

# *GBA Is Doing It!*

GBA Pep Rally

Joel Carson & Kim Morrison

# *GBA Is Doing It!*

Doing what, you ask?

# You Asked For It...

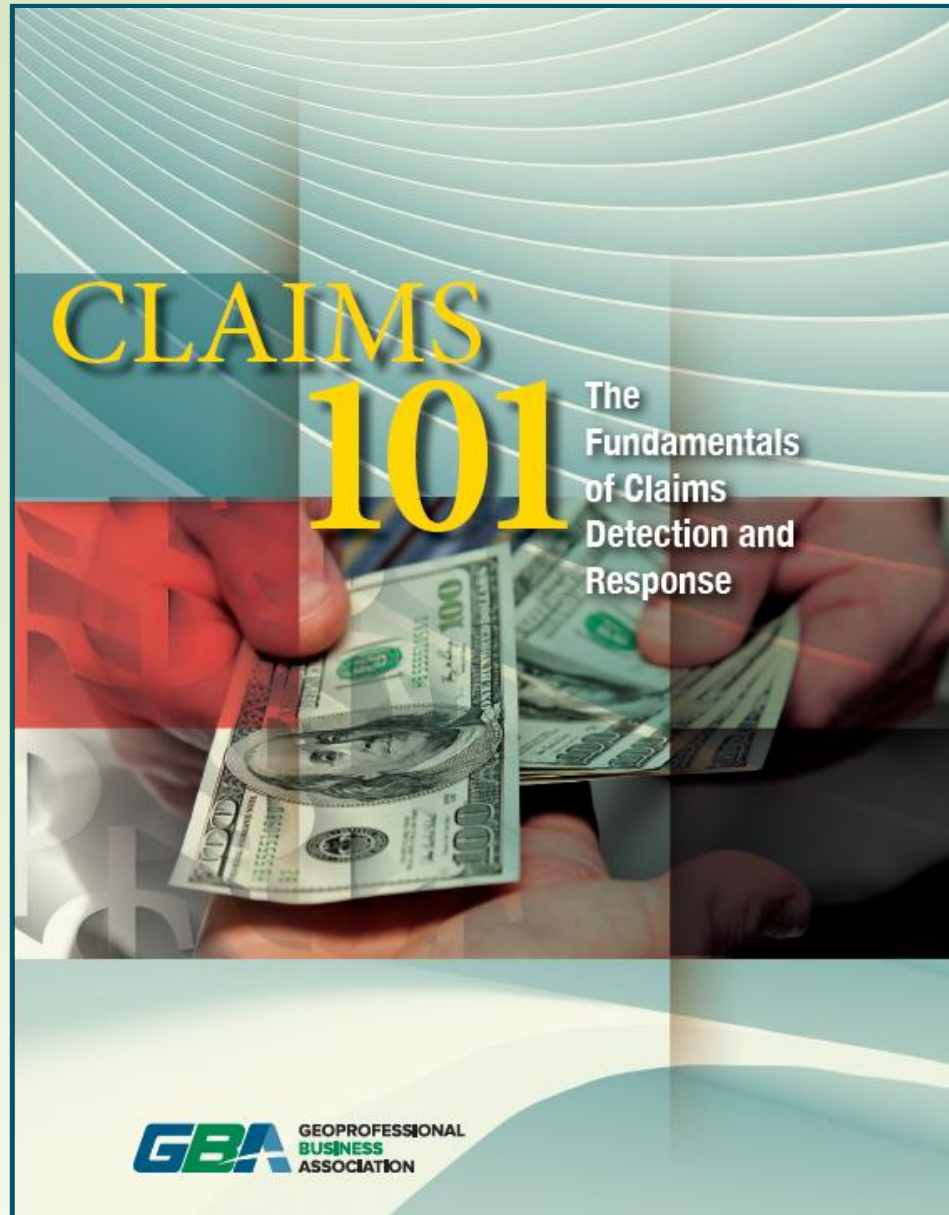
**We are developing timely,  
relevant and new educational  
resources for our Member  
Firms!**

# GBA EDUCATIONAL BOOKLETS

Serious time and effort goes into development of these timeless educational booklets. Two new ones recently developed, with more on the way!

