OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 11. INSURANCE DEPARTMENT
CHAPTER IX. UNFAIR TRADE PRACTICES
PART 216. UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL MEASURES

Section 216.0 Preamble.

(a) Section 2601 of the Insurance Law prohibits insurers doing business in this state from engaging in unfair claims settlement practices and provides that, if any insurer performs any of the acts or practices proscribed by that section without just cause and with such frequency as to indicate a general business practice, then those acts shall constitute unfair claims settlement practices. This Part contains claim practice rules which insurers must apply to the processing of all first-and third-party claims arising under policies subject to this Part. In addition, specific rules are provided for the processing of first-party motor vehicle physical damage claims and third-party property damage claims arising under motor vehicle liability insurance contracts.

(b) This Part is issued for the purpose of defining certain minimum standards which, if violated without just cause and with such frequency as to indicate a general business practice, would constitute unfair claims settlement practices. This Part is not exclusive, and other acts, not herein specified, may also be found to constitute such practices.

(c) Section 3411(i) of the Insurance Law has been implemented by section 216.7 of this Part.

(d) Section 3412 of the Insurance Law has been implemented by section 216.8 of this Part.

(e) Claim practice principles to be followed by all insurers:

(1) Have as your basic goal the prompt and fair settlement of all claims.

(2) Assist the claimant in the processing of a claim.

(3) Do not demand verification of facts unless there are good reasons to do so. When verification of facts is necessary, it should be done as expeditiously as possible.

(4) Clearly inform the claimant of the insurer's position regarding any disputed matter.

(5) Respond promptly, when response is indicated, to all communications from insureds, claimants, attorneys, and any other interested persons.

(6) Every insurer shall distribute copies of this regulation to every person directly responsible for the supervision, handling and settlement of claims subject to this

regulation, and every insurer shall satisfy itself that all such personnel are thoroughly conversant with, and are complying with, this regulation

Section 216.1 Definitions.

The definitions set forth in this section shall govern the construction of the terms used in this Part.

(a) Agent shall mean any person, firm, association, or corporation authorized to act as the representative of an insurer and licensed pursuant to the provisions of article 21 of the Insurance Law. With respect to group life and group accident and health policies, the group policyholder shall be the agent of the insurer to the extent such policyholder has been authorized to act on behalf of such insurer.

(b) Claimant shall mean any person who attempts to obtain a benefit from an insurer.

(c) Investigation shall mean any procedure adopted by an insurer to determine whether to accept or reject a claim.

(d) Business day shall mean a day other than Saturday, Sunday or New York State legal holiday.

(e) Notice of claim shall mean any notification, whether in writing or otherwise, to an insurer or its agent, by any claimant who reasonably apprises the insurer of the facts pertinent to a claim

Section 216.2 Applicability.

This Part shall apply to all insurers licensed to do business in this state.

(a) It shall not be applicable to policies of workers' compensation insurance issued pursuant to the provisions of section 1113(a)(15) of the Insurance Law; credit insurance issued pursuant to the provisions of section 1113(a)(17); title insurance issued pursuant to the provisions of section 1113(a)(18); inland marine insurance issued pursuant to the provisions of section 1113(a)(20); unless such insurance is subject to the provisions of section 3425 of the Insurance Law; and ocean marine insurance issued pursuant to the provisions of section 1113(a)(20) and (21).

(b) Subdivisions (a) and (b) of section 216.6 of this Part shall not be applicable to policies of life insurance written pursuant to the provisions of section 1113(a)(1) of the Insurance Law. Subdivision (b) of section 216.6 of this Part shall not be applicable to accident and health policies written pursuant to the provisions of section 1113(a)(3) and the provisions of article 43 of the Insurance Law.

(c) Sections 216.4 and 216.5 and subdivision (c) of section 216.6 of this Part shall not be applicable to policies of accident and health insurance written pursuant to the provisions

of section 1113(a)(3) and the provisions of article 43 of the Insurance Law, where the claimant is neither a policyholder, a certificateholder under a policy of group insurance, nor a relative or member of the household of such policy or certificateholder.

(d) Subdivision (b) of section 216.3, subdivision (b) of section 216.4 and subdivision (a) of section 216.5 of this Part shall not be applicable to policies of insurance where the claimant is represented by a public adjuster or a person acting in the capacity of a public adjuster pursuant to the provisions of article 21 of the Insurance Law.

Section 216.3 Misrepresentation of policy provisions.

(a) No insurer shall knowingly misrepresent to a claimant the terms, benefits, or advantages of the insurance policy pertinent to the claim.

(b) No insurer shall deny any element of a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition or exclusion is made in writing.

(c) Any payment, settlement or offer of settlement which, without explanation, does not include all amounts which should be included according to the claim filed by the claimant and investigated by the insurer shall, provided it is within the policy limits, be deemed to be a communication which misrepresents a pertinent policy provision.

Section 216.4 Failure to acknowledge pertinent communications.

(a) Every insurer, upon notification of a claim, shall, within 15 working days, acknowledge the receipt of such notice. Such acknowledgment may be in writing. If an acknowledgment is made by other means, an appropriate notation shall be made in the claim file of the insurer. Notification given to an agent of an insurer shall be notification to the insurer. If notification is given to an agent of an insurer, such agent may acknowledge receipt of such notice. Unless otherwise provided by law or contract, notice to an agent of an insurer shall not be notice to the insurer if such agent notifies the claimant that the agent is not authorized to receive notices of claims.

(b) An appropriate reply shall be made within 15 business days on all other pertinent communications.

(c) Every insurer shall establish an internal department specifically designated to investigate and resolve complaints filed with the Insurance Department and to take action necessitated as a result of its complaint investigation findings. Such internal department is to operate in a staff capacity to the entire company with authority to question and change the position taken in individual instances or company practices generally. Responsibility for such department is to be vested in a corporate officer who is also to be entrusted with the duty of executing the Insurance Department's directives. If the Insurance Department requests the appearance of an insurer representative to discuss a pending matter, the individual whom the company sends shall be authorized to make any

determination warranted after all the facts are elicited at such conference. Each insurer must furnish the superintendent with the name and title of the corporate officer responsible for its internal consumer services department.

(d) Every insurer, upon receipt of any inquiry from the Insurance Department respecting a claim, shall, within 10 business days, furnish the department with the available information requested respecting the claim.

(e) As part of its complaint handling function, an insurer's consumer services department shall maintain an ongoing central log to register and monitor all complaint activity.

Section 216.5 Standards for prompt investigation of claims.

(a) Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of receipt of notice of claim. An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(b) Where there is a reasonable basis, supported by specific information available for review by Insurance Department examiners, that the claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this Part. The provisions of this Part are suspended for the period required to investigate the alleged fraudulent aspects of the claim. The insurer must submit the report required by Part 86 (Insurance Frauds Bureau) of this Title when an insurer determines that a loss is suspect.

Section 216.6 Standards for prompt, fair and equitable settlements.

(a) In any case where there is no dispute as to coverage, it shall be the duty of every insurer to offer claimants, or their authorized representatives, amounts which are fair and reasonable as shown by its investigation of the claim, providing the amounts so offered are within policy limits and in accordance with the policy provisions.

