VAS 2010 CONVENTION
President's Corner

Greetings to all. I trust that this note finds everyone well. The 62nd annual convention is now past; and, it seems like it was a long time ago. The Convention Committee sincerely thanks all those that attended; and, from all reports those that did attend had a good time. It is an understatement that planning this was tough during these trying economic times; and, despite the tough time, we are happy to report that the convention finished in the black. There were two solid days of great seminars and great social events. The joint association with the District of Columbia Association of Surveyors (DCALS) for the Thursday seminar was very successful and well attended, drawing attendees from as far away as Pennsylvania, which in turn gave VAS some exposure to those to whom we would likely not reach on a regular basis. Plus, many of those who attended the Thursday seminar also stayed and VAS some exposure to those to whom we would likely not reach on a regular basis. The Friday seminars were well attended, with the Education Committee, chaired by Chip Richardson, doing another fine job of organizing seminars with good speakers and interesting topics. Even the spouse's tour had a bit of unplanned excitement – getting caught up in a demonstration in D.C.! Even though the demonstration forced a delay that ultimately resulted in them not being able to finish the planned program, it was still an interesting memory to take home. I again would like to thank all the members of the Convention Committee for their help in organizing and planning the convention. It was, indeed, a true team effort.

Since the annual meeting, I have represented VAS at the Pennsylvania, North Carolina, Kentucky and Tennessee annual meetings. In each case, Nancy and see President’s Corner, page 10

Editor’s Note

As the new editor of The Old Dominion Surveyor, I would like to express my thanks to Pete Moore for his work on the newsletter over the last year and as always to Judy Hite for being the continuity that holds the officers of the Executive board together. Thanks also to the advertisers who support our Association in many ways. The recent slow down in business has been tough for them also and their continued support of The Old Dominion Surveyor is very much appreciated.

I also want to ask all of you to be news reporters and send us articles and photos of the things that are going on in your chapters. All of you have had extra ordinary experiences that could benefit your fellow surveyors and I know the chapters are working hard to make our profession better and more profitable and we want to highlight your efforts. If your chapter is having an outing or you have a special project that may be of interest to the readers or you know of a program that surveyors may benefit from, please let either Judy or myself know. I know that things like this can be time consuming and I will be available any time to help you put something together if you wish. I also welcome any suggestions you may have to improve the paper and keep the cost down.

Will Nash, Editor
The Old Dominion Surveyor
Plat Contest Winners
John K. Sehl, Chairman, Awards Committee

The Plat Contest was held in conjunction with the 62nd Virginia Association of Surveyors, Inc. Annual meeting held in Alexandria, Virginia January 21-23, 2010. This year nine firms entered plats in the five announced categories.

Our judges this year were: Joe Baird, NSPS Area 3 Director; Steve Jones, Maryland Society of Surveyors, and Jerry Taylor from East Tennessee State University.

Special thanks again this year for the assistance provided by the students from East Tennessee State University.

THE WINNERS

Subdivision Plats
1st-R. C. Fields, Jr. & Associates, PC – Ronald Keller
2nd-Dewberry – Pete Moore

ALTA/ACSM Land Title Surveys
1st-The Engineering Groupe, Inc. – William Flynn
2nd-The Engineering Groupe, Inc. – Ned Marshall

Boundary/Cadastral Surveys
1st-Fairfax Co. Dept. of Public Works–Vickie McEntire
2nd-Acres of Virginia, Inc. – Thomas Brooks, Jr.

Topographic Surveys
1st-Gay & Neel, Inc. – Ralph Clements

Miscellaneous
1st-Acres of Virginia, Inc. – Thomas Brooks, Sr.
2nd-Gay & Neel, Inc. – Ralph Clements

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Indemnification or “Hold Harmless”
Knud E. Hermansen

Preventing or reducing liability is an important aspect for the survey practitioner to consider in preparing contracts. One clause employed to prevent or reduce responsibility for liability damages is an indemnification or “hold harmless” clause.

An indemnification clause or “hold harmless” clause imposes a contractual responsibility for reimbursing the surveyor for liability damages claimed against the surveyor by third parties. Most people have relied upon indemnification in the form of automobile insurance. Automobile insurance shifts the responsibility for liability damages to the insurance company per the insurance contract. An indemnification clause is often and properly used by the surveyor to shift the responsibility to the client for paying damages for a negligent act that should not in fairness be the responsibility of the surveyor.

