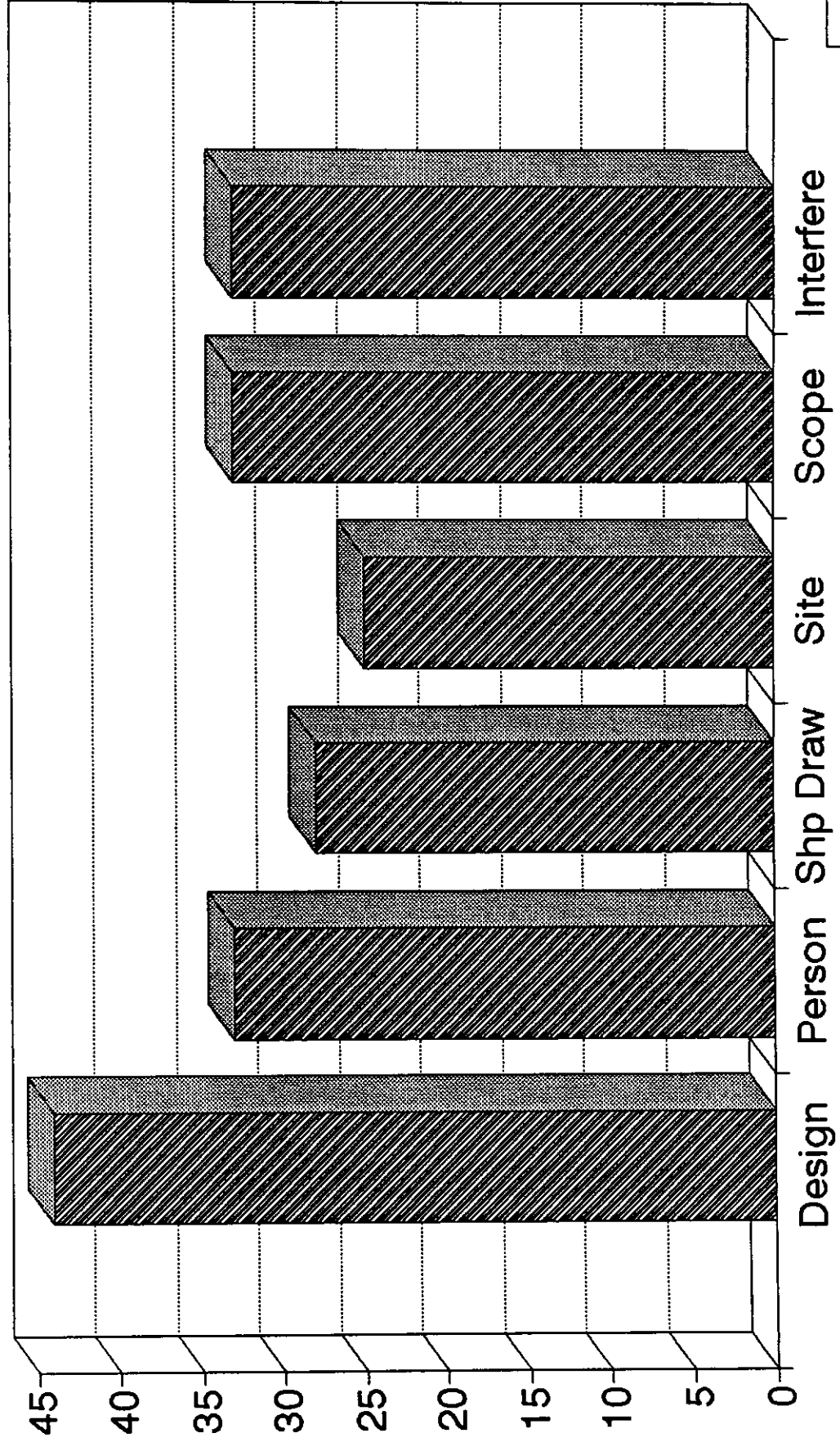


Part II Graph 2.2

Law II

Claims/Disputes

Reasons

