

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2021-0156

KEENE AUTO BODY, INC.  
Plaintiff / Appellant

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY  
Defendant / Appellee

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**APPENDIX OF *AMICI CURIAE***  
**NEW HAMPSHIRE AUTOMOBILE DEALERS ASSOCIATION**

Appeal Pursuant to Supreme Court Rule 7 from  
8<sup>th</sup> Circuit – District Division – Keene, Small Claims Division  
Docket No. 449-2021-SC-00079

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*Attorneys for New Hampshire Automobile Dealers  
Association*

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July 23, 2021

**TABLE OF CONTENTS**

Small Claim Complaint ..... 3

Motion To Dismiss Small Claims Complaint with Prejudice ..... 6

Order on Motion to Dismiss Small Claims Complaint with Prejudice ..... 6

Objection to Motion to Dismiss ..... 96

Reply in Further Support of State Farm Mutual Automobile Insurance  
Company’s Motion to Dismiss Small Claims Complaint with Prejudice ..... 107

Sur-Reply to Reply in Further Support of State Farm Mutual Automobile  
Insurance Company’s Motion to Dismiss Small Claims Complaint with  
Prejudice ..... 113

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
http://www.courts.state.nh.us

Court Name: 8th Circuit - District Division - Keene  
Case Name: Keene Auto Body Inc., AKA Keene Auto Body v. State Farm Mutual Automobile Insurance Compan, AKA State I  
449-2021-SC-00079  
Case Number: \_\_\_\_\_  
(if known)

SMALL CLAIM COMPLAINT

Plaintiff name: Keene Auto Body Inc., AKA Keene Auto Body  
Residence address: \_\_\_\_\_ Mailing address: (if different): \_\_\_\_\_  
Street: 543 Main Street Street: \_\_\_\_\_  
City: Keene City: \_\_\_\_\_  
State: NH Zip code: 03431 State: \_\_\_\_\_ Zip code: \_\_\_\_\_  
Telephone: (cell) (603) 352-3103 E-mail: STEVE-KAB@KEENE-AUTOBODY.COM  
(home) (603) 352-3103

Date of birth: Provide on Confidential Information Sheet  Check here if there are multiple Plaintiffs

If filing on behalf of another individual or a business please see below, otherwise continue to Defendant Information.

**District Division Rule 1.3D Statement Attached** (This is required when filing on behalf of an individual or business in addition to the applicable authorization below.)

Type of Business/ 3<sup>rd</sup> Party: (If applicable)

- |                                                    |                                      |
|----------------------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> Corporation    | <input type="checkbox"/> Trust       |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Sole Proprietorship       | <input type="checkbox"/> Other       |

Type of Authorization if filing on behalf of individual or business:

- |                                                                                   |                                                                  |
|-----------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Power of Attorney                                        | <input type="checkbox"/> Authorization signed by General Partner |
| <input checked="" type="checkbox"/> Corporate Resolution (corporation)            | <input type="checkbox"/> Authorization signed by Trustee         |
| <input type="checkbox"/> Authorization signed by Member with Management Authority | <input type="checkbox"/> Other                                   |

Defendant name State Farm Mutual Automobile Insurance Compan, AKA State Farm Insurance  
Residence address: \_\_\_\_\_ Mailing address: (if different): \_\_\_\_\_  
Street: 1 State Farm Pz-Law Dept (e-6) Street: One State Farm Plaza  
City: Bloomington City: Bloomington  
State: IL Zip code: 61701 State: IL Zip code: 61710  
Telephone: \_\_\_\_\_  Check here if there are multiple Defendants

**Military Statement Attached** (The court cannot issue a default judgment in the event of a default on the part of an individual defendant until the Military Statement has been filed.)

TurboCourt.com Form Set #5410853

Case Name: Keene Auto Body Inc., AKA Keene Auto Body v. State Farm Mutual Automobile Insurance Compan, AKA State I  
Case Number: 449-2021-SC-00079

**SMALL CLAIM COMPLAINT**

Type of Business: (If applicable)  Agent for Service: Michael Tipsord  
Name of agent  
1 State Farm Pz-Law Dept (e-6)  
Address  
Bloomington, IL 61701  
City State Zip code

Type of Business/ 3<sup>rd</sup> Party: (If applicable)

<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Trust
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Partnership
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other

The Plaintiff claims that the Defendant owes the Plaintiff \$ 1,093.37  
Use this space to clearly state the business or other relationship between the plaintiff and defendant and how, when and where the claim arose:

[See Attachment 'Claim Description']

Amount of Claim \$ 1,093.37 \*  
Filing Fee \$ 90.00  
Total \$ 1,183.37

Check here if this debt is from the extension of consumer credit and attach a Statement of Consumer Debt.

Check here if this is a debt that was purchased from or assigned by a third party.

Caleb Meagher  
Name of third party

**\*The maximum amount of a Small Claim action is \$10,000.00**  
**\*Claims in excess of \$5,000.00 are subject to mandatory mediation**  
**\*Claims over \$1,500 entitle the defendant to request a jury trial**

Steve B Piispanen  
Name of Filer

/s/ /s/ Steve B Piispanen 2/10/21  
Signature of Filer [See Attachment(s), item 'Signature'] Date

Law Firm, if applicable Bar ID # of attorney

(603) 352-3103  
Telephone

543 Main Street  
Address

STEVE-KAB@KEENE-AUTOBODY.COM  
E-mail

Keene, NH 03431  
City State Zip code

Court Use Only:

**Return Date:** March 29, 2021  
This is the date by which the Defendant must file a response with the court or be defaulted. See separate Instructions to the Defendant.

TurboCourt.com Form Set #5410863

To Small Claims Complaint

**Claim Description**

Caleb assigned the insurance proceeds that are owed to him by State Farm. State Farm failed to indemnify Caleb. SF owes Caleb for numerous necessary repair costs to properly repair his vehicle. Caleb & SF must agree upon the actual cash value of the loss. There was a disagreement between SF and the insured, SF should have resolved this disagreement by appraisal, instead of breaching the contract. A few examples of costs that SF denied coverages for were price increases, one time non reusable parts, safety related repairs, replacement of damaged parts, Aim radar, Covid precautions

**Signature**

Signed by Steve B Piispanen on behalf of Keene Auto Body Inc., AKA Keene Auto Body

Granted



Judge James D. Gleason

04/05/2021

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2021-SC-00079

Keene Auto Body Inc.

v.

State Farm Mutual Automobile Insurance Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, State Farm Mutual Automobile Insurance Company (“State Farm”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, State Farm states as follows:

1. This small claims action arises out of State Farm’s alleged failure to pay the full amount charged by Keene Auto Body to repair Caleb Meagher’s (“Meagher’s”) vehicle. According to the small claims complaint, Meagher refuses to accept the amount that State Farm has agreed to pay to repair his vehicle. The small claims complaint further asserts that Meagher “assigned the insurance proceeds that are owed to him by State Farm” to Keene Auto Body. The small claims complaint does not allege that State Farm ever agreed to pay for the additional repairs mentioned by Keene Auto Body. At all relevant times, Meagher’s vehicle was insured by State Farm.

2. As an initial matter, this case should be dismissed as it is premised on a theory that this Court has rejected in the many other cases brought by Keene Auto Body: that Keene Auto Body can force insurance carriers to pay a unilaterally-imposed price for vehicle repairs. In repeatedly dismissing these cases, the Court has recognized that Keene Auto Body cannot maintain

such claims. *See, e.g.*, Orders Dismissing Keene Auto Body’s Small Claims Complaints, attached hereto as Exhibit A. As this Court has recognized time and again, Keene Auto Body has no viable claim against State Farm under these circumstances.

3. Keene Auto Body has no direct cause of action against State Farm to recover any additional amount that Keene Auto Body claims that it is owed as Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm that could make State Farm obligated to pay that amount. Although Meagher is insured by State Farm, Meagher is not State Farm’s agent and has no authority to enter into a contract on behalf of State Farm. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) (“The law is well settled that the parties to a contract freely and openly entered into are bound by its terms...”). Accordingly, Meagher could not bind State Farm to pay the amount charged by Keene Auto Body simply by agreeing to pay that amount.

4. Likely recognizing that Keene Auto Body has no direct cause of action against State Farm to recover any additional amount, Keene Auto Body alleges that Meagher “assigned the insurance proceeds that are owed to him by State Farm” to Keene Auto Body. This alleged assignment, however, is invalid based on the plain language of Meagher’s policy with State Farm. Meagher’s policy includes the following provision:

**Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

State Farm Car Policy (the “Policy”), Assignment Provision, attached hereto as Exhibit B, p. 30 (bold and italics in original). Neither Meagher, nor Keene Auto Body ever sought or received State Farm’s approval for Meagher to transfer his rights under the Policy to Keene Auto Body. Without State Farm’s approval, Meagher could not transfer his rights under the Policy to Keene

Auto Body, and Keene Auto Body therefore has no right to bring a claim against State Farm based on the Policy. *See Farm Bureau Auto. Ins. Co. v. Martin*, 97 N.H. 196, 201 (1951) (“An assignee of the named insured is not covered by the policy until the company’s consent is endorsed thereon. No provision of the policy or of the Statute provides for any coverage for an assignee until there is consent, which is a new agreement, by the insurer.”); *Employers’ Liab. Assur. Corp. v. Sweatt*, 95 N.H. 31, 35 (1948) (explaining that a seller’s attempted assignment of insurance to a buyer of a truck did not estop the insurer from denying liability under an automobile liability policy issued to the seller, in absence of the insurer’s knowledge of or consent to such an assignment).

5. The New Hampshire Supreme Court has ruled that the language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mutual Ins. Co.*, 142 N.H. 144, 146 (1997). “The interpretation of insurance policy language is a question of law for the court.” *Attorneys Liab. Protection Society, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 371-72 (D.N.H. 2013). Here, the anti-assignment language in the Policy is clear: **without State Farm’s approval, Meagher cannot transfer the rights or benefits of the Policy to anyone.** There is also no question that Keene Auto Body’s claim is premised on recovering pursuant to the Policy as the small claims complaint states that Meagher was insured by State Farm and “assigned the insurance proceeds that are owed to him by State Farm” to Keene Auto Body. As Meagher never received State Farm’s approval to assign his rights under the Policy to Keene Auto Body, Keene Auto Body cannot maintain this action.

