



# Standards and Certification Training

Module C – Legal  
C3. Torts

# MODULE C COURSE OUTLINE

C1. Conflict Of Interest/Code Of Ethics

C2. Antitrust

**C3. Torts**

C4. Intellectual Property

C5. Speaking For The Society

# REVISIONS

<u>Date</u>	<u>Change</u>
10/24/18	Slides 11 and 12 revised
01/06/16	Reformatted entirely and revised or added notes throughout. Revised slides 3, 6, 11, 22 and 23
07/07/08	Revised entirely

## LEARNING OBJECTIVES

At the end of this module you will be able to:

- Describe the potential tort issues that can arise in standards development and conformity assessment activities.
- Understand the potential Tort problems in the timely implementation of new technology.
- Understand the actions you need to take to avoid tort claims.

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## **MODULE OUTLINE**

- I. What is a Tort?
- II. Potential Tort Issues in Standards Development
- III. Potential Tort Issues in Conformity Assessment
- IV. Potential Tort Issues in the Implementation of New Technology

This Module will Cover the following topics:

- I. What is a Tort?
- II. Potential Tort Issues in Standards Development
- III. Potential Tort Issues in Conformity Assessment
- IV. Potential Tort Issues in the Implementation of New Technology

# I. WHAT IS A TORT?

First let us consider the definition of tort.

## WHAT IS A TORT?

- Definition
  - Civil wrongs, other than breach of contract, recognized as grounds for a lawsuit filed by an injured party.
- The three elements of a tort include:
  - 1) Existence of legal duty
  - 2) Breach of duty
  - 3) Damage as approximate cause of the breach.

The definition of tort is civil wrongs, other than breach of contract, recognized as grounds for a lawsuit filed by an injured party. The three elements of a tort include:

- 1) Existence of legal duty
- 2) Breach of duty
- 3) Damage as approximate cause of the breach.

An example of this would include “Negligence” resulting in harm to persons or property, this will be discussed on the next slide.

## NEGLIGENCE CLAIMS

- Negligence Claims
  - Plaintiff must demonstrate that the defendant
    - Owed a duty of care
    - Breached or failed to discharge duty
    - Breach of duty was direct or proximate cause of injury to plaintiff's person or property
    - Damages

In order to claim Negligence, the Plaintiff must demonstrate that the defendant

- Owed a duty of care
- Breached or failed to discharge their duty
- That the breach of duty was direct or proximate cause of injury to plaintiff's person or property
- And that damage was done.



## TORT LAW AND ASME

- Activities where Potential Tort Claims Could Arise
  - Promulgating voluntary codes and standards
  - Administering conformity assessment programs

Tort claims could arise from both the codes and standards development and administration of conformity assessment programs. The individual issues that may occur in each of these departments will be discussed in the next few slides.

## II. POTENTIAL TORT ISSUES IN STANDARDS DEVELOPMENT

Potential Tort Issues in Standards Development.

## **NEGLIGENT STANDARDS DEVELOPMENT CLAIMS**

- An organization which renders a service that is necessary to protect a third person or thing is potentially liable for any harm resulting from its failure to take reasonable care in performing the service.
- Analysis applies whether the undertaking was gratuitous or for consideration.

Potential negligent standards development claims for:

- An organization which renders a service that is necessary to protect a third person or thing is potentially liable for any harm resulting from its failure to take reasonable care in performing the service.
- Analysis applies whether the undertaking was gratuitous or for consideration.

## **ALLEGED NEGLIGENCE IN THE PREPARATION OR DEVELOPMENT OF A STANDARD**

- Claim would allege that ASME failed to take reasonable care in promulgating a standard
  - Cases imposing liability have generally involved trade associations which are different from ASME.
  - Nonetheless, a resourceful plaintiff will use the trade association cases to support a claim against ASME

For example, a negligence claim could allege that ASME failed to take reasonable care in promulgating a standard.

In the past, cases imposing liability have generally involved trade associations which are different from ASME.

Nonetheless, a resourceful plaintiff will use the trade association cases to support a claim against ASME

## AVOIDING CLAIMS

- Guidelines
  - Members should exercise reasonable care by:
    - Carefully weighing all views
    - Using their best professional judgment
  - There should always be objective, documented technical basis for the standard or code

Therefore, to avoid claims, members should exercise reasonable care by:

- Carefully weighing all views
- Using their best professional judgment

Objective, documented technical basis for the standard should always be used.

### **III. POTENTIAL TORT ISSUES ARISING OUT OF CONFORMITY ASSESSMENT ACTIVITIES**

POTENTIAL TORT ISSUES ARISING OUT OF CONFORMITY ASSESSMENT  
ACTIVITIES

## **NEGLIGENT MISREPRESENTATION IN CONNECTION WITH ASME PRODUCT CERTIFICATION PROGRAMS**

- Party must demonstrate:
  - either that there was a failure to exercise reasonable care in awarding a Certificate of Authorization
  - or that inadequate care was taken in overseeing the use of a code stamp

In administration of product certification programs, negligent misrepresentation could be claimed.

Party must demonstrate either that there was a failure to exercise reasonable care in awarding a Certificate of Authorization or that inadequate care was taken in overseeing the use of a code stamp.

