



**SYSTEM FOR THE
EVALUATION,
ANALYSIS,
AND RESOLUTION
OF CONSTRUCTION DISPUTES**

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DISPUTES ANALYSIS SYSTEM

Table of Contents

System for the Evaluation, Analysis, and Resolution of Construction Disputes

<u>Description</u>	<u>Page</u>
Disputes Analysis Approach	1
Preliminary Phase	3
Interim Phase	5
Final Phase	9
Summary	10



DISPUTES ANALYSIS SYSTEM

DISPUTES ANALYSIS SYSTEM APPROACH

Project Development International, Inc. (PDI) has been preparing, analyzing, and resolving complex construction disputes for more than twenty years. These projects have encompassed all types of construction and have ranged in value to multibillion dollar size both nationally and internationally. **PDI** has developed an efficient and standardized approach to the analysis of disputes as a result of our many years of experience on all sides of these disputes. Although every construction project is different, this generic approach can be applied in every case.

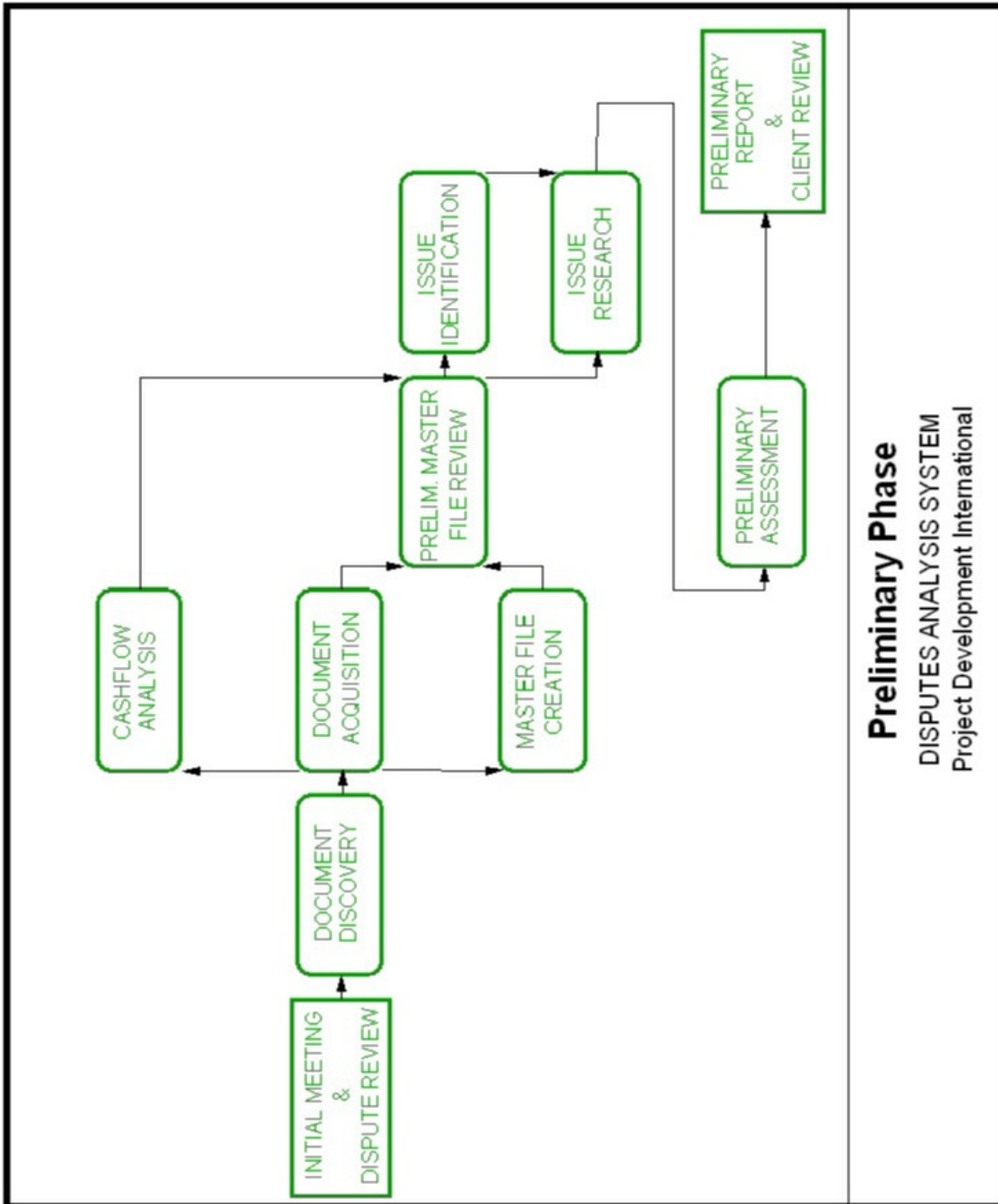
PDI has always approached the analysis of construction disputes with the dedicated goal of bringing disputes to the quickest, least costly, and most equitable results for our clients. **PDI's *Disputes Analysis System*** is therefore segregated into three major phases in order to permit for critical reviews and assessments by the Client. These phases are structured in a manner which affords the Client several opportunities to assess the costs of further analysis against the economics of settlement. The Client may decide that, after a Preliminary Phase analysis, the best course of action is to negotiate a settlement of outstanding disputes. The Client may alternatively decide to proceed to a more thorough Interim Phase assessment due to the findings in the Preliminary Phase. **PDI** can provide a separate cost estimate for each Phase of the analysis.