The employment of an indemnification clause by a surveyor is ideally suited in one of three situations. The first situation is where the client has demanded some reduction of services to save money, time, or both that increase the risk that the surveyor will be liable to a third party as a result of the reduced services demanded by the client. The second situation is where the surveyor must rely on information provided by the client or their agent, contractor, etc. to properly perform surveying services and that information could be faulty. The third situation is where the surveyor’s services are intertwined with services provided by others to such an extent that liability by anyone will reflect poorly on the surveyor’s services and may be difficult for a layperson to understand and identify the true source of the fault.

For example, assume a surveyor’s client intends to erect a structure and employs the surveyor to stake out the location of the structure. The client gives the surveyor a faulty engineering plan that the surveyor must rely upon to stake out the structure. The contractor completes half the structure before the mistake in the plan is discovered. The contractor sues the surveyor and engineer for misrepresentation. The surveyor along with the engineer is found liable to the contractor. An indemnification clause in the client’s contract would allow the surveyor to seek reimbursement from the client for the liability damages caused by the engineer’s negligence.

An indemnification clause should be employed in a contract between the surveyor and the client where three factors are present: 1) There is risk of increased liability to the surveyor from third-parties, the client, or client’s agents, contractors, etc. 2) The client stands to benefit from the risk undertaken by the surveyor or the client has caused or increased the likelihood of liability to the surveyor. 3) The client has the assets to cover reasonable and foreseeable damages arising from the risk. (The most meticulous and well-written indemnification clause will not get “blood from a rock” or money from an indigent.)

- **Indemnity:** Client and Surveyor each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the party’s negligent acts, errors, or omissions or those of their agents, contractors, subcontractors, or assignees. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Surveyor, they shall be borne by each party in proportion to their respective negligence.

- **Indemnity:** The surveyor shall indemnify the owner for any and all claims arising out of the work or services performed.

There are several different forms of indemnification clauses. One form shown by the previous example treats each party the same and shifts the responsibility for liability damages to the party at fault. Another form shifts the responsibility for liability damages to one party regardless of the source of the faulty behavior. The former is generally given unhampered recognition by the courts while the later is critically scrutinized by the courts and often rejected under equitable grounds where there is unequal bargaining power.

The surveyor must avoid signing a contract prepared by the client that shifts all the responsibility for damages, regardless of the source of negligence, to the surveyor. Quite often client-prepared contracts contain one-sided indemnification clauses.

- **Indemnity:** See Indemnification, page 10

Some states do not allow professionals to employ indemnification clauses that shift the responsibility for damages arising from the client for liability damages caused by the engineer’s negligence.
I recently returned from an excellent trip to Egypt. The trip was conceived and implemented by Professor Mike Besch, University of Akron Program Director of Surveying and Mapping. The idea was to tour Egypt along the Nile and relate the trip to surveying in ancient Egypt. I was informed of this trip last August and immediately committed to joining this excursion which was scheduled for March 12-21, 2010.

As it turned out, nine participants (mostly surveyors) ultimately went on the trip. We all met at JFK airport in New York City for the midnight nonstop flight to Cairo on March 12th. The time difference was plus 7 hours and the flight time was 11.5 hours which put us in Cairo at 6:30 P.M. Saturday March 13th. Our guide met us at the airport and off we went through downtown Cairo to the Pyramisa Hotel in Giza. Now, Egypt’s population is 80 million of which 20 million reside in metro Cairo, the largest city in Africa. There are generally no rules of the highway as there are no stop lights or stop signs or pesky speed limit signs. In other words, it’s every man for himself. Therefore, driving in Cairo is an experience beyond description. However, somehow the city functions and I saw very few accidents on the jammed highways and miraculously we arrived at the hotel in one piece.

Our trip was well planned and each day we had an itinerary laid out in advance. My goal was to see everything I could see in ten days and at the same time avoid the “Pharaoh’s Curse” of the gods. In other words, don’t drink any water except bottled water and be careful what you eat. Ultimately I was successful in that regard, where-as three members of our group were not so lucky. Bottom line is that Egypt is a third world country and poverty is abundant and overpopulation is the norm. On the other hand, the sights were among the most magnificent in the world.