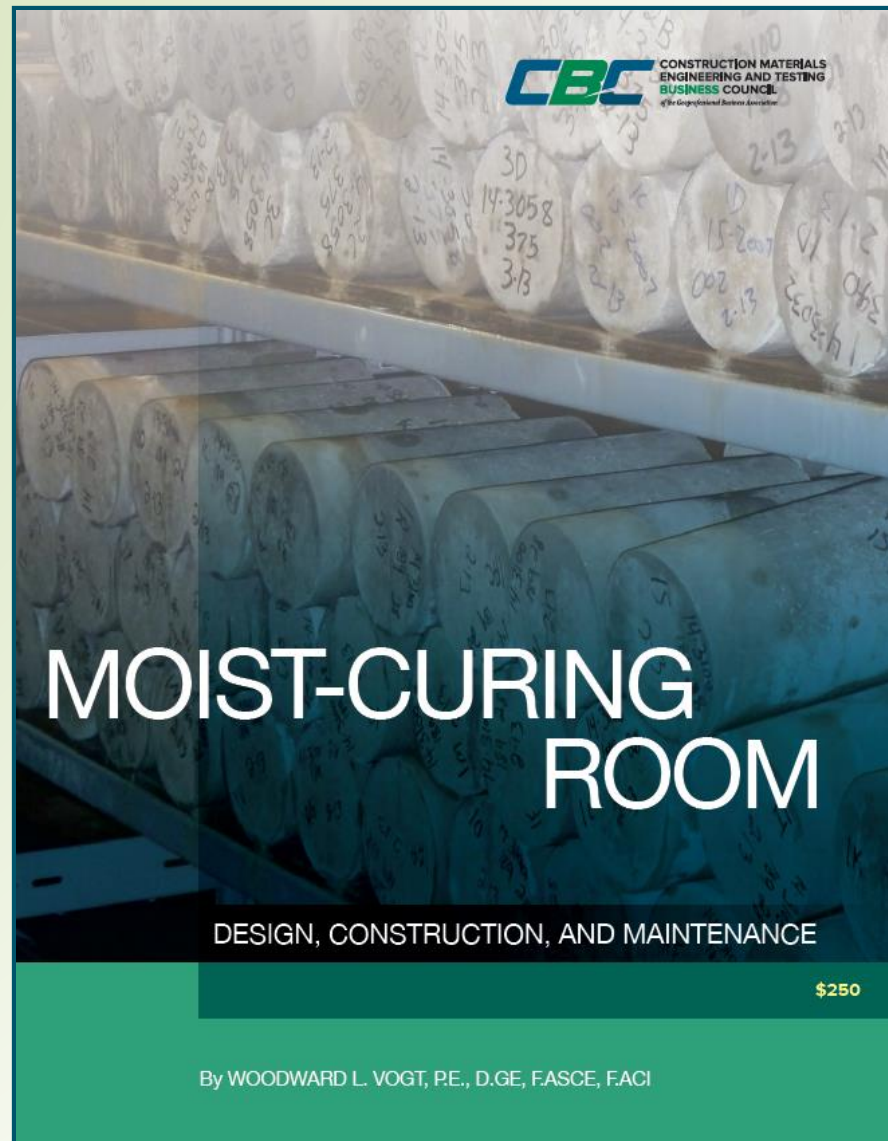
# Claims 101

- **Champion:**
  - Legal Affairs Committee
- **Supporter:**
  - TERRA Insurance Company



# Moist-Curing Room Booklet

- **Champions:**
  - Woody Vogt (of Paradigm)
  - COMET Business Council
- **Sponsors:**
  - Elm Tree System
  - Agile Frameworks
- **Supporters:**
  - Numerous other COMET Business Council Members





# CASE HISTORIES

Case histories are one of the best ways for GBA member firms to learn from experiences of other member firms. After number 100 was published, case histories took a back seat. But, they are back again – GBA publishes #101!

