Avoiding Tort Liability:  
What Works and What Doesn’t Work?

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Issues

- Developing the Standard
- Documents and Communications
- Liability Insurance
Developing The Standard

- Understand the scope of your organization’s involvement
  - Providing a forum
  - Technical knowledge
  - Inspection or approval
  - Testing
  - Proxy for government agency
Developing The Standard *(cont’d)*

- **Scope of Standard**
  - Members of organization
  - Entire industry
  - Voluntary - what are the consequences?
Standards Development

- Disclaimers
  - Spell out what standard intends to address
  - Spell out scope of organization’s involvement
  - Spell out ability to inspect, enforce or certify

- Watch out for words of ‘requirement’

- Emphasize government involvement
AMERICAN NATIONAL STANDARD
FOR SAFETY OF
CORDED WINDOW COVERING PRODUCTS

WCMA

Window Covering Manufacturers Association

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Developing The Standard (cont’d)

- Meetings and Minutes
  - Report on decisions and action items
  - Avoid play-by-play of meetings
  - Avoid recitations of discussions
  - Avoid attribution to members (except government participants)
  - **BUT** record approvals, mandates, advice, and requests from government agencies
Documents and Communications

- Document Retention Policy
  - Develop one and stick to it
  - Apply policy across the board
  - Document compliance with policy
  - **BUT** watch for ANSI rules
Documents and Communications (cont’d)

E-mails

- Keep business e-mails professional
- Try to keep e-mails to a single topic
- Consider telephone or face-to-face meetings, especially for involved discussions
- Consider hard copies for circulating drafts
Documents and Communications (cont’d)

- Government Relations
  - Document contacts with government agencies related to standards
  - When government agency requests, suggests, or approves action, confirm in writing
Insurance

- Examine policies closely for coverage for standards developing activities
- Consider seeking indemnity or coverage from manufacturers
- If issue arises, consider requesting that insurance company defer determination
If It Happens

- Try to determine what plaintiffs really want from SDO
- Try to make plaintiffs aware of how standards development process works
- If applicable, consider letting plaintiffs know about limited finances or insurance issues
End