(b) "Actual cash value," unless otherwise specifically defined by law or policy, means the lesser of the amounts for which the claimant can reasonably be expected to:

(1) repair the property to its condition immediately prior to the loss; or

(2) replace it with an item substantially identical to the item damaged. Such amount shall include all monies paid or payable as sales taxes on the item repaired or replaced. This shall not be construed to prevent an insurer from issuing a policy insuring against

physical damage to property, where the amount of damages to be paid in the event of a total loss to the property is a specified dollar amount.

(c) Within 15 business days after receipt by the insurer of a properly executed proof of loss and/or receipt of all items, statements and forms which the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer. When the insurer suspects that the claim involves arson, the foregoing 15 business days shall be read as 30 business days pursuant to section 2601 of the Insurance Law. If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, within 15 business days after receipt of such proof of loss, or requested information. Such notification shall include the reasons additional time is needed for investigation. If the claim remains unsettled, unless the matter is in litigation or arbitration, the insurer shall, 90 days from the date of the initial letter setting forth the need for further time to investigate, and every 90 days thereafter, send to the claimant, or the claimant's authorized representative, a letter setting forth the reasons additional time is needed for investigation. If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. In any case where the claim is rejected, the insurer shall notify the claimant, or the claimant's authorized representative, in writing, of any applicable policy provision limiting the claimant's right to sue the insurer.

(d) The company shall inform the claimant in writing as soon as it is determined that there was no policy in force or that it is disclaiming liability because of a breach of policy provisions by the policyholder. The insurer must also explain its specific reasons for disclaiming coverage.

(e) In any case where there is no dispute as to one or more elements of a claim, payment for such element(s) shall be made notwithstanding the existence of disputes as to other elements of the claim where such payment can be made without prejudice to either party.

(f) Every insurer shall pay any amount finally agreed upon in settlement of all or part of any claim not later than five business days from the receipt of such agreement by the insurer or from the date of the performance by the claimant of any condition set by such agreement, whichever is later, except as provided in section 331 of the Insurance Law as respects liens by tax districts on fire insurance proceeds.

(g) Checks or drafts in payment of claims; releases. No insurer shall issue a check or draft 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 shall constitute a final settlement or release of any or all future obligations arising out of the loss. No insurer shall require execution of a release on a first- or third-party claim that is broader than the scope of the settlement.

(h) Any notice rejecting any element of a claim involving personal property insurance shall contain the identity and the claims processing address of the insurer, the insured's policy number, the claim number, and the following statement prominently set out:

"Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at www.ins.state.ny.us/complhow.htm or you may write to or visit the Consumer Services Bureau, New York State Insurance Department, at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

Section 216.7 Standards for prompt, fair and equitable settlement of motor vehicle physical damage claims.

This section is applicable to claims arising under motor vehicle collision and comprehensive coverages. The provisions of this Part shall continue to be applicable to these claims, except to the extent that such provisions are inconsistent with the specific provisions of this section. The sections of this Part that do not apply at all to motor vehicle physical damage claims are sections 216.2(b) -- (d), 216.6(c), (h), and 216.9 of this Part.

(a) The following shall govern the construction of the terms used in this section:

(1) Agreed price shall mean the amount agreed to by the insurer and the insured, or their representatives, as the reasonable cost to repair damages to the motor vehicle resulting from the loss, without considering any deductible or other deductions.

(2) Designated representative (DR) shall mean an insured's broker of record or an insured's intended repair shop designated by the insured to represent the insured shop in negotiations with the insurer in an attempt to settle claim. Such designated representative may legally act on the insured's behalf. If the designated representative is the insured's intended repair shop, such repair shop, if located within New York state, must be registered pursuant to the provisions of the Motor Vehicle Repair Shop Registration Act (Article 12-A, Vehicle and Traffic Law) and may only represent the insured in negotiation of the amount necessary to repair the insured's damaged vehicle. The designation form must contain the repairer's registration number.

(3) Motor vehicle shall have the meaning ascribed in section 311 of the Vehicle and Traffic Law.

(4) Substantially similar vehicle shall mean a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles or 10 percent of the mileage on the vehicle at the date of loss, whichever is greater.

(5) Business day shall mean a day other than Saturday, Sunday or a New York state legal holiday.

(6) Crash part means a part of a motor vehicle, which:

(i) is made of sheet metal, plastic, fiberglass or similar material, including a door, fender, panel, bumper, hood, floor or trunk lid, but not including windows or hubcaps; and

(ii) constitutes or provides support for the motor vehicle's exterior.

(7) Original equipment manufacturer or OEM means a motor vehicle manufacturer or distributor that produces or markets, under its own name, crash parts for use in motor vehicles that it manufactures or distributes under its own name.

(8) Nonoriginal equipment manufacturer or non-OEM means a manufacturer or distributor (including any entity supplying the required warranty other than a manufacturer) that produces or markets, under its own name, crash parts for use in motor vehicles that it does not manufacture or distribute.

(9) Waste material means material defined as a liquid toxic waste or liquid hazardous waste material under Federal or New York state environmental laws or regulations.

(10) Local market area shall mean a 100-mile radius, limited to within the United States, of the place of principal garagement of the insured's motor vehicle.

(b) Adjustment of partial losses.

(1) If, upon notification of a loss, the insurer intends to exercise its right to inspect damages prior to repair, it shall have six business days following receipt of notice of claim to inspect the insured's damaged motor vehicle, which is available for inspection, during normal business hours at a place and time reasonably convenient to the insured. In addition, negotiations shall commence and a good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss, shall be made within the aforesaid six-day period to the designated representative, and it may also be made to the insured. If there is no designated representative, the offer shall be made to the insured within the six-day period.

(2) Before negotiating a loss with the insured's designated representative, the insurer must receive written proof of such designation, properly executed and signed by the insured. The designated representative form shall be accepted by the insurer or its representative when it is offered by either the designated representative or the insured. Prior to negotiating a loss with a repair shop, the insurer shall ascertain the repair shop registration number and the currency of the registration. The insurer shall not knowingly negotiate a loss with an unregistered repair shop.

(3) The person inspecting the damaged vehicle on behalf of the insurer must be licensed or authorized, under article 21 of the Insurance Law, to negotiate the loss with the insured or the insured's designated representative. At the time of initial inspection, the person chosen by the insurer to inspect damages must attempt to enter into negotiations, involving the extent of damages, manner of repair and number of hours to repair the damaged vehicle, with the designated representative or, if there is no designated representative, the insured, in accordance with the following procedures:

(i) at the time of inspection, the insurer shall furnish a copy of its estimate, which at a minimum, must indicate the extent of known damages and manner of repair; or

(ii) if the insurer utilizes electronic data processing equipment to generate its repair estimate the insurer shall furnish, at the time of inspection, its estimate or a copy of its worksheet which at a minimum, must indicate the extent of known damages and manner of repair or, in the alternative, such insurer may hand-deliver to the insured's designated representative or, if no designated representative, the insured, no later than twenty-four hours following the inspection, a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate deductions.

Within the aforesaid six-business-day period, the insured's designated representative or, if no designated representative, the insured, shall, in all events, receive from the insurer a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate deductions.

