Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

ALI Gives Final OK On Liability Insurance Guidelines

By **Jeff Sistrunk**

Law360 (May 22, 2018, 5:18 PM EDT) -- The American Law Institute on Tuesday approved a final draft of guidelines designed to help courts navigate liability insurance cases, bringing the oft-controversial eight-year-old project to a close.

During the ALI's annual meeting in Washington, the organization's membership voted to sign off on the final iteration of the Restatement of the Law, Liability Insurance. The 488-page document sets forth rules to aid courts in resolving insurance coverage issues across the spectrum, from how policy language should be interpreted to how insurers should handle misrepresentations that companies make on their insurance applications.

Tuesday's vote capped off a long-running collaborative effort dating to May 2010, when the ALI greenlit the project. Thomas Baker of the University of Pennsylvania Law School and Kyle Logue of the University of Michigan Law School led a group of advisers from academia, the insurance industry and law firms in developing the restatement, which went through nearly 30 drafts along the way.

Baker welcomed the approval of the final draft, saying in a statement liability insurance law "was a natural area of law for ALI to tackle in a restatement."

"Liability insurance is an important meeting place between tort and contract law, legal fields in which the ALI has a long tradition of involvement," he said. "Liability insurance case law can also vary from one jurisdiction to the next. By closely examining the existing common law, we believe that the membership approved a product that will be quite valuable to the courts."

Over the past eight years, advocates for the insurance industry and policyholders alike have expressed concerns that various provisions of the restatement did not reflect prevailing legal precedent or common law. Those criticisms intensified beginning in 2014, when the ALI converted the undertaking from a "principles" project aimed at expressing "the law as it should be, which may or may not reflect the law as it is," to a restatement intended to reflect the law as it actually stands.

Observers' efforts to amend portions of the restatement continued into Tuesday's meeting.

For instance, Covington & Burling LLP partner David Goodwin and senior counsel John G. Buchanan III, who represent policyholders, convinced Baker and Logue to delete a provision that would have allowed an insurer to deny coverage for its policyholder's costs to defend a claim that the policyholder became

aware of before the policy's inception. Goodwin and Buchanan previously told Law360 that the provision, if adopted, could have resulted in more insurers refusing to defend their policyholders.

In addition, Baker and Logue accepted amendments to the restatement in two sections permitting policyholders to settle claims without their insurers' consent under specified circumstances. Those amendments, offered by Wheeler Trigg O'Donnell LLP counsel emeritus Malcolm E. Wheeler, extended protections to insurance companies by requiring insureds to take steps to guard against collusive or unreasonable settlements.

Following Tuesday's vote, Baker and Logue, overseen by the ALI's director, are now tasked with making final revisions, including implementing the changes agreed to during the meeting, according to a statement by the ALI.

"Until the official text is published, the draft approved by the membership is the official position of ALI, and may be cited as such," the statement said.

--Editing by John Campbell.

All Content © 2003-2018, Portfolio Media, Inc.