Each project has unique features. However, the nature of the construction industry's current monitoring and management methodology lends itself to the general categorization of documentation and analysis. Project daily reports, progress meeting minutes, schedules, pay requests, correspondence, photographic records, and procurement submittals are produced and filed in virtually the same fashion on almost every type of project worldwide. The terms and conditions of each contractual party's relationship to the project can vary significantly, but the manner in which contractual activities are recorded is very similar.

Several techniques have been developed by **PDI** over the past twenty years, which allow us to thoroughly analyze contractual party liability, quantify "real" direct damages, and realistically assess consequential damages in a manner more efficient than our competitors. **PDI** follows its own *Disputes Analysis System* when evaluating almost every construction dispute. **PDI's *Disputes Analysis System*** is represented by the attached precedence style logic diagrams. This system allows **PDI** to efficiently assign, utilize, and coordinate disputes analysis functions for concurrent complex projects. This standardized approach permits disputes analysis personnel to perform separate functions with a complete knowledge of the basis and status of all analyses efforts being performed at the time. **PDI's *Disputes Analysis System*** also operates as a schedule of tasks allowing for coordinated planning and utilization of personnel and resources.



DISPUTES ANALYSIS SYSTEM





DISPUTES ANALYSIS SYSTEM

PRELIMINARY PHASE

The first, or Preliminary Phase, is the first pass at a construction claim. A preliminary understanding of the nature of the claim, its strengths and weaknesses is obtained in this phase. The identification of the issues in dispute is revealed and a cursory review is made of the “life” of the project. The following tasks are performed in the Preliminary Phase and are illustrated in the attached *Disputes Analysis System* fragnet logic diagram:

Initial Meeting and Dispute Review
Document Discovery
Document Acquisition
CashFlow Analysis
Master File Creation
Preliminary Master File Review
Issue Identification
Issue Research
Preliminary Assessment
Preliminary Report & Client Review

There is generally an initial introduction to the dispute. This introduction usually comes via a prepared Request for Equitable Adjustment or similar notification from a contractor. It is recommended that an Initial Meeting and Dispute Review be held between **PDI** and some contract knowledgeable Client representatives to generally describe the situation and the Client’s interpretation of the events leading up to the dispute. The Client’s documentation is then briefly reviewed by **PDI**.

This brief review most often results in the requirement to access further information to address the issues raised in the dispute. Some *Document Discovery* is then performed in order to identify available Client and other contractual party records which are key to the analysis of the dispute(s). It is common for some portions of *Document Discovery* to continue through the entire dispute analysis scope of work. This is particularly true if the project in question is still in progress.