(4) The insurer's repair estimate shall include, as a separate line item, the reasonable cost for proper disposal of waste material generated by painting the motor vehicle or crash part, in the following manner (or using another method that is acceptable to the superintendent as functionally equivalent):

(i) the cost per paint hour shall be calculated by dividing the repair shop's annual disposal fees for such waste material, after adjusting for reclaiming or recycling by the repair shop, by the number of hours expended annually to paint vehicles;

(ii) the reasonable cost for proper disposal of the waste material shall be calculated by multiplying the number of hours estimated to paint the vehicle by the cost per paint hour;

(iii) presentation of the manifest and invoice documenting a repair shop's disposal and disposal cost for hazardous waste may be required by an insurer as a condition for this separate line itemization, and the failure of the repair shop to provide such documentation shall relieve the insurer from any consideration or inclusion of such disposal cost on an itemized basis within the repair estimate;

(iv) the reasonable cost shall not exceed the prevailing cost for such disposal in the geographic area of such repair; and

(v) a new repair shop may use the prevailing cost for disposal of hazardous waste in its geographic area during its first year in business.

(5) If the insurer's repair estimate is based upon the use of any non-OEM crash part:

(i) the estimate shall specify the non-OEM or non-OEM supplier;

(ii) the insurer shall not, without consent of the insured or the insured's designated representative, specify non-OEM crash parts from more than three different suppliers for any one repair;

(iii) the crash part shall equal or exceed the comparable OEM crash part in terms of fit, form, finish, quality and performance;

(iv) the crash part must be warranted by the non-OEM at least to the extent and duration as the comparable OEM crash part;

(v) the insurer shall specify only certified crash parts, in regard to any part that has been duly certified by a qualified certifying entity acceptable to the superintendent;

(vi) if the crash part has not been certified by a qualified certifying entity acceptable to the superintendent, the non-OEM must issue a written warranty, for at least the period of the insured's ownership of the vehicle, that the crash part equals or exceeds the comparable OEM crash part in terms of fit, form, finish, quality and performance; and

(vii) the insurer shall cause the damaged vehicle to be restored to its pre-loss condition consistent with the non-OEM warranty, at no additional cost to the insured and within a reasonable time, if the non-OEM fails to honor its warranty required in subparagraph (iv) or (vi) of this paragraph.

(6) In determining whether a certifying entity is qualified and acceptable for purposes of paragraph (5) of this subdivision, the superintendent shall consider the extent to which the entity:

(i) has adopted written standards containing conditions to be fulfilled by a manufacturer of crash parts;

(ii) tests, or contracts with an independent testing organization that tests, crash parts, using suitable equipment and techniques;

(iii) administers its certification program in a nondiscriminatory manner regarding any manufacturer or supplier of non-OEM crash parts;

(iv) provides a system to determine that certified non-OEM crash parts continue to conform with standards prescribed in subparagraph (5)(iii) of paragraph (5) of this

subdivision and, failing to so conform, to decertify and advise crash part users of withdrawals of certification for any such part;

(v) provides mechanisms for quickly receiving inquiries and promptly resolving disputes that arise under the program in regard to consumers, insurers or repair shops;

(vi) provides a means of identifying each certified non-OEM crash part and provides a system of security that guards against misuse of the identification;

(vii) provides updated lists of certified non-OEM crash parts on at least a quarterly basis; and

(viii) provides the superintendent with an annual report, and such other reports as the superintendent may require, highlighting any significant developments, problems or changes relating to certification procedures or requirements.

(7) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price with the insured or the insured's designated representative. If the insured's intended repair shop is not a designated representative of the insured, the insurer may also reach an agreement with that repair shop on the cost to repair the damaged vehicle, but that agreement shall not be binding upon the insured or the designated representative. Early in negotiations, the insurer must inform the insured's designated representative or, if there is no designated representative, the insured of all deductions that will be made from the agreed price. If an insurer shall require a proof of loss, its offer shall be communicated to the insured via a proof of loss. The insurer shall also communicate the offer to the designated representative.

(8) If the insurer fails to inspect the damaged motor vehicle during the aforementioned six-business-day period, it shall forfeit its right to inspect the damaged vehicle prior to repairs. Unless the insured or designated representative shall permit an inspection after the six-day period, negotiations shall be limited to labor and the price of parts and shall not, unless objective evidence to the contrary is provided by the insurer, involve disputes as to the existence of damage or the chosen manner of repair. For the above forfeiture-of-inspection provision to apply, the damaged vehicle must be available for inspection during normal business hours for the entire aforementioned six-business-day period.

(9) If a second inspection of the vehicle is required by the insurer in order to evaluate open items on the original estimate, or hidden damage discovered upon commencement of repairs, such inspection shall be performed within two business days following the date of notice of additional or hidden damage from either the insured or the DR. When repairs are sublet by the original repairer, thereby necessitating a reinspection at a location other than the original repairer's location, such reinspection must take place within four business days' notice, from either the insured or the DR, of additional or hidden damage. At the time of the subsequent inspection, the insurer shall furnish a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate deductions.

(10) If upon notification of a loss, the insurer, because of the minor amount of the loss as reported by the insured, requests an estimate of repairs from the insured in lieu of a physical inspection, such a request must be made within three business days of the notice of claim. The insured must receive notification that, upon receipt of the estimate, the insurer may for good reasons (e.g., estimate far exceeded original advice to insurer) elect to inspect the vehicle. Such inspection must be made within four business days following the receipt of the estimate at the claim processing office of the insurer. Such inspection shall be subject to the provisions of this section, except that the six-business-day forfeiture-of-inspection period specified in paragraph (8) of this subdivision shall become applicable after the four business days. A good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss, must be made to the designated representative and, it may also be made to the insured within three business days of the receipt of the inspection and/or estimate. If there is no designated representative, the offer shall be made to the insured within the three-day period. If the insurer does not perform its own physical inspection, it is nevertheless bound by all the applicable requirements of this Part.

(11) Deductions for betterment and/or depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and/or depreciation shall be limited to the lesser of:

(i) an amount equal to the proportion that the expired life of the part, to be repaired or replaced, bears to the normal useful life of that part; or

(ii) the amount by which the resale value of the motor vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

(12) Deductions for previous damage or prior condition of the motor vehicle must be measurable, discernible, itemized and specified as to dollar amount, and such deductions must be detailed in the claim file. Such deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the elimination of the previous damage or the correction of the prior condition.

(13) Estimates of repairs prepared by insurers or their representatives shall contain the following information at a minimum: identity of policyholder and/or owner/claimant; owner/claimant's address and telephone number; identity of insurer, including name, address, license number and telephone number of adjuster; year, make, model, body style, mileage, VIN, license number, color and condition of the damaged vehicle. The estimate must also contain the claim number, the date of accident and the date the vehicle was inspected. Each item of damage must be detailed as to the paint, parts and labor hours it will require to repair that particular item. If the appraisal is made at a repair shop, the registration number of the shop must be included on the estimate form.

(14)(i) If after negotiations an agreed price cannot be reached, the insurer must furnish the insured with a prescribed Notice of Rights letter (NYS APD 1), contained in section

216.12 of this Part. The requirement of this subparagraph shall not be applicable to a claim solely involving window glass.