6. Even if the alleged assignment by Meagher to Keene Auto Body were valid, Keene Auto Body would still not have a viable claim against State Farm. In New Hampshire, “an assignee obtains the rights of the assignor at the time of the assignment. The assignee’s rights are the same as those of the assignor at the time of the assignment.” *Stateline Steel Erectors, Inc. v. Shields*,



150 N.H. 332, 336-37 (2003) (quotation omitted). As the amount of State Farm's estimate was reached through a procedure consistent with New Hampshire law, neither Meagher, nor his alleged assignee, Keene Auto Body, can succeed on a claim against State Farm with respect to the excess cost allegedly owed to Keene Auto Body.

7. When an insured driver in New Hampshire (as in all other jurisdictions) is involved in an accident causing property damage to his vehicle and submits a claim to his insurer, a triangular relationship emerges between the insured, the insurer, and the repair facility chosen to fix the damage. If an insured has a repair facility that he wishes to use, the insured will take his vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair estimate of its own. The insurer and the insured's chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

8. If an agreement is not reached, the insured then has a choice: he can leave his vehicle at his chosen repair facility, but only receive the amount reflected on the insurer's estimate, or he can send his vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the insured at the insurer's estimated price or it can turn the insured's business away. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the insured any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

9. New Hampshire law endorses this procedure and the options that an insured and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair

company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility can unilaterally impose a price for repairs on an insurer.

10. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Meagher's vehicle and trying to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Meagher's vehicle, Keene Auto Body could have elected not to perform the work on Meagher's vehicle. Having chosen to do the work without an agreement with State Farm, Keene Auto Body can either accept the State Farm estimate or it can attempt to recover the excess cost from Meagher if Meagher agreed to pay that excess amount. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Meagher's vehicle.

WHEREFORE, State Farm respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

**STATE FARM MUTUAL  
AUTOMOBILE INSURANCE CO.**

by its attorneys,

**PRIMMER PIPER  
EGGLESTON & CRAMER PC**

Dated: March 24, 2021

by: /s/ Brendan D. O'Brien  
Brendan D. O'Brien, Esq., #267995  
P.O. Box 3600  
Manchester, NH 03105-3600  
603.626.3300  
bobrien@primmer.com

**Certificate of Service**

I hereby certify that a copy of the foregoing motion was forwarded this day to the plaintiff via the Court's ECF system.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

# Exhibit A

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

8th Circuit - District Division - Keene  
33 Winter Street, Suite 1  
Keene NH 03431-0364

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**Case Name: Keene Auto Body Inc., Peter Case v. David Doyle, Allstate and Fire and  
Casualty Insurance Comp  
Case Number: 449-2020-SC-00068**

11/30/2020-MOTION HEARING

After hearing oral argument, this matter is dismissed.

**Ordered by the Court:** DEC 07 2020

  
James D. Gleason

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2020-SC-00443

Keene Auto Body Inc.

v.

Allstate Fire and Casualty Insurance Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, the Allstate Fire and Casualty Insurance Company (“Allstate”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, Allstate states as follows:

1. This small claims action arises from Allstate’s alleged failure to pay the full amount charged by Keene Auto Body to repair Lynn Simpanen (“Simpanen”) and Raymond Woods’s (“Woods’s”) vehicles. According to the small claims complaint, Allstate’s insureds caused damage to Simpanen and Woods’s vehicles. Keene Auto Body alleges that “Allstate was the responsible insurer who promised the insured to pay & reimburse the claimants for the repair charge.” Keene Auto Body further claims that “[t]here are still amounts owed of \$449.59 on the Simpanen repairs & \$884.77 on the Woods repairs.”

2. Other than indicating that Simpanen and Woods’s vehicles were damaged by Allstate insureds, the small claims complaint fails to identify or even suggest any

relationship that Simpanen, Woods or Keene Auto Body has with Allstate that might obligate Allstate to pay the additional amounts that Keene Auto Body claims that it is owed. Keene Auto Body has also failed to set forth any legal theory under which Allstate could be held liable for the additional amounts as Keene Auto Body has no basis in contract or otherwise to bring a claim against Allstate to recover these excess costs.

3. In the small claims complaint, Keene Auto Body does not suggest that Allstate retained Keene Auto Body to repair Simpanen and/or Woods's vehicles or that Allstate agreed with Keene Auto Body on a price to repair the vehicles. The small claims complaint identifies no theory under which Keene Auto Body could recover from Allstate directly for the amounts at issue. If Simpanen and/or Woods hired Keene Auto Body to repair their vehicles, then they are responsible for paying the amount that Keene Auto Body has charged. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) ("The law is well settled that the parties to a contract freely and openly entered into are bound by its terms..."). Neither Simpanen, nor Woods is Allstate's agent, and they have no authority to enter into a repair contract on Allstate's behalf.

4. When an insured driver in New Hampshire (as in all other jurisdictions) causes an accident resulting in property damage to another's vehicle and that other driver submits a claim on the insured driver's policy, a triangular relationship emerges between the claimant, the insurer, and the repair facility chosen to fix the damage. If the claimant has a repair facility that he wishes to use, the claimant will take his vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair

estimate of its own. The insurer and the claimant's chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

5. If an agreement is not reached, the claimant then has a choice: he can leave his vehicle at his chosen repair facility, but only receive the amount reflected on the insurer's estimate, or he can send his vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the claimant at the insurer's estimated price or it can reject the claimant's business. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the claimant any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

6. New Hampshire law endorses this procedure and the options that a claimant and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**



N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17.

7. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Simpanen and Woods's vehicles and trying to force Allstate to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with Allstate's estimates for the repairs to Simpanen and/or Woods's vehicles, Keene Auto Body could have elected not to perform the work on those vehicles. Having chosen to do the work without an agreement with Allstate, Keene Auto Body can either accept the Allstate estimate amount it has already been paid or it can attempt to recover the excess cost from Simpanen and/or Woods. Allstate has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Simpanen and Woods's vehicles.

8. Although the small claims complaint indicates that Keene Auto Body purchased assignments from Simpanen and Woods, presumably for their claims related to the repair of their vehicles, those alleged assignments still do not support that Keene Auto

Body has a claim against Allstate. In New Hampshire, “an assignee obtains the rights of the assignor at the time of the assignment. The assignee’s rights are the same as those of the assignor at the time of the assignment.” *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted). Any claim that Simpanen and/or Woods may have related to damage to their vehicles allegedly caused by Allstate’s insureds would be against the Allstate insureds who allegedly caused the damage, not Allstate directly. Under New Hampshire law, an injured third party, as Keene Auto Body claims to be or as Simpanen and/or Woods may have been, cannot maintain a direct cause of action against an alleged tortfeasor’s insurer. *See Burke v. Fireman’s Fund Ins. Co.*, 120 N.H. 365, 366 (1980); *see also New Hampshire Ins. Guaranty Ass’n v. Elliot Hosp.*, 154 N.H. 571, 575 (2006) (explaining the holding of *Burke*). Allstate has no direct liability to Simpanen, Woods or Keene Auto Body for the conduct of its insureds.

9. To the extent that Keene Auto Body alleges that Allstate made a misrepresentation to its insureds by promising “to pay & reimburse [Simpanen and Woods] for the repair charges,” Keene Auto Body cannot maintain a misrepresentation claim against Allstate based on statements that Allstate allegedly made to other parties. Keene Auto Body never alleges that Allstate made any misrepresentations to Keene Auto Body, which is fatal to any misrepresentation claim. *See Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 47 (1987) (“The plaintiff’s pleadings utterly fail to allege specifically a fraudulent misrepresentation made by the defendant for the purpose of causing the plaintiff to act upon it... . Thus ... [the] court properly dismissed the [count].” (internal quotations omitted)); *see also Akwa Vista, LLC v. NRT, Inc.*, 160 N.H. 594, 601 (2010) (explaining that to prevail

on a negligent misrepresentation claim, a plaintiff is “required to prove that the defendants made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause [the plaintiff] to rely upon it and that [the plaintiff] justifiably relied upon it”). “For a misrepresentation to be actionable, a special relationship must exist between a representor and the person relying on the misrepresentation.” *Stillwater Condominium Ass’n v. Town of Salem*, 140 N.H. 505, 508 (1995) (internal quotation omitted). “Not all misrepresentations are actionable. A relationship must exist between the representor and the person relying on the misrepresentation that creates a duty.” *Island Shores Estates Condominium Ass’n v. City of Concord*, 136 N.H. 300, 306 (1992). Keene Auto Body has not only failed to allege a special relationship between itself and Allstate, it has failed to allege that any relationship existed between the two entities. If Allstate never communicated any information to Keene Auto Body regarding its willingness to pay the amounts charged by Keene Auto Body to repair Simpanen and Woods’s vehicles, Allstate had no relationship with Keene Auto Body that could form the basis of a misrepresentation claim.

10. The small claims complaint identifies no relationship between Allstate and Simpanen, Woods or Keene Auto Body that could provide the basis for a claim against Allstate. Without such a relationship, Keene Auto Body has failed to state a cause of action against Allstate, and the small claims complaint against Allstate should be dismissed with prejudice. *See Burke*, 120 N.H. at 366.

WHEREFORE, Allstate respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &  
CRAMER, PC


Dated: September 21, 2020

/s/ Brendan D. O'Brien  
Brendan D. O'Brien, Esq. #267995  
900 Elm Street, 19<sup>th</sup> Floor  
PO Box 3600  
Manchester, NH 03105  
(603) 626-3300  
bobrien@primmer.com

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served through the Court's electronic filing system on the plaintiff, Keene Auto Body Inc.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

DEC 07 2020  
**GRANTED**  


STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2020-SC-00039

Keene Auto Body Inc.

v.

Allstate Fire and Casualty Insurance Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, the Allstate Fire and Casualty Insurance Company (“Allstate”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, Allstate states as follows:

1. This small claims action arises out of Allstate’s alleged failure to pay the full amount charged by Keene Auto Body to repair Catherine Gilbo’s (“Gilbo’s”) vehicle. According to the small claims complaint, Gilbo’s vehicle “was damaged by an Allstate insured.” Keene Auto Body allegedly charged \$1,679.73 to repair Gilbo’s vehicle. The small claims complaint does not allege that Allstate ever agreed to pay this amount, stating only that “Allstate’s opinion and value of the loss was \$1,330.40.”