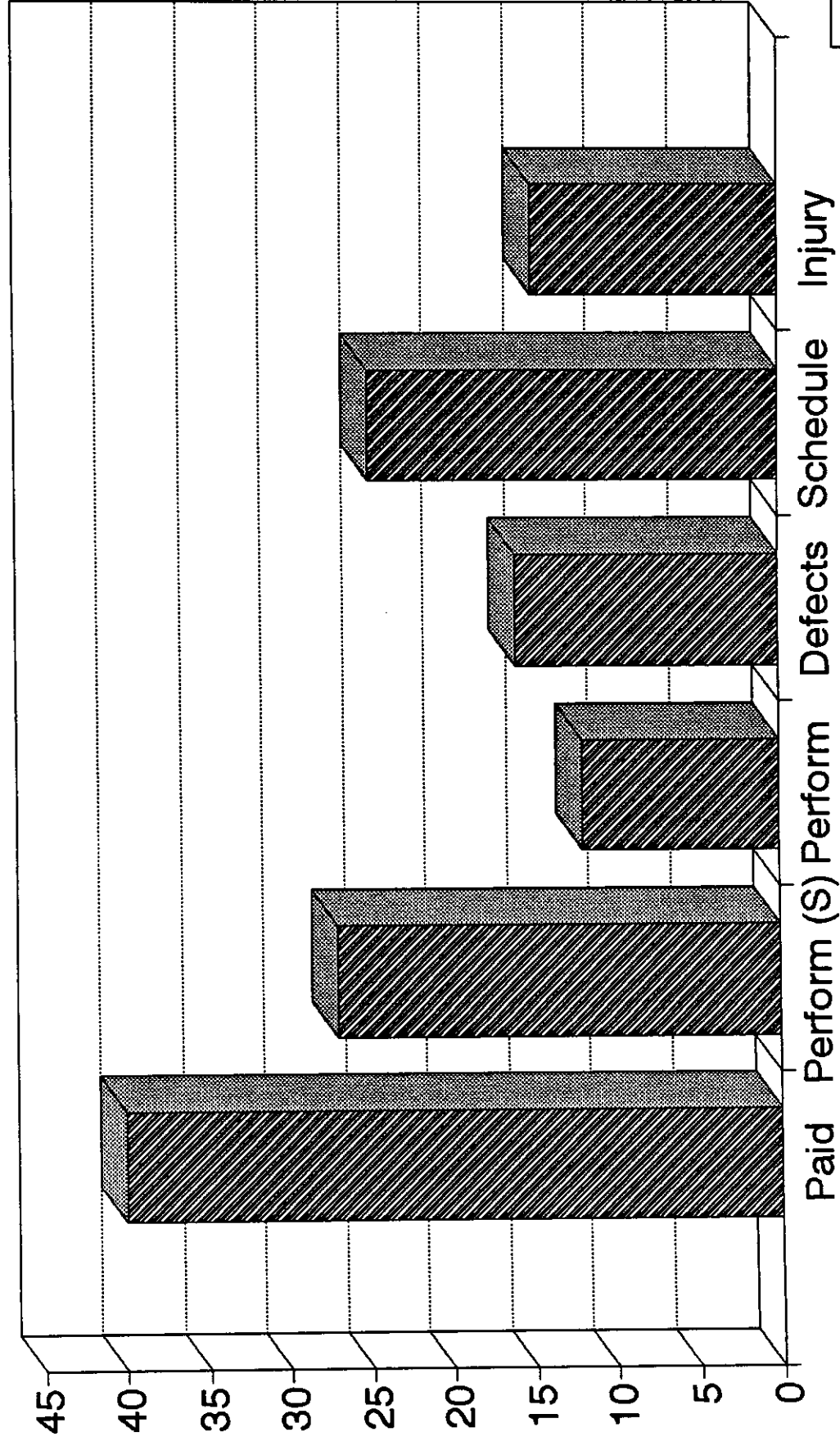


Part III Graph 1.1

Law II

Claims/Disputes

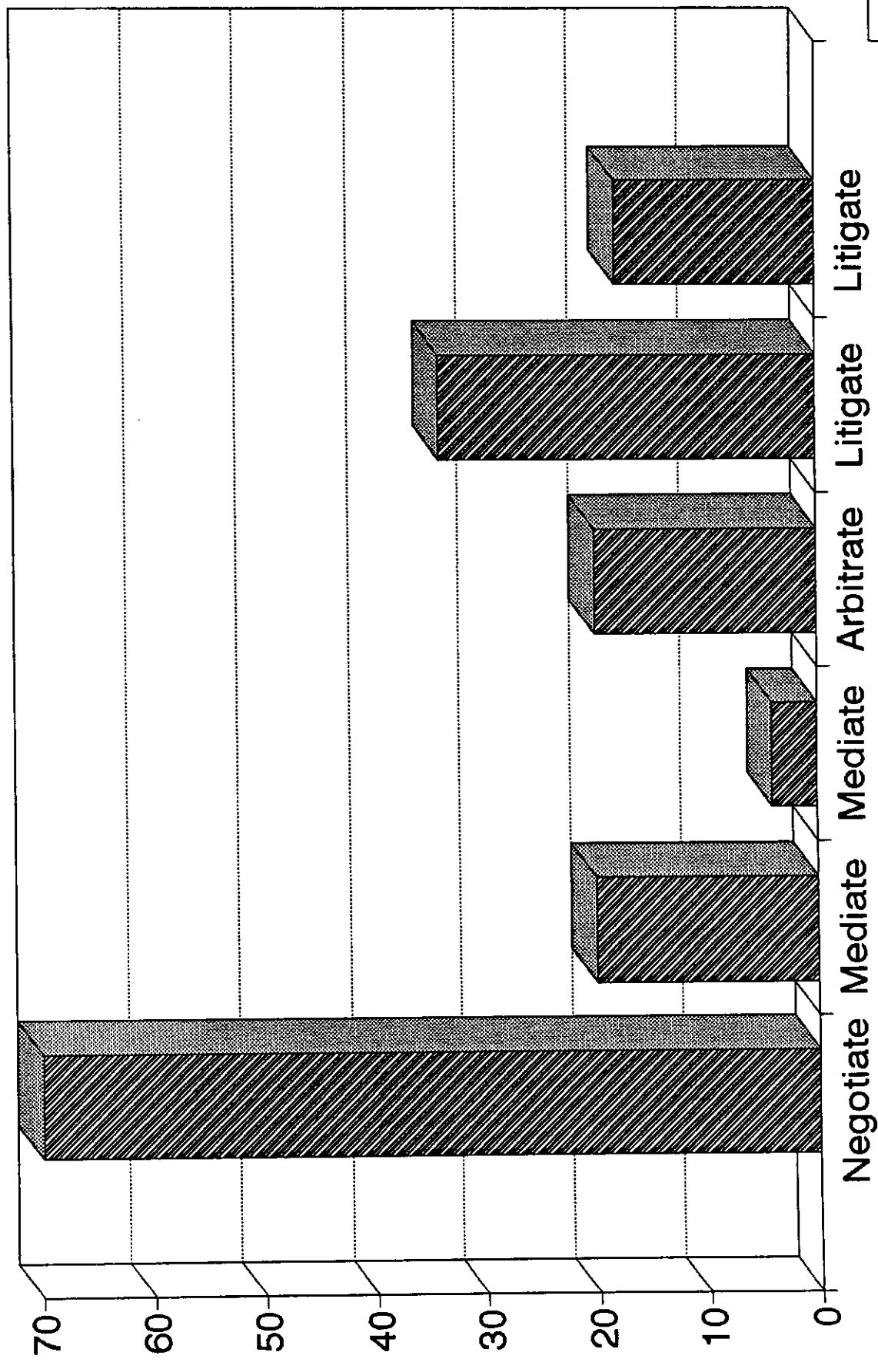
Reasons



Part III Graph 1.2

Law II

Breakdown of Problem Resolutions



Part III Graph 2

Law II