## **NEGLIGENT MISREPRESENTATION IN CONNECTION WITH ASME PRODUCT CERTIFICATION PROGRAMS**

- Issues
  - The presence of an ASME symbol may be misinterpreted as ASME's representation that the stamped item meets the ASME standard.
  - The actual certification of a product's compliance is made by the ASME-certified manufacturer.
  - Misinterpretation is likely where others rely on the stamp as an assurance of compliance with the standard.

The issues are that

- The presence of an ASME symbol may be misinterpreted as ASME's representation that the stamped item meets the ASME standard.
- The actual certification of a product's compliance is made by the ASME-certified manufacturer.
- Misinterpretation is likely where others rely on the stamp as an assurance of compliance with the standard.



## AVOIDING CLAIMS

- Guidelines
  - Reviews and surveys must be carried out by competent and qualified personnel.
  - ASME must act promptly, within the limits of due process, upon the receipt of a report of non-conformance.

Therefore, to avoid claims, the following guidelines shall be followed:

- Reviews and surveys must be carried out by competent and qualified personnel.
- ASME must act promptly, within the limits of due process, upon the receipt of a report of non-conformance. Actions could include
  - Withdrawal of suspension of certification
  - Require certificate holder to bring item in question into standard compliance or remove ASME markings.

## **IV. POTENTIAL TORT ISSUES IN THE IMPLEMENTATION OF NEW TECHNOLOGY**

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POTENTIAL TORT ISSUES IN THE IMPLEMENTATION OF NEW TECHNOLOGY

## IMPLEMENTATION OF NEW TECHNOLOGY

- Potential Legal Claims Could Arise
  - If new safety-enhancing technology is introduced but there is a delay in revision to the standard
  - New Jersey Supreme Court's decision in Snyder vs. American Association of Blood Banks

Finally, there are potential Tort claims that could arise if new safety-enhancing technology is introduced but there is a delay in revision to the standard.

The example of New Jersey Supreme Court's decision in Snyder vs. American Association of Blood Banks will be discussed in the next slide.

## IMPLEMENTATION OF NEW TECHNOLOGY

- Suit against the American Association of Blood Banks (“AABB”)
  - AABB is a trade organization
  - The allegation in the lawsuit was that the AABB failed to change a standard for blood donations
  - The litigation centered on when reliable technology was available to screen blood for the presence of HIV
  - AABB was held responsible because it failed to incorporate new technology for HIV screening into its standards

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- AABB was held responsible because it failed to incorporate new technology for HIV screening into its standards

## IMPLEMENTATION OF NEW TECHNOLOGY

- Meneely v. S.R. Smith, Inc. (Washington Court of Appeals 2002)
  - Lawsuit against National Spa and Pool Institute (NSPI) arising out of a 1991 swimming pool accident
  - 16 year old 6 foot 4 inch boy broke his neck on a “transition slope” diving off a diving board into a pool.
  - Pool was constructed in 1965. Diving board was replaced in 1974.

Another example where Tort claims could arise if new safety-enhancing technology is introduced but there is a delay in revision to the standard is Meneely v. S.R. Smith, Inc.

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- 16 year old 6 foot 4 inch boy broke his neck on a “transition slope” diving off a diving board into a pool.
- Pool was constructed in 1965. Diving board was replaced in 1974.

## IMPLEMENTATION OF NEW TECHNOLOGY

- Label on diving board stated that it was designed for use with NSPI Type II pools. Allegation was that by the early 1970's NSPI was aware of risks associated with this type of diving board.
- NSPI published the only comprehensive set of pool safety standards
- Court held that by publishing safety standards NSPI voluntarily assumed a duty to warn of risks associated with this type of diving board

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- NSPI published the only comprehensive set of pool safety standards.
- Court held that by publishing safety standards NSPI voluntarily assumed a duty to warn of risks associated with this type of diving board.

## AVOIDING CLAIMS

- Guidelines
  - Take advantage of advances in technology
  - Streamline the standards development or code case process so that new technology can be implemented

Claims could be avoided by standards committees taking advantage of advances in technology and streamlining the standards development or code case process so that new technology can be implemented.

## MODULE SUMMARY

- Torts are civil wrongs recognized as grounds for a lawsuit filed by an injured party
- Care should be taken to avoid potential claims by carefully weighing all views and using best professional judgment in the development of a standards
- In administration of product certification programs, Reviews and surveys must be carried out by competent and qualified personnel and ASME must act promptly, within the limits of due process, upon the receipt of a report of non-conformance
- To avoid Tort problems due to timely implementation of new technology take advantage of advances in technology and streamline the standards development process so that new technology can be implemented

### In Summary:

- Torts are civil wrongs recognized as grounds for a lawsuit filed by an injured party
- Care should be taken to avoid potential claims by carefully weighing all views and using best professional judgment in the development of a standards.
- In administration of product certification programs, Reviews and surveys must be carried out by competent and qualified personnel and ASME must act promptly, within the limits of due process, upon the receipt of a report of non-conformance
- To avoid Tort problems due to timely implementation of new technology take advantage of advances in technology and streamline the standards development process so that new technology can be implemented



## REFERENCES

- A Guide to Tort Compliance for ASME Volunteer and Staff Members  
<https://cstools.asme.org/csconnect/NewMemberResources.cfm>

ASME policies are available online through the attached link under Policies and Procedures, Item 1 Legal Implications of Standards and Certification Activities, page 71.