2. Other than indicating that Gilbo’s vehicle was damaged by an Allstate insured, the small claims complaint fails to identify or even suggest any relationship that Gilbo or Keene Auto Body has with Allstate that might obligate Allstate to pay the additional \$349.33 that Keene Auto Body claims that it is owed. Keene Auto Body has

also failed to set forth any legal theory under which Allstate could be held liable for the additional \$349.33. Keene Auto Body has no basis in contract or otherwise to bring a claim against Allstate to recover this excess cost.

3. According to the small claims complaint, “Catherine Gilbo hired Keene Auto Body to repair her Nissan.” There is no indication that Allstate retained Keene Auto Body to repair Gilbo’s vehicle or agreed with Keene Auto Body on a price to repair Gilbo’s vehicle. The small claims complaint identifies no theory under which Keene Auto Body could recover from Allstate directly for the amount at issue. If Gilbo hired Keene Auto Body to repair her vehicle in exchange for \$1,679.73, then Gilbo is responsible for paying that amount. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) (“The law is well settled that the parties to a contract freely and openly entered into are bound by its terms...”). Gilbo is not Allstate’s agent and has no authority to enter into a contract on behalf of Allstate.

4. When an insured driver in New Hampshire (as in all other jurisdictions) causes an accident causing property damage to another’s vehicle and that other driver submits a claim on the insured driver’s policy, a triangular relationship emerges between the claimant, the insurer, and the repair facility chosen to fix the damage. If the claimant has a repair facility that she wishes to use, the claimant will take her vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair estimate of its own. The insurer and the claimant’s chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

5. If an agreement is not reached, the claimant then has a choice: she can leave her vehicle at her chosen repair facility, but only receive the amount reflected on the insurer's estimate, or she can send her vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the claimant at the insurer's estimated price or it can turn the claimant's business away. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the claimant any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

6. New Hampshire law endorses this procedure and the options that a claimant and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent

repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17.

7. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Gilbo's vehicle and trying to force Allstate to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with Allstate's estimate for the repairs to Gilbo's vehicle, Keene Auto Body could have elected not to perform the work on Gilbo's vehicle. Having chosen to do the work without an agreement with Allstate, Keene Auto Body can either accept the Allstate estimate amount it has already been paid or it can attempt to recover the excess cost from Gilbo. Allstate has no obligation to pay Keene Auto Body for its unilaterally-imposed price for the repairs to Gilbo's vehicle.

8. Although the small claims complaint indicates that Keene Auto Body purchased an assignment from Gilbo, presumably for her claims related to the repair of her vehicle, that assignment still does not support that Keene Auto Body has a claim against Allstate. In New Hampshire, "an assignee obtains the rights of the assignor at the time of the assignment. The assignee's rights are the same as those of the assignor at the time of the assignment." *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted). Any claim that Gilbo may have related to damage to her vehicle allegedly caused by an Allstate insured would be against the Allstate insured who allegedly



caused the damage, not Allstate directly. Under New Hampshire law, an injured third party, as Keene Auto Body claims to be or as Gilbo may have been, cannot maintain a direct cause of action against an alleged tortfeasor's insurer. *See Burke v. Fireman's Fund Ins. Co.*, 120 N.H. 365, 366 (1980); *see also New Hampshire Ins. Guaranty Ass'n v. Elliot Hosp.*, 154 N.H. 571, 575 (2006) (explaining holding of *Burke*). Allstate has no direct liability to Gilbo or Keene Auto Body for the conduct of its insureds.

9. As the small claims complaint provides that Gilbo hired Keene Auto Body to repair her vehicle, the proper target of Keene Auto Body's claim is Gilbo, who has apparently failed to pay Keene Auto Body in full for the work that it performed. Gilbo might also have a claim against the unidentified other driver involved in the accident that resulted in the damage to her vehicle, but neither Keene Auto Body, nor Gilbo has a claim against Allstate. The small claims complaint against Allstate should therefore be dismissed with prejudice. *See Burke*, 120 N.H. at 366.

WHEREFORE, Allstate respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &  
CRAMER, PC

Dated: March 6, 2020

/s/ Brendan D. O'Brien  
Brendan D. O'Brien, Esq. #267995  
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PO Box 3600  
Manchester, NH 03105  
(603) 626-3300  
bobrien@primmer.com

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served through the Court's electronic filing system on the plaintiff, Keene Auto Body Inc.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

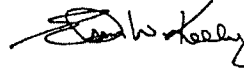
Schedule for a hearing on the motion.

The Recommendation of the  
Master/Referee is Approved

Referee Recommends:



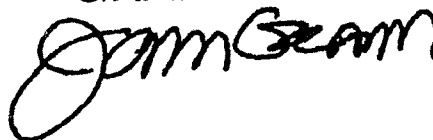
Referee Patrick W. Ryan  
03/23/2020



Judge Edwin W. Kelly  
03/30/2020

DEC 07 2020

GRANTED



Clerk's Notice  
Document sent to parties  
on 04/16/2020

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2019-SC-00576

Keene Auto Body Inc.

v.

David Doyle & Allstate Fire and Casualty Insurance Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COME the defendants, David Doyle (“Doyle”) and the Allstate Fire and Casualty Insurance Company (“Allstate” and, collectively with Doyle, “Defendants”), by and through their attorneys, Primmer Piper Eggleston & Cramer PC, and hereby move to dismiss the small claims complaint filed against them by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, Defendants state as follows:

1. This small claims action arises out of Allstate’s alleged failure to pay the full amount charged by Keene Auto Body to repair Ginnette Ranfos’s (“Ranfos’s”) vehicle. According to the small claims complaint, Ranfos entered “into a repair contract to repair her Jeep in the amount of \$5236.86 with Keene Auto Body, the Jeep was insured with Allstate.” The small claims complaint does not allege that Allstate ever agreed to pay this amount, stating only that “Allstate’s opinion for the amount of the loss is \$4213.35.” At the time of these repairs, Ranfos’s vehicle was insured by Allstate.

2. Keene Auto Body has no direct cause of action against Allstate to recover the additional \$1023.71 that Keene Auto Body claims that it is owed as Keene Auto Body

is not the owner of the damaged vehicle, is not insured by Allstate, and has no contractual relationship with Allstate that could make Allstate obligated to pay that amount. Although Ranfos is insured by Allstate, Ranfos is not Allstate's agent and has no authority to enter into a contract on behalf of Allstate. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) ("The law is well settled that the parties to a contract freely and openly entered into are bound by its terms..."). Accordingly, Ranfos could not bind Allstate to pay the amount charged by Keene Auto Body simply by agreeing to pay that amount.

3. Likely recognizing that Keene Auto Body has no direct cause of action against Allstate to recover the additional \$1,023.71 that Keene Auto Body claims that it is owed, Keene Auto Body alleges that Ranfos "assigned the rights of her insurance policy" to Keene Auto Body.<sup>1</sup> This alleged assignment, however, is invalid based on the plain language of Ranfos's policy with Allstate. Ranfos's policy includes the following provision:

**Transfer**

This policy can't be transferred to anyone without **our** written consent. However, if **you** die, coverage will be provided until the end of the premium period for:

1. **your** legal representative while acting as such; and
2. persons covered on the date of **your** death.

Allstate Auto Insurance Policy (the "Policy"), Transfer Provision, attached hereto as Exhibit A, p. 2 (bold in original). Neither Ranfos, nor Keene Auto Body ever sought or received Allstate's written consent for Ranfos to transfer her rights under the Policy to

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<sup>1</sup> Keene Auto Body also indicates that Ranfos assigned her rights under the Policy in exchange for Keene Auto Body releasing "the lien on the insured's Jeep."

Keene Auto Body. Without Allstate's consent, Ranfos could not transfer her rights under the Policy to Keene Auto Body, and Keene Auto Body therefore has no right to bring a claim against Allstate based on the Policy. *See Farm Bureau Auto. Ins. Co. v. Martin*, 97 N.H. 196, 201 (1951) ("An assignee of the named insured is not covered by the policy until the company's consent is endorsed thereon. No provision of the policy or of the Statute provides for any coverage for an assignee until there is consent, which is a new agreement, by the insurer."); *Employers' Liab. Assur. Corp. v. Sweatt*, 95 N.H. 31, 35 (1948) (explaining that a seller's attempted assignment of insurance to a buyer of a truck did not estop the insurer from denying liability under an automobile liability policy issued to the seller, in absence of the insurer's knowledge of or consent to such an assignment).

4. The New Hampshire Supreme Court has ruled that the language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mutual Ins. Co.*, 142 N.H. 144, 146 (1997). "The interpretation of insurance policy language is a question of law for the court." *Attorneys Liab. Protection Society, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 371-72 (D.N.H. 2013). Here, the anti-transfer language in the Policy is clear: **without Allstate's consent, Ranfos cannot transfer the Policy to anyone.** There is also no question that Keene Auto Body's claim is premised on recovering pursuant to the Policy as the small claims complaint states that Ranfos "assigned the rights of her insurance policy." As Ranfos never received Allstate's consent to assign her rights under the Policy to Keene Auto Body, Keene Auto Body cannot maintain this action.

5. Even if the alleged assignment by Ranfos to Keene Auto Body were valid, Keene Auto Body would still not have a viable claim against Allstate. In New Hampshire, “an assignee obtains the rights of the assignor at the time of the assignment. The assignee’s rights are the same as those of the assignor at the time of the assignment.” *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted). As the amount of Allstate’s estimate was reached through a procedure consistent with New Hampshire law, neither Ranfos, nor her alleged assignee, Keene Auto Body, can succeed on a claim against Allstate with respect to the excess cost allegedly owed to Keene Auto Body.

6. When an insured driver in New Hampshire (as in all other jurisdictions) is involved in an accident causing property damage to her vehicle and submits a claim to her insurer, a triangular relationship emerges between the insured, the insurer, and the repair facility chosen to fix the damage. If an insured has a repair facility that she wishes to use, the insured will take her vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair estimate of its own. The insurer and the insured’s chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

7. If an agreement is not reached, the insured then has a choice: she can leave her vehicle at her chosen repair facility, but only receive the amount reflected on the insurer’s estimate, or she can send her vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer’s estimated price. *See, e.g., Chick’s Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do

the work for the insured at the insurer's estimated price or it can turn the insured's business away. See *Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the insured any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

8. New Hampshire law endorses this procedure and the options that an insured and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility can unilaterally impose a price for repairs on an insurer.

9. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Ranfos's vehicle and trying to force Allstate to pay whatever price Keene Auto Body

wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with Allstate's estimate for the repairs to Ranfos's vehicle, Keene Auto Body could have elected not to perform the work on Ranfos's vehicle. Having chosen to do the work without an agreement with Allstate, Keene Auto Body can either accept the Allstate estimate amount it has already been paid or it can attempt to recover the excess cost from Ranfos if Ranfos agreed to pay that excess amount. Allstate has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Ranfos's vehicle.

10. Finally, Keene Auto Body has also named Doyle as a defendant in this matter, but identified no theory under which he could be liable. Although Keene Auto Body is apparently dissatisfied with Allstate's handling of a claim, that dissatisfaction does not support any claim against Doyle, an employee of Allstate who happened to be involved in the handling of that claim. The small claims complaint is devoid of any fact that could support a claim against Doyle individually, and Keene Auto Body's claim description does not even mention Doyle. For these reasons, Doyle should be dismissed as he has no individual liability to Keene Auto Body. As Keene Auto Body has no claim against the Defendants, the small claims complaint should therefore be dismissed with prejudice.

WHEREFORE, Defendants respectfully request that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.



Respectfully submitted,

DAVID DOYLE and  
ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY

By Their Attorneys:

PRIMMER PIPER EGGLESTON &  
CRAMER, PC

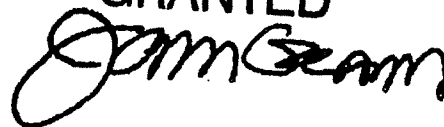
Dated: March 13, 2020

/s/ Brendan D. O'Brien  
Brendan D. O'Brien, Esq. #267995  
900 Elm Street, 19<sup>th</sup> Floor  
PO Box 3600  
Manchester, NH 03105  
(603) 626-3300  
bobrien@primmer.com

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served through the Court's electronic filing system on the plaintiff, Keene Auto Body Inc.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

DEC 07 2020  
GRANTED  


**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

8th Circuit - District Division - Keene  
33 Winter Street, Suite 1  
Keene NH 03431-0364

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

Case Name: **Keene Auto Body Inc. v. Concord General Mutual Insurance Company**  
Case Number: **449-2020-SC-00051**

11/30/20 -MOTION HEARING ORDER

After hearing oral argument on this matter, the case is dismissed.

Ordered by the Court: DEC 07 2020

  
James D. Gleason

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

8th Circuit - District Division - Keene  
33 Winter Street, Suite 1  
Keene NH 03431-0364

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**Case Name: Keene Auto Body Inc. v. David Doyle, Allstate and Fire and Casualty Insurance Comp**  
**Case Number: 449-2020-SC-00052**

11/30/20-MOTION HEARING ORDER

After hearing oral argument, this matter is dismissed.

**Ordered by the Court:** DEC 07 2020

  
**James D. Gleason**

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

8th Circuit - District Division - Keene  
33 Winter Street, Suite 1  
Keene NH 03431-0364

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

Case Name: **Keene Auto Body Inc. v. State Farm Mutual Automobile Insurance Compan**  
Case Number: **449-2020-SC-00072**

11/30/2020-MOTION HEARING ORDER

After Hearing oral argument, this matter is dismissed.

**Recommended:**

Ordered by the Court: DEC 07 2020

  
James D. Gleason

(694)

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2020-SC-00463

Keene Auto Body Inc.

v.

State Farm Fire and Casualty Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, State Farm Fire and Casualty Company (“State Farm”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, State Farm states as follows:

1. This small claims action arises out of State Farm’s alleged failure to pay Keene Auto Body for repairs to Gary Wood’s (“Wood’s”) vehicle. According to the Complaint, State Farm issued an auto policy that provides collision damage to Wood’s auto. (See Claims Description).

2. Wood’s auto was damaged, and State Farm agreed to pay Wood \$3,516.55 for repairs. (See Claims Description). Wood then (apparently) hired Keene Auto Body to perform the auto repairs. Keene Auto Body claims the repairs cost \$4,604.24.

3. According to the Complaint, Wood “assigned” to Keene Auto Body his rights under the State Farm insurance policy to collect the difference between what State

Farm agreed to pay for covered property damage and the repair costs charged by Keene Auto Body. (See Claims Description).

4. Keene Auto Body's complaint should be dismissed for three reasons. First, Keene Auto Body has no direct cause of action against State Farm because Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm. Second, Keene Auto Body has no direct cause of action against State Farm because Wood's policy bars assignment of his rights without State Farm's consent. Third, under New Hampshire law, State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs it made to Wood's vehicle.

5. Keene Auto Body's Complaint should be dismissed because the facts and allegations, as pled by the Plaintiff and as tested against the applicable law, are not reasonably susceptible of a construction that would permit recovery. *See, e.g., Berry v. Watchtower Bible & Tract Soc.*, 152 N.H. 407, 410 (N.H. 2005).

6. Keene Auto Body has no direct cause of action against State Farm to recover the \$1,087.69 that it claims it is owed because Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm that could make it obligated to pay that amount. Although Wood is insured by State Farm, he is not State Farm's agent and has no authority to enter into a contract on behalf of State Farm. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) ("The law is well settled that the parties to a contract freely and openly entered into are bound by

its terms...”). Accordingly, Wood could not bind State Farm to pay the amount charged by Keene Auto Body simply by agreeing to pay that amount.

7. Likely recognizing that Keene Auto Body has no direct cause of action against State Farm to recover the additional \$1,087.69 that Keene Auto Body claims it is owed, Keene Auto Body indicates that Wood “assigned” his rights under his State Farm policy to Keene Auto Body. (See Claim Description). This alleged assignment, however, is invalid based on the plain language of Wood’s policy with State Farm. Wood’s Policy includes the following provision:

**Assignment**

No assignment of benefits, or other transfer of rights is binding upon *us* unless approved by *us*.

See State Farm Insurance Policy #0467980-C29-29F (the “Policy”), attached hereto as Exhibit A, p. 30 (bold in original).

8. Absent an allegation that Wood received State Farm’s approval to transfer of his rights under the policy to Keene Auto Body, Wood could not transfer his rights and Keene Auto Body therefore has no right to bring a claim against State Farm based on the Policy. See *Farm Bureau Auto. Ins. Co. v. Martin*, 97 N.H. 196, 201 (1951) (“An assignee of the named insured is not covered by the policy until the company’s consent is endorsed thereon. No provision of the policy or of the Statute provides for any coverage for an assignee until there is consent, which is a new agreement, by the insurer.”); *Employers’ Liab. Assur. Corp. v. Sweatt*, 95 N.H. 31, 35 (1948) (explaining that a seller’s attempted assignment of insurance to a buyer of a truck did not estop the insurer from denying liability

under an automobile liability policy issued to the seller, in absence of the insurer's knowledge of or consent to such an assignment).

8. The New Hampshire Supreme Court has ruled that the language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mutual Ins. Co.*, 142 N.H. 144, 146 (1997). "The interpretation of insurance policy language is a question of law for the court." *Attorneys Liab. Protection Society, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 371-72 (D.N.H. 2013). Here, the anti-transfer language in the Policy is clear: **without State Farm's consent, Wood cannot transfer the Policy to anyone.**

9. Even if the alleged assignment by Wood to Keene Auto Body were valid, Keene Auto Body would still not have a viable claim against State Farm. In New Hampshire, "an assignee obtains the rights of the assignor at the time of the assignment. The assignee's rights are the same as those of the assignor at the time of the assignment." *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted).

10. When an insured driver in New Hampshire (as in all other jurisdictions) is involved in an accident causing property damage to his vehicle and submits a claim to his insurer, a triangular relationship emerges between the insured, the insurer, and the repair facility chosen to fix the damage. If an insured has a repair facility that he wishes to use, the insured will take his vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair estimate of its own. The insurer and the insured's chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.



11. If an agreement is not reached, the insured then has a choice: he can leave his vehicle at his chosen repair facility, but only receive the amount reflected on the insurer's estimate, or he can send his vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the insured at the insurer's estimated price or it can turn the insured's business away. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the insured any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

12. New Hampshire law endorses this procedure and the options that an insured and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent

repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility can unilaterally impose a price for repairs on an insurer.

13. Keene Auto Body appears to have rejected the choices available under New Hampshire law in favor of keeping the business and attempting to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Wood's vehicle, Keene Auto Body could have elected not to perform the work on Wood's vehicle. Having chosen to do the work without an agreement with State Farm, Keene Auto Body can either accept the State Farm estimate amount it has already been paid or it can attempt to recover the excess cost from Wood if Wood agreed to pay that excess amount. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Wood's vehicle.

WHEREFORE, State Farm respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY  
COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &  
CRAMER, PC

Dated: 10-1-2020

By: /s/ Doreen F. Connor  
Doreen F. Connor, #421  
PO Box 3600  
Manchester, NH 03105  
(603) 626-3600

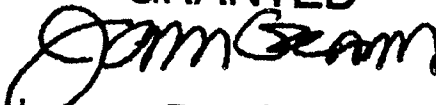
**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served through the Court's electronic filing system on the plaintiff, Keene Auto Body Inc.

/s/ Doreen F. Connor  
Doreen F. Connor

SEP 07 2020

GRANTED

  
James D. Gleason

Granted



Judge James D. Gleason

12/07/2020

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2020-SC-00516

Keene Auto Body Inc.

v.

State Farm Fire and Casualty Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, State Farm Fire and Casualty Company (“State Farm”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, State Farm states as follows:

1. This small claims action arises out of State Farm’s alleged failure to pay Keene Auto Body for repairs to Timothy Weeks’ (“Weeks”) vehicle. According to the Complaint, State Farm issued an auto policy that provides collision damage to Weeks’ auto. (See Claims Description).

2. According to the small claims action, Weeks’ auto was damaged, and Weeks hired Keene Auto Body to perform the auto repairs. Keene Auto Body claims there is an outstanding repairs bill totaling \$684.84.

