Although I have been a member of the American Concrete Institute for over 20 years, I have never attended a convention until the spring 2011 event in Tampa. Needless to say, it was quite an experience.

I, unlike a lot of other first timers, had the benefit of having fellow ASCC members take me under their wings and show me the ropes. Our own Denny Ahal, Joe Sanders and Bev Garnant sit on the ACI Board of Direction, which helps us in getting the contractors’ viewpoints recognized.

I’m guessing there were close to 1500 people who attended and a mind boggling number of committee meetings (I counted 323) on every subject relating to concrete that you can imagine. They include well known committees such as 302- Floor Construction and 117- Tolerances, as well as some lesser known, such as 307- Chimneys and 209- Creep & Shrinkage (no, they are not referring to me). It was amazing to see the dedication to bettering our industry that these committee members exhibit.

I sat in on the Construction Liaison Committee meeting, of which Mike Schneider is chair and 12 of the 26 members belong to ASCC. At both this meeting as well as at the opening reception, ACI president Ken Hover encouraged contractor participation on ACI committees. As I have mentioned previously, there has never been a better time for us to get involved and have the contractors’ voice represented.

One of the highlights for me was the speaker at the Contractors Day luncheon. Larry Novak spoke to us about the challenges he encountered in engineering the world’s tallest structure, the Burj Khalifia in Dubai. It stands 2716.5’ tall and contains 160 stories. Larry’s presentation was excellent. He took a complex process and explained it in a way that even I understood.

I would encourage all of you to try to attend an ACI convention, you won’t be disappointed.

Oh, and let’s all be careful out there.

My dad was and still is (though retired) a farmer; a hard-headed man who thought he pretty much had the answer to everything. I’ve always contended that farmers and concrete contractors have a lot in common. Both occupations undertake an inordinate amount of risk directed by conditions beyond their control; take the weather for example. This often makes them independent, stubborn, masters of their universe; inclined to trust their own instincts rather than to turn to others for help.

My dad did belong to a couple of agricultural organizations that he was quite involved in. So I have to believe he applied some useful information gleaned from these groups. He also talked to seed salesmen, fertilizer salesmen, his banker and lawyer, neighbors. He was successful at farming, so again, I assume he occasionally took another’s advice.

A couple reasons for bringing this up. In this newsletter we debut a column on legal issues authored by ASCC member Jeff Coleman. (See more about Jeff on page 4.) His first column is “Why You Need to Read Your Contract.” This is an issue that comes up again and again for ASCC contractors. I know many of you have had serious problems with contracts you either didn’t read, didn’t fully understand, or didn’t bother to challenge. Jeff shares some excellent insights here – but you have to read it and apply it.
A couple of recent email forum discussions lead me down this same path. Without identifying the topics, let’s just say they were subjects that have been visited and revisited. They’re also subjects we cover in Position Statements. Hypothetically, had these statements been included in the concrete contractor’s proposal or at a pre-construction meeting, then hypothetically, they might have saved these contractors some major headaches and the cost of the aspirin.

Believe me, I know it isn’t as black and white as I make it sound. However, I also know that ASCC is a wealth of tremendous resources that are here for the taking. But you have to read the material and use it. Or call the hotline. Or participate in the email forum. Or join a MIX Group. Hypothetically… you should do that.

SAFETY & RISK MANAGEMENT COUNCIL

High Injury Rates for New Employees

Statistics from three insurance companies indicate that employees with less than one year of service account for 28% – 44% of workers’ compensation claims.

Possible reasons for the high injury rate include:

- Lack of knowledge
- Lack of skills
- New surroundings (i.e., people, equipment and job conditions)
- New policies and procedures
- Something to prove
- Poor screening and hiring practices
- Alcohol and substance abuse

To reduce the likelihood of injuries to new employees consider:

- **A formal standardized New Employee Orientation Program.** At a minimum this should include:
  - A review of safety policies, rules and procedures
  - Personal protective equipment requirements
  - Employee duties and responsibilities and the company disciplinary policy
  - Emergency reporting and response procedures including access to first aid and follow-up medical care
  - A tour of the jobsite
  - Who to contact for help or further information

- **A mentoring program** whereby new employees are identified by a hardhat sticker, different colored hardhat or shirt, and are paired with an experienced, safe worker for a period of 30 – 90 days

- **Daily pre-task safety huddles** with all crew members focusing on assigned tasks, associated hazards and required safeguards

- **Standardized hiring practices** including:
  - Written applications
  - Reference checks
  - Driving record checks
  - Post-job offer alcohol and drug tests

The mission of the ASCC Safety and Risk Management Council (SRMC) is “To make ASCC members the safest contractors in the concrete industry.” To assist our members we are currently updating our New Employee Orientation video. We hope to have the video available by fourth quarter 2011. If you have a safety-related question call the ASCC Hotline at 866-788-2722.

