

## Project Spotlight: Restatement of the Law, Liability Insurance

 JENNIFER MORINIGO |  APRIL 10, 2018 |  LIABILITY INSURANCE

The Restatement of the Law, Liability Insurance, is on the Annual Meeting agenda on Tuesday, May 22. A Proposed Final Draft of the project will be presented to membership, and if approved, the project will be completed. All projects follow the Institute's rigorous process, including the preparation of Preliminary, Council, and Tentative Drafts, and thoughtful discussion of those drafts at project, Council, and Annual Meetings. The suggestions, experience, and wisdom of our diverse group of Reporters, project participants, members, and Council members are incorporated along the way.

This feature takes a detailed look at the life of an ALI project, examining the process through the lens of the Liability Insurance Restatement.

The first Preliminary Draft was prepared in 2011. At that time, the project was formulated as Principles of the Law. The first two Chapters, Basic Liability Insurance Contract Principles and Management of Potentially Insured Liability Claims, were approved by the membership at the 2013 Annual Meeting.

In 2014, the Council approved changing the project from Principles of the Law to a Restatement of the Law. At that time, updates to the ALI Style Manual were underway to clarify the distinction between Restatements and Principles. Restatements are primarily addressed to courts and reflect the law as it presently stands or

might appropriately be stated by a court, whereas Principles are primarily addressed to legislatures, administrative agencies, or private actors. Since the Liability Insurance project seeks to provide guidance primarily to the courts and there is an established body of positive law, it was determined that the project would more accurately be categorized as a Restatement.

Changing the project to a Restatement required significant changes to the previously approved Chapters. Chapters 1 and 2 were revised by the Reporters, presented to the Advisers, Members Consultative Group, and Council, and further revised before being presented to the membership for discussion at the 2015 Annual Meeting. Changes to the black letter, Comments, and Reporters' Notes included the removal of the definition of large commercial policyholder and the removal of references to this term throughout; edits and new Comments to reflect prevailing law; and the removal of the knowledge requirement and the "quasi-reformation" remedy for innocent misrepresentations.

Around the same time that the project became a Restatement, ALI redesigned its website, adding an interface that allows written comments sent to Reporters to be shared also with project participants and the Council. The project's Advisers and Members Consultative Group have been actively involved throughout the process; more than 200 comments and 30 motions are posted online.

The membership approved Chapters 1 and 2 and portions of Chapter 3 at the 2016 Annual Meeting, "subject to the discussion and to the usual editorial prerogative."<sup>1</sup> The motion to approve a draft is coined the "Boskey motion," named after longtime ALI Treasurer Bennett Boskey. This phrase will often appear in Annual or Council Meeting updates after a vote has been taken to approve any portion of a project. This is the motion made from the floor at the end of a session that calls for members to approve a draft or a specified portion of a draft with the understanding that the Reporters will make edits that reflect the way the discussion took place at the Meeting. The membership approved the remainder of Chapter 3 along with Chapter 4 at the 2017 Annual Meeting. The

Reporters agreed that another year of work would include a fall project meeting and presentation of the entire project for final approval at the 2018 Annual Meeting.

### ***The Process: Examined***

It may be helpful to take a close look at a single Section of the Restatement to understand its evolution to the form that will be presented at the 2018 Annual Meeting for final approval.

Section 3, The Plain Meaning Rule, was named “The Presumption in Favor of the Plain-Meaning of Standard Form Insurance Policy Terms” in most drafts. After the project became a Restatement, changes were made to the black letter, Comments, and Reporters’ Notes. Preliminary Draft No. 1 of the Restatement was presented at a project meeting in March 2015 and, after further revision, a Discussion Draft was submitted for the 2015 Annual Meeting.

The Council approved § 3 (among others) in October 2015. The Council’s feedback was reflected in Tentative Draft No. 1 at the 2016 Annual Meeting, where a motion was made to remove significant portions of the Section that permit extrinsic evidence. The motion failed and the draft was approved by the membership under a Boskey motion.

The Reporters then prepared drafts for another cycle of project, Council, and Annual Meetings. Section 3 was included in the Proposed Final Draft and was the subject of written comments; however, approval of the draft by the membership at the 2017 Annual Meeting covered only the new and revised material.

The Reporters took into consideration the comments and discussion at the Meeting and the additional feedback on the draft prepared for a fall 2017 project meeting. A draft of the entire project was discussed at the January 2018 Council meeting, after Council members had a chance to review posted comments. At the meeting, several judges on the Council suggested changes to simplify §§ 3 and 4. The Council approved the draft, with the exception of §§ 3, 4, and 12; it approved the revised version of these Sections in April, subject to the discussion.

As approved by Council, these Sections will be included in Proposed Final Draft No. 2 for membership approval at the Annual Meeting. By that time, a version of § 3 will have been in 14 previous drafts.

1. ↑ The motion to approve a draft is coined the “Boskey motion,” named after longtime ALI Treasurer Bennett Boskey. This phrase will often appear in Annual or Council Meeting updates after a vote has been taken to approve any portion of a project.

**SHARE**

## ALI STAFF

THE AMERICAN LAW INSTITUTE

[← Judicial Involvement in Arbitration](#)

[Enforcing New York Convention Awards In the United States: Getting It Right →](#)

### SUBSCRIBE

Receive our weekly digest.

SUBSCRIBE

## **INSIDE THE ALI**

### **POSTS BY PROJECT**

[American Indian Law](#)

[Charitable Nonprofit Organizations](#)

[Children and the Law](#)

[Compliance, Enforcement & Risk Management](#)

[Conflict of Laws](#)

[Consumer Contracts](#)

[Data Privacy](#)

[Economic Harm Torts](#)

[Election Administration](#)

[Government Ethics](#)

[Intentional Torts to Persons](#)

[International Commercial and Investment Arbitration](#)

[Liability Insurance](#)

[Policing](#)

[Property](#)

[Sentencing](#)

[Sexual Assault](#)

[Student Sexual Misconduct](#)

[U.S. Foreign Relations Law](#)

### **TAGS**

ARBITRATION ASSAULT BATTERY BLACK LETTER BODY CAMERA  
CHILDREN COLLATERAL CONSEQUENCES CONFLICT OF LAWS CONSENT  
CONSUMER PROTECTION CONTRACT CYBER SECURITY DATA COLLECTION  
DATA PRIVACY DATA SECURITY DUTY GOVERNMENT ETHICS  
INDIAN CHILD WELFARE ACT INDIAN LAW INSURANCE INTENTIONAL TORTS  
INTERNATIONAL LAW JUDICIAL AUTHORITY JURISDICTION JUVENILE COURT  
JUVENILE SENTENCING LIABILITY INSURANCE LITIGATION  
MANDATORY MINIMUMS MAXIMUM SENTENCES MODEL PENAL CODE  
OVERCROWDING PAROLE POLICIES & PROCEDURES POLICING RAPE  
SENTENCE REDUCTION SENTENCING SEXUAL ASSAULT SOVEREIGN IMMUNITY  
TECHNOLOGY TITLE IX TREATIES TRIBAL SOVEREIGNTY USE-OF-FORCE

ABOUT

CONTACT US

COMMUNICATIONS@ALI.ORG

FOLLOW US



ALI.ORG