3. According to the Complaint, Weeks “assigned” to Keene Auto Body his rights under the State Farm insurance policy to collect the difference between what State

Farm agreed to pay for covered property damage and the repair costs charged by Keene Auto Body. (See Claims Description).

4. Keene Auto Body's complaint should be dismissed for three reasons. First, Keene Auto Body has no direct cause of action against State Farm because Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm. Second, Keene Auto Body has no direct cause of action against State Farm because Weeks' policy bars assignment of his rights without State Farm's consent. Third, under New Hampshire law, State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs it made to Weeks' vehicle.

5. Keene Auto Body's Complaint should be dismissed because the facts and allegations, as pled by the Plaintiff and as tested against the applicable law, are not reasonably susceptible of a construction that would permit recovery. *See, e.g., Berry v. Watchtower Bible & Tract Soc.*, 152 N.H. 407, 410 (N.H. 2005).

6. Keene Auto Body has no direct cause of action against State Farm to recover the \$684.84 that it claims it is owed because Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm that could make it obligated to pay that amount. Although Weeks is insured by State Farm, he is not State Farm's agent and has no authority to enter into a contract on behalf of State Farm. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) ("The law is well settled that the parties to a contract freely and openly entered into are bound by

its terms...”). Accordingly, Weeks could not bind State Farm to pay the amount charged by Keene Auto Body simply by agreeing to pay that amount.

7. Likely recognizing that Keene Auto Body has no direct cause of action against State Farm to recover the additional \$684.84 that Keene Auto Body claims it is owed, Keene Auto Body indicates that Weeks “assigned” his rights under his State Farm policy to Keene Auto Body. (See Claim Description). This alleged assignment, however, is invalid based on the plain language of Weeks’ policy with State Farm. Weeks’ Policy includes the following provision:

**Assignment**

No assignment of benefits, or other transfer of rights is binding upon *us* unless approved by *us*.

See State Farm Insurance Policy #0467980-C29-29F (the “Policy”), attached hereto as Exhibit A, p. 30 (bold in original).

8. Absent an allegation that Weeks received State Farm’s approval to transfer of his rights under the policy to Keene Auto Body, Weeks could not transfer his rights and Keene Auto Body therefore has no right to bring a claim against State Farm based on the Policy. See *Farm Bureau Auto. Ins. Co. v. Martin*, 97 N.H. 196, 201 (1951) (“An assignee of the named insured is not covered by the policy until the company’s consent is endorsed thereon. No provision of the policy or of the Statute provides for any coverage for an assignee until there is consent, which is a new agreement, by the insurer.”); *Employers’ Liab. Assur. Corp. v. Sweatt*, 95 N.H. 31, 35 (1948) (explaining that a seller’s attempted assignment of insurance to a buyer of a truck did not estop the insurer from denying liability

under an automobile liability policy issued to the seller, in absence of the insurer's knowledge of or consent to such an assignment).

8. The New Hampshire Supreme Court has ruled that the language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mutual Ins. Co.*, 142 N.H. 144, 146 (1997). "The interpretation of insurance policy language is a question of law for the court." *Attorneys Liab. Protection Society, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 371-72 (D.N.H. 2013). Here, the anti-transfer language in the Policy is clear: **without State Farm's consent, Weeks cannot transfer the Policy to anyone.**

9. Even if the alleged assignment by Weeks to Keene Auto Body were valid, Keene Auto Body would still not have a viable claim against State Farm. In New Hampshire, "an assignee obtains the rights of the assignor at the time of the assignment. The assignee's rights are the same as those of the assignor at the time of the assignment." *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted).

10. When an insured driver in New Hampshire (as in all other jurisdictions) is involved in an accident causing property damage to his vehicle and submits a claim to his insurer, a triangular relationship emerges between the insured, the insurer, and the repair facility chosen to fix the damage. If an insured has a repair facility that he wishes to use, the insured will take his vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair estimate of its own. The insurer and the insured's chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

11. If an agreement is not reached, the insured then has a choice: he can leave his vehicle at his chosen repair facility, but only receive the amount reflected on the insurer's estimate, or he can send his vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the insured at the insurer's estimated price or it can turn the insured's business away. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the insured any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

12. New Hampshire law endorses this procedure and the options that an insured and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent



repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility can unilaterally impose a price for repairs on an insurer.

13. Keene Auto Body appears to have rejected the choices available under New Hampshire law in favor of keeping the business and attempting to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Weeks's vehicle, Keene Auto Body could have elected not to perform the work on Weeks's vehicle. Having chosen to do the work without an agreement with State Farm, Keene Auto Body can either accept the State Farm estimate amount it has already been paid or it can attempt to recover the excess cost from Weeks if Weeks agreed to pay that excess amount. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Weeks's vehicle.

WHEREFORE, State Farm respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY  
COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &  
CRAMER, PC

Dated: 11/6/2020

By: /s/ Doreen F. Connor  
Doreen F. Connor, #421  
PO Box 3600  
Manchester, NH 03105  
(603) 626-3600

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served through the Court's electronic filing system on the plaintiff, Keene Auto Body Inc.

/s/ Doreen F. Connor  
Doreen F. Connor

Granted



Judge James D. Gleason

01/19/2021

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2020-SC-00633

Keene Auto Body Inc.

v.

State Farm General Insurance Company

**MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, State Farm Mutual Automobile Insurance Company incorrectly named as State Farm General Insurance Company (“State Farm”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby moves to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In support thereof, State Farm states as follows:

1. This small claims action arises out of State Farm’s alleged failure to pay the full amount charged by Keene Auto Body to repair Gloria Perrin’s (“Perrin’s”) vehicle. According to the small claims complaint, Perrin refuses to accept the amount that State Farm has agreed to pay to repair her vehicle and “is owed \$1499 to be made whole by State Farm for the necessary repairs.” The small claims complaint further asserts that “Perrin assigned the debt that she is owed to Keene Auto Body.” The small claims complaint does not allege that State Farm ever agreed to pay this additional \$1,499, nor explain how this amount was calculated, who calculated it or what “necessary repairs” it would cover. At all relevant times, Perrin’s vehicle was insured by State Farm.

2. As an initial matter, this case should be dismissed as it premised on a theory that this Court has rejected in the many other cases brought by Keene Auto Body: that Keene Auto Body can force insurance carriers to pay a unilaterally-imposed price for vehicle repairs. In dismissing these cases, the Court has recognized that Keene Auto Body cannot maintain such claims. *See, e.g., Orders Dismissing Keene Auto Body's Small Claims Complaints*, attached hereto as Exhibit A. Keene Auto Body similarly has no viable claim against State Farm in this matter.

3. Keene Auto Body has no direct cause of action against State Farm to recover the additional \$1,499 that Keene Auto Body claims that it is owed as Keene Auto Body is not the owner of the damaged vehicle, is not insured by State Farm, and has no contractual relationship with State Farm that could make State Farm obligated to pay that amount. Although Perrin is insured by State Farm, Perrin is not State Farm's agent and has no authority to enter into a contract on behalf of State Farm. *See Lowell v. U.S. Sav. Bank of Am.*, 132 N.H. 719, 725 (1990) ("The law is well settled that the parties to a contract freely and openly entered into are bound by its terms..."). Accordingly, Perrin could not bind State Farm to pay the amount charged by Keene Auto Body simply by agreeing to pay that amount.

4. Likely recognizing that Keene Auto Body has no direct cause of action against State Farm to recover the additional \$1,499, Keene Auto Body alleges that Perrin "assigned the debt that she is owed to Keene Auto Body." This alleged assignment, however, is invalid based on the plain language of Perrin's policy with State Farm. Perrin's policy includes the following provision:

**Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

State Farm Car Policy (the “Policy”), Assignment Provision, attached hereto as Exhibit B, p. 30 (bold and italics in original). Neither Perrin, nor Keene Auto Body ever sought or received State Farm’s approval for Perrin to transfer her rights under the Policy to Keene Auto Body. Without State Farm’s approval, Perrin could not transfer her rights under the Policy to Keene Auto Body, and Keene Auto Body therefore has no right to bring a claim against State Farm based on the Policy. See *Farm Bureau Auto. Ins. Co. v. Martin*, 97 N.H. 196, 201 (1951) (“An assignee of the named insured is not covered by the policy until the company’s consent is endorsed thereon. No provision of the policy or of the Statute provides for any coverage for an assignee until there is consent, which is a new agreement, by the insurer.”); *Employers’ Liab. Assur. Corp. v. Sweatt*, 95 N.H. 31, 35 (1948) (explaining that a seller’s attempted assignment of insurance to a buyer of a truck did not estop the insurer from denying liability under an automobile liability policy issued to the seller, in absence of the insurer’s knowledge of or consent to such an assignment).

5. The New Hampshire Supreme Court has ruled that the language of an insurance policy is to be interpreted in the same manner as any other contract. See *Hudson v. Farm Family Mutual Ins. Co.*, 142 N.H. 144, 146 (1997). “The interpretation of insurance policy language is a question of law for the court.” *Attorneys Liab. Protection Society, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 371-72 (D.N.H. 2013). Here, the anti-assignment language in the

Policy is clear: **without State Farm’s approval, Perrin cannot transfer the rights or benefits of the Policy to anyone.** There is also no question that Keene Auto Body’s claim is premised on recovering pursuant to the Policy as the small claims complaint states that Perrin was insured by State Farm and “assigned the debt that she is owed to Keene Auto Body.” As Perrin never received State Farm’s approval to assign her rights under the Policy to Keene Auto Body, Keene Auto Body cannot maintain this action.

6. Even if the alleged assignment by Perrin to Keene Auto Body were valid, Keene Auto Body would still not have a viable claim against State Farm. In New Hampshire, “an assignee obtains the rights of the assignor at the time of the assignment. The assignee’s rights are the same as those of the assignor at the time of the assignment.” *Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-37 (2003) (quotation omitted). As the amount of State Farm’s estimate was reached through a procedure consistent with New Hampshire law, neither Perrin, nor her alleged assignee, Keene Auto Body, can succeed on a claim against State Farm with respect to the excess cost allegedly owed to Keene Auto Body.

