

NEWSLOG

Published for Its Members Every Other Month by ASFE

ASFE, ASCE Partner the New Foundation for Professional Practice

After months of discussion and planning, the Institute for Professional Practice (IPP) has agreed to change its name to the Foundation for Professional Practice, and – via additional bylaws modifications – to vest organizational oversight jointly in ASFE and ASCE.

Established in 1988, with ASFE's then-Immediate Past President Steven J. Trettel, P.E. (*GZA GeoEnvironmental, Inc.*) at its helm, IPP's mission was to create closer linkage between the worlds of practice and academia, with an eye to turning out engineering graduates with more awareness of practice issues. The IPP was funded by a near-\$300,000 grant from ASFE and, over the years, more funding was received from ASFE and from a number of Member Firms and their principals, among others.

The IPP became an entity that was wholly distinct from ASFE, from the belief that it had to break free from "turf" issues. Its impact had to be more than geotechnical, and then, as now, ASFE was incorrectly seen as a purely geotechnical organization. While the split was largely successful, IPP suffered from a lack of "worker bees." In essence, to develop a supply of reliable volunteers, it simply had to have a group it could count on day in and day out. Although a number of ASFE members offered to help, as private practitioners their time was limited. When business is good, time must be spent completing projects. And when business is not so good, time must be spent finding projects.

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John Gnaedinger, P.E.

John Phillip Gnaedinger, P.E., a founder of ASFE and our third President (1972-73), passed away on Saturday, August 11, at his home in Glenview, IL. He was an amazing man, blessed with extraordinary energy and creativity. A number of years ago, after John had convinced a certain speaker to appear before us, the speaker commented to the membership, "Having a conversation with John Gnaedinger is like taking a sip of water from an open fire hydrant." The observation stuck, if only because it seemed so apt. If you mentioned a problem, John would bring up solutions...lots of them, and so many would apply. But he had more than thousands of ideas. He had knowledge, too, and he was always willing to share. It was John who took the concept of mediation/arbitration and applied it to construction, thus creating the first new ADR

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The Show Must Go on

To those in the ASFE family who lost loved ones in the madness of September 11, you have our condolences and our support. We grieve with you, for we all have lost at least just a bit of ourselves in the slaughter of so many innocents. But slaughter was not the madmen's goal, nor was grief. As ASFE President W. Jerrold "Jerry" Samford, P.G. said in a recent message to the membership, "President Bush was correct in saying that this has been the first battle of the first war of the 21st century. Some may say we have lost that battle.

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NewsLog is published six times a year (bi-monthly) by ASFE. Copyright 2001 by ASFE. All rights reserved. The nonmember subscription rate is \$240 per year.

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That the IPP could not fulfill its mission to the extent it wanted to was sad indeed, because it produced some really excellent materials and programs. Recognizing that something had to be done, the Institute embarked on a highly laudable search, so it could pass the baton to another group capable of doing what it could not.

Through the new arrangement, the IPP will actually stay in existence, albeit with a modified name and modified bylaws.

The mission of creating more liaison with faculty and students still exists, except now the Foundation will have much better access to academia, thanks to the involvement of ASCE. But there's much more to it than that.

The IPP realized early on that it could help mold more practice-savvy professionals by focusing on "emergent" practitioners, originally conceived to be young practitioners who had not received all the college- and university-

level practice-focused education they should have, but subsequently interpreted to mean any practitioner, no matter how old and with no matter how many years of experience, who needed to know more. The Foundation for Professional Practice will carry that mission forward, principally, at first, through reliance on ASFE materials. In other words, ASFE materials (as well as programs) will be offered to ASCE, albeit with FPP covers. This creates a huge potential for new ASFE influence, because what the "new" Foundation develops will represent ASCE's first significant efforts in the area of practice materials.

Stay tuned. We have some wonderful new ideas to take forward. And if you're interested in doing work for the Foundation, or somehow developing a program to commemorate a firm or individual, let us know.

Unions Active in New York

Politicians are preparing for elections in New York and, as usual, candidates are speaking out to gain attention. The public employees unions (*a la* Professional Engineers in California Government, or PECG) are only too happy to help, with the assistance of name brand accounting firms eager to distort reality to the fifth decimal place. Consider the following report from the *Rochester Democrat and Chronicle*, inspired by the statements of gubernatorial hopeful and current Comptroller H. Carl McCall:

The state could save millions of taxpayer dollars every year if it used staff engineers to design and inspect roads and other projects instead of hiring consultants, Comptroller H. Carl McCall said yesterday.... McCall accused the [Department of Transportation] of sitting on a independent study showing that consultants are 50 percent to 75 percent more expensive than staff engineers.... The DOT attempted to keep the study by the KPMG accounting firm under wraps by giving it to McCall with a letter asking him not to publicly release it. But McCall held a news conference on the study, saying it shows the state could have saved up to \$274

million over the past eight years by giving more work to staff engineers. The Public Employees Federation, the union representing state engineers, sued the DOT to get the report, which cost the state \$365,000.

The report goes on to note that the state DOT today employs 4,400 engineers, compared to 3,700 in 1998.

Does all this sound familiar? It should. It's virtually the identical scenario that played out about a year-and-a-half ago in Texas, where an independent study found that, common sense notwithstanding, state-employed engineers could design roads, bridges, and so on for just a tiny fraction of what the state paid consulting engineers for the same services. An independent review of the TexDOT study (conducted in part by the same KPMG that performed the undoubtedly flawed NYDOT study) showed that the original study was steeped in bias and error, and that, to the extent any comparisons could be made, it showed that the private sector was more cost-effective by far. (Check **MS 1** for a copy of the review report.) Unfortunately, cries of "foul" came too late to make much of a difference to Texas' general public.

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John Gnaedinger, P.E. ... continued from page 1

method to hit the industry since arbitration, about 100 years before. And it was John's feistiness that helped mold the attitude of ASFE; an attitude that remains intact still. (John was not the only feisty founder!)

John was born on January 11, 1926. He received his bachelor's degree in civil engineering from Cornell University in 1946, and his master's degree in civil engineering from Northwestern University in 1947. In February 1948, at the ripe old age of 22, John founded Soil Testing Services, the forerunner of today's STS Consultants, Ltd., and a veritable breeding ground for entrepreneurial engineers, many of whom now head up substantial Member Firms.

John earned acclaim as an engineer, being a pioneer in the field of soil testing and designing foundations for some of Chicago's best-known downtown buildings, such as the John Hancock Building, the Standard Oil Building, and the Prudential Insurance Company Building. He also invented testing equipment, and when he eased back somewhat on his professional pursuits, he took his problem-solving abilities to the streets, founding and chairing the Careers for Youth Foundation, to help underprivileged children learn career skills. Working closely with public schools in Lake County and the City of Chicago, John developed 16 career paths to help children learn about and enjoy the basics of having a career in almost any industry. John established the Foundation on the premise that "every business should exist to serve human needs as determined by a free market, not just to make a profit."

