

ALI Annual Meeting This Week

May 17, 2011 by [Sean Wajert](#)

Your humble blogger is a member of the [American Law Institute](#), attending the annual ALI meeting in San Francisco this week. Readers likely know that ALI is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. It publishes the Restatements and other works, including, notably for our readers, the [Principles of the Law of Aggregate Litigation](#).

Highlights of Day 1 included an address by [Steve Zack](#), President of the ABA. We have been privileged to know and work with this excellent lawyer for about 15 years. His tenure as head of the ABA has been marked by a number of important initiatives, and at ALI he spoke of assaults on the important principle of equal justice under law. The down economy, falling tax revenues, etc. have severely impacted access to justice, including to the degree that civil jury trials are indefinitely postponed or excessively delayed in some jurisdictions. Courts are closed, judicial staff let go. Steve closed with a moving story about his grandparents fleeing from the communists in Cuba, heartened by the freedoms and rule of law in the U.S., and noting that they would never be refugees again because if the U.S. legal system collapsed, there would really be no place else to go.

Much of the afternoon was devoted to the final chapter of the Restatement Third of Torts. Volume 1 of the Restatement was published in 2009, and covers the most basic topics of the law of torts: liability for intentional physical harm and for negligence causing physical harm, duty, strict liability, factual cause, and scope of liability (traditionally called proximate cause). A second volume, dealing with affirmative duties, emotional harm, landowner liability, and liability of actors who retain independent contractors, will complete this work and is expected to be published in 2011. Yesterday's session dealt with the final chapter, the liability of actors who retain independent contractors.

Professor Pryor of SMU was the leader for this final chapter, which deals both with direct liability of those who hire, and vicarious liability for the contractor's tortious conduct. Students of the Restatements may recall that Dean Prosser himself once said that this topic was "the worst mess of any chapter" in the Restatement. But Prof. Pryor has done great work to improve that situation.

A number of tweaks were suggested by the membership, including by my colleague Jim Beck, who noted that an illustration regarding the asbestos context would be helpful, given the search for new defendants that is a constant feature of that mass tort, and a clarification of the Reporter's sense that the references to public nuisance in the section referred to traditionally land-based public nuisance claims, and were not expressing any opinion on the recent attempts to apply the doctrine to non-traditional settings, such as climate change.