We started out our first day by visiting with the president of the Egyptian Geographical Society, Prof. Dr. M. S. Abulezz. The society headquarters is located in an ancient building housing a museum within a military compound in central Cairo. Soldiers and security personnel were in force everywhere we went. The meeting was very informative as to what was currently being done to modernize Cairo such as building more aqueducts, etc. From there we hopped on the bus and headed to the Egyptian Museum which houses the world’s richest collection of Pharaonic antiquities including King Tutankhamen’s treasures and 27 mummies including a mummified crocodile.

Then we were off to one of the ancient seven wonders of the world, the three pyramids on top of the Giza plateau. The great pyramid was built by King Cheops (IV Dynasty) around 2650 B.C. and is about 480 feet in height. These pyramids are surrounded by small pyramids and hundreds of tombs for kings and nobles. The ancient Egyptians built these pyramids to be tombs to preserve the bodies of their dead kings for the afterlife. Later in the trip we visited the Dahshur pyramids consisting of the “red pyramid” and the “bent pyramid” among others. The red pyramid was 345 feet in height and built around 2550 B.C. I entered this pyramid entrance and crawled through a 4.5’ x 4.5’ tunnel for about 200 feet until I arrived at the first burial chamber. Then I climbed a scaffolding platform to the second burial chamber. This was quite claustrophobic and dimly lighted.

The air was rather stifling and the climb out was rather strenuous. However, the experience was well worth it. Finally, we drove out to the Great Sphinx. A legendary statue with a body of lion and a human head. It is 230 feet long and 66 feet high. That evening we arrived back at our hotel and recovered from the day tour. The weather was around 80 degrees and very dry. A casino was in the hotel so of course I had to try my luck at the black jack tables.

The next morning we drove out to the airport and boarded the plane for Luxor City which is in upper Egypt on the Nile river. We then transferred to our river boat, the M/S Nile Story, for a 4 day cruise on the Nile. After lunch we toured the Tomb of Menna which is located on the west bank at

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**Egypt...Land of the Pharoahs**

David Holland, L.S.

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see Egypt, page 9
The shortest distance between two points is not a trip back to the tripod.

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Luxor (ancient Thebes) in the area known as the Tombs of the Nobles. The tomb of Menna is dated from the New Kingdoms 18th dynasty and is approximately 3,400 years old. This is the pre-eminent tomb that bears directly on the subject of surveying that began in ancient Egypt. As any surveyor worth his or her weight in plumb bobs knows, that due to the annual flooding of the Nile, surveyors (rope-stretchers) were required to re-measure the land and replace the boundary stones. Menna held the title, “Scribe of the fields of the lord of the two lands of upper and lower Egypt” during the reign of Tuthmosis IV and his successor Amenhotep III. We explored the tomb and saw paintings that depict Menna’s everyday lifestyle including scenes of surveying with knotted robes along the Nile.

That afternoon we drove over to the Valley of Kings and toured the tombs of Ramesses III, Ramesses IV, and Ramesses VII. The valley was composed of layers of limestone and contained some 60 tombs in all. I also dropped by King Tut’s tomb for old times sake. The switch to burying the pharaohs within the valley instead of pyramids, was intended to safeguard against tomb robbers. In most cases this did not prove to be effective. However, these tombs were fascinating to explore. The walls are covered with colorful hieroglyphics with sacred text and sophisticated paintings outlining the pharaohs life. The text was intended to aid the deceased on his journey through the netherworld.

We finished our exploration of the temples (Karnak, Luxor, & Edfu) and tombs of Luxor and then drove back to our boat for afternoon high tea on the deck and continued our journey up the Nile toward Aswan. There are approximately 315 of the cruise boats that ply the Nile for the tourist trade. Each night the boat would cruise up the Nile and dock at a historical site along the river for us to explore the following morning. Sitting in my chaise lounge on the upper deck in the late afternoon floating down the Nile was a wonderful experience. The scene was straight out of an Agatha Christie novel. Date palm trees lined each side of the river and life went as it had been for thousands of years. Sometimes there would be some water buffalo, or some camels, or cattle and sheep grazing near the river. We would pass by small villages and each village would have at least one minaret (tall, circular spires). The main function of the minaret is to provide a vantage point from which the call to prayer is made. The Egyptians are predominantly Sunni Muslims and are required to pray five times a day.