We'll miss John. We're lucky to have had him with us so early on. We're more fortunate still that so many of his best ideas and attitudes are with us even now, woven into the very fabric of who we are, and what we do, and how we do it.

GRAPE PRESS

We have two wines to review. The first is *Ironstone Vineyards Sierra Foothills 1997 Cabernet Sauvignon*. The wine is being heavily advertised in various periodicals, as something really good for drinking now. And that's close to the truth. While the wine still has some tannin in it, meaning you could probably lay it down for six months or so, it is drinking well now. It's what our reviewers called a fat wine, meaning it doesn't have much complexity to it. That's hardly a sin, nor should you expect tremendous complexity from a California "cab" this modestly priced. What you get is a big jammy wine, bursting with blackberry fruit. It's an excellent complement to a variety of foods, and it could put any number of more costly wines to shame. *Bottom line:* A solid wine and a good value.

The next wine is a ruby port, the red dessert wine of Portugal. You can spend a lot of money for a good vintage port. You can spend far less (\$18-\$22) for a Late Bottled Vintage (LBV), which is several years old and excellent. And you can obtain some remarkably good nonvintage port for about the same price as LBV. This particular offering is something new: *Burmester Vinho do Porto "Vintage Character."* The good people of Burmester have attempted to put the character and complexity of a vintage port into a bottle that is far less expensive. And they have done a really good job! On first taste, the wine has all the thick fruity attributes of a good port, with tasty hints of coffee, tobacco, and pepper. All the tasters agreed: Yummers! Try it with some hard cheese and slices of apple. And by the way, this remarkable bottle sells for \$12-\$15. It's worth a try.

ASFE

An international trade association established in 1969, ASFE develops programs, services and materials to help geotechnical, environmental, and civil engineering firms prosper through professionalism.

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I disagree, because the object of the battle is not territory, or buildings, or lives. The terrorists' object is our spirit, and the battle is far from over. If we despair, if we cower, then – and only then - we will have lost. I am confident we will not lose. While we may grieve, we will not despair. While we may exercise caution, we will not cower. Life will go on and, in our country,

that means our lives will be lived the American way. For that reason, ASFE will not cancel its Fall Meeting, because we shall not capitulate to terrorists. I am sure that by coming together again, as we have for decades; by again refreshing important professional, collegial, and personal relationships, we shall lift our spirits... and so shall win the day."

2001-2002 TRAINING SCHEDULE

ASFE offers a variety of training opportunities for Member Firms, including BackYard Seminars as well as seminars offered as part of ASFE's innovative Project Manager Training Program (PMTP). Attendees receive continuing education units awarded by ASFE under the auspices of the International Association for Continuing Education and Training. Those who attend the PMTP courses also receive credit toward the Registered Project Manager (RPM) credential ASFE will award to those who participate in the full Program.

If you want to attend a PMTP course or BackYard Seminar that has already been scheduled, contact the person listed below to determine if space is available. For more information on the content of a course or seminar and instructions on how to sponsor one, just check the corresponding MS box on page 16, or refer to ASFE's website (www.asfe.org). *Note:* ASFE can custom-design a seminar or similar presentation for your firm or organization. Contact John Bachner for details.

And by all means, don't forget ASFE's classic **Fundamentals of Professional Practice** course (**MS 2**), the program that many Member Firms consider a rite of passage for those on their way to the top.

BackYard Seminars

- *Essentials of Risk Management and Profitability for Project Managers* **MS 3**
- *Field Representation: The Technician's Role on Site* **MS 4**
- *Write Right* **MS 5**
- *Contract Basics for Project Managers* **MS 6**

Project Manager Training Program (PMTP)

Courses

- *Fundamentals of Project Management* **MS 7**
- *Client Management and Communication Skills* **MS 8**
- *Financial Aspects of Project Management* **MS 9**
- *Training the Trainer* **MS 10**

DATE	LOCATION	CONTACT/SPONSOR	SEMINAR NAME
November 2 & 3 (Friday & Saturday)	San Francisco, CA	ASFE Ann Reed 301/565-2733 ann@asfe.org	PMTP Fundamentals of Project Management
November 16 & 17 (Friday & Saturday)	Washington, DC	ASFE Ann Reed 301/565-2733 ann@asfe.org	PMTP Fundamentals of Project Management
2002			
February 1 & 2 (Friday & Saturday)	Detroit, MI	ASFE Ann Reed 301/565-2733 ann@asfe.org	PMTP Fundamentals of Project Management

For inquiries or to schedule a Training Program, contact Ann Reed (301/565-2733, ext. 222; ann@asfe.org).

Houston: We Have a Problem

Houston is well known for widespread foundation problems that affect slab-on-grade homes sited on expansive soils. As it so happens, almost all the problems are avoidable, as long as clients engage competent geotechnical engineers and give them reasonable budgets to work with. But that doesn't seem to be the way things work in Houston where, from what we hear, problems are getting worse, not better.

Alarmed by the situation, a group of structural engineers, calling themselves the Foundation Performance Association (FPA), has put together a "recommended practice" (see it at www.foundationperformance.org/technical_papers.html). Does it call for developers to select geotechnical engineers on the basis of demonstrated competence? No. Does it at least say that geotechnical engineers should have experience (not just occasional good luck) with expansive soils? No. Does it suggest that the geotechnical engineer, the structural engineer, the architect, and the developer should together develop a scope of geotechnical engineering service? Don't be silly! The FPA has turned out what is nothing more than a bid spec that sets forth a poorly worded scope of service that could create inadvertent, yet serious liability for the geotechnical engineers who accept it.

ASFE has been attempting to work with the FPA via the Codes and Standards Committee, with extensive efforts on the part of Committee Chair James Johnston, P.E. (*PMK Group*) and, in particular, David Lourie, P.E. (*Lourie Consultants*), who has written to FPA leaders, called them, and even attended an FPA meeting to explain ASFE's position against prescriptive standards or materials that could be perceived as prescriptive

standards. An excerpt from one of David's letters to the FPA is instructive:

ASFE is involved at the request of our Houston-area and other Texas member firms. They believe that the business practice and technical comments they provided in response to their reviews were mostly ignored by the FPA. A document of this potential significance merits an open review process that encourages participation by all persons who could be directly and materially affected. Furthermore, for the document to be credible, those propounding it should make a legitimate effort to resolve all credible objections through a process that requires each objector to be advised in writing about the disposition of the objection and the reasons for it. The FPA did not follow such a process, I believe.