(ii) The insurer must furnish the insured or the designated representative, at the express request of either, with the name and address of a New York State registered motor vehicle repairer, properly equipped to complete the repairs on the damaged motor vehicle (back-up shop), at a location reasonably convenient to the insured, who will repair the damaged motor vehicle at the insurer's estimated cost of repair. A location reasonably convenient to the insured shall mean: in Nassau, Suffolk and Westchester counties and cities with 100,000 or more population, 10 miles -- and in all other areas of the State, 25 miles -- from the place where the motor vehicle is principally garaged; or the location of the insured's repair facility. This mileage limitation shall not apply when a repair facility properly equipped to complete the repairs is not available within the above geographical area. In such a case, a properly equipped facility must be selected at a location as close as possible to the above definition of reasonably convenient to the insured. The insurer must furnish the insured, upon request, with a statement from the back-up shop that it will repair the vehicle in a manner consistent with the insurer's estimate for the amount estimated by the insurer to repair the damaged vehicle.

(15) If the insured's motor vehicle is repaired at a repair shop recommended by the insurer, for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

(i) shall select a repair shop that issues written guarantees that any work performed in repairing damaged motor vehicles meets generally accepted standards for safe and proper repairs;

(ii) shall cause the damaged vehicle to be restored to its condition prior to the loss, at no additional cost to the insured and within a reasonable time, if the repair shop it recommended does not repair the damaged motor vehicle in accordance with generally accepted standards for safe and proper repair; and

(iii) shall retain in its claim file a signed section 2610 of the Insurance Law Disclosure Statement (NYS APD 1-a), contained in section 216.12 of this Part, or other written documentation that the insured requested recommendation of a repair facility. If the insured has verbally requested a recommendation of a repair facility prior to the issuance of the prescribed Notice of Rights form, the requirement for written proof of referral shall be satisfied by a notation in the claim file as to the date of such request and the identity of the person to whom such request was made. The requirement of this subparagraph shall not be applicable to a claim solely involving window glass.

(16) Salvage vehicle branding. (i) This paragraph shall be applicable to claims involving vehicles that are eight model years or newer on the date of the loss.

(ii) If the insurer determines that the cost to repair a damaged vehicle exceeds seventy-five percent of the vehicle's actual cash value and if the insurer does not take possession

of the vehicle for disposition as salvage, the insurer shall require the vehicle owner to provide the title to the insurer. The insurer may withhold the entire claim payment, but must withhold at least fifty percent of its claim payment, after application of any deductible, until receipt of the title. The vehicle owner shall be advised by the insurer that the title is being requested in order to comply with subdivision (c) of Section 20.20 of the Regulations of the Commissioner of Motor Vehicles and that the title will be branded as "REBUILT SALVAGE" and will be returned to the owner by the Department of Motor Vehicles.

(iii) As soon as reasonably practicable, but no later than ten business days after receipt of the title from the vehicle owner, the insurer shall forward the title to the New York State Department of Motor Vehicles, Title Bureau, Empire State Plaza, Albany, NY 12228.

(iv) For the purpose of determining the vehicle's actual cash value pursuant to this paragraph, an insurer shall use the methods prescribed in subparagraph (c)(1)(i) or (iii) of this section; the value of repair parts shall be determined by using the current published retail cost of the original equipment manufacturer parts or the actual retail cost of the repair parts included on the insurer's repair estimate; and the labor cost shall be computed based upon hourly labor rate and time allocations that are consistent with the insurer's repair estimates in the community where the repairs are performed.

(17) The insurer must mail or hand-deliver its payment to the insured or the designated representative within five business days after the insured has accepted the insurer's offer, or three business days after the receipt of a completed proof of loss.

(18) The insured shall have the right to receive the proceeds of any settlement in accordance with policy provisions. However, if the insured agrees and this agreement is documented in the claim file, the insurer may make the check or draft payable to the insured and the lienholder and/or the insured's designated repairer. An insurer may not condition payment of a loss upon repair of the automobile or receipt of a completed Certification of Automobile Repairs.

(19) The following additional standards shall be applicable to the settlement of private passenger automobile physical damage claims:

(i) Subsequent to payment of the claim, the insurer, in accordance with the provisions of section 3411(i) of the Insurance Law, may request that the automobile be made available for inspection, whether or not the automobile is repaired. The inspection shall be conducted at a time and place reasonably convenient to the insured. The inspection report shall be retained in the insurer's claim file.

(ii) An insurer shall request submission of a Certification of Automobile Repairs (NYS APD 2) as contained in section 216.12 of this Part, signed and certified by the insured and the automobile repairer, under penalties of perjury, stating whether all items allowed by the insurer have been repaired and, if not, that repairs were made in accordance with the repairer's invoice. This form together with a postage-paid return envelope, shall be

given to the insured or the insured's designated representative by the insurer during the course of negotiation of the settlement amount.

(iii) The provisions of section 3411(i) of the Insurance Law, with respect to certification and repair invoices, do not apply where the amount of damage to the insured automobile is less than the deductible applicable to the policy.

(20) Pursuant to the requirements of section 3411(1) of the Insurance Law, whenever an insurer discovers any evidence of overcharging, improper repairs or adjustments, or any other wrongdoing by a motor vehicle repair shop, including its failure to permit an inspection of the repaired automobile, to sign the Certification of Automobile Repairs or to provide the insured with an itemized invoice, such evidence shall be forwarded, within 30 days, to:

New York State Department of Motor Vehicles
Division of Vehicle Safety
One Commerce Plaza
Albany, New York 12228

The insurer shall thereafter cooperate fully with the Department of Motor Vehicles in its investigation.

(c) Adjustment of total losses.

(1) If the insurer elects to make a cash settlement, its minimum offer, subject to applicable deductions, must be one of the following:

(i) The average of the retail values for a substantially similar vehicle as listed in two valuation manuals current at the date of loss and approved by this Department. Manuals approved for use are -- The Redbook, published by National Market Reports Inc., and The N.A.D.A. Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company. The use of other manuals may be approved by this Department upon demonstration of need and suitability. If it is evident that an option has not been considered in either or both of the above valuation manuals, the insurer shall consider the value, if any, of such option in arriving at the vehicle's value and shall utilize the best available method to value such option. The insurer may deduct documented, reasonable dealer preparation charges, up to $100, from the average of the retail values. The insurer shall provide to the insured, no later than the date of payment of the claim, a detailed copy of its calculation of the insured vehicle's total loss value, including the valuation of options which are not considered in the base price of the vehicle.

(ii) A quotation for a substantially similar vehicle, obtained by the insurer from a qualified dealer located reasonably convenient to the insured. A reasonable location shall

be within 25 miles of the place of principal garagement of the motor vehicle. The substantially similar available vehicle must remain available for purchase by the insured for a period of three calendar days subsequent to receipt of notice of its availability by the insured, and the insured must be able to purchase the substantially similar vehicle at the quoted dealer for the insurer's cash offer plus applicable deductions. The insurer must maintain in its claim file the dealer's name and location, the vehicle identification number, the dealer stock number, the mileage and the major options for the substantially similar vehicle which was the basis of its quote. The notice to the insured of the availability of a substantially similar vehicle must be sent by certified mail, return receipt requested, or be a sound-recorded conversation reflecting the date of notice. The three calendar days commence on the date the insured acknowledges receipt of notice. The insured need not purchase the vehicle used as the basis of the insurer's quotation, since the quotation merely serves as a basis for the insurer's offer. The foregoing period is satisfied at the point an insured physically verifies the existence of the substantially similar available vehicle used as the basis of the insurer's quotation. Should the insurer's research of substantially similar vehicles determine that the retail values contained in the valuation manuals, prescribed in subparagraph (i) of this paragraph, are inadequate to purchase a substantially similar vehicle, the insurer's offer should be the amount determined by such research.

