

# Product Evaluation and Indemnification

Overview

Revised 4/17/2017

**SBCA**

**SBCA** has been the voice of the structural building components industry since 1983, providing educational programs and technical information, disseminating industry news, and facilitating networking opportunities for manufacturers of roof trusses, wall panels and floor trusses. **SBCA** endeavors to expand component manufacturers' market share and enhance the professionalism of the component manufacturing industry.

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# Introduction

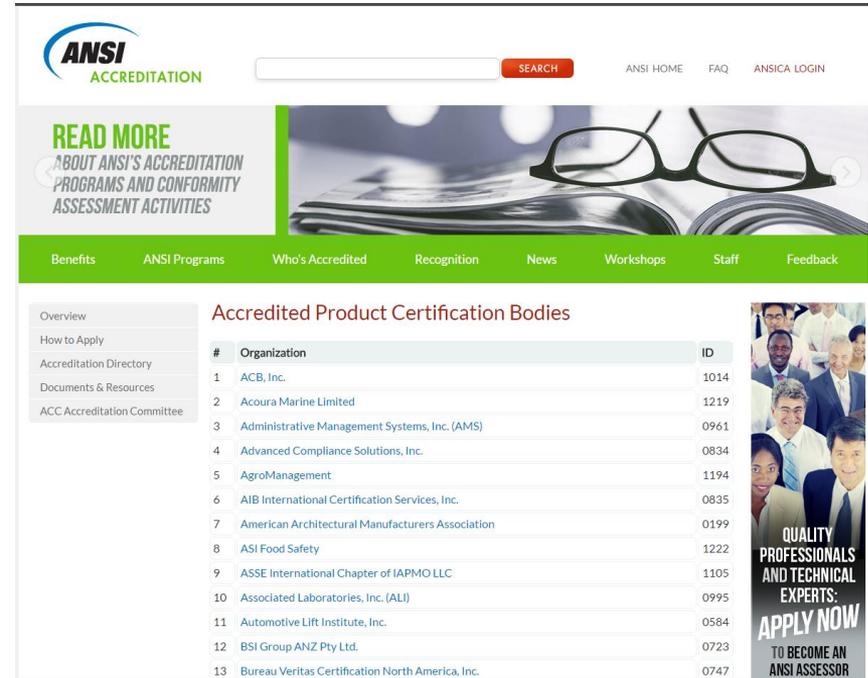
- Product evaluation reports, technical evaluation reports (TERs) and code compliance reports are documents that evaluate existing and new products, processes and services to ensure that they comply with code requirements.
- This presentation examines the different ways that the organizations that publish evaluation reports handle liability, and what this means for the manufacturer seeking a TER for their product.

# Key Definitions

- **ACCREDITATION (ANSI)**  
The independent assessment of a third-party certification or other conformity assessment body (or, a standards developer) to determine whether it demonstrates competence and is operating in accordance with specific requirements.
- **PRODUCT CERTIFICATION BODY (*Wikipedia*)**  
An organization that is accredited to certify that a certain product has passed performance tests and quality assurance tests, and meets qualification criteria stipulated in contracts, regulations, or specifications.
- **INDEMNIFICATION (*Legal Information Institute*)**  
To indemnify another party is to compensate that party for loss or damage that has already occurred, or to guarantee through a contractual agreement to repay another party for loss or damage that occurs in the future.
- **THIRD PARTY INSPECTION (*Standards Portal*)**  
Third-party inspection is a series of examinations of a product design, product, process, or installation that demonstrates its conformity to specific requirements and that is performed by an independent inspection body. Inspection bodies are considered independent when they do not possess an interest in the person or organization that provides the object for conformity assessment or any user interests in that object.

# Background

- Technical Evaluation Reports are created by more than 80 organizations that are ANSI ISO/IEC 17065 accredited product certification bodies

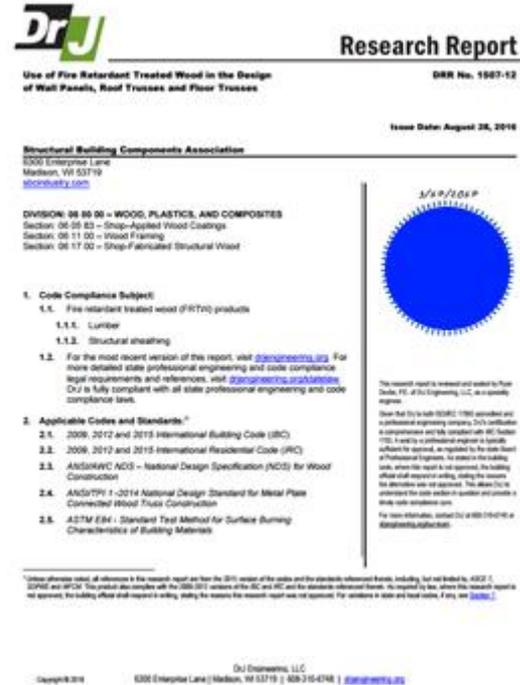


The screenshot shows the ANSI Accreditation website. The header includes the ANSI Accreditation logo, a search bar, and navigation links for ANSI HOME, FAQ, and ANSICA LOGIN. A prominent banner features the text "READ MORE ABOUT ANSI'S ACCREDITATION PROGRAMS AND CONFORMITY ASSESSMENT ACTIVITIES" next to an image of glasses on a stack of papers. Below the banner is a green navigation bar with links for Benefits, ANSI Programs, Who's Accredited, Recognition, News, Workshops, Staff, and Feedback. The main content area is titled "Accredited Product Certification Bodies" and contains a table with 13 entries. To the right of the table is a vertical banner with a group photo and the text "QUALITY PROFESSIONALS AND TECHNICAL EXPERTS. APPLY NOW TO BECOME AN ANSI ASSESSOR".