While the web-published version of your document is somewhat different from the review version dated March 1, 2001, serious problems remain. The document is still prescriptive in nature and it still looks as though it is intended to be used to seek bids from geotechnical engineers as part of a price-based selection process that ignores other evaluation criteria. The document is silent on the issues of qualifications, experience, mutual scope development, etc., which are key concerns when it comes to selecting design professionals. If the problem now in Houston is shoddy work, shoddy work will continue to be a problem

when selection processes focus on a standard scope and low fee, while ignoring quality factors. In fact, the FPA recommended practice suggests quite plainly that, no matter how poorly trained or poorly qualified a practitioner might be, following the recommended practice will ensure a good result. The document also

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**ASFE is
involved**
**AT THE REQUEST
OF OUR
HOUSTON-AREA
AND OTHER
TEXAS MEMBER
FIRMS.**

Cutting the Cost of College

If you haven't set aside money for a child's college education, chances are you'll have to cover at least a portion of it by selling some of that well-appreciated stock. The problem with doing that is capital gains tax. For every \$100 of gain, you might have to pay another \$20 in tax. Here's a thought: Don't sell the stock. Instead, give it to the college-bound child and have the child sell it. When that happens, the capital gains rate may be 10%, 8% (on assets held for at least five years before you give them away), or even nothing at all. The maximum amount you can give is \$10,000. Your spouse can give \$10,000, too. (Now double that and you should be able to get through the first semester!)

UPCOMING MEETINGS

Mark your calendar!

Call ASFE (301/565-2733) for more information.

October 17-21, 2001

ASFE Fall Meeting
The Orchid at Mauna Lani
Island of Hawaii

April 3-7, 2002

ASFE Spring (Annual) Meeting
The Westin Savannah Harbor
Savannah, Georgia

October 2-6, 2002

ASFE Fall Meeting
Westin La Cantera
San Antonio, Texas

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In response to the *Rochester Democrat and Chronicle* article, ASFE Executive VP John Bachner submitted the following letter to the editor:

Your article about Comptroller McCall's criticism of the state's DOT for failure to staff up more in-house is almost identical to an article that appeared about two years ago in Texas newspapers, where a costly "independent" study (by PriceWaterhouseCoopers) showed that that state's DOT could get work done less expensively using in-house staff. A recent analysis of the TexDOT study showed that it was seriously flawed and seriously misleading; that, in fact, work could be done less expensively by consultants.

Our more than 30 years of experience in dealing with these issues shows that every such study done: has been commissioned by a government entity (making that entity the client of the "independent" source retained to do the work); must be so commissioned because only the government has access to data on the cost of government operations; has shown that government can do the same work for less, common sense notwithstanding; demonstrates government "cost-effectiveness" by omitting various costs, such as the cost of rent, the cost of

pensions, the cost of bookkeeping, etc.; overlooks the fact that consultants are fully liable and insured for the work they do, whereas government workers are not; never considers the money spent as a consequence of government engineers' negligence; etc.

ASFE has prepared and will gladly share with you a cost comparison white paper that identifies how to make a genuine cost comparison, on an apples-to-apples basis.

Do not expect this type of union-backed counterintuitive nonsense to go away. The only defense against it, it seems, is an immediate comeback that "the study involved, even though performed by the well-known accounting firm of [fill in the blank], is based upon a variety of assumptions that yield absolutely false and misleading results. Garbage in, garbage out." To not respond quickly and stridently permits the nonsense to be treated as truth, leading to the staffing up of state DOTs, et al., at tremendous expense to all taxpayers and to the private practice of engineering. Use the *ASFE White Paper No. 2: Establishing the Cost of Public-Sector Design* which identifies some of the typical tricks used to generate misleading results. Obtain a copy of the *White Paper* by checking [MS 11](#) on p. 16.

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seems to suggest that more data is a substitute for better data. What's really important is obtaining an adequate amount of the right data, using qualified people to interpret it properly, and developing geotechnical design and construction recommendations that are conveyed clearly. Of course, the structural engineer and other design professionals, the contractor, and the owner need to follow the recommendations.

While David's and Jim's efforts did result in some changes to the document, e.g., a note that professional judgment is required and that the methods indicated may not be applicable to all situations, ASFE remains concerned by plaintiff's counsel's ability to still use the "recommended practice" to the detriment of our members, much as occurred in the situation documented in *ASFE Case History 66* (check [MS12](#) on p.16 to receive a copy). Accordingly, the Codes and Standards Committee was prepared to develop a white paper designed to debunk the FPA document. Now we have learned from Philip G. "Phil" King, P.E. (*Fugro South, Inc.*) that "the ASCE Texas Section (ASCE-TX) is scheduled to present its *Guideline of Minimum Standards for the Design of Residential Foundations* by mid 2002. It is scheduled to be posted on the ASCE-

TX website for review and comment by members in early 2002. This document has a section on recommended geotechnical engineering services. Four Fugro engineers (Saad Hineidi, David Belcher, Bob Ringholz, and I) are on the committee drafting the document and all agree that the geotechnical recommendations are within acceptable language. With this in mind, we may want to wait for the presentation of the ASCE-TX document and the problem may take care of itself. ASFE could provide a statement (if it agrees) that it supports the ASCE-TX document and that the FPA document is not acceptable by the engineering community...." Phil also noted that the guideline will be developed using an ANSI-approved consensus procedure, and will contain a caveat indicating that the standard does not and is not intended to supplant the standard of care, that it must be applied by a PE, and that the PE is encouraged to apply judgment because any standard presupposes as static conditions that always are dynamic.

You can track these and related developments by becoming part of ASFE Standardwatch.com, a special communications net available exclusively to ASFE members. Obtain access by contacting David Lourie (Lcon@aol.com).

Compared to What?

You've done it all just right. You targeted the organization you wanted to bring into the firm's clientele. Through reading, you learned more about the targeted organization's industry and the organization itself. You identified the representative who would be best to work with and you attended meetings of an association you knew the representative was active in. You struck up a conversation and were asked to submit a proposal. You did, and now you're getting ready to call to find out if your proposal will be accepted. "Well," your contact begins, "your price came in pretty high." So now what do you say? Do you have an immediate comeback? You should, and it had better not be something on the order of, "That's the price you have to pay for quality." Instead, you might be better off with something like, "I'm really surprised. I know we're not the

cheapest provider out there, but when it comes to an apples-to-apples comparison, we usually do pretty well. Can I take some time with you just to make sure the other guys are giving you everything you should get?" Given that your contact might be busy, you could schedule the comparison for a day or two later. Be prepared. You will need to know *all* the features and benefits of your service, and you will need to know them intimately. For example, "So they're providing the field observation for \$5 an hour less than we are. Do they send a registered engineer to the site to establish the observation protocol? Does senior field staff spot-check quality? Are their people all equipped with cell phones?" You might even want to consider some of the general issues, like limitation of liability. "They don't limit their liability by contract? You know, the risk

on a project like this is significant enough to put a firm like ours out of business. Have you checked their insurance coverage? Some of the policies out there today aren't worth the paper they're printed on; like a million-dollar policy with no prior acts coverage. It's not really a safety net. Now, I'm not saying that they've done things to lower their costs at the expense of overall service quality, but I do know that any number of short-cuts are available. We don't use them, and our clients are glad we don't."

How much do you *really* know about the services you sell and the factors that make it a quality service? How much do you know about the competition? Vague terms like "quality" are not likely to be effective when it comes to apples-to-apples comparisons. Know your apples.