We ended the trip at Aswan which is the city known for the Aswan High Dam which separates Lake Nasser from the Nile and probably has the most beautiful setting on the Nile. There is an island which separates the Nile into two channels opposite Aswan called Elephantine Island (so called due to the ancient ivory trade and large rocks that resemble elephants). Nearby is a Nilometer dating from the Roman period. Nilometers were generally steps cut into the stone that descended to the Nile. A scale was carved along the side of the steps. On this the height of the river inundation could be measured and then recorded, so that the proportion of tax to be paid on the land could be adjusted. It was here on the southern tip of Elephantine Island our group took a camel ride. We took a boat ride to the camel area and each of us was assigned a camel and guide. My camel’s name was Mickey and he was ready to ride. I hopped on Mickey’s saddle and held on to the wooden saddle horn and we were off across the desert leading the pack. I believe Mickey’s philosophy was that the quicker he and I arrive at the ancient abandoned monastery one-half mile up the sand dunes, the quicker he would get back to the camel corral for a delicious snack of dried leaves, dates and grass. Anyway, the saddle cushion was very comfortable and the view from atop Mickey the camel was magnificent. Most definitely one of the “high” points of the trip!

That evening we went to the Aswan Bazaar downtown for a shopping excursion. The money exchange in Egypt is very positive in regards to the American dollar. That is to say 5.45 Egyptian Pounds is equal to one dollar or approximately 20 cents each. Now that’s my kind of exchange rate. Also, bartering and negotiating is expected and is conducted in a manner of a sport. I picked up on this method very quickly.
and was able to get some fantastic bargains on jewelry for my wife and souvenirs for myself. Actually, the vendors can be very aggressive and will constantly pester you to buy one of there goods. Later we sat at an outdoor café and had some delicious Turkish coffee and pastries.

The next day we toured more of Aswan and the world-famous High Dam which was built in 1960 and on a clear day one can gaze across Nasser Lake. However, a sirocco (desert sandstorm) had blown through the previous night and the visibility was poor. That afternoon we drove out to the Aswan Airport and flew back to Cairo for one more day of sightseeing before we returned to the U.S.A. That evening we attended a dinner show at the Falafel restaurant. The food was your typical Egyptian ethnic fare of which I ate sparingly, but the traditional folkloric show was more to my liking filled with lots of colorful costumes and whirling dervishes and belly dancers.

We finished the tour by visiting the Sultan Hassan Mosque, Old Cairo and the Abu Serga Church (where Joseph, Mary, and Jesus found asylum during there flight from King Herod), and the Citadel of Salah El Din, and the famous Khan El Khalilli Bazaar. Finally we checked out of the hotel and headed for the airport at 9:30 for our late night flight back to the good old U.S.A. Definitely this was a trip of a lifetime and I would highly recommend it for anyone that is adventuresome and different cultural part of the world.

Indemnification, continued from page 6

damages resulting from professional negligence.

Some professional liability insurance contracts will not cover damages that are shifted to the surveyor under an indemnification clause. Accordingly, the surveyor is cautioned to carefully read an indemnification clause and reject those shifting responsibility for liability that was beyond the surveyor’s control. When employing an indemnification clause in a contract, the surveyor should review the clause with their liability insurance agent.

Indemnification does not remove or diminish liability. It does not prevent the surveyor from being sued or held liable. It is not a defense to a lawsuit nor can it be used to prevent a lawsuit. It merely allows the surveyor to seek reimbursement from the client for certain sources of liability damages the court will hold the surveyor liable. Furthermore, an indemnification clause is ineffective where the client does not have the assets or money to cover the responsibility for damages that are shifted as a result of the indemnification clause.

The surveyor would be wise to consult with their attorney to determine if an indemnification clause will be effective in their state and what language is most appropriate according to their state law.

† Knud is a professional land surveyor, professional engineer, and attorney at law licensed in several states. He teaches in the surveying program at the University of Maine and operates a consulting firm specializing in professional liability, boundary disputes, land development, and title issues.
Calendar of Events for 2010 - 2011

VAS ANNUAL CONVENTION, JANUARY 24-29, 2011. Williamsburg Lodge, Williamsburg, Virginia

VAS Board Meetings — Summer Board Meeting — June 25 & 26, 2010, hosted by the Monticello Chapter
Fall Board Meeting — September 17 & 18, 2010, hosted by the Southern Chapter

John Foster School — July 19-22, 2010, Roanoke College, Salem, Virginia

Land Surveyor Exam Schedule — October 29, 2010
   Deadline for Application and Fee – June 22, 2010
   Deadline for Exam Fee – September 17, 2010