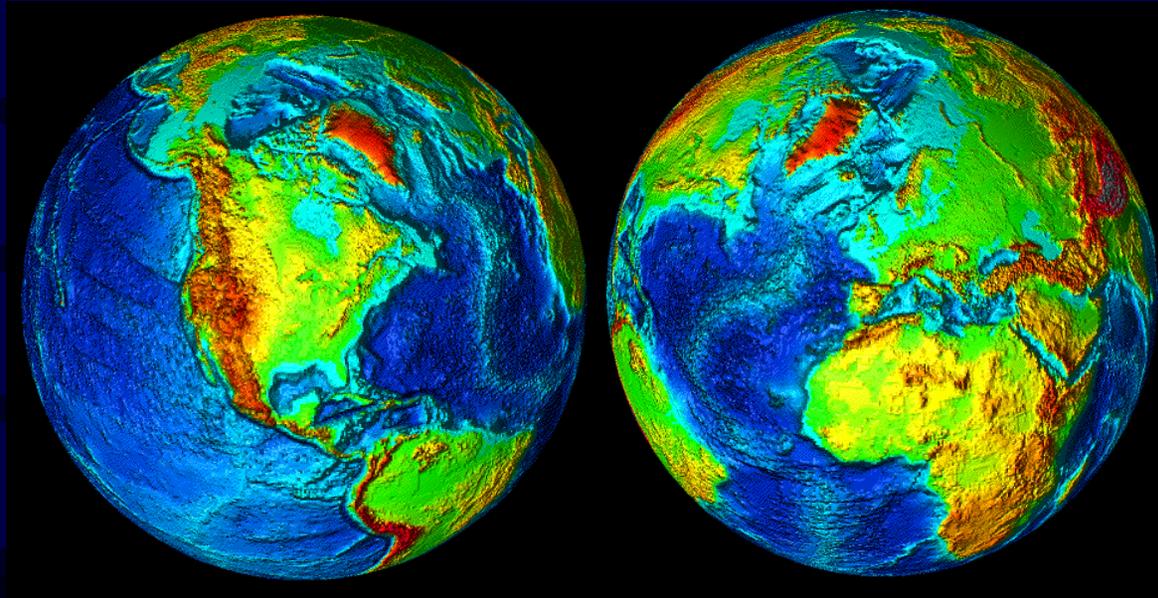


# *Standards: Sword or Shield in Corporate Liability?*



***In a world of risk, can standards mitigate  
legal liability?***

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# About InterCEP



- World's First Academic Research Center Dedicated to Private Sector Preparedness & Corporate Resilience
- The Alfred P. Sloan Foundation Funds InterCEP Research on Incentives for Business Preparedness
  - insurance, rating agency, mitigating legal liability, supply chain, corporate governance
- Research Focus on the Linkage of “What” & “Why” of private sector resilience

# Standards as Sword

- All additional points made earlier
- Litany of requirements that show up deficiencies
- Additional attack points for trial lawyers
- Nascent regulations
- Take away “wobble room” (we can’t do everything).

# Standards as Shield

- Conformity with a “consensus-based” standard which represents good practice at any point in time can inform “the standard of care” owed by the corporation
- Compliance can provide a strong foundation for an affirmative defense against tort liability

# Standards as Shield

- We endorse the American National Standards Institute's recommended standard for private preparedness [NFPA 1600]. ... We believe that compliance with the standard should define the standard of care owed by a company to its employees and the public for legal purposes.
  - Federal 9-11 Commission Final Report

# Standards as Shield

- Can add specificity to otherwise open-ended responsibility
  - Specificity can help answer the question of: “how much is enough?”
  - Can add realistic balance to the discussion
    - Especially if the standard involves a risk assessment element and cost-benefit analysis (as does NFPA 1600)

# Lessons for SDO's

- There is real value in substantiating your consensus-based and transparent development process
- Your standards may help inform the standard of care and thus compliance with them may mitigate liability for your users
- Consider promoting this to your users

# Lessons for Corporations / Users of Standards

- Look to compliance with consensus-based standards as part of enterprise risk management and liability mitigation goals
- Proactively, use standards to inform your planning and operations
- Document your conformity where appropriate to facilitate an affirmative defense to future liability

# A Developing Story

- “Implementing Recommendations of the 9/11 Commission Act of 2007” - Public Law 110-53. [Title IX, Section 524]

# Voluntary Corporate Preparedness Certification Program

- Will establish a certification program for private sector preparedness
- Will be based on one or more preparedness standards. NFPA 1600 is example.
- Will be voluntary.
- Offers an opportunity to link preparedness to benefits in
  - Mitigating legal liability
  - Insurance
  - Rating agency acknowledgement
  - Supply chain management
  - Overall corporate resiliency.



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