Glerfen Blerbitz

There you are, networking your way through the local association's cocktail hour while trying to down a little sustenance lest you drink a wee too much on an empty stomach. As luck would have it, it's just then that a friend says, "I'd like you to meet John Doe, CEO of Shmekel Manufacturing." Delighted, you try to say "Nice to meet you," but, your

mouth being full of half-chewed breaded shrimp, your greeting comes out as "Glerfen Blerbitz."

Networking Rule No. 1: Don't go into a networking function hungry. If it's a dinner function preceded by a cocktail period, have a few snacks before you arrive, so you will not be hungry. That way, instead of

stuffing your face with food, you'll be able to talk. You'll also be able to keep your drink in your left hand, so you'll be free to shake others' hand without having to look for a place to rest your plate. If the function is cocktails only, as is common at an open house, for example, either have dinner beforehand, or have a snack beforehand and dinner later.

Meeting Effectiveness

Ineffective meetings waste time; that's not news. You need to do what you can to make meetings more effective; that's not news either. One of the effectiveness keys that every prospective meeting participant should demand is an agenda for the meeting at least 24 (at least 48 is better) hours beforehand. The last item on the agenda should be "Adjourn," and a time should be given. (It's best for all items to be timed.) The next-to-last item should be the date of the next meeting. And the item before that should be "Assignment Review," meaning a quick review of what needs to be

done and who will do it, by when. If you're in the position of taking notes, and you do it by hand, we suggest that you use two pens, one red and one blue, and write all of the assigned tasks in red. In that way, you can review your notes and instantly identify the to-dos. If you take notes using a laptop, you can identify to-dos by introducing each with the name of the doer printed in bold italics. (Using a computer also permits you to reformat the agenda in the form of minutes before the meeting, making the note-taking task far simpler and faster.)

MEMBER NEWS

ENGEO Incorporated (San Ramon, CA), recently named one of San Ramon's Top Ten Corporate Citizens by the San Ramon Chamber of Commerce, has appointed a new Principal (**Theodore P. Bayham, R.E.A., C.E.G., G.E.**) and three new Associates (**Raymond P. Skinner, C.E.G., Philip J. Stuecheli, C.E.G., and Josef Tootle, P.E.**). The firm also announced the opening of a new office at Quarters N, 522 Walnut Avenue, Mare Island, Vallejo, CA 94592.

Geostructures, Inc. (Leesburg, VA): **Edward S. O'Malley, P.E.** has joined the firm as Chief Engineer.

Geotechnology, Inc. (St. Louis, MO): **Yvonne A. Reed** has joined the firm as a Project Engineer in the Environmental Services Division.

Ground Engineering Ltd. (Regina, Saskatchewan, Canada) has named **Tim Adelman, P. Geo. P. Eng.** Presi-

dent and Chief Executive Officer, replacing **Paul Kozicki, P. Eng.**, who remains as Chairman of the Board. **Steve Harty, P.Eng.** has been appointed Director, and **Kelly Maunder, A.Sc.T.** has been appointed manager of the firm's QA/QC Materials Testing Division.

Haley & Aldrich, Inc. (Boston, MA): ASFE Past President (1994-95) **David E. Thompson, P.E.**, has been named winner of ASCE's 2001 Parcel-Sverdrup Award for excellence in engineering management. The award will be presented to Dave at the CEO Forum/Engineering Management Awards Luncheon during ASCE's Annual Convention in October.

NTH Consultants, Ltd. (Farmington Hills, MI): Well-known masonry expert Rochelle C. Jaffe, R.A., P.E. has joined the firm.

Schnabel Engineering Associates, Inc. (Ashland, VA): **James J. "Jim" Schnabel, P.E.**, ASFE's fourth President (1973-74), announced his retirement at the firm's July Board meeting. Jim will step down as Chairman of the Board following the company's October Board meeting. Jim founded the firm in 1956. **Ray E. Martin, Ph.D., P.E.** was re-elected Chief Executive Officer and will become Chairman when Jim retires. **Gordon Matheson, Ph.D., P.G., P.E.** was promoted from Executive Vice President, responsible for Northern Region operations, to President. Gordon will become CEO when Ray becomes Chairman. **Raymond DeStephen, P.E.**, responsible for Southern Region operations, was re-elected Executive Vice President.

Terracon (Lenexa, KS): **Gary Rome, P.E.** has joined the firm's Billings, MT office as a senior consultant specializing in land reclamation, stream hydraulics and related hydrology.

NEW MEMBERS

We're most pleased to welcome one new Member Firm, one new Professional Colleague, two new Individual Practitioners, and one new Faculty Member.

Our newest **Member Firm** is **C. Felice & Company, LLC.** (14150-227th Avenue, Woodinville, WA 98072; **tel.** 425/882-2168; **fax** 425/882-2179; **Internet** www.cfelice.com). The firm provides geotechnical and geo-environmental management consulting services to national and international clients with a focus on planning, economic and risk analysis, claim avoidance and resolution, peer and independent project review, numerical analysis, and engineering design. The firm's Managing Principal is **Conrad W. Felice, Ph.D., P.E.** (cfelice@cfelice.com).

Our newest **Professional Colleague** is **Geopier Global Corporation**

(8283 North Hayden Road/Suite 291, Scottsdale, AZ 85258; **tel.** 480/998-3522; **fax** 480/998-3542; **e-mail** geopierglobal@aol.com; **Internet** www.geopiers.com). The company provides specialized Geopier design/build ground improvement systems outside the United States. It is a subsidiary of Geopier Foundation Company. Branch offices are located in Green Bay, WI and Bad Soden-Salmunster, Germany. **Nathaniel S. "Nat" Fox, Ph.D., P.E.** is CEO.

Our two new **Practitioner Members** are familiar to many of us. **Carol W. Bowers, C.P.G., P.G.** is Director of the **Geo-Institute of ASCE.** She's located at 1801 Alexander Bell Drive, Reston, VA 20191-4400 (**tel.** 703/295-6352; **e-mail** cbowers@asce.org). Carol earned her BA in geology from the College of Wooster, and her MS in geology from the University of Alabama. After gradua-

tion, she worked for Amoco Production Company for four years, then Versar, and, for seven years, Environmental Science and Engineering. She joined G-I in 1997.

William "Bill" Mirza, P.E. founded and headed his own firm for 30 years, and was an ASFE member for almost that long. He merged the firm in 1998, and then directed his own one-person consultancy for about a year. Bill is now a Staff Engineer for the **Village of Glenview, Illinois.**

Our newest **Faculty Member** is **William E. Wolfe, Ph.D., P.E.**, a Professor of Civil Engineering at **The Ohio State University** (470 Hitchcock Hall, 2070 Neil Avenue, Columbus, OH 43210; **tel.** 614/292-0790; **fax** 614/292-3780; **e-mail** wolfe.10@osu.edu).