7. When an insured driver in New Hampshire (as in all other jurisdictions) is involved in an accident causing property damage to her vehicle and submits a claim to her insurer, a triangular relationship emerges between the insured, the insurer, and the repair facility chosen to fix the damage. If an insured has a repair facility that she wishes to use, the insured will take her vehicle to that shop where an estimate will be prepared. The insurer will also prepare a preliminary repair

estimate of its own. The insurer and the insured's chosen repair facility will then compare estimates and if there is a discrepancy, will attempt to negotiate an agreed-upon repair cost.

8. If an agreement is not reached, the insured then has a choice: she can leave her vehicle at her chosen repair facility, but only receive the amount reflected on the insurer's estimate, or she can send her vehicle to a repair shop identified by the insurer as willing to do the repair work for the insurer's estimated price. *See, e.g., Chick's Auto Body v. State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 84 (1979); *see also* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. The repair shop has a similar choice: it is free to do the work for the insured at the insurer's estimated price or it can turn the insured's business away. *See Chick's Auto Body*, 168 N.J. Super. at 84. The repair shop is also free to charge and collect from the insured any part of the repair price that exceeds the amount the insurer determines is appropriate. *Id.*

9. New Hampshire law endorses this procedure and the options that an insured and a repair shop have after an accident. N.H. Rev. Stat. Ann. § 417:4, XX(c) provides that:

[n]othing shall prohibit any insurance company... from providing to such insured person or entity the name of an... automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services... . **[T]he insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services...**

N.H. Rev. Stat. Ann. § 417:4, XX(c) (emphasis added). Similarly, New Hampshire Insurance Department Regulation 1002.17 provides that if an independent repair shop and an insurer are unable to agree on a price, then:

[t]he price shall be the price available from any other recognized, competent, and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time.

Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility can unilaterally impose a price for repairs on an insurer.

10. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Perrin's vehicle and trying to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, *see* RSA 417:4, XX(c); Ins. 1002.17, and to elemental principles of contract. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Perrin's vehicle, Keene Auto Body could have elected not to perform the work on Perrin's vehicle. Having chosen to do the work without an agreement with State Farm, Keene Auto Body can either accept the State Farm estimate or it can attempt to recover the excess cost from Perrin if Perrin agreed to pay that excess amount. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Perrin's vehicle.



WHEREFORE, State Farm respectfully requests that this Honorable Court:

- A. GRANT this motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

**STATE FARM MUTUAL  
AUTOMOBILE INSURANCE CO.**

by its attorneys,

**PRIMMER PIPER  
EGGLESTON & CRAMER PC**

Dated: December 23, 2020

by: /s/ Brendan D. O'Brien  
Adam R. Mordecai, Esq., #17727  
Brendan D. O'Brien, Esq., #267995  
P.O. Box 3600  
Manchester, NH 03105-3600  
603.626.3300  
amordecai@primmer.com  
bobrien@primmer.com

Certificate of Service

I hereby certify that a copy of the foregoing motion was forwarded this day to the pro se plaintiff via the Court's ECF system.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

# Exhibit B



Please read the policy carefully. If there is an accident, contact your State Farm agent or one of our Claim Offices at once. (See "INSURED'S DUTIES" in this policy booklet.)

**State Farm®  
Car Policy  
Booklet**

**New Hampshire**  
Policy Form 9829A

## CONTENTS

<p><b>THIS POLICY</b> ..... 3</p> <p><b>DEFINITIONS</b> ..... 3</p> <p><b>LIABILITY COVERAGE</b> ..... 5</p> <p style="padding-left: 20px;">Additional Definition ..... 5</p> <p style="padding-left: 20px;">Insuring Agreement ..... 6</p> <p style="padding-left: 20px;">Supplementary Payments ..... 6</p> <p style="padding-left: 20px;">Limits ..... 7</p> <p style="padding-left: 20px;">Nonduplication ..... 7</p> <p style="padding-left: 20px;">Exclusions ..... 7</p> <p style="padding-left: 20px;">If Other Liability Coverage Applies ..... 8</p> <p style="padding-left: 20px;">Required Out-of-State Liability Coverage ..... 9</p> <p style="padding-left: 20px;">Financial Responsibility Certification ..... 9</p> <p style="padding-left: 20px;">New Hampshire Statutory Liability Coverage for Chauffeurs and Domestic Servants ..... 9</p> <p><b>MEDICAL PAYMENTS COVERAGE</b> ..... 9</p> <p style="padding-left: 20px;">Additional Definitions ..... 9</p> <p style="padding-left: 20px;">Insuring Agreement ..... 10</p> <p style="padding-left: 20px;">Determining Medical Expenses ..... 10</p> <p style="padding-left: 20px;">Arbitration ..... 10</p> <p style="padding-left: 20px;">Limit ..... 11</p> <p style="padding-left: 20px;">Nonduplication ..... 11</p> <p style="padding-left: 20px;">Exclusions ..... 11</p> <p style="padding-left: 20px;">If Other Medical Payments Coverage or Similar Vehicle Insurance Applies ..... 12</p> <p style="padding-left: 20px;">Our Payment Options ..... 13</p> <p><b>UNINSURED MOTOR VEHICLE COVERAGE</b> ..... 13</p> <p style="padding-left: 20px;">Additional Definitions ..... 13</p> <p style="padding-left: 20px;">Insuring Agreement ..... 14</p> <p style="padding-left: 20px;">Consent to Settlement ..... 14</p> <p style="padding-left: 20px;">Deciding Fault and Amount ..... 14</p> <p style="padding-left: 20px;">Limits ..... 14</p> <p style="padding-left: 20px;">Nonduplication ..... 15</p> <p style="padding-left: 20px;">Exclusions ..... 15</p> <p style="padding-left: 20px;">If Other Uninsured Motor Vehicle Coverage Applies ..... 15</p> <p style="padding-left: 20px;">Our Payment Options ..... 16</p> <p><b>PHYSICAL DAMAGE COVERAGES</b> ..... 16</p> <p style="padding-left: 20px;">Additional Definitions ..... 16</p> <p style="padding-left: 20px;">Insuring Agreements ..... 17</p> <p style="padding-left: 20px;">Supplementary Payments – Comprehensive Coverage and Collision Coverage ..... 19</p>	<p style="padding-left: 20px;">Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage ..... 19</p> <p style="padding-left: 20px;">Limits – Car Rental and Travel Expenses Coverage ..... 20</p> <p style="padding-left: 20px;">Nonduplication ..... 20</p> <p style="padding-left: 20px;">Exclusions ..... 20</p> <p style="padding-left: 20px;">If Other Physical Damage Coverage or Similar Coverage Applies ..... 22</p> <p style="padding-left: 20px;">Financed Vehicle ..... 22</p> <p style="padding-left: 20px;">Our Payment Options ..... 23</p> <p><b>DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE</b> ..... 23</p> <p style="padding-left: 20px;">Additional Definitions ..... 23</p> <p style="padding-left: 20px;">Insuring Agreement ..... 23</p> <p style="padding-left: 20px;">Benefits ..... 24</p> <p style="padding-left: 20px;">Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage ..... 24</p> <p style="padding-left: 20px;">Our Payment Options– Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage ..... 25</p> <p><b>LOSS OF EARNINGS COVERAGE</b> ..... 24</p> <p style="padding-left: 20px;">Additional Definitions ..... 24</p> <p style="padding-left: 20px;">Insuring Agreement ..... 24</p> <p style="padding-left: 20px;">Limit ..... 24</p> <p style="padding-left: 20px;">Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage ..... 24</p> <p style="padding-left: 20px;">Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage ..... 25</p> <p><b>INSURED’S DUTIES</b> ..... 25</p> <p style="padding-left: 20px;">Notice to Us of an Accident or Loss ..... 25</p> <p style="padding-left: 20px;">Notice to Us of a Claim or Lawsuit ..... 25</p> <p style="padding-left: 20px;">Insured’s Duty to Cooperate With Us ..... 25</p> <p style="padding-left: 20px;">Questioning Under Oath ..... 26</p> <p style="padding-left: 20px;">Other Duties Under the Physical Damage Coverages ..... 26</p> <p style="padding-left: 20px;">Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage ..... 26</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>GENERAL TERMS</b> .....	27	Cancellation.....	29
When Coverage Applies .....	27	Assignment.....	30
Where Coverage Applies .....	27	Bankruptcy or Insolvency of the Insured .....	30
Limited Coverage in Mexico .....	27	Concealment or Fraud .....	30
Newly Owned or Newly Leased Car .....	28	False Statement of Residency.....	30
Changes to This Policy .....	28	Our Right to Recover Our Payments.....	30
Premium.....	28	Legal Action Against Us.....	30
Renewal .....	29	Choice of Law .....	31
Nonrenewal.....	29	Severability .....	31

### THIS POLICY

1. This policy consists of:
  - a. the most recently issued Declarations Page;
  - b. the policy booklet version shown on that Declarations Page; and
  - c. any endorsements that apply, including those listed on that Declarations Page as well as those issued in connection with any subsequent renewal of this policy.
2. This policy contains all of the agreements between all named insureds who are shown on the Declarations Page and all applicants and:
  - a. *us*; and
  - b. any of *our* agents.
3. *We* agree to provide insurance according to the terms of this policy:
  - a. based on payment of premium for the coverages chosen; and
  - b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET, & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:
    - (1) The named insured shown on the Declarations Page is an owner of *your car*.
    - (2) *Your car* is used for pleasure and business.
4. All named insureds shown on the Declarations Page and all applicants agree by acceptance of this policy that:
  - a. the statements in 3.b. above are made by such named insured or applicant and are true; and
  - b. *we* provide this insurance on the basis those statements are true.
5. *Your* purchase of this policy may allow:
  - a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or
  - b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies*, or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

### DEFINITIONS

*We* define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage. These definitions apply to the singular, plural, possessive, and any other form of these words and

phrases. Defined words and phrases are printed in boldface italics.

***Bodily Injury*** means bodily injury to a *person* and sickness, disease, or death that results from it.

**Car means:**

1. a self-propelled land motor vehicle with four or more wheels, designed for use primarily on public roads;
2. a motorcycle, motorbike, motorscooter, or similar two-wheel or three-wheel motor vehicle; and
3. an off-highway recreational vehicle that is registered pursuant to New Hampshire law but only while such vehicle is used on public roads.

