

The Office of General Counsel issued the following informal opinion on October 26, 2001, representing the position of the New York State Insurance Department.

Re: Inclusion of a Release in a Proof of Loss Form

Question Presented:

Does the New York Insurance Law permit the inclusion of a release in a proof of loss form?

Conclusion:

There is nothing in the New York Insurance Law that prohibits the inclusion of a release in a proof of loss form provided that such release is not broader than the scope of the settlement pursuant to N.Y. Comp. Codes R. & Regs. § 216.6(g) (1998) (Reg. 64).

Facts:

A public adjuster states that it often receives sworn statement and proof of loss forms that contain release language that it believes to be violative of the New York Insurance Law. The following is a sample that was provided to the Department of such language, which the public adjuster states is representative of the language that is typically used:

RELEASE AND AUTHORIZATION OF PAYMENT

The undersigned hereby acknowledges that the repair or replacement of the loss and damage resulting from _____ which occurred on or about the ___ day of _____ has been made to his entire satisfaction and agrees that the payment of the sum of _____ dollars (\$_____) by the _____ Company of [Northbrook, Illinois] to _____ shall constitute a full performance of the obligation of the Insurer under its policy.

In consideration of such payment the _____ company is hereby discharged and forever released from any and all claims and demands under its policy No. _____ resulting from the occurrence of the loss above described.

At the end of the "release and authorization of payment" wording there are additional blank spaces for the date of signing, the state in which such signing occurred, the insured's signature, a witness's signature and a mortgagee's signature.

The public adjuster contends that the inclusion of such language in a sworn statement and proof of loss form is violative of N.Y. Ins. Law § 3407 (McKinney 2000) and N.Y. Comp. Codes R. & Regs. tit. 11, § 216.6(g) (1998) (Reg. 64). The public adjuster was unable to find any case law that is supportive on this point. It is assumed that the public adjuster's inquiry refers specifically to contracts of property/casualty insurance based on its reference to N.Y. Ins. Law § 3407, which applies only to property/casualty insurance contracts. Furthermore, based on the public adjuster's reference to N.Y. Comp. Codes R. & Regs. tit. 11, § 216.6(g) (1998) (Reg. 64), it is assumed that its inquiry does not refer to the kinds of insurance excluded by N.Y. Comp. Codes R. & Regs. tit. 11, § 216.2 (2000) (Reg. 64), which states in relevant part:

§ 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).

Analysis:

N.Y. Ins. Law § 3407(a) (McKinney 2000) states:

The failure of any person insured against loss or damage to property under any contract of insurance, issued or delivered in this state or covering property located in this state, to furnish proofs of loss to the insurer or insurers as specified in such contract shall not invalidate or diminish any claim of such person insured under such contract, unless such insurer or insurers shall, after such loss or damage, give to such insured a written notice that it or they desire proofs of loss to be furnished by such insured to such insurer or insurers on a suitable blank form or forms. If the insured shall furnish proofs of loss within sixty days after the receipt of such notice and such form or forms, or within any longer period of time specified in such notice, such insured shall be deemed to have complied with the provisions of such contract of insurance relating to the time within which proofs of loss are required. Neither the giving of such notice nor the furnishing of such blank form or forms by the insurer shall constitute a waiver of any stipulation or condition of such contract, or an admission of liability thereunder.

There is nothing in this section that prohibits the inclusion of a release in a proof of loss form.

N.Y. Comp. Codes R. & Regs. tit. 11, § 216.6(g) (1998) (Reg. 64) states:

(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.

N.Y. Comp. Codes R. & Regs. § 216.6(g) (1998) (Reg. 64) prohibits the inclusion of release language only on checks and drafts. Therefore, the inclusion of a release in a proof of loss form does not violate the Insurance Law.

N.Y. Comp. Codes R. & Regs. § 216.6(g) (1998) (Reg. 64) does, however, prohibit insurers from requiring execution of a release on a claim that is broader than the scope of the settlement. In order to ensure that the release is not broader than the scope of the settlement, the release must describe the claim with specificity. Additionally, the release should include an explanation, and calculation, of the payments that the insurer will make in settlement of the claim. The Department has advised insurers accordingly.

For further information you may contact Attorney Sally Geisel at the New York City Office.