To one and all, **welcome aboard!**

Delaware Law Created To Protect Professionals from Personal Liability

Delaware's Qualified Dispositions in Trust Act was created in large part to shield professionals' personal assets from professional negligence claims. (Anyone subject to an attack on personal assets would be well advised to learn more about the law. This would include some of your clients who may be subject to environmental claims.) To take advantage of the law, a professional typically would retain a Delaware lawyer to establish and act as trustee for an irrevocable Asset Protection Trust (APT). Assets would be moved into the APT; administration and custody of at least some of the assets would have to occur in Delaware.

The law bars original actions and actions to enforce judgments unless they are first brought to the Delaware Chancery Court. There, a creditor could reach protected personal assets only if:

- The claim arose before the APT was created and the claimant can prove the creation of the APT was

intended to be fraudulent, providing that the claim was made within four years from the date of the APT's creation, or, if more than four years, within one year after creation of the APT was or reasonably could have been discovered.

- The claim arose after the APT was created, and the claim is brought within four years of the date of APT creation.
- The claim resulted from an agreement or court order for child support, alimony, or property division.
- The claim arose from a death, personal injury, or property damage associated with an incident that occurred on or before creation of the APT.

Powell Trachtman Logan Carrle Bowman & Lombardo provided this information. For more information on APTs, communicate with Thomas J. Bogar, J.D. (tbogar@powelltrachtman.com or 610/354-9700).

They Are Good Speakers. Honest.

Several astute *NewsLog* readers picked up on an embarrassing typo on the front page of our July/August number, in which we said, "But mediocre they [our speakers in Hawaii] are." After we proofed

NewsLog, our graphic artist's program kicked out most every bold-faced italicized word in what was sent to the printer. Thus it was that you did not see our strong averral, "But mediocre they are ***not***."

Stop Being Silly

It's a regular practice: After each national meeting we issue a questionnaire to firms that were not represented and ask, "Why didn't you attend?" And time after time, the same firms give the same reasons. Yet, in truth, one of the number-one most important benefits of being a member of ASFE is the marvelous networking opportunities that occur at the ASFE meetings. One of the results, and something we report with extremely mixed emotions, is the merger and acquisition activity that occurs. In fact, involvement in ASFE helps establish culture commonalities that can help make unification much easier. But let's not overlook those opportunities for joint ventures and project partnerships.

Take, for example, the activity reported in a recent edition of *Inside Terracon*, which reports on the outstanding success of Terracon's "strategic alliance" with Haley & Aldrich. "This alliance was formed to

strengthen both companies' abilities to serve national client needs. Since Haley & Aldrich is primarily based in the Eastern and Great Lakes areas, the company has been able to assist Terracon with work in the Eastern states, while Terracon has been able to assist Haley & Aldrich with work throughout the Midwest." To what extent did ASFE help play matchmaker?

To what extent did ASFE help play matchmaker?

WE BELIEVE THAT ANY GUESS LESS THAN 100% IS LOW.

We believe that any guess less than 100% is low. We have said repeatedly over the years that more business gets done at our meetings' social events than at any other time. And it's true. If you're not there, you cannot partake. Registered for Hawaii? If not, and if you regret your oversight in failing to register for what now appears

to be one of the best-attended meeting in ASFE history, give us a call. We still may be able to squeeze you in. And if we cannot, then start making plans now for Savannah.

Unusual Arbitration Decision in Florida Design/Build Case

Judges often consolidate two arbitrable disputes that involve three parties or more. In this case, however, the judge required arbitration between two parties that were *not* contractually bound. It happened in Florida, when B.L. of Miami, Inc. (B.L.) selected Cunningham Group Construction Services, LLC (Cunningham) to design and build an entertainment complex. Their contract noted that a Cunningham affiliate – Cunningham, Hamilton, Quiter, P.A. (CHQ) – would provide AE design services. The d/b agreement made binding arbitration the sole method for resolving all disputes. Binding arbitration was also required by the Cunningham/CHQ agreement, an Associated General Contractors' *Standard Form of Agreement between Architect and Design/Builder* that also referenced the agreement between Cunningham and B.L.

It didn't take long for B.L. and CHQ to have a falling-out that led to B.L. suing CHQ for negligence during the predesign phase and for providing bad advice about hiring Cunningham. CHQ attempted to compel arbitration of B.L.'s claim,

but B.L. resisted, claiming it could not be compelled to arbitrate because, first, it didn't have a contract with CHQ, and, second, because the acts giving rise to its claim occurred before it had entered into the d/b agreement with Cunningham.

The judge required arbitration

BETWEEN TWO PARTIES
THAT WERE NOT
CONTRACTUALLY BOUND.

Ultimately the issue was brought before the District Court of Appeal of Florida. It ruled that, despite the absence of a contract between them, B.L. was required to arbitrate the dispute with CHQ, because the overall contracting scheme clearly reflected a desire by B.L. for all claims to be arbitrated. The appellate justices noted

that the prime agreement required B.L. and Cunningham to arbitrate disputes, and that it also contained a provision that "all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in other contracts relating to the work to provide for the consolidation of arbitration." The same agreement identified CHQ as the AE subcontractor, and the Cunningham/CHQ subcontract also contained an arbitration requirement. As for the claim that the negligence involved preceded the d/b contract and AE subcontract, and thus was distinct from it, the court said, "B.L. claims that [CHQ] wrongfully induced B.L. to enter into the design/build agreement, a claim which clearly relates to the design/build agreement... [showing that] B.L.'s claim for professional negligence is intimately intertwined with the design/build contract and is therefore arbitrable." (*Cunningham, Hamilton, Quiter, P.A. v. B.L. of Miami, Inc.* 776 So.2d 940 (Fla. App. 3 Dist. 2000))

Covered by Insurance? Maybe not.

Sitech Engineering Corporation's professional liability insurance, obtained from Utica Lloyd's of Texas, excluded coverage for bodily injury, property damage, or personal injury arising from the company's professional services or from its failure to provide professional services. And it was precisely that aspect of the policy that Utica Lloyd's cited to justify its refusal to defend Sitech after the company and its president were sued by the survivors of Jarred Lindsley, a construction worker who was killed in a trench cave-in. Sitech disagreed with its insurer's decision, saying

that, because the services were provided by both engineering and nonengineering personnel, the services were nonprofessional and, accordingly, not subject to the policy exclusion. Utica Lloyd's sued to have the court uphold its position, but the court refused to do so, causing Utica Lloyd's to appeal. The Court of Appeals of Texas reversed the trial court's decision, finding that Sitech's services were professional, as that term was defined in the policy. (*Utica Lloyd's of Texas v. Sitech Engineering*, Court of Appeals of Texas, February 2, 2001)

Commentary: If you think all insurance policies are created equal, you have another think coming. Obtain coverage that will provide exactly the kind of security you'd like to have should a safety net be needed. ASFE recommends Terra Insurance Company, the nation's top-ranked risk retention group and the only professional liability insurer that specializes in coverage for geotechnical engineering firm to obtain coverage, you do need to be a member of ASFE. For details, check [MS13](#) on p.16, or call Terra at 800/872-0077.