(iii) A quotation obtained from a computerized database, approved by the superintendent, that produces statistically valid fair market values for a substantially similar vehicle, within the local market area that meets all the following minimum criteria:

(a) it shall produce values for at least 85 percent of all makes and models of private passenger automobiles, as defined in section 67.1(a) of this Title, for the last 15 model years, and shall take into account the values of all major options for such vehicles;

(b) it shall rely upon values derived from licensed dealers, which have minimum sales of 100 motor vehicles per year in the local market area for all vehicles of seven model years or less of age, and be based upon the physical inventory of vehicles sold within the 90 days prior to the loss and vehicles which are available; and

(c) it shall monitor the average retail price of private passenger automobiles when there is insufficient data or inventory available from licensed dealers to ensure statistically valid local market area values.

(iv) If the method used in subparagraph (i), (ii) or (iii) of this paragraph would result in a settlement offer greater than the purchase price plus the cost of substantiated improvements paid by the insured for a vehicle purchased within the 180 calendar days prior to date of loss, the insurer's offer of settlement may be limited to the purchase price, plus the cost of any substantiated improvements, less the deductible. This method of settlement shall not be applicable to motor vehicles acquired by the insured through a private sale or as a gift. A private sale is one in which the seller does not engage in the sale of motor vehicles as an occupation.

(v) If it is not possible to value the damaged motor vehicle by using an alternative method as described in subparagraph (i), (ii), (iii) or (iv) of this paragraph, the insurer shall determine the retail value by the best available method and shall explain to the insured how its offer was calculated.

(2) If the insurer elects to replace the vehicle, the replacement vehicle must be an immediately available, substantially similar vehicle that is both furnished and paid for by the insurer, subject to the deductible if any.

(3) A private passenger automobile of the current model year means a current model year automobile that has not been superseded in the marketplace by an officially introduced succeeding model, or an automobile of the previous model year purchased new within 90 days prior to the date of loss. If the insured vehicle is a private passenger automobile of the current model year, the insurer shall pay to the insured the reasonable purchase price to the insured on the date of loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below, except where the utilization of this method of settlement would result in a lower claim payment as compared with the utilization of the methods described in subparagraphs (1)(i), (ii) and (iii) of this subdivision.

DEPRECIATION SCHEDULE

Purchase Price	Depreciation Per Mile
Up to $10,000	$.15
$10,001 to $15,000	.20
$15,001 to $20,000	.25
$20,001 to $25,000	.30
$25,001 to $30,000	.37
$30,001 to $35,000	.45
More than $35,000	.53

(4) Right of recourse. If, within 35 calendar days after mailing of the claim payment, the insured notifies the insurer in writing that the insured cannot purchase a comparable vehicle for the market value, as determined under the provisions of subparagraph (1)(i), (ii), (iii) or (v) or paragraph (3) of this subdivision, the insurer shall reopen its claim file and shall offer, in its discretion and subject to applicable deductions, one of the following options to the insured:

(i) the insurer shall identify and offer for settlement an amount sufficient to purchase a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision; or

(ii) the insurer shall pay the insured the difference between the amount of its claim payment and the cost of a substantially similar vehicle, as provided in subparagraph

(1)(ii) of this subdivision, located by the insured, or the insurer, upon consent of the insured, may purchase that vehicle for the insured.

(5) The insurer shall not be required to take action under paragraph (4) of this subdivision if its documentation to the insured at the time of its final offer included written notification of the availability of a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision, which shall have been available for at least three calendar days subsequent to the insured's receipt of that offer. The documentation shall include the vehicle identification number, the stock number or order number.

(6) If the insurer in the process of adjusting a total loss makes a deduction for the salvage value of the insured vehicle, the insurer must furnish the insured upon the insured's request, with the name and address of a salvage dealer or dismantler who will purchase the salvage for the amount deducted with no additional charges to the insured by the salvage dealer or dismantler.

(7) All applicable provisions of subdivision (b) of this section ("adjustment of partial losses") also shall apply to the adjustment of total losses, except that the insurer shall be allowed an additional five business days to comply with the requirements of paragraph (1) of subdivision (b) of this section. In the case of an unrecovered theft loss, except as provided in section 216.8 of this Part, the insurer shall make its offer for the total loss no later than the 25th calendar day following the notice of loss, if the insured has provided all information that has been requested by the insurer that is necessary to value the claim. If the insured has not provided such information by the 25th calendar day following the notice of loss, the insurer shall make its offer no later than the 5th business day following receipt of such information.

(8) This subdivision does not prohibit an insurer from issuing a stated value policy insuring against physical damage, where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

(9) The superintendent shall review the operation and efficacy of the total loss provisions of this subdivision at least every five years.

(d) Unreasonable delay.

(1) Unless clear justification exists, no more than 20 percent of a representative sample of the physical damage claims selected by Insurance Department examiners at any office or offices of the insurer shall have a payment period in excess of 30 calendar days. A payment period is the period between the date of receipt of notice of loss by the insurer and:

(i) the date the settlement check is mailed; or

(ii) the date on which the damaged motor vehicle is replaced by the insurer.

If an insurer is in violation of this overall standard, then each such claim in excess of 30 calendar days may be treated as a separate violation.

(2) If any element of a physical damage claim remains unresolved more than 30 calendar days from the date of receipt of notice by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for delay in the claim settlement. Unless the matter is in litigation, an updated letter of explanation shall be sent every 30 calendar days thereafter until all elements of the claim are either honored or rejected.

(3) Any letter of explanation or rejection of any element of a claim shall contain the identity and claims processing address of the insurer, the insured's policy number, the claim number and the following statement, prominently set out:

"Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at www.ins.state.ny.us/complhow.htm or you may write to or visit the Consumer Services Bureau, New York State Insurance Department, at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

(e) Repair estimates. If an insurer requires that its insured obtain an estimate or estimates of vehicle damage, the reasonable cost, if any, of such estimates shall be borne by the insurer.

(f) Loss of use. In the event of the theft of the entire vehicle, it shall be the duty of the insurer at the time of notification of loss to advise the insured of his right under the policy to be reimbursed for transportation expenses. Such notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

(g) Subrogation agreements.

(1) Where an insured has received payment under a physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer from third parties. Within 30 calendar days of such recovery the insurer must mail or hand-deliver to the insured its payment for the insured's pro rata share of the recovery.

(2) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:

(i) TOTAL RECOVERY-ALLOCATED LOSS ADJUSTMENT EXPENSES = NET RECOVERY

(ii) DEDUCTIBLE/TOTAL LOSS × NET RECOVERY = INSURED'S SHARE OF NET RECOVERY

Application of Formula: Assume a loss of $500 subject to a $100 deductible with $50 in allocated loss adjustment expenses:

(a) if there is full recovery of $500:

computation of net recovery: $500 - $50 = $450

computation of insured's share of recovery: $100/$500 × $450 = $90

(b) If there is a partial recovery of $300:

computation of net recovery: $300 - $50 = $250

computation of insured's share of recovery: $100/$500 × $250 = $50

(3) Unless the insurer returns its insured's full deductible, it shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis.