# Case History 101

- **Champions:**
  - Chuck Gregory (of Terracon)
  - CoMET Business Council



## CASE HISTORY 101

**The Client**  
The constructor-in-charge;  
i.e., "general contractor"

**The Project**  
A new hospital building in the  
southwestern United States

**The GBA-Member Firm's Commission**  
Sample and test a bagged, non-  
shrink (expansive) grout product

**Background:** The new hospital building was the key element of a high-profile, \$800-million project located in the southwestern United States. Comprising 738,000 square feet, it was a seven-story, structural-steel building with a partial basement, supported by drilled piers. Other building components included steel columns, metal decks, and concrete-floor slabs. Importantly, the constructor-in-charge faced significant penalties if it failed to complete its work by the targeted date.

The grout product involved was to be mixed on site and placed beneath column base plates (ranging from 12 to 16 inches square) on the lowest levels of the structure. Project specifications called for the grout to achieve a minimum compressive strength of 8,000 psi at 28 days, the same as the product manufacturer's advertised-strength claim. Specifications did not require grout testing. However, earlier in the project, in a request for information (RFI), the constructor-in-charge recommended the product and that it be tested. After the RFI was approved, the constructor-in-charge retained the GBA-Member Firm to perform the testing, following the manufacturer's testing recommendations; i.e., use 2-inch-by-2-inch-by-2-inch cubes and follow the procedures laid out in ASTM C109 Modified and ASTM C1107.

The Member Firm's construction-materials engineering and testing (CoMET) field representatives sampled the product at the required frequency and cast cubes. Member-Firm personnel were somewhat surprised by the results of their initial 28-day test on the first 11 sets of cubes (3 cubes per set; 33 cubes total), representing the strength of the grout used for 85 columns: Only one set of cubes achieved the specified strength. Concerned about the possibility of an error of some kind, the Member Firm decided to validate its sampling/testing procedures. The firm's review showed that it failed to comply with ASTM C1107-08 and the manufacturer's recommendations, because:

- Instead of metal molds, it used plastic molds whose walls flexed, creating uneven cube surfaces that reduced test-area size (in cross section)

and, possibly, caused uneven loading; and

- It failed to damp a cover plate on top of each mold, probably resulting in a test specimen that was less dense than the product as placed.

The Member Firm's director of engineering contacted the manufacturer's technical personnel. They confirmed that the firm's faulty sampling and testing procedures reduced the cubes' measured strength. They also noted that the product was formulated with a significant safety factor to achieve the advertised strength. Based on this input alone, Member-Firm engineers concluded that, had their field representatives cast the grout samples properly – using metal cube molds with a metal cover plate – testing probably would have shown that their compressive strength



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PAGE 1



# GBA BEST PRACTICES

GBA introduces “GBA Best Practices”, a newly-launched series of monographs that provide timely relevant information to GBA member firms. Six complete, with at least three more nearing completion!

# E-mail Disclaimers: A Better Way

- **Champion:**
  - Legal Affairs Committee

**BEST PRACTICES**

December 2014

## E-Mail Disclaimers: A Better Way

**Have you looked at the bottom of your company's e-mail template lately? If it's like most companies', it probably is encumbered with at least a paragraph of disclaimer language. In many cases, if not most, the disclaimer is far longer than the e-mail message it concludes. Why?**

Putting disclaimers into an e-mail seems wise enough: People send more than 55 billion e-mails a day (not including spam) and some are bound to be sent or forwarded to someone unintended. Privacy concerns and confidentiality agreements being what they are, disclaimers commonly note that an e-mail is privileged (which it probably isn't) and confidential (which begs the question, "If it's really confidential, why in goodness name would you send it by e-mail?"). A possibility also exists that, during transmission or retransmission, an e-mail and/or whatever's appended to it might somehow be changed by a random electronic glitch or bug of some sort.

Seeking to save itself from having to deal with the potential consequences of such problems, a law firm somewhere in the United States probably developed and applied the first e-mail disclaimer (thus the "privileged and confidential" wording), which then alerted every recipient to the wisdom of using such language in their own e-mail templates, initiating a cascade effect. Some, no doubt, copied the original while others tweaked it a bit, adding a word here or a sentence there to address yet another risk others had not yet recognized.

