

5 Key Proposals On ALI's Insurance Agenda

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Sherilyn Pastor

The American Law Institute on Thursday is set to consider guidelines for liability insurance law, including hotly contested proposals regarding requirements for insurers to pay policyholders' attorneys' fees in coverage disputes and the standard for punitive damages in bad faith cases.

The ALI Council has already largely approved the first three chapters of its Restatement of the Law of Liability Insurance, a set of guidelines aimed at providing courts with guidance in resolving coverage issues across the spectrum. The restatement, which is subject to the approval of the ALI's membership, is designed to articulate common law on insurance issues in a way that reflects "the law as it presently stands or might plausibly be stated by a court," according to the organization.

Now, the project's leaders are set to meet with advisers in Philadelphia to debate primarily over the restatement's fourth chapter, which addresses the remedies available to policyholders in the event an insurer is found to breach its duty to defend, among other issues.

But Sheri Pastor, leader of McCarter & English LLP's insurance practice group, said that the restatement's general prohibition on recoupment is "the perfectly appropriate treatment" from a policyholder's perspective.

"General liability policies don't contain insurer reimbursement provisions," Pastor said. "Insurers know how to draft such provisions, but don't include them. Insurance policies do, however, make clear that they are complete, integrated agreements. Courts should not rewrite contracts for an insurer, inserting provisions that in a way are entirely contrary to policyholders' reasonable expectations."