(4) If an insurer has paid a physical damage claim that is subject to a deductible and it has elected to pursue its subrogation claim, the insurer shall promptly attempt to effect recovery. If a dispute arises between two or more insurers regarding the subrogation recovery, and the insurers are unable to resolve it, the insurer seeking recovery shall submit the dispute to binding arbitration or a court action shall be commenced no later than 180 calendar days following the payment of the claim to its insured.

(5) If an insurer has paid a physical damage claim that is subject to a deductible and it is pursuing its subrogation claim, the insurer shall notify its insured in writing of the status of its claim 120 calendar days after the date of the claim payment to its insured. An updated status letter shall be sent every 120 calendar days thereafter until the claim is either honored or rejected.

(6) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the possibility of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice of claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible.

(h) Referral of insured to the "at fault" party. There shall be no attempt to discourage an insured from filing a physical damage claim nor shall an insurer encourage its insured to assert a claim against a third party in lieu of filing a physical damage claim under the insured's policy.

Section 216.8 Verification and reporting requirements applicable to losses arising under automobile physical damage policies and reporting of third-party property damage losses.

(a) Preamble. The purpose of this section is to implement the provisions of section 3412 of the Insurance Law, which provides for measures to be applied by insurers and a central organization engaged in loss prevention in order to prevent payment of fraudulent claims arising under automobile physical damage policies. Such measures shall include: reporting of data on private passenger automobiles involved in total losses to a central organization engaged in loss prevention, as designated by the superintendent; verification procedures to be applied by insurers prior to the payment of total theft losses; restrictions on the insured's retention of salvage; restrictions and procedures for insurer's disposition of salvage; the insurer's right to retrieve located stolen or abandoned vehicles; and notification by insurers to law enforcement agencies, when the insurer or the central organization suspects improper or fraudulent action on the part of the insured, or others involved in the loss settlement process.

(b) Applicability. This section shall apply to all losses involving private passenger automobiles of the current model year and the preceding six model years and older private passenger automobiles with an actual cash value of $5,000 or more, prior to the loss. A private passenger automobile shall mean a four-wheel private passenger vehicle, station wagon, van, jeep-type vehicle, sport utility vehicle, or pickup truck.

(c) Central organization. The central organization shall be designated by the superintendent. For purposes of this Part, "central organization" shall also include any entity that is acceptable to the superintendent with which the central organization contracts to assist in executing its responsibilities pursuant to this Part. All insurers licensed to write automobile physical damage insurance in this State are hereby required to become members of the central organization, for the purpose of compliance with this section.

(d) Reporting and follow-up requirements. Insurers shall report all private passenger automobiles involved in losses to the central organization, as follows:

(1) All total theft losses shall be reported immediately, but no more than two business days following notice of claim, as defined in section 216.1(d) of this Part. If the insurer has not received any acknowledgment or communication from the central organization within 10 calendar days following its submission of the total theft report to the central organization, the insurer shall immediately communicate with the central organization to determine the status of its report.

(2) All other first- and third-party losses, however sustained, where damage to the claimant's vehicle exceeds $2,500 shall be reported to the central organization no later than five calendar days after the sale of salvage, or, if the insured or claimant is permitted to retain the vehicle, no later than five calendar days after the date of loss payment.

(3) The central organization shall be responsible for recording any special vehicle identification number (VIN) issued by the Commissioner of Motor Vehicles, which data will be forwarded to the central organization pursuant to section 431(2) of the Vehicle and Traffic Law.

(e) Verification procedures required prior to paying a total theft loss. Notwithstanding the provisions of section 216.7(b) and (c) of this Part, an insurer shall comply with central organization verification procedures prior to its payment of a total theft loss, subject to the rules provided for in this section.

(1) The insurer shall defer the payment of a claim for five calendar days following receipt of the acknowledgment from the central organization of the insurer's total theft report. If no further communication is received from the central organization during this five-day period indicating unresolved questionable circumstances, the insurer shall continue with the processing of the claim in accordance with the provisions of this Part.

(2) If the central organization verification procedure indicates insurance coverage by more than one insurer or a previously unrecovered theft loss, the insurers shall promptly investigate and resolve such discrepancy.

(3) If the central organization verification procedure reveals an erroneous vehicle identification number (VIN) and the central organization is unable to clear up such discrepancy internally, a questionnaire will be sent to the insurer by the central organization. This questionnaire shall be returned to the central organization within five business days of receipt by the insurer. Should central organization and insurer efforts, after due diligence, be unsuccessful in resolving the VIN error after a 30-day period from date of report of loss to the insurer on a vehicle that has been inspected pursuant to Part 67 of this Title, the insurer shall proceed with the processing of the loss in accordance with the provisions of this Part.

(4) Subject to the provisions of subdivision (h) of this section, if the central organization certification procedure indicates that the theft loss may be fraudulent, the insurer shall suspend processing of the loss. The central organization shall then cooperate with any investigation.

(f) Salvage. Insurers shall, except where the insured is permitted to retain the automobile as part of the claim settlement, take possession of the certificate of title, properly endorsed to them, and take possession of the salvage, if any, whenever a loss is determined by the insurer to be a total loss or a constructive total loss. Insurers, in disposing of the salvage, shall fully comply with the requirements of section 429 of the Vehicle and Traffic Law.

(1) An insured shall not be permitted to retain the insured vehicle if the salvage value of the vehicle after the loss aggregates 10 percent or less of the actual cash value of the vehicle prior to the loss, unless the insurer is satisfied that the insured intends to retain the automobile for the insured's own use.

(2) Unless the conditions set forth in section 430.2 of the Vehicle and Traffic Law are met, insurers shall not, directly or indirectly, transfer within or without this State any vehicle for salvage, except to an automobile dealer, a vehicle dismantler, or a scrap processor licensed, registered or certified in accordance with the provisions of the

Vehicle and Traffic Law, or such person meeting licensing, registration or certification requirements of the state in which such person does business. An insurer or its agents shall not purchase salvage vehicles or used major component parts of motor vehicles except from a registered vehicle dismantler or a licensed automobile dealer.

(g) Central organization recording and reporting recovery of stolen or abandoned vehicles. The central organization shall be responsible for receiving and recording reports received from police and other law enforcement agencies of located stolen or abandoned vehicles pursuant to section 3412(f) of the Insurance Law. The central organization shall promptly transmit such information to the insurer providing automobile physical damage coverage, if any, on the located vehicle. The insurer shall immediately notify the insured of the location where the vehicle has been stored for safekeeping.

(h) Reporting requirement and cooperation with law enforcement agencies. (1) The central organization and each insurer authorized to issue automobile comprehensive insurance policies covering losses incurred to private passenger vehicles shall, upon the request of any appropriate law enforcement agency or insurance organization engaged in automobile loss prevention, release information in its possession resulting from an investigation conducted by it pertaining to such comprehensive loss, including information as such agency or organization deems related to its investigation. Should the central organization or the insurer be of the opinion that the loss was caused by any criminal or fraudulent act of any person or organization, or that an improper action occurred in the disposition of an automobile subject to the provisions of this section, the central organization or the insurer shall notify the Insurance Department's Frauds Bureau and any other appropriate law enforcement agency or insurance organization engaged in automobile loss prevention of that opinion, and shall notify the Insurance Department or Department of Motor Vehicles of any improper action of their respective licensees or registrants.

