



An Update from AGC's Winter National Safety Committee Meetings.

Insights

1.13.18

Folks who follow my writing know that of the many groups to which I speak, the AGC National Safety Committee is my favorite. I love the industry and I value the clients and contacts who have become friends, even Bob Emmerich, Jim Goss, Bo Cooper, Rick Reubelt, Carl Heinlein, Kevin Turner, Tommy Lee, and of course, our AGC leader, Kevin Cannon.

I can say great things about ABC, NUCA, and other construction groups, but the AGC National Safety Committee epitomizes to me the cutting edge of companies inculcating safety into their culture and values. The actions taken by these attendees save lives and prevent employee injuries. And these actions do not interfere with making money. That's my 33+ years' experience speaking. I hate jingoisms, rah-rah motivation speeches, and unsubstantiated claims of a correlation. I've seen these companies make a difference, and contrary to popular opinion, lawyers do have souls. Well, at least on the defense side. Everyone needs on some level to feel that their job matters.

I'd challenge you to find a more down-to-earth group of professionals ... and tough. Eliot Lapidus, Safety Director for the robust Oregon-Columbia AGC Chapter doesn't think that it's a big deal that he survived hitting a 400 pound bear at 60 mph on his Harley after the bear leaped from above onto the road. Eliot literally broke every bone on his right side – every bone – as well as having two arterial bleeds. Of course he's back at work.

Eliot would have died except that a battle-hardened navy corpsman stopped and administered trauma care until Eliot could be medevac'd out.

ACTION POINT: Employers – please consider providing certain employees with trauma training in addition to first aid and CPR training. Spend about \$40 and add a military-type trauma pack to your First Aid kits. An estimated 80% of shooting victims might have lived if anyone had possessed even rudimentary trauma response training and gear.

Of course toughness isn't limited to men. Consider Kathi Dobson and her nationwide efforts to get more women active in construction through NAWIC and other groups. The bear would have known better than to jump in front of her.

Sharing Knowledge for the Good of the Industry and its Workers.

Like The Association of Union Contractors (TAUC), another favorite, the AGC National Safety Committee provides an opportunity for even competitors to share safety information and cooperate with one another, and with OSHA. This is a savvy group and we talk about managing OSHA inspections and reducing legal exposure, but the primary purpose of the meetings is to develop and share best practices. Companies like AECOM-Hunt, Haselden, Zurich, Willis Towers Watson, Herzog, HCSS, and many others stood out.

What were some of the hot topics of discussion?

- Practical strategies to eliminate silica exposure and meet the new OSHA standards.
- Getting past the talk and improving employee engagement, including in safety.
- Dealing with employee fatigue, distraction and the challenges associated with an aging less healthy workforce.
- Worker shortages.
- More effectively managing the large amounts of construction, demanding schedules, and challenging architects.
- Recent studies showing that the construction industry worldwide is lagging behind other industries in improving technology to keep up with the increases in worker productivity.
- Motor vehicle accidents, fleet risk management, struck-bys and workers killed coming and going to work.
- The NLRB *Hy-Brand* and *Browning Ferris* decisions, joint employer liability, and OSHA's multiemployer citation approach.

Shameless Promotion and request for More Management and Owner/Customer Involvement.

Most if not all of these industrywide issues require active involvement by upper management, owners and architects. Trade Associations provide opportunities for different interest groups, and so does the AGC ... finance, executives, HR There are good reasons to have affinity groups where fellow CEOs, CFOs or HR professionals can comfortably discuss issues unique to their roles. I'm especially fond of the AGC HR and Labor Lawyer groups.

I respect the time demands on executives and the deluge of data. I'm a practice group leader over attorneys in 32 offices, and yet I still have to bill hours and bring in business. With the endless flow of data and the increasing speed and productivity demanded in every industry, it's tough to be involved versus relying on subordinates.

Nevertheless, the people who can most address the above safety-related challenges are not the safety professional attendees.

- A genuinely safe workplace won't happen without upper management getting involved.
- HR and safety may not coordinate closely enough.

- Owners may not recognize how they could more effectively manage risks created by their contractors, or how owner policies and lack of coordination can contribute to the problems they seek to avoid.

And yet, few construction executives attend safety meetings. Owner reps would love to be privy to some of the discussions. And it's sad that the few attorneys who generally attend are directly involved in risk management or making a presentation. We're sometimes preaching to the Choir.

Silica – silica – silica.

The December 22, 2017 DC Court of Appeals rejected employer challenges to the silica standard. Regardless of the next legal steps, employers should emphasize figuring out how to make this thing work.

The AGC National Safety committee, various AGC chapters, insurers and the CEA are spending time and money to: (1) gather and analyze existing test data and obtain new results; (2) share information on compliance strategies and technological developments. Other groups, schools and companies are doing good work, such as CPWR.

Silica Issues Discussed.

- Because of the legal challenges, budget and staff needs and other issues, Fed-OSHA has not been able to provide adequate guidance, and as we work through the new standard, more issues will arise.
- Attendees reported no consistency in how OSHA Area Offices and State Plans are approaching silica inspections and in providing guidance.
- We're entering new territory in systematically testing and developing collections of results (objective data) on similar work. In the past, it was more common in OSHA respiratory exposure citations to after the fact try to prove that the employer reasonably relied on past experience. Rarely did a challenged employer rely on studies specifically prepared and relied upon for decisions.
- What should an employer do when equipment is deemed effective by OSHA in eliminating hazards in one of the 18 categories – if one follows manufacturer's instructions - but out of caution or product liability concerns, the manufacturers' instructions still recommend wearing a respirator?
- How does one get water to upper levels in multistory structures where there is no water? Manufacturers, such as Huskavarna are starting to develop new equipment to control dust or provide water for portable devices, but the equipment does not yet meet all of the needs.
- What is the response to the risk of water discoloring stone or other floor surfaces, or cause concrete slabs to curl at edges.
- How to handle changing filters of devices designed to vacuum up dust when the filter change may release dust.

Silica Legal Issues.

OSHA should expect employers to demand reliable and effective monitoring by OSHA when they come on site. Newer monitoring technologies are coming out and employers will use them. They may be more sophisticated than available to OSHA and its Salt Lake lab.

Employers will likely demand the right to conduct dual monitoring, which may require OSHA IH's to return when the employer has retained outside industrial hygienists.

Employers are not required to recreate an accident, restart work or conduct work solely for OSHA to evaluate the work or conduct tests.

More to come

Howard