While risk confrontation needs to be an active, vibrant element of any geoprofessional firm's business operations, it generally should be a somewhat subtle element, lest what's done gives people the impression that a firm is permanently "lawyered up" and is unwilling to accept responsibility for anything. Using a 10-line legalese disclaimer to conclude a one-line e-mail is not subtle, especially when the e-mail chain includes several messages, each burdened with a cumbersome disclaimer that itself could take up almost the entirety of a smartphone screen. Besides, the actual effectiveness of even the longest disclaimers is unknown: While the attorneys who comprise the Geoprofessional Business Association's Legal Affairs Committee are aware of lawsuits contending that an errant e-mail violated confidentiality provisions, they are unaware of any defendant having the case dismissed based on a disclaimer.

Yet another problem: Using a disclaimer may encourage people to believe, mistakenly, that they're somehow protected from the consequences of too much haste or too little proofreading, or that they are immune from the consequences of using e-mail to far too broad an audience to "prove" they are right and "the other guy" is wrong. Nonetheless, it's the image problems created by template disclaimers that have encouraged many companies to take the next step; a new approach that still confronts the risks – real or imagined – but in a far less "in your face" way. They have replaced the disclaimer with a brief notice that links to a disclaimer domiciled on their website. A sample notice may read as:

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PAGE 1

# Avoiding Allegations of Corruption

- **Champion:**
  - Legal Affairs Committee

**BEST PRACTICES**

January 2015

### Avoiding Allegations of Corruption

"If you don't want to be skewered by allegations of corruption, don't be corrupt." Even though simplistic, that seems like wise advice. But it's not. It is simplistic, if only because, first, you need to know about and understand how governments define corruption, and, second, you need to realize that your firm would likely be held liable for employees' corrupt practices even though they pursued them wholly without management's knowledge, and for their own – not the firm's – benefit. In other words, it's not enough to maintain what you believe is your own and your firm's professional integrity. You need to know what the applicable laws are; you need to educate your staff about those laws; and you need to establish a professional culture that regards corrupt practices as a fatal virus that needs to be avoided at all costs, and investigated thoroughly at first suspicion, preferably with the assistance of legal counsel.

The Geoprofessional Business Association's (GBA's) Legal Affairs Committee has developed this brief guide to relate what it believes are best practices. Note that the guidance conveyed *does not and is not intended to provide specific legal advice*. Do not rely on the guidance in connection with any particular situation; *rely only on competent legal counsel when you have questions about the way in which laws and regulations apply to your firm's activities*.

#### Domestic Anti-Corruption Statutes and Regulations

Potential issues for a U.S.-based practice stem from statutes and regulations that federal, state, territorial, and tribal authorities have enacted to minimize the risk of fraud and corruption, especially when government funds are involved.

#### Federal False Claims Act

The federal government enacted the False Claims Act, also known as "Lincoln's Law," in 1863, during the Civil War (also known as "The War of Northern Aggression"), to fight rampant fraud against the federal government and Union troops.

If you are contracting with governmental agencies or otherwise participating in a project funded in whole or in part by the federal government, this law prohibits you from knowingly submitting any false claims or conspiring to do so. Note that "false claims" include any false representations made during the contracting process.

One of the law's most important elements is its *qui tam* provisions, which incentivize private-citizen whistleblowers ("relators") to report corrupt practices and receive as compensation as much as 30% of the government's recovery. The law even allows whistleblowers to sue on their own, on behalf of the United States. ("Qui tam" is an abbreviation of the Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "[he] who sues in this matter for the king as well as for himself.")


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PAGE 1

# Professional-Liability Insurance Basics

- **Champion:**
  - Business Practices Committee

 **BEST PRACTICES**

January 2015

## Professional-Liability Insurance Basics


Professional-liability insurance (PLI) can be a confusing topic. The Geoprotessional Business Association's (GBA's) Business Practices Committee has developed this *GBA Best Practices* monograph to provide answers to some of the basic questions. If you have other questions, please let the GBA office know. Being aware of your information needs will be important when the Committee sets out to develop the next *GBA Best Practices* monograph on this important subject.

