



TORT LIABILITY IN THE STANDARDS WORLD

2007 ANSI Legal Issues Forum



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



Disclaimers

**AMERICAN NATIONAL STANDARD
FOR SAFETY OF
CORDED WINDOW COVERING PRODUCTS**



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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