DECORATIVE CONCRETE COUNCIL

Concrete Décor Show Recap

If there was a particular project at the recent Concrete Décor Show in Nashville, Tenn. that represented the direction our industry is heading, it was the staircase crafted by Jason Geiser of Deco-Crete Supply. This was one of more than a dozen hands-on workshops that took place at Nashville’s youth center, Rocketown. 14’ long skateboards, including the trucks and wheels, were fabricated entirely of concrete. The entire process can be viewed at http://www.youtube.com/watch?v=Hipxp-PM-Ds. However, it’s the Rocketown logo I most liked - an arrow pointing in the direction our decorative concrete industry is heading - straight up.

The show brought together 65 experts in decorative concrete who offered nearly 80 educational sessions for both newcomers and experienced concrete artisans. Seminars, workshops, panel discussions, and keynotes covered every facet of decorative concrete from artificial
Q. What is the definition of “grade?” We did a job where the specifications for a residence called for the contractor of exposed, above grade concrete to patch all tie holes, aggregate pockets, honeycomb, and defective areas. It also called for removing all fins and ridges, and sandblasting the surface. We placed the basement walls for the residence and the general contractor said “grade” was the surface of the basement floor so we had to do a lot of work we weren’t expecting and didn’t get paid for.

A. Below grade commonly refers to concrete below the finished earth level. Above grade refers to the portion of the building that is above ground level. It’s a term applied to any part of a structure or site feature that is above the finished or intact ground level. You can get many more definitions of “above grade” and “below grade” by inserting these terms in a Google Search. None of them match the general contractor’s definition.

If the general contractor’s definition were true, all concrete basements would be above grade. In fact, we don’t know that anything but footings or foundation mats would be considered to be below grade.

### WHY YOU NEED TO READ YOUR CONTRACT (Part 1)
Jeffery W. Coleman, Coleman, Hull and van Vliet

You have been contacted by a General Contractor who wants to give a contract to your firm to perform the concrete portion of the work. You receive the old edition of the Standard AGC Subcontract, an edition that is still in common use.

The contract contains the following clause under paragraph 7:

> The Subcontract agrees to assume entire responsibility and liability, to the fullest extent permitted by law, for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from or in any manner connected with, the execution of the work provided for in this Subcontract, or occurring or resulting from the use by the Subcontractor, his agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, the Subcontractor or third parties, and the Subcontractor to the fullest extent permitted by law, agrees to indemnify and save harmless the Contractor, his agents and employees from all such claims including, without limiting the generality of the foregoing, claims for which the Contractor may or may be claimed to be liable and legal fees and disbursements paid or incurred to enforce the provisions of this paragraph. And the Subcontractor further agrees to obtain, maintain and pay for such general liability insurance coverage and endorsements as will ensure the provisions of this paragraph.

Since the economy has been difficult and you don’t want to “rock the boat” in your relationship with the General Contractor, you go ahead and sign the agreement.

By doing so, you need to understand the effect of the indemnification paragraph as written. There are three primary problems with this paragraph.

First, the indemnification responsibility is for anything “arising out of, resulting from or in any manner connected with the execution of the work.” Absent an anti-indemnification statute in the state in which you are working, this clause has been interpreted to mean exactly what it says. In other words, you, as the concrete Subcontractor, will be forced to indemnify and defend the General Contractor for any liability “arising out of or resulting from or in any manner connected with” your work. This has included liability for a personal injury for which you as the concrete Subcontractor had no direct involvement.