Agency Makes the Difference

If you're unfamiliar with the law of agency, you might want to reread pertinent sections of ASFE's *Contract Reference Guide*. In essence, the party that retains an agent is 100% liable for the agent's acts. For that reason, clients usually will insist that you act as an independent professional, not as an agent. Unfortunately, the important distinction between independent professional and agent seems to have been lost on Mossy Eagle, LLC, a company that owned and leased coal mining property. Mossy Eagle hired Brock Mining to provide the equipment and labor needed to mine Mossy Eagle's land. Mossy Eagle then retained Alpha Engineering Services, Inc. as its agent, to provide the accurate mining maps and competent engineering services that, by contract, it

agreed to provide to Brock. The competency of Alpha's services was questioned, however. Brock alleged that Alpha twice told it to cut into abandoned mines, causing water to pour in and damage Brock's equipment on each occasion. When Mossy Eagle refused to reimburse Brock for its losses, Brock sued Mossy Eagle and Alpha for negligence and breach of contract. Mossy Eagle immediately called its liability insurer, State Automobile Mutual Insurance Company, but the insurer refused to defend or indemnify its insured. It cited an exclusion in the policy it issued to Mossy Eagle, whereby coverage would not be provided for property damage caused by the rendering of, or the failure to render, professional services, including the preparation of drawings, reports,

surveys, or maps. When Mossy Eagle refused to accept its insurer's position, the insurer sued to have a court declare its position correct, and exactly that happened at trial. Mossy Eagle appealed, arguing that it did not provide professional services, Alpha did, so that the exclusion did not apply. The appeals court upheld the trial court's verdict, however. It pointed out that, because Mossy Eagle hired Alpha as its agent, Mossy Eagle was 100% liable for the services rendered, as if the Alpha employees who did the work were employees of Mossy Eagle. Accordingly, the exclusion did apply, and Mossy Eagle was uninsured. (*State Automobile Mutual Insurance Company v. Alpha Engineering Services, Inc.*, Supreme Court of Appeals of West Virginia, December 6, 2000)

ASFE's Position Upheld in Important Heron Ridge Decision

Although the United States District Court for the Ninth Circuit decided to not accept an *amicus* brief from ASFE in *Heron Ridge v. Agra Earth and Environmental, Inc.*, ASFE's position was maintained in the Court's decision. The appellants had appealed a lower court's verdict in favor of Agra (now AMEC, Inc.). The appellants argued that one of the Heron Ridge principals, Stanley J. Rumbaugh, had rejected Agra's limitation of liability (LoL) provision during the same telephone conversation in which he authorized Agra to move forward on the project. Rumbaugh subsequently signed several related agreements, all of which contained an LoL. The District Court said that Mr. Rumbaugh had ample opportunity to reject the LoL in writing, but chose not to do so. Accordingly, the Court ruled that the provision was in effect.

Heron Ridge also contended that the disclaimer on warranties included in Agra's LoL did not bar Heron Ridge's breach of implied warranty claim, because the LoL was not specifically negotiated. The Court rejected that argument, too, noting that the provision was clear

and unambiguous, and the claimant was represented by an attorney.

Heron Ridge claimed that the limitation of liability provision was against public policy and unenforceable, because it violated the state's anti-indemnification statutes. Heron Ridge cited an Alaska decision to bolster its argument, but the Alaska decision related to the history of the law in that state, which did not apply in Washington. The Court rejected that argument.

Heron Ridge also alleged that Agra was grossly negligent, but the court rebuffed the appellants yet again. Heron Ridge's losses, it ruled, were purely economic, and therefore damages had to be decided on the basis of contract law, not tort law. (Because a plaintiff in Washington may not recover purely economic damages as a consequence of negligence, negligence (tort) actions may not be maintained; there's nothing to collect. Purely economic damages may be recovered only based on what a contract says and, in this case, it said liability was limited. A number of states have done away with the economic loss doctrine.)

ASFE Helps Secure Huge Victory in Lakeview Decision

Hooray! We've had an extremely important, highly successful outcome in *Lakeview Boulevard Condominium Association v. Geotech Consultants, Inc., et al.*, thanks in no small measure to the outstanding service contributed by Shannon & Wilson's Michael Dodd, Esq. and J. Duncan Findlay, Esq., on behalf of ASFE.

The case began when three condominiums slid down a hill after a winter storm and became uninhabitable. The homeowners brought various claims against the geotechnical engineer, structural engineer, architect, and construction manager. A trial court dismissed the claims, because the state's six-year statute of repose had already expired, making the claims time-barred. As plaintiffs have done in other states, however, those in *Lakeview* appealed on the ground that the statute of repose was unconstitutional, because it violated a) the Administration of Justice Clause of the Washington State Constitution by denying the plaintiffs access to the courts, and b) the Equal Protection Clause of the U.S. Constitution, because there was no rational basis for giving protection to builders and design professionals while excluding homeowners and tenants.

Appeals such as these often are successful, particularly because homeowners are involved. Assumedly, the defendants in this case believed they would receive a sympathetic hearing, and they did. While Division I of the Washington State Court of

Appeals upheld the trial court, it did so reluctantly, suggesting strongly that the statute of repose was unconstitutional notwithstanding prior Supreme Court of the State of Washington decisions arguably addressing the issues.

Buoyed by the appellate court's decision, the plaintiffs appealed to the Supreme Court of the State of Washington. Had that court agreed with the plaintiffs, holding the statute of repose unconstitutional, the results would have been devastating and far-reaching. Devastating, because claims then could be brought ten, 20, 30, or more years after the fact, at a time when it would be virtually impossible for design professionals, especially retired design professionals who no longer had insurance, to mount a defense. Far-reaching, because the decision in Washington would have been cited as a nonbinding precedent to urge other states to hold their statutes of repose unconstitutional, something that would be cause for jubilation by

trial lawyers nationwide.

As it so happened, the Supreme Court of the State of Washington decided unanimously in favor of the defendants, holding the statute constitutional on all challenged grounds. After the decision, several of the defendants' attorneys said the case would not have been won without the support of the *amici* briefs, one of the most prominent being ASFE's. For a copy of the decision, check [MS14](#) on p.16.

The case began
when
THREE CONDOMINIUMS
SLID DOWN A HILL AFTER
A WINTER STORM

Random House Replies

Well, Random House is a lot easier to deal with than the Association for Selling Technical Materials (ASTM). You may recall the letter we sent to the editor of *Random House Webster's College Dictionary* bemoaning lack of reference to Professional Engineer under "PE" (defined to include physical education, Prince Edward Island, Canada, printer's error, and, in statistics, probable error). We have received a positive reply from Carol Braham, Senior Editor, Random House Dictionaries:

We'll certainly consider adding P.E. or PE (Professional Engineer) to the next edition of our College Dictionary. It's already listed in our larger Random House Webster's Unabridged Dictionary.