**Car** does not include any vehicle while located for use as a dwelling or other premises.

**Car Business** means a business or job where the purpose is to sell, lease, rent, repair, service, modify, transport, store, or park land motor vehicles or any type of trailer.

**Newly Acquired Car** means a *car* newly owned by *you*. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by *us* or any other company that describes the *car* as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the *car* is delivered to *you*.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to *you*.

**Non-Owned Car** means a *car* that is in the lawful possession of *you* or any *resident relative* and that neither:

1. is **owned by**:
  - a. *you*;
  - b. any *resident relative*;
  - c. any other *person* who resides primarily in *your* household; or
  - d. an employer of any *person* described in a., b., or c. above; nor
2. has been operated by, rented by, or in the possession of:
  - a. *you*; or

b. any *resident relative*

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or *loss*.

**Occupying** means in, on, entering, or exiting.

**Our** means the Company issuing this policy as shown on the Declarations Page.

**Owned By** means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

**Pedestrian** means a *person* who is not *occupying*:

1. a motorized vehicle; or
2. a vehicle designed to be pulled by a motorized vehicle.

**Person** means a human being.

**Private Passenger Car** means:

1. a *car* of the private passenger type, other than a pickup truck, van, minivan, or sport utility vehicle, designed primarily to carry *persons* and their luggage; or
2. a pickup truck, van, minivan, or sport utility vehicle:
  - a. while not used for:
    - (1) wholesale; or
    - (2) retail pickup or delivery; and
  - b. that has a Gross Vehicle Weight Rating of 10,000 pounds or less.

**Resident Relative** means a *person*, other than *you*, who resides primarily with the first *person* shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured, his or her spouse, or a *person* described in 1. above.

**State Farm Companies** means one or more of the following:

1. State Farm Mutual Automobile Insurance Company;
2. State Farm Fire and Casualty Company; and
3. Subsidiaries or affiliates of either 1. or 2. above.

**Temporary Substitute Car** means a *car* that is in the lawful possession of the *person* operating it and that:

1. replaces *your car* for a short time while *your car* is out of use due to its:
  - a. breakdown;
  - b. repair;
  - c. servicing;
  - d. damage; or
  - e. theft; and
2. neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered either a *non-owned car* or a *temporary substitute car*, but not both. *We* will apply only the one definition under which *you* benefit the most.

**Trailer** means:

1. a trailer designed to be pulled by a *private passenger car*:
  - a. not designed to carry *persons*;
  - b. while not used as a dwelling; and
  - c. while not used as premises for office, store, or display purposes;
2. a trailer or semi-trailer:
  - a. designed for use primarily on public roads;
  - b. subject to motor vehicle registration;
  - c. while not used as a dwelling; and

- d. while not used as premises for office, store, or display purposes; or
3. a farm implement or farm wagon while being pulled on public roads by a *car*.

**Us** means the Company issuing this policy as shown on the Declarations Page.

**We** means the Company issuing this policy as shown on the Declarations Page.

**You** or **Your** means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "*you*" or "*your*" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured.

**Your Car** means the vehicle shown under "YOUR CAR" on the Declarations Page. **Your Car** does not include a vehicle that *you* no longer own or lease.

If a *car* is shown on the Declarations Page under "YOUR CAR", and *you* ask *us* to replace it with a *car* newly *owned by you*, then the *car* being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date the *car* newly *owned by you* is delivered to *you*;
2. the date this policy is no longer in force; or
3. the date *you* no longer own or lease the *car* being replaced.

## LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under "SYMBOLS" on the Declarations Page.

### Additional Definition

**Insured** means:

1. *you* and *resident relatives* for:
  - a. the ownership, maintenance, or use of:
    - (1) *your car*;
    - (2) a *newly acquired car*; or

- (3) a *trailer*; and
- b. the maintenance or use of:
  - (1) a *non-owned car*; or
  - (2) a *temporary substitute car*;
2. the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured for the maintenance or use of a *car* that is *owned by*, or furnished by an employer to, a

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- person* who resides primarily in *your* household, but only if such *car* is neither *owned by*, nor furnished by an employer to, the first *person* shown as a named insured on the Declarations Page or that *person's* spouse;
3. any other *person* for his or her use of:
    - a. *your car*;
    - b. a *newly acquired car*;
    - c. a *temporary substitute car*; or
    - d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used with *your* express or implied consent; and
  4. any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This provision applies only if the vehicle is neither *owned by*, nor hired by, that other *person* or organization.

*Insured* does not include the United States of America or any of its agencies.

#### Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:
  - a. *bodily injury* to others; and
  - b. damage to property caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.
2. *We* have the right to:
  - a. investigate, negotiate, and settle any claim or lawsuit;
  - b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
  - c. appeal any award or legal decision for damages payable under this policy's Liability Coverage.

#### Supplementary Payments

*We* will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:
  - a. that seeks damages payable under this policy's Liability Coverage; and
  - b. against which *we* defend an *insured* with attorneys chosen by *us*.

*We* have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:
  - a. before a judgment, but only the interest on the lesser of:
    - (1) that part of the damages *we* pay; or
    - (2) this policy's applicable Liability Coverage limit; and
  - b. after a judgment.

*We* have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
  - a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;
  - b. furnish or apply for any bonds; or
  - c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and
5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
  - a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
    - (1) an arbitration;
    - (2) a mediation; or
    - (3) a trial of a lawsuit; and
  - b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.



The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

#### Limits

The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage – Bodily Injury Limits – Each Person, Each Accident."

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *person* injured in any one accident, including all damages sustained by other *persons* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.

The Liability Coverage limit for damage to property is shown on the Declarations Page under "Liability Coverage – Property Damage Limit – Each Accident". The limit shown is the most *we* will pay for all damages resulting from damage to property in any one accident.

These Liability Coverage limits are the most *we* will pay regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

#### Nonduplication

*We* will not pay any damages or expenses under Liability Coverage that have already been paid under Uninsured Motor Vehicle Coverage or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*.

#### Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO INTENTIONALLY CAUSES *BODILY INJURY* OR DAMAGE TO PROPERTY;
2. OR FOR THAT *INSURED'S* INSURER FOR ANY OBLIGATION UNDER ANY TYPE OF WORKERS' COMPENSATION, DISABILITY, OR SIMILAR LAW;
3. FOR *BODILY INJURY* TO THAT *INSURED'S* EMPLOYEE WHICH ARISES OUT OF THAT EMPLOYEE'S EMPLOYMENT. This exclusion does not apply to that *insured's* household employee who is neither covered, nor required to be covered, under workers' compensation insurance;

4. FOR *BODILY INJURY* TO THAT *INSURED'S* FELLOW EMPLOYEE WHILE THE FELLOW EMPLOYEE IS IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT. This exclusion does not apply to *you* and *resident relatives* who are legally liable for *bodily injury* to fellow employees;
5. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
6. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
7. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply to:
  - a. *you*;
  - b. any *resident relative*; or
  - c. any agent, employee, or business partner of a. or b. abovewhile maintaining or using *your car*, a *newly acquired car*, a *temporary substitute car*, or a *trailer owned by you*;
8. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
9. WHILE MAINTAINING OR USING ANY VEHICLE OTHER THAN *YOUR CAR*, A *NEWLY ACQUIRED CAR*, A *TEMPORARY SUBSTITUTE CAR*, OR A *TRAILER* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
10. FOR DAMAGE TO PROPERTY WHILE IT IS:
  - a. *OWNED BY*;
  - b. *RENTED TO*;
  - c. *USED BY*;
  - d. *IN THE CARE OF*; OR
  - e. *TRANSPORTED BY*THAT *INSURED*. This exclusion does not apply to damage to a:
  - a. motor vehicle *owned by* the employer of *you* or any *resident relative* if such damage is caused by an *insured* while operating another motor vehicle;

- b. residence while rented to or leased to an *insured*; or
  - c. private garage while rented to or leased to an *insured*;
11. FOR LIABILITY ASSUMED UNDER ANY CONTRACT OR AGREEMENT. This exclusion does not apply to liability that would otherwise be covered under the Liability Coverage in the absence of such contract or agreement;
  12. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
  13. WHILE USING A *TRAILER* WITH A MOTOR VEHICLE IF THAT *INSURED* IS NOT PROVIDED LIABILITY COVERAGE BY THIS POLICY FOR THE USE OF THAT MOTOR VEHICLE;
  14. FOR THE OWNERSHIP, MAINTENANCE, OR USE OF ANY VEHICLE WHILE IT IS:
    - a. OFF PUBLIC ROADS AND BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
    - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
  15. WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY; OR
  16. EXCEPT AS TO THE MINIMUM FINANCIAL RESPONSIBILITY LIMITS, WHILE OPERATING A VEHICLE, IF THAT *INSURED'S* DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.
2. The Liability Coverage provided by this policy applies as primary coverage for the ownership, maintenance, or use of *your car* or a *trailer* attached to it.
    - a. If:
      - (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as primary coverage; and
      - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,
 

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as primary coverage.
    - b. If:
      - (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as primary coverage; and
      - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,
 

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as primary coverage.
  3. Except as provided in 2. above, the Liability Coverage provided by this policy applies as excess coverage.
    - a. If:
      - (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as excess coverage; and
      - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,
 

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as excess coverage.

**If Other Liability Coverage Applies**

1. If Liability Coverage provided by this policy and one or more other Car Policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same accident, then:
  - a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
  - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.

- b. If:
- (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as excess coverage; and
  - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as excess coverage.

#### Required Out-of-State Liability Coverage

If:

1. an *insured* is in another state of the United States of America, a territory or possession of the United States of America, the District of Columbia, or any province or territory of Canada, and as a nonresident becomes subject to its motor vehicle compulsory insurance law, financial responsibility law, or similar law; and
2. this policy does not provide at least the minimum liability coverage required by such law for such nonresident,

then this policy will be interpreted to provide the minimum liability coverage required by such law.

This provision does not apply to liability coverage required by law for motor carriers of passengers or motor carriers of property.

#### Financial Responsibility Certification

When this policy is certified under any law as proof of future financial responsibility, and while required during the policy period, this policy will comply with such law to the extent required.