#	Organization	ID
1	ACB, Inc.	1014
2	Acoura Marine Limited	1219
3	Administrative Management Systems, Inc. (AMS)	0961
4	Advanced Compliance Solutions, Inc.	0834
5	AgroManagement	1194
6	AIB International Certification Services, Inc.	0835
7	American Architectural Manufacturers Association	0199
8	ASI Food Safety	1222
9	ASSE International Chapter of IAPMO LLC	1105
10	Associated Laboratories, Inc. (ALI)	0995
11	Automotive Lift Institute, Inc.	0584
12	BSI Group ANZ Pty Ltd.	0723
13	Bureau Veritas Certification North America, Inc.	0747

# Background

- Some organizations produce evaluation reports that are signed and sealed by a professional engineer.
- This means the certification body takes engineering responsibility for all work done and provides professional liability insurance coverage.



# Background

- Other organizations may provide indemnification and hold harmless provisions which apply to all reports they produce.
- Examples of indemnification and hold harmless provisions:
  - [ICC-ES Evaluation Report Application](#)
  - [Intertek Terms and Conditions](#)
  - [IAPMO R&T Certification Program Application Packet](#)
  - [UL Environment Agreement](#)

the terms of this Agreement, nor do any other act detrimental to any Certification Mark or to IAPMO R&T's rights therein or to IAPMO R&T by Listee's use of the Certification Marks. Listee agrees to indemnify, defend and hold IAPMO R&T and the officers, directors, members, agents and representatives harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including, but not limited to, attorney's fees, investigative costs and court costs arising out of, relating to or in connection with (a) Listee's participation in IAPMO R&T's listing program, including but not limited to statements by Listee to third parties relating to Listee's participation in IAPMO R&T's listing program, and (b) all third party claims relating to the purchase or use of Listee's products, whether based in contract (including, but not limited to

**13. Indemnification.** YOU WILL INDEMNIFY AND HOLD HARMLESS ALL OF THE UL COMPANIES AND THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS, AND SUBCONTRACTORS FROM ALL LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) ARISING OUT OF, OR RELATED TO, ALL CLAIMS ASSERTED BY THIRD PARTIES THAT RELATE TO THE DESIGN, TESTING OR DATA PROVIDED BY YOU, OR THE MANUFACTURE, MARKETING, OR SALE OF YOUR PRODUCT(S) OR SERVICES (INCLUDING BUT NOT LIMITED TO YOUR USE OF ANY OF THE MARKS), OR THAT RELATE TO THE SERVICES. YOUR INDEMNIFICATION OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL COMMON LAW, CONTRACTUAL, STATUTORY AND CONSTITUTIONAL CLAIMS OF ANY TYPE. IF ANY UL COMPANY BECOMES SUBJECT TO AN INDEMNIFIED THIRD PARTY CLAIM, IT MAY SELECT COUNSEL AND DEFEND ITSELF AT YOUR EXPENSE.

(c) The Customer shall guarantee, hold harmless and indemnify Intertek against all claims made by any third party, including without limitation any party other than the Customer who may have received or relied upon any Intertek Report whether or not with the express or implied authorization of Intertek, for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one service exceed the limit of liability identified in clause 3(a) and against any related costs of litigation and attorneys' fees.

# Background

- The distinction between these two practices holds significant implications for product evaluation - shifting the balance of risk between the certification body and the product manufacturer.



# Analysis

- When a report is signed and sealed by the certification body, it shifts product evaluation risk from the product manufacturer to the certification body
- This means that the certification body has taken on engineering responsibility within their scope of work for the engineering related scopes of work that it has performed.



# Analysis

- An engineering group generally provides professional liability insurance coverage for any errors and omissions, and also works within and is privileged by professional engineering laws.
- A typical 'indemnification and hold harmless' agreement would require the product manufacturer to defend the certification body in court if any incident occurred that required litigation.



# Conclusion

- A product manufacturer can gain peace of mind by choosing a certification body that backs up its evaluation reports with an engineer's seal
- An engineer's seal on the evaluation report means the certification body is standing behind its evaluation legally, which reduces the risk to the product manufacturer.



# References

- [SBC Magazine | For an 'ICC Report,' What Value Does Sealed Engineering Have?](#) (November 2016)
- [SBC Magazine | Do You Indemnify & Hold Harmless Your 'ICC Report' Author?](#) (December 2016)
- [SBC Magazine | 'Hold Harmless' Article Garner's Valuable Reader Response](#) (January 2017)
- [SBC Magazine | Does Your 'ICC Report' Creator, Who is Also Your 3rd Party Inspector, Have a Conflict of Interest?](#) (January 2017)