Voluntary Standards:
A Defense Lawyer’s Perspective

Jamie Carroll
King & Spalding

October 17, 2007
Defending Voluntary Standards

What are the potential claims?

- Negligent Development
- Failure to Warn
- Fraud
- Conspiracy
Defending Voluntary Standards

- Defend the organization before the standard

Themes

- Value to society
- Value to industry
- Not your normal defendant ... legally
- Not your normal defendant ... economically
Defending Against Negligent Development Allegations

- One who undertakes ... gratuitously ... to render services ... necessary for the protection of a third person ... is subject to liability ... if
  
  (a) ... failure to exercise reasonable care increases risk of such harm ...
  
  (b) ... has undertaken a duty owed ... to third person ...
  
  (c) ... harm is suffered because of reliance ...

Restatement (Second) Torts §324A
Defending Against Failure to Warn Allegations

- Province of the jury ... ugh
- If SDO failed to warn, what effect?
- May have to defend language and design ... so look at it now.
Defending Against Conspiracy/Fraud Claims

- Fact-intensive and hard to defeat early.
- Need good lawyers.
- Think now about industrial hygiene.
- Think now about document and electronic hygiene.
Case Study: Murray v. ANSI

- 11/15/01 - filed in D.C. Superior Court; removed to U.S.D.C.
- 10/11/02 - Parties agree on stay
- 7/19/04 - remanded to D.C. Superior Court
- 11/30/04 - Motion to Dismiss filed
- 10/24/05 - Oral argument on motion
- 8/24/07 - Order of Dismissal with Prejudice
- 9/20/07 - Notice of appeal filed

- Conspiracy and Fraud claims still not reached.
Case Study: Window Blinds Personal Injury Cases

- **Garcia** - filed 11/5/03; dismissed 5/6/05
- **McGee** - filed 2/13/04; dismissed 4/28/06
- **Olen** - filed 2/16/05; dismissed 5/31/06
- **Danks** - filed 1/12/04; dismissed 12/8/04
- **Graham** - filed 2/27/04; dismissed 12/1/06