(2) In the absence of fraud or bad faith, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the central organization, or the insurer, or any person acting on their behalf:

(i) for any such information it furnished;

(ii) for its assistance in any such investigation; or

(iii) for any report or notification made pursuant to the provisions of this section.

(3) Any information or evidence furnished pursuant to this subdivision shall be held in confidence by the appropriate agency or insurance organization engaged in automobile loss prevention, until such information is required to be released pursuant to a criminal proceeding, or if such agency or organization shall be served a summons or subpoena to testify as to any information or evidence in its possession regarding such automobile comprehensive loss in any civil action where an insured or other person is seeking recovery under a policy against an insurer for such automobile comprehensive loss.

(i) Required amendatory endorsement. For all policies providing automobile physical damage coverage issued or renewed to be effective on and after October 1, 1979, insurers shall adopt one of the following procedures:

(1) amend the policy by adding thereto the endorsement as set out in this subdivision, which is hereby deemed approved upon filing with the Insurance Department;

(2) submit for Insurance Department approval the insurer's own substantially similar endorsement; or

(3) submit for Insurance Department approval the insurer's basic policy form incorporating the substance of the endorsement set out in this subdivision.

An insurer which adopts one of the procedures set forth in this subdivision may subsequently submit filings under either of the other procedures.

MANDATORY PHYSICAL DAMAGE COVERAGE ENDORSEMENT (NEW YORK)

Notwithstanding any conflicting provisions applicable to the physical damage coverages of this policy, it is agreed that the following condition is added:

Recovery of Stolen or Abandoned Automobiles

In the event an automobile to which the physical damage coverages of this policy apply is stolen or abandoned, the company or its authorized representative(s) shall, when notified of the location of the automobile, have the right to take custody of the automobile for safekeeping.

Instruction

This endorsement must be attached to, incorporated in or overprinted upon all policies covering private passenger automobiles issued or delivered in New York.

(j) Existing policies. All policies in force on and after the effective date of this Part providing automobile physical damage coverage shall be deemed to include the provisions of the endorsement set forth in subdivision (i) of this section.

Section 216.9 Written notice to claimants of payment of claim in third-party settlements.

(a) Upon payment of $5,000 or more in settlement of any third party liability claim, where the claimant is a natural person, the insurer shall cause written notice to be mailed to the claimant at the same time payment is made, by the insurer or its representative (including the insurer's attorney), to the claimant's attorney or other representatives of the claimant by draft, check or otherwise.

(b) Nothing in subsection (a) hereof shall create, or be construed to create, a cause of action for any person or entity, other than the Insurance Department, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in subsection (a) hereof shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service of such notice.

Section 216.10 Standards for prompt, fair and equitable settlement of third-party property damage claims arising under motor vehicle liability insurance contracts.

This section is applicable to claims arising under motor vehicle liability insurance contracts affording coverage for claims of property damage by third parties caused by the alleged negligence of the insured. The following provisions of this Part shall also be applicable to these claims: sections 216.0(a), (b), (d), (e); 216.1; 216.2(preamble); 216.3; 216.4(b), (c), (d), (e); 216.5; 216.6(a), (b), (e)- (g); 216.7(a), (b)(4)- (6), (11)- (13)(c)(1), (3), (4); and 216.11.

(a) Within 15 business days of receipt of notice of claim, the insurer shall send either written acknowledgement of the receipt of notice of claim or payment to the claimant or the claimant's representative.

(1) When notice of a claim is received from a claimant or the claimant's representative, and the insurer is of the opinion that it is not liable for any payment, then its sole obligation shall be to advise the claimant in writing that it is the insurer and furnish the claimant with its policy number and deny the claim, setting forth the reasons therefor.

(2) If the insurer is unable to verify coverage of the insured, its written acknowledgement shall indicate such fact and request any additional information as may be needed to ascertain the existence or absence of coverage. Upon verification of coverage, the insurer shall provide the notification pursuant to paragraph (3) of this subdivision.

(3)(i) In all other claims, the written acknowledgement by the insurer shall inform the claimant that the insured has a policy which, to the extent of the insured's negligence, provides coverage for property damage, including the loss of use of damaged property and any other out-of-pocket expenses reasonably attributable to the accident. The acknowledgement shall also state that in no event will the recovery against the insurer exceed the maximum amount of the policy. The acknowledgement shall contain an explanation of the comparative negligence rules in New York, to the effect that, should the insurer's investigation determine that its insured is only partially liable, coverage of the property damage, loss of use and other expenses will only be partially reimbursed in accordance with the percentage that the insured is found to be at fault in the accident.

(ii) Concurrent with the acknowledgement, the insurer shall send a claim form or shall request by telephone or personal contact any pertinent additional information necessary for the insurer to reach a final evaluation of the claim. Within 10 business days of acknowledgement of the claim or the receipt of the information requested when

acknowledging the claim, the insurer must request any additional information required to process the claim. If, during the investigation, additional information will be required, the insurer must initiate a request for such information within 10 business days after the need for the information is established. If the insurer is advised by the claimant that the claimant is pursuing recovery under another policy, the insurer may suspend action on the claim.

(4)(i) Limitations for adjustment of rental vehicle claims for vehicles rented in New York State. With respect to the rights of authorized drivers and insurers to inspect rental vehicles, notwithstanding any other provisions of this Part, insurers are also subject to the provisions of section 396-z(5)(c) of the General Business Law, effective February 24, 2003, which provides as follows:

"Within seventy-two hours of return of the vehicle, the authorized driver or his or her insurer must notify the rental vehicle company that he or she wishes to inspect the damaged vehicle. The inspection must be completed within seven days of the return date of the vehicle. If the authorized driver or his or her insurer does not request this inspection within the seventy-two hour period, the authorized driver or his or her insurer will be deemed to have waived this right. If the rental vehicle company determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and the authorized driver or his or her insurer shall have ten business days from the authorized driver's receipt of notification from the rental vehicle company pursuant to paragraph (a) of this subdivision to inspect the damaged vehicle, unless the rental vehicle company agrees to provide access to such damaged vehicle beyond the ten business days provided herein."

(ii) Section 396-z(5)(c) of the General Business Law further provides: "Within the limits provided in this paragraph, the rental vehicle company shall identify the repairer of, and provide access to, the damaged vehicle, in order to verify the nature and extent of damages, repairs and repair costs, and/or repair estimates."

(b) If a claimant has given notice of loss and the insurer has not received notice of the incident from its policyholder, then, within seven business days after notice by the claimant the insurer shall notify the policyholder that failure to give notice and to cooperate with the insurer may result in the company disclaiming liability and the possibility that the policyholder will be held personally liable. A form shall also be furnished to the insured for the insured's use in detailing the incident unless the insurer shall accept a prior telephone or personal contact which has resulted in securing the required information.

(c) If the insurer determines that there was no policy in force or that it is disclaiming liability because of a breach of policy provisions by the policyholder, the insurer shall inform the claimant in writing within five business days of such determination.