One of the biggest bottlenecks in the proper, expeditious, and cost-effective analysis of disputes is *Document Acquisition*. Trips may have to be made to the Client’s offices, the project site, and/or other contractual parties’ offices in order to identify and produce copies of necessary documentation for review and analysis. Large projects can have substantial quantities of documentation associated with the project and the claim issues. The proper and timely identification and acquisition of pertinent project records is critical to the quality and cost-effectiveness of any analyses performed.



DISPUTES ANALYSIS SYSTEM

As documentation is acquired, several preliminary analysis functions can proceed. One such function is the *CashFlow Analysis*. This analysis is utilized to produce a picture of the life of the project through the generation of S-curves which reflect the general progress of the work. **PDI** has developed a unique and proprietary computer program which allows us to quickly enter project earned value information to almost instantaneously generate graphic summaries of the entire project or segregated components of the work. **PDI's** experience in the analysis of these graphic summaries permits us to quickly pinpoint time frames in the project which may have been problematic. Often these problems are not even addressed in the presented claims as intentionally, or unwittingly, the claiming party ignores the "real" reasons for their financial hardship.

Once the pertinent documentation is accessed and acquired, it is essential that some organized library of information be created to permit the analyses to proceed. **PDI** relies upon a proper *Master File Creation* task in order to assure that all pertinent documentation is reviewed on behalf of the Client. All project documentation is chronologically organized to allow **PDI** to make quick assessments of events and issues as they occurred in time. This is one of the most important tasks to be performed in the analysis of disputes.

Once the Master File is created and as the CashFlow Analysis is performed, a *Preliminary Master File Review* is performed by **PDI**. This review highlights the issues which impacted the project and forms the basis for the further "in-depth" investigation which may be required. This review by **PDI** also becomes the basis for the preliminary assessments of the potential entitlement of the claimant. As dispute issues are identified, *Issue Research* is conducted to help reveal the current state of industry and legal interpretations with regard to damage and recovery concepts.

Assessments and recommendations are then offered to the Client in the form of a *Preliminary Report and Client Review*. The Preliminary Report may be provided verbally or in written form at the Client's discretion. The Client may decide at this time that the information is sufficient to resolve the disputes or go forward with a more thorough investigation. **PDI** can provide the Client with an accurate estimate of cost to proceed to the Interim Phase having examined the quantity and quality of the available documentation and the nature of the disputes.

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DISPUTES ANALYSIS SYSTEM

INTERIM PHASE

Should the Client decide to go forward, an Interim Phase of investigation is begun. This phase is illustrated by the attached precedence style logic diagram. This phase is the “meat” of the analysis efforts. It is in the Interim Phase that dispute issues are thoroughly investigated, an Accounting Analysis is performed, and generally, a detailed Schedule Analysis is also produced. The following tasks are performed in the Interim Phase and are illustrated in the attached *Disputes Analysis System* fragnet logic diagram:

Project Site Visit
Project Interviews
Issue File Creation
Scheduling Analysis
Accounting Analysis
Technical Issue Analysis
Preliminary Graphics Generation
Master File Management
Interim Assessment
Interim Report & Client Review