### 1. Geoprotessionals Need PLI

The nature of what you do makes you particularly liable to claims. Unlike other members of the design team, you deal with natural conditions that are hidden by earth, rock, water, and time. It's your job to assess these conditions based on relatively few samples that may or may not be representative of what lies below, and then develop "confirmation-dependent" recommendations. ("Confirmation-dependent" is used to underscore a vitally important aspect of the "observational method" developed by von Terzaghi and Peck; i.e., geoprotessionals cannot assess their recommendations' appropriateness until they are on-site to confirm that the subsurface conditions revealed by earthwork are the same conditions they inferred from the samples they obtained, and from their experience, judgment, and knowledge of local subsurface conditions. If actual site-

subsurface conditions differ from the inferred conditions on which the geoprotessional based their confirmation-dependent recommendations, they would need to modify their confirmation-dependent recommendations to develop final recommendations.)

All too often, in an unwise effort to save a few dollars, clients retain a replacement geoprotessional to perform on-site observation, or forgo on-site observation altogether. Either approach significantly aggravates the risk of something going wrong and, when it does, the geoprotessionals are vulnerable to claims. Given that failing to respond to claims can be construed as an admission of fault, geoprotessionals need to defend every claim against them: That can be costly and, without insurance, geoprotessionals would have to pay all the costs on their own, usually via the geoprotessional firms that they're affiliated with. In some cases, however, geoprotessionals might have to pay personally, because geoprotessionals – as most other professionals – are personally liable for what they do. Unless they're willing to gamble with their life savings, PLI is a necessity. It's necessary, too, for marketing purposes, given most clients' insistence on adequate coverage. Do note, however, that having PLI does not eliminate the possibility of having to pay personally, as when the amount of the award exceeds a PLI policy's limit. (In one case, a geoprotessional firm's principals were personally "on the hook" for five years, paying off a jury award that was about \$2 million more than their policy's limits.)

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PAGE 1



# Confronting Workplace Bullying

- **Champion:**
  - Business Practices Committee

 **BEST PRACTICES**

March 2015

## Confronting Workplace Bullying


**Persecute. Oppress. Tyrannize. Browbeat. Harass. Torment. Intimidate. Strong-Arm. Dominate. Push around. These are synonyms for the verb "bully," and they apply just as much to workplace bullying as they do to schoolyard bullying. But as common as schoolyard bullying may be, workplace bullying might be even more widespread: According to a national survey conducted by the Workplace Bullying Institute (WBI), 35% of the U.S. workforce – 53.5 million people – say they've been bullied on the job; another 15% say they've witnessed it.**

Bullying is far more than incivility, rudeness, or the occasional loss of one's "cool": It is premeditated and continuing mistreatment that typically involves attacks so severe they can compromise targets' physical and emotional well-being, jeopardize their jobs and careers, and strain their relationships with family and friends. The impacts become even more severe when bullying leads to "mobbing"; i.e., group-bullying behavior or social isolation of a person through collective, meritless accusations, general harassment, or emotional abuse designed to humiliate.

**Bullying is premeditated and continuing mistreatment that can compromise targets' physical and emotional well-being.**

The WBI's research shows that the top-15 examples of workplace bullying take the form of:

1. falsely accusing targets of "errors" not actually made (71%);
2. staring or glaring at targets, being otherwise nonverbally intimidating, and clearly showing hostility (68%);
3. Discounting targets' thoughts or feelings in meetings, with a remark like "Oh, that's silly" or something similar (64%);
4. using the "silent treatment" to shun targets and separate them from others (64%);
5. exhibiting presumably uncontrollable mood swings in front of the group (61%);
6. making up their own rules on the fly (that they then fail to follow) (61%);
7. disregarding the satisfactory or even exemplary quality of targets' work despite evidence (58%);
8. constantly and harshly criticizing targets based on standards that apply to targets but not others (57%);
9. starting or failing to stop destructive rumors or gossip about targets (56%);
10. encouraging people to turn against targets (55%);
11. socially or physically singling out targets and isolating them from co-workers (54%);
12. publicly displaying "gross" and undignified, but not illegal behavior (53%);
13. humiliating targets by yelling or screaming at them, or by throwing tantrums in front of others (53%);

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PAGE 1

# Establishing a Cell Phone Safety Policy for Your Firm

- **Champion:**
  - Business Practices Committee

**BEST PRACTICES**

April 2015

## Establishing a Cell-Phone Safety Policy for Your Firm

"Distracted driving" occurs whenever a vehicle's driver is doing something in addition to driving, making it impossible for the driver to devote full time and attention to "the road." Safety experts categorize the "something-in-addition-to-driving" activity as at:

- cognitive distraction (performing a task that distract one's mind from driving); and/or a
- visual distraction (moving one's eyes from the view through the windshield to something else, like a radio control); and/or a
- mechanical distraction (using one's fingers or hands for something other than steering).

