

## DETERMINING CAUSE...WHO IS TO BLAME?

By William Henry, PhD

### OVERVIEW

As design forensic experts we are often tasked with investigating sites where injuries and/or fatalities arise from unsafe building conditions. Often times, no photographic or other visual record exists of the actual incident. In these cases, the expert must rely on third party accounts from eyewitnesses who provide testimony as to their recollection of what occurred.

### DOCUMENTATION OF ONSITE CONDITION

There are some instances where actual videos record the incident from security cameras, or a passerby may have photographs immediately following the incident derived from sources such as cell phone pictures. In today's highly technological world, some experts can utilize three-dimensional modeling techniques to recreate an accident scene. Further, with supporting evidence, the expert can take the next technological jump to reenactment via animation.

### FACTORS CONTRIBUTING TO SAFETY

As design experts, we have been asked by attorneys to identify the cause of the accident from a design or construction perspective. We have qualified our opinions to state that as three-dimensional experts, we understand the built

environment and how it may affect building users' perceptions e.g. depth perception, color contrast, light and shadow contrast, as well as the impacts of natural versus artificial lighting. All of these components of the built environment can impact human behavior and elicit physical responses.

However, we are not, what is termed today, "human factors experts." This means we are not experts in the psychology or physiology of human perception and response to exterior conditions. As design professionals we should seek to clarify the differences in expertise above. Therefore the factors contributing to safety derive both from the built environment and all of its attributes as well as human physiology capability that can determine the response.

### CODE DEFICIENCIES ARE MOST COMPELLING IN ASSESSING LIABILITY.

While the above factors are certainly germane to assessing accountability for injuries to building users, as a matter of law, building code violations are of utmost importance. These code violations can stem from a number of governing statutes and regulations. They span the jurisdictions from Federal, State, County, as well as Municipal codes.

The Federal codes seem to be most concerned with discrimination as found in the Americans



**William "Bill" Henry**  
RGA-Design LLC  
DreamScapes LLC  
(813) 226.2220  
ext. 204  
[whenry@rga-design.com](mailto:whenry@rga-design.com)

with Disabilities Act (ADA), as well as the Fair Housing Act, its counterpart as applied to residential construction. State regulations are usually applied in building codes. In the state of Florida, the governing code is known as The Florida Building Code. Counties tend to legislate and enact regulations pertaining to zoning law, which allows or prohibits land uses. And finally, Municipal codes focus more on covenants and restrictions that are unique to the locality.

If the site of the incident is found to be non compliant with any of the above, a compelling case can be made that the property owner, its design professionals and contractors, property managers, and safety personnel could be found to be liable. Damages can be assessed to one and or all in some pro rata proportionality as determined by arbitration or judge and jury. Therefore, it is very important that existing facilities are assessed periodically to ascertain code compliance as detailed above. Unsafe conditions can lead to liabilities to all parties mentioned above. In short, an accident victim can now bring claims against not only the property owner who they are in direct privities with, but also all third party contributors to the built environment named above during a time frame under the statute of limitations.