

**NEW YORK STATE
INSURANCE DEPARTMENT**

**PROPOSED
FOURTEENTH AMENDMENT TO REGULATION NO. 64
(11 NYCRR 216)**

**UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL
MEASURES**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201, 301, and 2601 of the Insurance Law hereby promulgate the following Fourteenth Amendment to Part 216 (Regulation No. 64) of Chapter IX of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication in the State Register, to read as follows:

(NEW MATTER IS UNDERLINED; MATTER IN BRACKETS IS DELETED)

Subdivision 216.6(g) is hereby amended to read as follows:

(g) Checks, [or] drafts, or other mediums in payment of claims; releases.

(1) For the purpose of this subdivision, release shall mean a written document whereby a person or entity relinquishes rights and discharges an insured and/or insurer from obligations in exchange for settlement of a claim.

(2) [No] An insurer shall not:

(i) issue a check, [or] draft, or other medium or make an electronic transfer in payment of a [first-party] claim or any element thereof, arising under any policy subject to this Part, that contains any language or provision that expressly or impliedly states that acceptance of such check, [or] draft, or other medium or such electronic transfer shall constitute a final settlement or release of any or all future obligations arising out of the loss[.]; or

[No insurer shall] (ii) require execution of a release on a [first- or third-party] claim that:

(a) is broader than the scope of the settlement[.];

(b) requires the releasor to keep the terms and conditions of the settlement confidential, unless warranted by the circumstances; or

(c) prohibits the releasor from making disparaging, negative, denigrating or derogatory statements about the releasee; provided, however, that nothing herein shall prevent an insurer from requiring the execution of a

release that prohibits the releasor from making false statements about the releasee.

(3)(i) In addition to the prohibition set forth in paragraph (2) of this subdivision, with respect to any policy issued pursuant to Insurance Law § 1113(a)(4) through (14); (16); (19); or (20), with regard to inland marine insurance subject to the provisions of section 3425 of the Insurance Law; or (32) as a substantially similar kind of such insurance:

(a) an insurer shall not require execution of a release for any claim arising under the policy, unless the release sets forth:

(1) where the claim arises under a liability insurance policy, whether the claim is a property damage claim or a bodily injury liability claim;

(2) the nature of the occurrence from which the claim arises;

(3) the date and location of the occurrence from which the claim arises;

(4) the total amount of actual damages; and

(5) where the claim arises under a liability insurance policy, the dollar or percentage reduction in damages as a result of an agreement between the parties or as a result of comparative negligence, if applicable; and

(b) an insurer shall use separate releases for the property damage claim and the bodily injury liability claim for settlements that involve both property damage and bodily injury liability claims arising under a liability insurance policy.

(1) A release for a bodily injury liability claim shall state in its heading in bolded capital letters that the release is only for the bodily injury liability claim.

(2) A release for a property damage claim shall state in its heading in bolded capital letters that the release is only for the property damage claim.

(4) With regard to a motor vehicle property damage claim arising under a motor vehicle liability insurance policy, if an insurer requires execution of a release, then the insurer shall use the prescribed "Release of Motor Vehicle Property Damage Liability Claim Only" form contained in section 216.12 of this Part, or a form that contains substantially equivalent language.

(5) An insurer shall not be subject to paragraphs (2)(b), (2)(c), (3), and (4) of this subdivision provided that the claimant is a large commercial claimant and the claimant agrees in writing that the insurer shall not be subject to such paragraphs. The insurer shall maintain a copy of the claimant's written agreement in the claim file. For the purpose of this subdivision, *large commercial claimant* means an entity that:

(i) has a net worth of at least ten million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(ii) has gross assets exceeding thirty-three million dollars and a net worth of at least two million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(iii) is a for-profit business entity that generates annual gross revenues exceeding thirty-three million dollars, and has a net worth of at least two million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(iv) is a for-profit business entity that has gross assets exceeding thirty-three million dollars and generates annual gross revenues exceeding thirty-three million dollars as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim; or

(v) is a not-for-profit organization or public entity with an annual budget exceeding thirty-three million dollars for each of its three fiscal years immediately preceding the claim.

(6) Nothing in this subdivision shall be construed as requiring an insurer to use a release.

Section 216.12 is hereby amended by adding a new "Release of Motor Vehicle Property Damage Liability Claim Only" form to read as follows:

RELEASE OF MOTOR VEHICLE PROPERTY DAMAGE LIABILITY CLAIM ONLY

Claim # _____

For and in consideration of the sum of \$ _____, which represents the total known property damages asserted reduced by _____, the undersigned hereby releases and forever discharges: _____ % or \$

(NAME OF INSURER AND/OR INSURED)

his/her/its/their employees, agents, successors, heirs, executors, administrators, representatives, and assigns from all claims, demands, actions, causes of action, damages, and costs on account of any and all known property damage, including loss of use thereof, resulting from a motor vehicle accident that occurred on or about:

(DATE AND LOCATION OF ACCIDENT)

The above sum shall be distributed as follows:

Payable to: _____

Transmitted to: _____

It is understood and agreed that this settlement is the compromise of a disputed claim or matter, and that the payment is not to be construed as an admission of liability by the party or parties hereby released or for whose favor this release is given.

The undersigned declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned; that this release contains the entire agreement between the parties hereto; and that the terms of this release are contractual and not a mere recital.

The undersigned further agrees, acknowledges, represents, and warrants that the undersigned is the sole and lawful owner of all rights and title to, and all interests in, every claim or matter herein released, and has not assigned, transferred, or purported or attempted to assign or transfer to any person, firm, or entity any claim or other matter herein released, and that the undersigned shall not file, cause to be filed, or assist in the preparation or filing of any action or claim herein released.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or

personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

I certify under penalty of perjury that the signature below is my signature.

(CLAIMANT)

(DATE)

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