(d) Insurers shall report to the NICB, in a manner consistent with section 216.8(d)(2) of this Part, vehicles involved in a property damage claim where the damage to the motor vehicle is in excess of $2,500.

(e) Within ten business days of the completion of its investigation of a property damage claim, the insurer shall:

(1) make a written offer which is first computed in the same manner as would be used if the claim were made under a first-party coverage by one of its insureds, and, if applicable, modified to give effect to the comparative negligence statute of this state, or any other state subject to policy limits. Any offer based on comparative negligence shall contain a factual and complete explanation of the insurer's basis for apportioning culpability. If the claim presented is greater than policy limits, then the claimant must be so advised; or

(2) deny the claim in writing giving specific reasons therefor.

(f) If the investigation is not complete 60 calendar days subsequent to the claimant's notice of loss, the insurer shall send a written explanation of the specific reasons for the delay in claim settlement. An updated letter shall be sent every 60 calendar days thereafter, but the insurer must within six months of the notice of loss advise the claimant of its decision pursuant to paragraph (e)(1) or (2) of this section. This requirement shall cease to be applicable after a claim has been placed into litigation or the insurer advises the claimant of its decision.

(g) In the processing of third-party property damage claims, the time limitations of subdivisions (e) and (f) of this section shall not be applicable if there is objective evidence available for review by Insurance Department examiners that anyone involved in the accident who may assert a bodily injury liability claim against the insured has sustained a serious injury as defined in section 5102 of the Insurance Law. Such claim shall be settled or denied in accordance with the provisions of section 216.6 of this Part.

(h) This section shall not be applicable to subrogation claims.

Section 216.11 Examinations.

To verify compliance with this Part and related statutes, Insurance Department examiners will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer's activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and work papers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer. Claim files must be so maintained that all events relating to a claim can be reconstructed by the Insurance Department examiners. Insurers shall either make a notation in the file or retain a copy of all forms mailed to claimants.

Section 216.12 Forms.

The following forms are hereby approved for use as specified in this Part:

INSURER LETTERHEAD NOTICE OF RIGHTS UNDER YOUR PHYSICAL DAMAGE INSURANCE POLICY

INSURED _____ CLAIM #
_____ POLICY #
_____ DATE OF ACCIDENT
_____

Dear Insured,

We have been unable, after negotiating in good faith, to reach an agreed price with you, your Designated Representative and/or your repairer _____ , the repairer of your choice. Pursuant to regulation 64 of the New York Insurance Department, we are supplying you with the following information and optional waiver.

Our offer of $ _____ plus your deductible of $ _____ and $ _____ of betterment or previous damage deduction is sufficient to repair your vehicle to its pre-accident condition at a repair shop located reasonably convenient to you. We are able to provide you with the identity of the repair shop that will repair your vehicle at our estimate, but under the Insurance Law we may not recommend a repairer unless you expressly request such information. Unless you have already asked us to recommend a repair shop, you must sign the attached section 2610 of the Insurance Law Disclosure Statement in order to enable us to make such recommendation.

If your vehicle is repaired at a repair shop recommended by us, the repair shop must issue a written guarantee that any work performed in repairing your vehicle meets generally accepted standards for safe and proper repairs. If our recommended repairer does not honor its written guarantee we will restore your vehicle to its pre-accident condition within a reasonable time at no additional cost to you.

Your policy covers you for reasonable expenses you incur in order to protect your motor vehicle from further damage after a loss. Contact us immediately for information as to what extent such expenses are covered.

INSURER LETTERHEAD SECTION 2610 OF THE INSURANCE LAW
DISCLOSURE STATEMENT

Section 2610 of the New York State Insurance Law provides that the insurance carrier shall not require that repairs be made in a particular place or shop or by a particular concern.

The Law further provides that the insurance company shall not recommend or suggest repairs be made in a particular place or shop or by a particular concern, unless expressly requested by you.

I acknowledge receipt of a copy of this notice.

DATE SIGNATURE INSURED/VEHICLE OWNER

I have read the above notice and understand the Insurance Company cannot require or recommend that repairs be made in a particular place or by a particular person unless I expressly request such recommendation. I hereby, of my own volition, request that the Insurance Company or its representative recommend a repair shop.

DATE SIGNATURE INSURED/VEHICLE OWNER

FORM APD2

CERTIFICATION OF AUTOMOBILE REPAIR

(TO BE COMPLETED BY INSURER)

INSERT
INSURER'S NAME
INSURER'S ADDRESS

INSURED
CLAIM #
POLICY #
DATE OF ACCIDENT
DEDUCTIBLE $

Sections 3411(i) of the NEW YORK INSURANCE LAW (NYIL) and Article 12-A of the Vehicle and Traffic Law (VT&L) require that the following certification be completed and signed by both the insured and the automobile repairer. These laws also require submission of the repair invoice (Paid Bill) by the automobile repairer or the insured to the insurer whenever any repairs are made. The NYIL does not require an insured to repair the automobile as a condition of payment of a loss. This form must be completed and returned to the insurer within 45 days. A postage-paid return envelope has been furnished for your convenience.

ANY PERSON WHO, 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.

PART I TO BE COMPLETED BY THE INSURED:

I, ____PRINT YOUR NAME____ certify, under penalties of perjury, that:

CHECK A OR B ___ A. I have not made any repairs to my automobile as a result of this loss. ___ B. I have made repairs to my automobile and I have attached a copy of my invoice for repairs to my automobile as a result of the captioned loss.

IMPORTANT NOTICE TO INSURED

IF THIS CERTIFICATION IS NOT COMPLETED AND RETURNED, TOGETHER WITH A COPY OF THE ITEMIZED PAID BILL, IT WILL BE ASSUMED THAT YOU DID NOT REPAIR YOUR MOTOR VEHICLE. IF YOU HAVE A SUBSEQUENT LOSS, THE COMPANY MUST, TO THE EXTENT RELEVANT, DEDUCT SUCH UNREPAIRED ITEMS AS PREVIOUS DAMAGE IN SETTLING A FUTURE LOSS. IF YOU DO NOT REPAIR ALL THE DAMAGES ALLOWED BY THE INSURER, SUCH REPAIRS NOT PERFORMED MAY REDUCE YOUR SETTLEMENT OF ANY FUTURE LOSS. THEREFORE, IF AFTER SIGNING THIS CERTIFICATION, YOU REPAIR ANY DAMAGE CAUSED BY THIS ACCIDENT, YOU

SHOULD NOTIFY THE COMPANY IMMEDIATELY. THE COMPANY MAY AT THAT TIME ELECT TO INSPECT YOUR AUTOMOBILE.

DATE SIGNATURE OF INSURED

PART II TO BE COMPLETED BY THE AUTOMOBILE REPAIRER:

I, ___(PRINT YOUR NAME)___ owner or officer of ___(PRINT NAME OF AUTO REPAIR SHOP)_____
Auto Repair Shop Registration Number _____ , located at _____ certify, under penalties of perjury, that I have made the repairs to the automobile owned by ____(PRINT NAME OF INSURED)___ as shown on the attached itemized invoice. I further certify that:

CHECK A OR B ___ A. I have repaired all the items allowed by the insurer, or, if not, ___ B. I have repaired the automobile as described on the attached itemized invoice.

DATE SIGNATURE OF REPAIR (Owner or Officer)