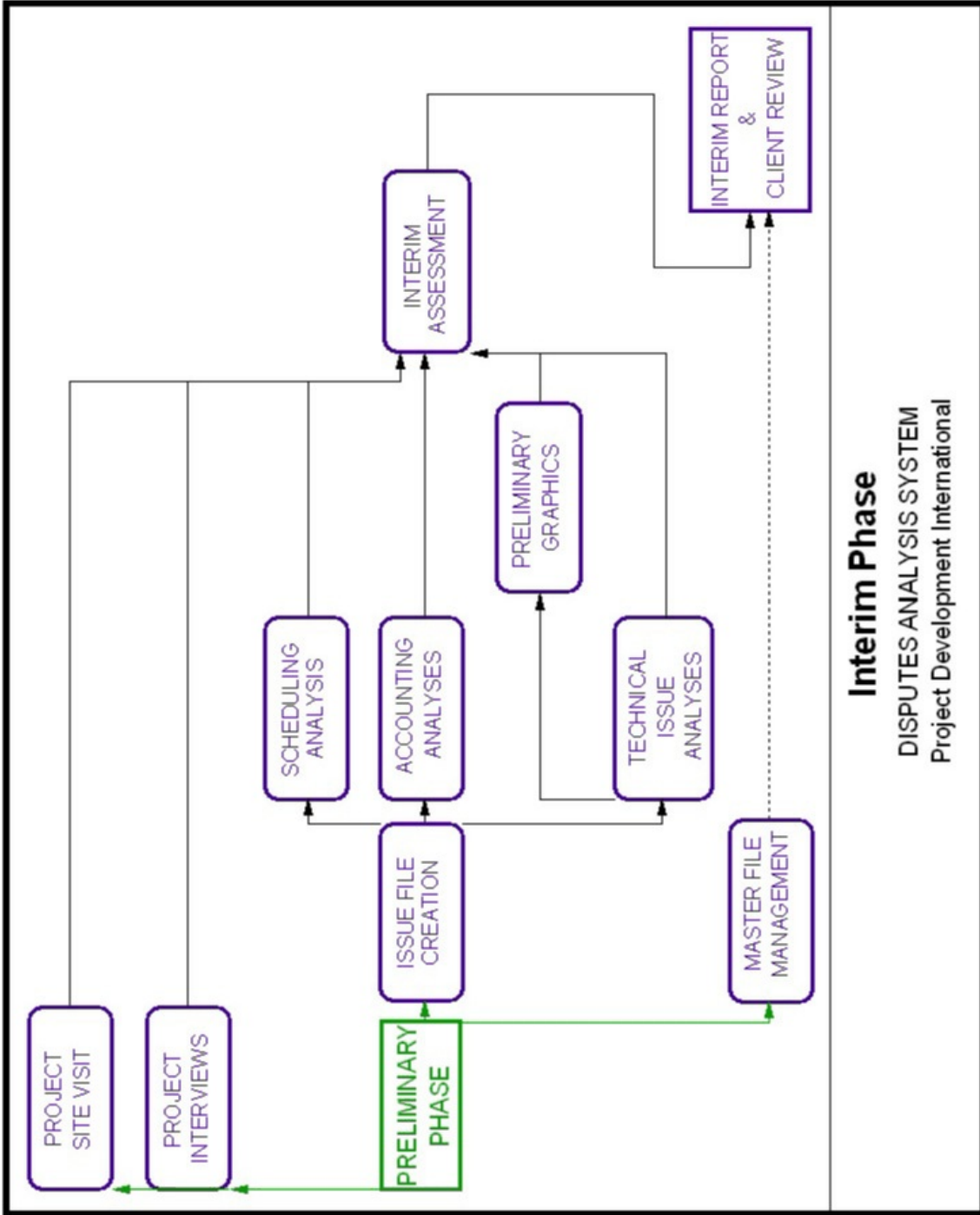
A *Project Site Visit* is usually scheduled during the Interim Phase to gain a close appreciation of the problems which have resulted in disputes on the project. Often *Project Interviews* can be scheduled simultaneously to question those personnel most intimately knowledgeable about the issues in the dispute. As further documentation is discovered or produced, an ongoing Master File Management function is maintained to assure that the most current status of the project and relevant issues are brought to the attention of **PDI** and the Client.

Issue files are created which represent all of the available evidence regarding the project issues identified in the Preliminary Phase. Detailed and thorough analyses of these issues takes place during the Interim Phase. There are three general categories of detailed analyses which are undertaken in this phase, Scheduling, Accounting, and Technical Issue Analyses.

The *Scheduling Analysis* generally consists of the comparative assessment of the difference between how the project was actually performed against how the project was planned. This analysis usually entails the examination and review of complex construction schedules, daily reports, project meeting minutes, and progress photographs. This analysis will result in the determination of what really happened during the project and how the project progress may, or may not, have been impacted.



