

Most importantly, product manufacturers must ensure compliance with all product guidelines, including federal government, state and local regulations and building code provisions, industry standards, and trade association recommendations. Because green construction and green advertising rules remain in flux, a product

manufacturer must commit resources to keep apprised of changes that will impact its business and risk for liability.

Conclusion: Knowing What You're Getting into Will Make It Lots Easier

The marketplace has embraced green construction. Consumers demand it. Building-

product manufacturers have tremendous business opportunities to design and manufacture products for green buildings. Manufacturers must understand the nature of green certification and enhanced building performance expectations to reduce liability risks for products used in these new settings. **FD**

Think Globally, from page 84 the same time improbable scenarios at this stage; however, they become factors in determining the overall likelihood of an injury.

Injury Severity

To quantify the severity of one or several injuries identified in the injury scenarios, the new guidelines provide a standardized table on how to classify injuries into one of four categories: *slight, moderate, serious*

and *very serious*. Compared to the present RAPEX risk assessment guidelines, one category has been added, and the table is much more nuanced.

Injury Probability

The new proposed guidelines distinguish between eight levels of probability of injuries from “*virtually impossible (< 1/1,000,000)*” to “*almost certain, might well be expected (> 50 percent)*.”

Determination of the Risk

Once the severity and probability of an injury have been determined for each of the scenarios, the risk of each is determined by a final matrix providing the four risk levels of *low, significant, high* and *serious*, as opposed to five levels that the previous RAPEX guidelines used and that suggest an accuracy that does not exist. Finally, the proposed guidelines invite a plausibility check and recommend conducting a sensitivity analysis in the event of doubt.

Mediation, from page 31 allow a plaintiff to feel acknowledged and heard is to restate what the defense lawyer truly believes are the strengths of plaintiff's position. Thus, it can be quite effective for defense counsel to begin his or her opening mediation comments by genuinely acknowledging what the defense sees as the greatest strengths in plaintiff's case. It is important not to overstate or understate the realistic view that the defense has of the plaintiff's advantages in the case. Examples of advantages held by the plaintiff can include 1) plaintiff was severely injured or damaged; 2) plaintiff makes a good witness or is sympathetic; 3) plaintiff has an excellent (or at least zealous) attorney; 4) negative bias exists against the defense client or the industry of the defense client, etc.

Once plaintiff's strengths have been stated, while looking plaintiff directly in the eye to see whether he or she feels heard, a defense attorney can even invite plaintiff and his or her counsel to point out any additional strengths or advantages that the defendant may have overlooked and that need to be considered in carefully evaluating the case. After the defense attorney has fully stated his or her view of the plaintiff's position, the defense lawyer can then calmly and confidently state, “. . .but this is our position.” It is much more likely plaintiffs will actually hear and acknowledge some possible merit in the opposing viewpoint when they feel that the defense has first listened and understood the plaintiff's position. **FD**

Conclusions

At first glance both the GPSD Business Application and new risk assessment guidelines appear to simplify processes for businesses.

The guidelines contain a lot of common sense and best practices and should, therefore, help improve the consistency and conclusiveness of risk assessment. The level of “*low risk*” was called “*acceptable*” in previous drafts. Such a change may also help to introduce a level of risk below the level that is regarded as a substantial product hazard in the United States, a category so far non-existent in the EU.

Apart from certain legal flaws of the GPSD Business Application, the big, practical question will be whether businesses can contact an appropriate country authority at the right time. It will be very difficult to identify the individual handling “your case,” in each agency with an often decentralized administration involving localities in 27 member states. It is, however, advisable and also good practice to establish direct contact with “your case handler” prior to or at least at the time of the notification to avoid surprises.

Businesses are advised to become familiar with the GPSC Business Application and the new guidelines and to determine to what extent they offer a real option. **FD**

DRITM
The Voice of the Defense Bar

PRODUCT LIABILITY CONFERENCE
THE VENETIAN
LAS VEGAS, NEVADA
APRIL 7-9, 2010

Save the date!

Visit www.dri.org or call 312.795.1101 to register or for more information.