Thanks also for the information on ASFE and NSPE, which we will put in our files.

PE is actually the approved postal code for Prince Edward Island...

As for MD versus M.D., I'll admit that our dictionaries are a bit inconsistent in regard to the use of periods in abbreviations. This issue will be addressed in the future.

Professional geologists: If you prefer college students to think of your professional accomplishments as something other than Parental Guidance, Ms. Braham's address is CBraham@randomhouse.com.

Richard C. Slade & Associates Completes *Peer Review*. New Promotional Materials Ready

Congratulations to **Richard C. Slade & Associates, LLC** (North Hollywood, CA) for completing its **Peer Review**. Where does your firm stand? Has it ever been Peer Reviewed? If not, you will lose out on some key benefits designed to help you profit even more from your commitment to excellence:

- A news release prepared by ASFE staff on ASFE news release letterhead and issued to several media of your choosing. You can also make as many copies of the release as you want, for issuance to other media, clients, prospective clients, staff, et al.
- A special **Peer Review** logo for use on your company's letterhead, business cards, brochures, advertisements, and other materials, indicating that your firm was Peer Reviewed, and the year during which the **Peer Review** occurred.
- An individually developed memorandum you can use in proposals (and feasibly other media) discussing the purpose of **Peer Review** and how firms

that undergo **Peer Review** demonstrate a genuine concern for enhancing the quality of their service to clients, employees, and the public.

- An electronic certificate you can use repeatedly for insertion in proposals, brochures, and so forth.
- A hand-inscribed certificate designed for framing (with more available for each office).
- Copies of **Peer Review: Its Meaning to Clients**, a high-quality brochure designed for distribution to clients and prospects.
- Special notice in the *ASFE Directory* and at the ASFE website.

As good as the **Peer Review** perks are, the real benefit of **Peer Review** is the process itself. **Peer Review** makes firms better. Find out for yourself. Fill out the application form at the ASFE website (www.asfe.org) or contact the ASFE office.

Record Profits for Environmental Firms

Environmental consulting firms experienced strong profit margins for their most recently completed fiscal year, according to ZweigWhite's newly published *2001 Financial Performance Survey of Environmental Consulting Firms*. Firms recorded their third straight year of double-digit profit margins, with a median pre-tax, pre-bonus profit of 11.5% of net service revenue. Pre-tax, pre-bonus profit per professional/technical employee reached an all-time high median of \$11,869 (vs. a low of \$4,054 in 1996).

Revenue growth and more efficient utilization of human resources seem most responsible for the posi-

tive results, ZweigWhite said. Median net service revenue per total staff reached a high of \$82,123, compared to a low of \$66,009 in 1993. Median chargeability, which reached a high of 61.2%, was also up (vs. a low of 54.4% in 1994 and 1996).

ZweigWhite CFO Ian Rusk said, "Although our survey data show little change in the median net multiplier for the industry and an increase in overhead rates, firms were able to maintain profitability through higher chargeability levels.... If revenue levels flatten or fall, the burden of higher overhead and debt levels will certainly take their toll...." **Details:** www.zweigwhite.com/store/svfev

Say It Isn't So

We received the following letter from ASFE President W. Jerrold "Jerry" Samford, P.G. We find it hard to believe. What do you think?

I recently had the opportunity to work as an expert witness in a lawsuit involving an environmental site assessment. The cause of action dates to the early 1990 time-frame, before ASTM E1527. [As you know,] the only credible way to identify the standard of care at a particular time in a particular place is to review actual instruments of service (reports) prepared during that time, in that area. This process has been affirmed a number of times in various courts. It works, and it's fair. However,

my recent experience points out a huge flaw in the process: obtaining reports. Of all the firms I contacted, ASFE Member Firms and non-member firms alike, *not one firm* was willing to provide a report to help identify the standard of care. (One ASFE Member Firm actually offered to provide some reports, but only if they were retained as an expert in the case!) When we talk about professionalism and helping our profession, I guess we'd better start by talking to ourselves.

ASFE was founded on the notion that, if we don't hang together, we will hang separately. Clearly, we need to reinforce that concept.

And So's Your Old Man

Do crude remarks constitute sexual harassment? That's what a school system employee concluded when, in her presence, her supervisor and a fellow employee engaged in a sexually explicit conversation. She filed a discrimination suit against the school district and was reassigned. After one appeal and then another, the case finally reached the U.S. Supreme Court. It ruled that the case should have been dismissed from

the get-go, because "no reasonable person" could accept the proposition that one offensive remark constitutes unlawful harassment. Harassment occurs only when the behavior involved is "so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment." (*Clark County School District v. Breeden*, 2001 US LEXIS 3365, 69 U.S.L.W.3684 (2001))

What have you done to make yourself almost bulletproof against lawsuits filed by unhappy employees? Did you know that ASFE has sample language for use in developing an alternative dispute resolution system that would require employees to use mediation or arbitration instead of lawsuits? Want a copy of the material? As long as you're a member of ASFE, it's yours for the asking. Just check **MS15** on p. 16.

Self-employed? Check out 105!

Internal Revenue Code Section 105 is so obscure that 99% of the sole proprietors to whom it applies do not take advantage of its benefits. *Example:* When used in con-

junction with Revenue Ruling 71-588, 105 allows 100% deduction (from federal, state, and self-employment taxes) of all family health insurance premiums, plus de-

duction of all uninsured medical, dental, and vision care expenses, as long as the sole-proprietor's spouse works for the sole-proprietor, on at least a part-time basis.

DR. ENGLISH

Years ago, each profession distinguished itself by the particular language it chose (usually Latin or Greek) to discuss issues among practitioners, the special apparel its members wore, and so on. Engineering and environmental professionals in particular don't do that as much today as they should. Other professions do, and most of us would be shocked if they didn't. Imagine a physician calling patients "customers," or a surgical procedure a "job." Want to start sounding more professional? We hope you do, because, when you take the effort to apply professional "cachet," perhaps you will be more cognizant of your own specialness, causing others to recognize it, too. Consider:

Scope of work: Work is something that contractors do. Engineering and environmental professionals perform services. Therefore, change *scope of work* to **scope of service**.

Work product: If you do not perform work, you cannot deliver a *work product*. And if you provide a service, the completion of the service is not a product. ("Product" can get you

into all types of product liability problems; see the *ASFE Contract Reference Guide*.) Do not use *work product*. Feasibly, you may be talking about a **deliverable**, something that usually takes the form of an **instrument of professional service**.

Product: See *work product*.

Job: Professionals don't do *jobs*. Professionals become involved in **projects**, often spoken of as **engagements** or, better yet, **commissions**.

Job site: For reason discussed above, this should be a **construction site**, **remediation site**, or **project site**.