Cell-phone use is certainly not the only cause of distracted driving, especially in today's electronics-laden vehicles that come equipped with GPS units, touch-screen controls, "voice-command," and vehicle-management systems. Nor can one overlook "traditional" distractions, such as changing an audio- or climate-control-system setting, eating or drinking, looking at a map or GPS display, or even conversing with passengers or becoming "lost in thought."


Any form of distracted driving can cause or contribute to an accident and create a liability exposure for your firm when the vehicle is company-provided or when a company employee is driving the vehicle (no matter who owns or provides it) on company business (as defined by a court of law). As such, all employers are well advised to educate their employees about distracted-driving avoidance (among other things) before they receive a company-provided vehicle or are authorized to use a personal vehicle for business purposes, such as driving to or from a project site or an appointment with a client representative.

**A Special Risk**  
Geoprofessional firms need to realize that cell-phone use while driving creates a special risk, because it causes or contributes to so many distracted-driving accidents, and because so many trials of fact – judges and juries – seem eager to consider the mistakes of employees the responsibility of the employers whenever a cell phone is involved.

From a safety point of view, cell-phone use while driving always creates a cognitive distraction, frequently creates cognitive and visual distractions, and sometimes creates a mechanical distraction as well, particularly when the driver uses a cell phone to compose, send, or read text messages or e-mails.

Many people believe – mistakenly – that using a cell phone while driving does not create a distraction, because of their ability to "multitask"

**Any form of distracted driving can cause or contribute to an accident and create a liability exposure for your firm.**

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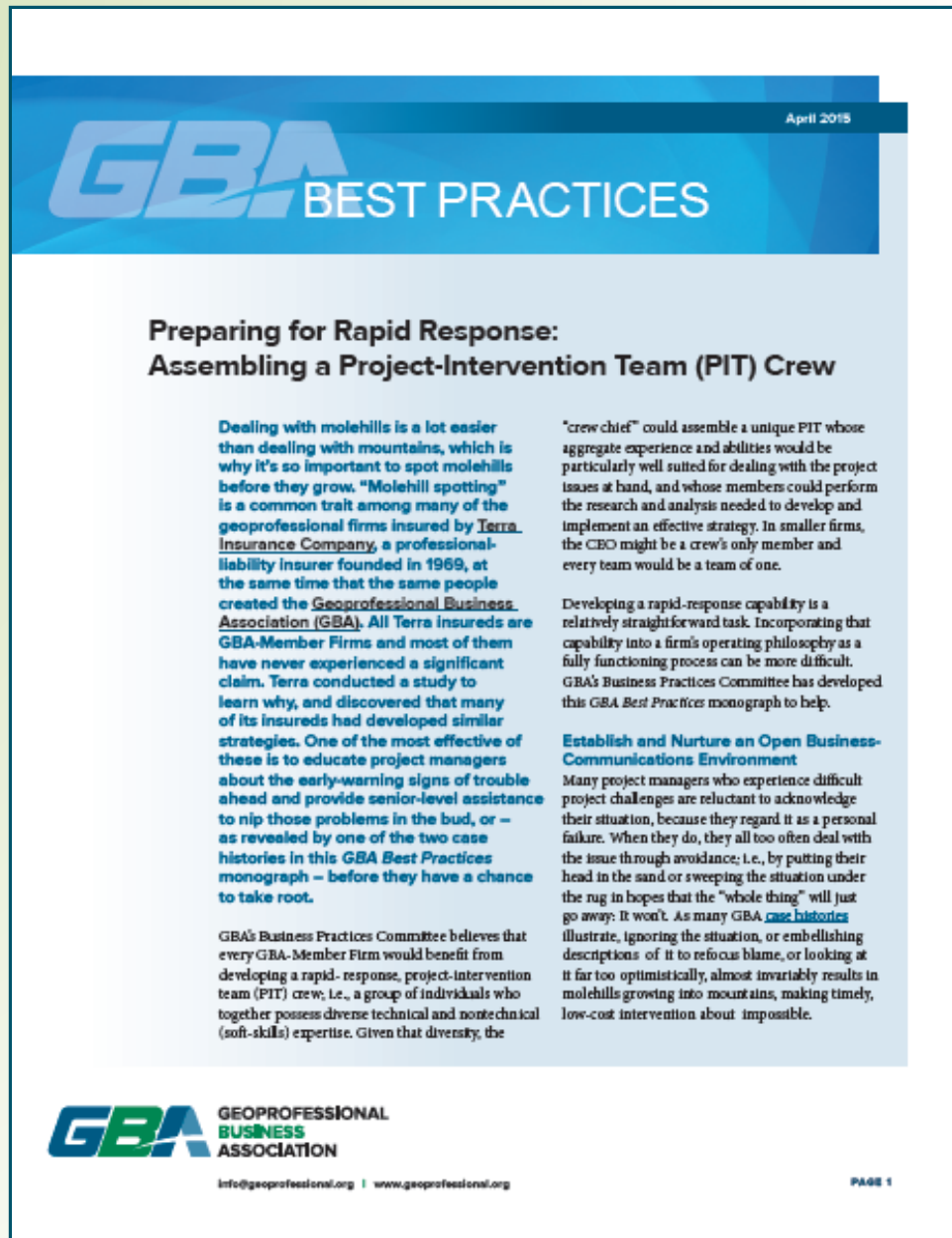
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PAGE 1



