

SAMPLE MOTION

Restatement of the Law, Liability Insurance Tentative Draft No. 3

Motion to Amend § 25 Submitted by Jane Q. Member

Proposed changes:

§ 25. The Effect of a Reservation of Rights on Settlement Rights and Duties

(1) A reservation of the right to contest coverage does not relieve an insurer of the duty to make reasonable settlement decisions stated in § 24, but the insurer is not required to cover a judgment on a non-covered claim.

(2) Unless otherwise stated in an insurance policy or agreed to by the insured, an insurer may not settle a legal action and thereafter demand recoupment of the settlement amount from the insured on the ground that the action was not covered.

(3) When an insurer has reserved the right to contest coverage for a legal action, the insured may settle the action without the insurer's consent and without violating the duty to cooperate or other restrictions on the insured's settlement rights contained in the policy if:

(a) The insurer receives all information reasonably necessary to evaluate the legal action and has a reasonable amount of time to do so;

(b) The insurer is given a reasonable opportunity to participate, and is kept reasonably informed of developments, in the settlement process;

(c)(b) The insured makes a reasonable effort to obtain the insurer's consent or approval of the settlement, including by providing the insurer with a reasonable amount of time to evaluate all the terms of the settlement agreement;

(d)(e) The insurer declines to withdraw its reservation of rights after receiving prior notice of the proposed settlement; and

(e)(d) The settlement agreed to by the insured is one that a reasonable person who bears the sole financial responsibility for the full amount of the potential covered judgment would make.

Explanation of proposed changes:

The purpose of the proposed changes is to ensure that Section 25 implements the expressed intent of the Draft to meet the need for “procedural requirements designed to protect against collusive or improvident settlements” when an insured settles “without the consent of the insurer even if the policy contains a provision requiring consent.” The proposed additional protections for the black-letter text of Section 25 are taken directly from Comment *e* in the Draft. They are as important as those currently provided in the text of Section 25(3), and they therefore should be added to that text.