Customer: I still cannot figure this one out, even though it is preferred by some professionals I admire greatly. With all due respect, it's icky. True: We can talk about customer relations, customer orientation, and so on, usually to identify those activities that anyone in any service business should be performing, but engineering and environmental professionals have **clients**. (Call

clients customers, and customers will start calling you technicians.)

Work: Should be **service**, as already discussed.

Verbal agreement: "Verbal" means "through the use of words." Although some use it to mean "oral," the fact is that, as a professional, you need to get into the habit of using words precisely. Accordingly, you do not enter into a *verbal agreement*; you enter into an **oral agreement**. (Of course, you shouldn't be entering into any oral agreements, no matter what you call them.)

In response to those who ask, "Why can't we use the same kind of language that every other service provider uses," we say, because you are not everyone else. You are professionals. In fact, you are the most important professionals there are. Your job is to maintain Earth's ability to sustain the people who live on it. No one else's responsibilities even come close. If you don't take a few simple baby steps to differentiate yourself from others, why should others do it for you?

In many firms, someone in the bookkeeping (or accounting, financial services, etc.) department makes the first call to a late-paying client. Who should that be? Generally speaking, it should be someone who likes doing the job and, believe it or not, a number of people do. Consider, too, this suggestion (made by the CEO of an MEP firm whose clientele consists mostly of small architectural firms and developers (i.e., a lot of collection activity)): If most collection calls are placed to men, best results may be obtained when the collection calls are made by someone who has the voice of what would be taken to be a young woman. (He apologized for his blatantly sexist outlook, but said that's the way it was.)

The people who place calls must have the right attitude. This begins with understanding the value of clients. While you've probably seen the following in one firm or another, it's not a bad idea to post the thoughts above the desk of everyone in your firm who deals with clients, including those who make collection calls:

Clients...

- are the lifeblood of our firm,
- are part of our organization, not outside it,
- are people just like us, with feelings and emotions just like ours,
- are not dependent on us (we're dependent on them),
- bring us their needs (many of which may be unspoken), not just their problems, and we must strive to fulfill them,
- do us a favor by giving us business (we're not doing them a favor by providing service),
- deserve the most courteous, attentive, and thoughtful service we are capable of providing (and if there's room for improvement, we need to improve),

- do not interrupt us from work, because filling their needs is the purpose of our work,
- are not people to argue with,
- may not always be right, but need to be made to feel important, if they are always to be clients.

Collectors also need to know and abide by the **Ten Commandments of Effective Collectors:**

1. Thou shalt not be inflexible.
2. Thou shalt not place a collection call unless thou art thoroughly familiar with the situation and the alternatives available to resolve it.
3. Thou shalt strive with every call to create a positive image for thy company.
4. Thou shalt keep each call brief, for the benefit of thy client and thy firm.
5. Thou shalt be gracious and respectful, and seek to realize that other persons' opinions and problems, no matter how trivial, foolish, or wrong they may seem, are important to them and merit consideration.
6. Thou shalt not talk down to or in any way demean thy clients.
7. Thou shalt keep proper perspective and not become so convinced of thine own or thy firm's righteousness that thou soundest "holier than thou" and arrogant.
8. Thou shalt not rub thy client's face in rules, policies, or requirements, nor attempt to prove others careless, unthinking, or evil.
9. Thou shalt not become impatient, nor resort to calling thy clients names or arguing with them.
10. Thou shalt document the conversation and follow up religiously.

ASFE Establishes New IT Forum

Here's a question that was recently sent to ASFE's new IT Forum: *We have a Frame Relay WAN that's been in place nearly four years now, and I've been struggling with all the practical issues involved in replacing it with a cheaper, faster, Internet-based VPN. Problems include the actual deliverability of broadband connections to each of our offices, supportability/reliability of cheap broadband connections versus biz-strength Frame Relay, and so on. I think this may be an interesting issue to have on a discussion, survey, etc. with the goal of helping other ASFE member companies with their own investigations and implementations.* The issue is being addressed and, in fact, the member with the question

received an almost instant response along the lines of, "We just went through that...."

If you are into IT or if others on your staff are, they should be into ASFE's all-new Information Technology Forum. You need to be authorized to enter, and authorization's easy to get. Just contact IT Committee Chair (and Immediate Past President) Kevin Hoppe, P.E. (NTH Consultants, Ltd.) khoppe@nthconsultants.com. And if you'd like to serve on the IT Committee, by all means let Kevin know that, too. Recognize that the IT Committee is slated to hold all of its meetings in cyberspace, meaning reliance on some of the newest tools available for doing so.

Fewer Construction Deaths in 2000, but...

The U.S. Bureau of Labor Statistics' (BLS') *Census of Fatal Occupational Injuries* is out, showing that, while workplace fatalities in all industries declined by 2.4% between 1999 and 2000, from 6,054 to 5,915, construction fatalities fell 3.2%, from 1,191 to 1,154. The rate of construction fatalities fell, too, from 14 per 100,000 workers to 12.9. But it's no time to crow. The construction industry still accounted for almost 20% of all workplace fatalities even though it comprised only 6.6% of all workers. The most common cause of construction industry deaths? Falls. H. Berrien Zettler, Deputy Director of OSHA's Construction Industry Directorate, quoted in *Engineering*

News-Record, said that as many as half of the 734 lethal falls recorded in 2000 (up 5.3% from 1999), occurred in construction. That estimate may be a bit overstated, given results of an OSHA-sponsored study conducted by the Construction Industry Research and Policy Center (CIRPC) at the University of Tennessee, Knoxville. The CIRPC report noted that 259 of the 705 (36.7%) 1999 construction industry fatalities it studied were caused by falls. William R. Schriver, who coauthored the CIRPC report, commented that, no matter how much the construction mix changes, falls, vehicle and equipment accidents, and electrocutions lead the fatality list every year.

YOU'VE JUST GOT TO BE KIDDING

You think you've been hit with a meritless claim? Consider...

Richard Overton's \$10,000 lawsuit brought against Anheuser-Busch for false advertising. The *St. Joseph [MO] News-Press* reported that Overton's complaint cited physical and mental injury, as well as emotional distress, because the company's promises (implicit in its advertising), especially about success with women, did not come true when he drank the company's product. In fact, Overton com-

plained, the product sometimes made him sick. (The claim was rejected at trial, and the trial court's decision was affirmed on appeal.)

The \$55 million suit filed against the Dayton, TN sheriff's department by several parents who had been arrested at a cockfighting raid. The parents claim the raid traumatized their children. (Just before the raid, the *Knoxville News-Sentinel* reported, the children watched as 400 people cheered two fights in adjacent rings where 15 roosters had already been

clawed to death.)

The suit filed against the New York Transit Authority for "carelessness, recklessness, and negligence." As reported in the *New York Daily News*, a homeless couple – Darryl Washington and Maria Ramos – were copulating on a mattress on the tracks near a subway station, when a train hit them. Thanks to a fast-acting motorman, the injuries were relatively minor. So why the suit? According to the couple's lawyer, "Homeless people are allowed to have sex, too."

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