# Preparing for a Rapid Response: Assembling a Project-Intervention Team (PIT) Crew

- **Champion:**
  - Business Practices Committee



# OTHER INDUSTRY NEWS

# GBA NEWSLOG

A publication of the Geoprofessional Business Association

- Bi-weekly digital publication of the Association
- Authored by:
  - John Bachner

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## GBA NEWSLOG

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**GBA's CLAIMS 101 Now Ready for Download**

GBA  
*CLAIMS 101: The Fundamentals of Claims Detection and Response* is the title of an all-new, 18-page guide prepared by GBA's Legal Affairs Committee, with support from [Terra Insurance Company](#). The guide provides an overview of the claim-resolution process, from initial filing to the final resolution and beyond. Chapter titles are:

- Do Not Admit Fault,
- Claim Precursors and Responding to Them,
- Unconventional Initial Notices,
- Pre-Litigation Claim Notices,
- First Things First,
- Pre-Litigation Claims Resolution,
- Litigation, and
- It's Over: Put the Case behind You.

According to Michael J. "Mike" Yost, Esq., vice president and general counsel of GBA-Member Firm [Terracon](#) and chair of GBA's Legal Affairs Committee, "We wanted to produce a guide that would be particularly instructive for younger geoprofessionals and a solid refresher for some of the 'old hands.' We wanted it to be an easy read, without legalese or Latin, that would take only about 15 minutes to review, and people would come away with an understanding of the process." *CLAIMS 101: The Fundamentals of Claims Detection and Response* is available to GBA members free of charge. Nonmembers may purchase it for \$150 per copy.

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**GBA President Steve Thorne Named an ASCE Fellow**