DISPUTES ANALYSIS SYSTEM





DISPUTES ANALYSIS SYSTEM

The *Accounting Analysis* will provide an accuracy check on the claim damage and cost calculations as well as an examination of the accounting data being relied upon to measure alleged damages. It is common to utilize a CPA in the evaluation of the contractor's accounting records, although it is not always necessary, in order to provide competent testimony at trial which may support or refute the claims made.

All complex technical issues are also assessed during the Interim Phase. These issues may be related to differing site conditions, permit access restrictions, utility relocation impacts, design professional performance, or construction management issues. Each technical issue may require specific expertise in order to definitively interpret the disputes and provide supportable evidentiary data to corroborate or refute any claims.

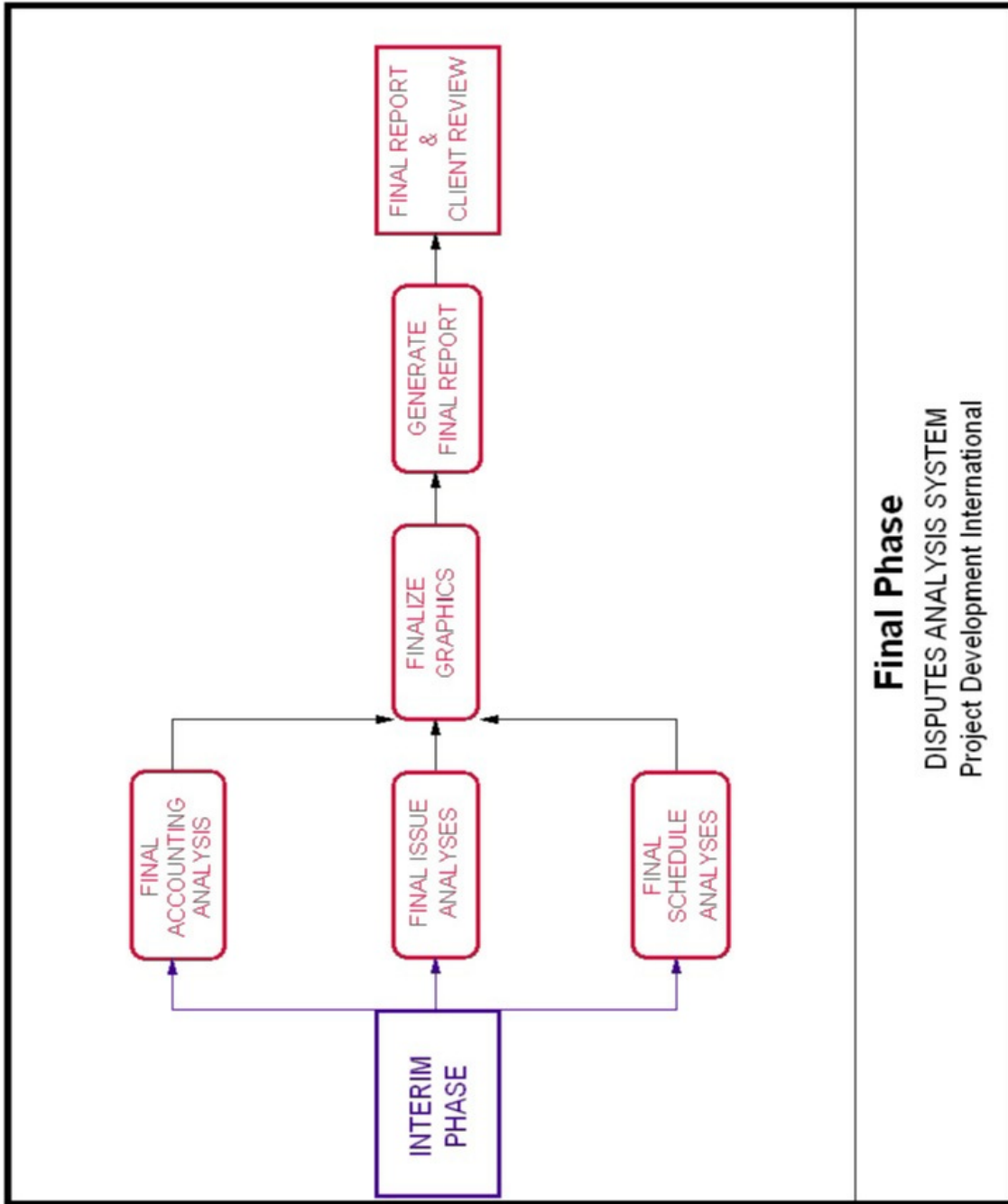
Any *Preliminary Graphics*, necessary to illustrate and analyze issues arising out of the project, are also generated during the Interim Phase. These graphics are usually associated with particular statistical issue analyses directly, such as contractor manpower bar charts, equipment usage charts, as-planned versus as-built progress comparisons, productivity comparisons, and shop drawing and information request turnaround times. These can prove to be extremely helpful in demonstrating particular claim strengths and weaknesses in negotiations toward settlement.