The second problem with this paragraph as written is that it even includes “claims for which the Contractor may or may be claimed to be liable . . .” This reinforces the fact that you as the concrete Subcontractor have agreed to assume liability for all acts, even those for which the Contractor “may or may be claimed” to be liable. While such risk transfer clauses are strictly construed by the courts, if they are clear, as is this one, there is a high likelihood that a court will take the position that while unfair, you have knowingly entered into a contract that requires such a transfer of risk.
The third problem with this paragraph is in the last phrase which states, “And the Subcontractor further agrees to obtain, maintain and pay for such general liability insurance coverage and endorsements as will ensure the provisions of this paragraph.” This paragraph says not only will you assume liability for the acts of the Contractor, but you will buy and pay for general liability insurance to cover those acts. Thus, there is the potential that a personal injury on site could end up being paid by your general liability insurance carrier and become part of your loss history. This clause results in you, the concrete Subcontractor, buying insurance to cover the General Contractor. A practical result will be increased general liability insurance premiums in the future.

So what is the answer to this problem? The new so-called “Consensus Documents” which have been endorsed by the AGC, contain a modified version of these paragraphs. While introducing some new issues, it does address the issues above. Paragraph 9.1.1 of Consensus Document 750 states:

**Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the constructor, the design professional, the owner and their agents, consultants and employees (the Indemnities) from all claims for bodily injury and property damage other than to the work itself that may arise from the performance of the subcontract work, including reasonable attorneys’ fees, costs and expenses that arise from the performance of the work, but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor’s subcontractors, or anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable. The Subcontractor shall be entitled to reimbursement of any defense costs paid above the Subcontractor’s percentage of liability for the underlying claim to the extent attributable to the negligent acts or omissions of the Indemnities.

This clause, unlike the old AGC clause, limits the concrete Subcontractor’s liability “to the extent caused by the negligent acts or omissions of the Subcontractor . . .” It does not require the Subcontractor to indemnify the General Contractor for “claims for which the Contractor may or may be claimed to be liable . . .” This is a much fairer allocation of liability.

If faced with the broad assumption of liability in the first clause (the old but still used AGC clause), you are well advised to ask for a revision that is in line with the new Consensus Document 750. Failure to do so could result in your company being “liable” for damages and accidents that you had nothing to do with and increased insurance premiums if your GL insurer is forced to pay the claim.

Jeffrey W. Coleman, Coleman, Hull and van Vliet, PLLP, Minneapolis, Minn., is an ASCC member and a trial attorney who has been involved in numerous complex construction cases. He provides advice and counsel to a variety of companies, including concrete suppliers and companies involved in concrete construction. He is the author of *Legal Issues in Concrete Construction*. Jeff is the only attorney who is also a Fellow of ACI and he chairs ACI’s Responsibility in Concrete Construction Committee. He was a structural engineer from 1977 to 1982 and is still a licensed engineer in Iowa, Minnesota and Wisconsin. Jeff has generously offered to author a regular legal column for *The Voice.*

**CONGRATULATIONS TO ACI AWARD WINNERS**

The following ASCC members were recognized at the recent ACI convention in Tampa:

**Patrick Harrison**, SSI; **William Klorman**, W.M. Klorman Construction Corp.; and **Donald Marks**, Baker Concrete Construction, were named Fellows of ACI.

**Mike Schneider**, Baker Concrete Construction, received the Roger H. Corbetta Concrete Constructor Award “in recognition of his outstanding contributions to improve the concrete industry through the American Concrete Institute and the American Society of Concrete Contractors.”

ASCC technical director **Ward Malisch**, and **Bruce Suprenant**, Concrete Engineering Specialists, received the ACI Construction Award for “their co-authored paper investigating tolerance issues related to post-tensioning elevated slabs.”

**2011 MANUAL OF CONCRETE PRACTICE**

The American Concrete Institute’s 2011 Manual of Concrete Practice (MCP) contains over 200 ACI committee standards and reports. The MCP is the most comprehensive concrete reference set available. It contains all of the widely used ACI concrete and masonry code requirements, specifications, guides, and reports. Additionally, it includes information about code requirements, deflection, cracking, durability problems, temperature control, nondestructive testing, and hundreds of other topics. A complete listing of publications included in the 2011 edition and additional optional formats including online subscription, multi-user license, and more is available at [www.concrete.org](http://www.concrete.org) or by calling 248-848-3800.