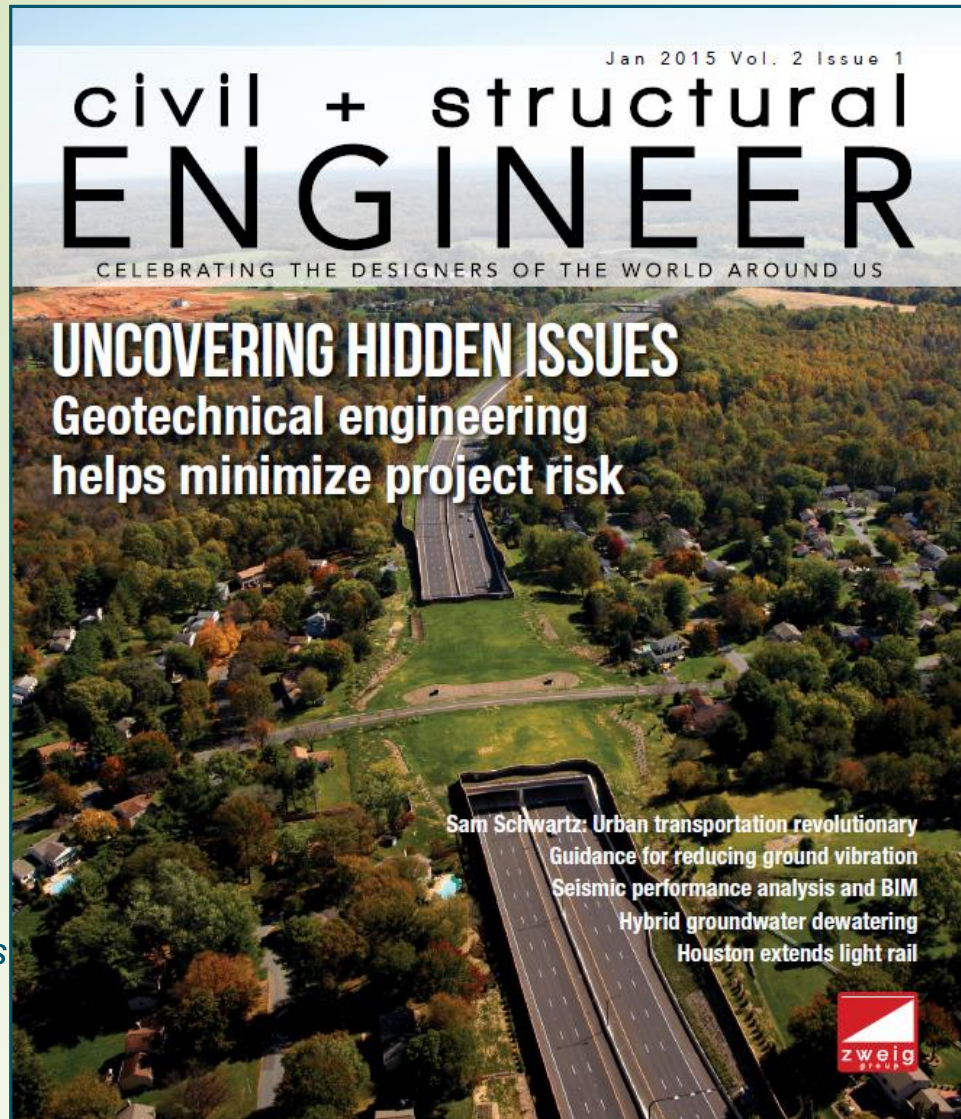
ASCE News  
Isn't it amazing (NOT!) how people who provide invaluable volunteer service year after year seem to collect ever more letters after their name? Case in point: The man we used to know as GBA President Steven D. "Steve" Thorne, P.E., D.GE ([Terracon](#)) is now GBA President Steven D. "Steve" Thorne, P.E., D.GE, F.ASCE ([Terracon](#)), with the new designation indicating his election to Fellow status in ASCE; a richly deserved honor. A Terracon principal and manager of the company's New Jersey office, Steve has more than 30 years' experience in planning, supervising,



# Article in Civil + Structural Engineer Magazine

- **Champions:**
  - Chad Mayers (of Schnabel)
  - Geotechnical Business Council

*The cover of the January 2015 issue features a photo of suburban Maryland's Intercounty Connector, along with the title of the article related to it. The article is a pilot project underwritten by GBA in hopes of encouraging GBA-Member Firms to develop similar pieces on their own, for other trade magazines.*



# A LOT MORE IS IN THE QUEUE...

Thanks to the efforts of our  
Committees and Councils...

# More GBA Best Practices...

- 10 Things You Need to Know about Client Representatives
- Safety and Your Geoprofessional Practice
- A/R: Improving Cash Flow through Effective Collection Procedures





# New GBA Booklet...

- Can't You Come Up With a Cheaper Alternative?
  - Champion – Geotechnical Business Council (*will also be an Environmental Business Council version*)

# Re-Branding Efforts...

- Council Identity Materials (GBC/CBC/EBC)
- Case History Conversion (from ASFE to GBA)
- About Your Report/Proposal Series

*GBA Is  
Doing It!*