All of the detailed analyses performed during the Interim Phase culminate in an *Interim Assessment*. The results of all of the information uncovered and analyzed is brought together for the interim review of **PDI** senior personnel. Relevant details are examined and summarized in preparation for the Client review in the form of an *Interim Report and Client Review*. The Interim Report may be provided verbally or in written form at the Client's discretion. Once again the Client has an opportunity to assess its posture with respect to the dispute. It is generally at this time that **PDI** and the Client are ready to enter detailed negotiations or dispute resolution forums such as mediation, in an attempt to resolve the disputes. It is also at this time that detailed recommendations will be offered by **PDI** for the expeditious resolution of outstanding disputes.

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DISPUTES ANALYSIS SYSTEM





DISPUTES ANALYSIS SYSTEM

FINAL PHASE

In the event that negotiations or other attempts fail to resolve the outstanding disputes, Final Phase efforts would begin to prepare for the probability of a formal resolution presentation. These presentations are typically done in conjunction with expert testimony at trial or in arbitration hearings. The following tasks are performed in the Final Phase and are illustrated in the attached *Disputes Analysis System* fragnet logic diagram:

Final Accounting Analysis
Final Technical Issue Analysis
Final Schedule Analysis
Final Graphics Generation
Final Report Preparation
Final Report & Client Review

It is in this Final Phase that all Accounting Analysis, Scheduling Analysis, and Issue Analysis tasks are finalized, presentation exhibits are prepared, and a Final Report may be generated. Upon the issuance of a *Final Report and Client Review*, **PDI** would stand ready to assist the Client in the preparation and analysis of interrogatories, depositions, expert testimony and dispute resolution in further negotiations or at mediation, arbitration, or trial.

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DISPUTES ANALYSIS SYSTEM

SUMMARY

Time is money and nowhere is that axiom more true than on large construction projects. Damages claimed which allegedly result from delays, disruption, acceleration, and lost productivity situations can be the most expensive portions of project disputes. It is **PDI's** experience that consequential damage claims can literally exceed the dollar value of the original construction contract. These types of allegations are also some of the most complex to analyze. **PDI** has specialized in the successful analysis and resolution of complex delay, disruption, acceleration, and lost productivity disputes for more than twenty years. **PDI's** personnel have testified as experts with regard to these types of damages in court proceedings in several district courts in Florida and Texas, in Superior courts in Massachusetts and New Jersey, and in arbitration hearings in Florida, Louisiana, and New York City.

PDI has always been guided by the premise that our clients deserve the best construction business opinion available with regard to their posture in a dispute. That means that all information deemed relevant to the ability of the Client to practically resolve disputes in their best interest will be immediately and candidly brought to its attention. **PDI** will bring its extensive and varied construction experience to the aid of the Client in furtherance of its interest in the least costly resolution of construction disputes. **PDI** believes that its team is the best qualified to satisfy the Client's desire to engage preeminent assistance in the analysis and resolution of disputes arising out of its projects.

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