#### NEW HAMPSHIRE STATUTORY LIABILITY COVERAGE FOR CHAUFFEURS AND DOMESTIC SERVANTS

If *your* chauffeur or domestic servant is not an *insured* by definition under Liability Coverage of this policy, then the Liability Coverage of this policy extends to *your* chauffeur or domestic servant acting within the scope of that employment as *your* chauffeur or domestic servant, but only if all of the following apply:

1. that chauffeur or domestic servant is using any motor vehicle, trailer, or semi-trailer other than *your car*;
2. the accident occurs in the state of New Hampshire; and
3. no other liability coverage applies to that chauffeur or domestic servant.

#### MEDICAL PAYMENTS COVERAGE

This policy provides Medical Payments Coverage if "C" is shown under "SYMBOLS" on the Declarations Page.

#### Additional Definitions

*Insured* means:

1. *you* and *resident relatives*:
  - a. while *occupying*:
    - (1) *your car*;
    - (2) a *newly acquired car*;
    - (3) a *temporary substitute car*;
    - (4) a *non-owned car*; or
    - (5) a *trailer* while attached to a *car* described in (1), (2), (3), or (4) above; or

- b. if struck as a *pedestrian* by a motor vehicle or any type of trailer; and

2. any other *person* while *occupying*:

- a. *your car*;
- b. a *newly acquired car*;
- c. a *temporary substitute car*; or
- d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used with *your* express or implied consent.

*Medical Expenses* mean *reasonable expenses* for *medical services*.

*Medical Services* mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the *bodily injury*;
2. rendered by a healthcare provider:
  - a. who is licensed as a healthcare provider if a license is required by law; and
  - b. within the legally authorized scope of that healthcare provider's practice;
3. commonly and customarily recognized throughout the medical profession and within the United States of America as appropriate for the treatment of the *bodily injury*;
4. primarily designed to serve a medical purpose;
5. not experimental; and
6. not for research purposes.

*Reasonable Expenses* mean reasonable fees in the geographic area where medical services are provided. Such charges may be limited to the lowest of:

1. Provided the healthcare provider does not have a right to bill the *insured* for any balance, the fee specified in any fee schedule:
  - a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where *medical services* are provided; and
  - b. as prescribed or authorized by the law of the state where *medical services* are provided;
2. The fees agreed to by both the *insured's* healthcare provider and *us*; or
3. The fees agreed upon between the *insured's* healthcare provider and a third party when *we* have a contract with such third party.

#### **Insuring Agreement**

*We* will pay:

1. *medical expenses* incurred because of *bodily injury* that is sustained by an *insured* and caused by a motor vehicle accident if such *medical expenses* are for *medical services* that are provided within three years immediately following the date of the accident; and
2. funeral expenses incurred for an *insured* who dies within three years immediately following the date of a motor vehicle accident if the death is a direct result of *bodily injury* sustained in such accident.

#### **Determining Medical Expenses**

*We* have the right to:

1. obtain and use:
  - a. utilization reviews;
  - b. peer reviews; and

- c. medical bill reviews to determine if the incurred charges are *medical expenses*;
2. use a medical examination of the *insured* to determine if:
  - a. the *bodily injury* was caused by a motor vehicle accident; and
  - b. the expenses incurred are *medical expenses*; and
3. enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

#### **Arbitration**

1. If there is a disagreement as to whether incurred charges are *medical expenses*, then the disagreement will be resolved by arbitration upon written request of the *insured* or *us*.
2. The arbitration will take place in the county in which the *insured* resides unless the parties agree to another location.

The *insured* and *we* will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the *insured* or *we* may petition a court that has jurisdiction to select the third arbitrator.

Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.

3. The arbitrators shall only decide whether incurred charges are *medical expenses*. Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
  - a. *us*;
  - b. the *insured*;
  - c. any assignee of the *insured*; and
  - d. any *person* or organization with whom the *insured* expressly or impliedly contracts for *medical services*.

5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. *We* do not waive any of *our* rights by submitting to arbitration.

**Limit**

The Medical Payments Coverage limit is shown on the Declarations Page under "Medical Payments Coverage – Limit – Each Person". This limit is the most *we* will pay for the *medical expenses* and funeral expenses combined, incurred by or on behalf of any one *insured* as a result of any one accident, regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Subject to the limit shown on the Declarations Page, the most *we* will pay for funeral expenses incurred for any one *insured* is \$3,000.

**Nonduplication**

*We* will not pay any *medical expenses* or funeral expenses under Medical Payments Coverage that have already been paid under a health insurance policy.

**Exclusions**

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO IS STRUCK AS A *PEDESTRIAN* BY A MOTOR VEHICLE, *OWNED BY THAT INSURED* OR *YOU*, IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*;
2. IF ANY WORKERS' COMPENSATION LAW OR ANY SIMILAR LAW APPLIES TO THAT *INSURED'S BODILY INJURY*;
3. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
4. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to:
  - a. the use of a *private passenger car* on a share-the-expense basis; or
  - b. an *insured* while *occupying a non-owned car* as a passenger;

5. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply to:

- a. *you*;
- b. any *resident relative*; or
- c. any agent, employee, or business partner of a. or b. above

while maintaining or using *your car*, a *newly acquired car*, a *temporary substitute car*, or a *trailer owned by you*;

6. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
7. WHILE MAINTAINING OR USING A *NON-OWNED CAR* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
8. WHO IS EITHER *OCCUPYING* OR STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
9. WHO IS STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT:
  - a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
  - b. RUNS ON RAILS OR CRAWLER-TREADS;
10. WHOSE *BODILY INJURY* RESULTS FROM WAR OF ANY KIND;
11. WHOSE *BODILY INJURY* RESULTS FROM:
  - a. NUCLEAR REACTION;
  - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
  - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
12. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS:
  - a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST,

HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST;  
OR

- b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (12.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving; OR
13. WHILE OPERATING A VEHICLE, IF THAT **INSURED'S** DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.

**If Other Medical Payments Coverage or Similar Vehicle Insurance Applies**

- 1. An *insured* shall not recover for the same *medical expenses* or funeral expenses under both this coverage and other medical payments coverage or similar vehicle insurance.
- 2. If Medical Payments Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
  - a. the Medical Payments Coverage limits of such policies shall not be added together to determine the most that may be paid; and
  - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 3. The Medical Payments Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car* or a *trailer* attached to it.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage

or similar vehicle insurance that apply as primary coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and funeral expenses payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

- 4. Except as provided in 3. above, the Medical Payments Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and funeral expenses payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

#### Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*;
4. A *person* authorized by law to receive such payment; or
5. Any *person* or organization that provides the *medical services* or funeral services.

### UNINSURED MOTOR VEHICLE COVERAGE

This policy provides Uninsured Motor Vehicle Coverage if "U" is shown under "SYMBOLS" on the Declarations Page.

#### Additional Definitions

*Insured* means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
  - a. *your car*;
  - b. a *newly acquired car*; or
  - c. a *temporary substitute car*.

Such vehicle must be used with *your* express or implied consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

*Uninsured Motor Vehicle* means a land motor vehicle:

1. the ownership, maintenance, and use of which is:
  - a. not insured, self-insured, or bonded for bodily injury liability at the time of the accident; or
  - b. insured, self-insured, or bonded for bodily injury liability at the time of the accident; but
    - (1) the limits are less than required by the financial responsibility law of New Hampshire; or

- (2) the insuring company:

- (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or
- (b) is declared insolvent by a court of competent jurisdiction; or

- (3) the total limits of insurance, bonds, and self-insurance for bodily injury liability from all sources:

- (a) are less than the Uninsured Motor Vehicle Coverage limits of this policy; or
- (b) have been reduced by payments to *persons* other than *you* and *resident relatives* to less than the Uninsured Motor Vehicle Coverage limits of this policy; or

2. the owner and driver of which remain unknown and which causes *bodily injury* to an *insured*.

*Uninsured Motor Vehicle* does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or furnished or available for the regular use of *you*;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads except while on public roads; or

5. while located for use as a dwelling or other premises.

#### **Insuring Agreement**

*We* will pay compensatory damages for **bodily injury** an *insured* is legally entitled to recover from the owner or driver of an **uninsured motor vehicle**. The **bodily injury** must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an **uninsured motor vehicle** as a motor vehicle.

*We* will also pay compensatory damages for injury to or destruction of property an *insured* is legally entitled to recover from the owner or driver of an **uninsured motor vehicle**, but only when the liability insurer for the owner or driver of that **uninsured motor vehicle** has been declared to be insolvent by a court of competent jurisdiction.

#### **Consent to Settlement**

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the **uninsured motor vehicle**, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the **uninsured motor vehicle**.

#### **Deciding Fault and Amount**

1. a. The *insured* and *we* must agree to the answers to the following two questions:
  - (1) Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the **uninsured motor vehicle**?
  - (2) If the *insured* and *we* agree that the answer to 1.a.(1) above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the **uninsured motor vehicle**?

- b. If there is no agreement on the answer to either question in 1.a. above, then the *insured* shall:

- (1) file a lawsuit, in a state or federal court that has jurisdiction, against:
  - (a) *us*;
  - (b) the owner and driver of the **uninsured motor vehicle** unless *we* have consented to a settlement offer proposed by or on behalf of such owner or driver; and
  - (c) any other party or parties who may be legally liable for the *insured's* damages;
- (2) consent to a jury trial if requested by *us*;
- (3) agree that *we* may contest the issues of liability and the amount of damages; and
- (4) secure a judgment in that action. The judgment must be the final result of an actual trial and any appeals, if any appeals are taken.

2. *We* are not bound by any:

- a. judgment obtained without *our* written consent; and
- b. default judgment against any *person* or organization other than *us*.

3. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

#### **Limits**

The Uninsured Motor Vehicle Coverage limits are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from **bodily injury** to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that **bodily injury**. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from **bodily injury** to two or more *insureds* injured in the same accident.

The most *we* will pay for all damages resulting from injury to or destruction of property for all *insureds* in any one accident is \$25,000.

These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:

1. *insureds*;



2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

**Nonduplication**

*We* will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that have already been paid to or for the *insured*:
  - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
  - b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. that:
  - a. have already been paid;
  - b. could have been paid; or
  - c. could be paid

to or for the *insured* under any workers' compensation law, disability benefits law, or similar law.

**Exclusions**

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.  
 This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;
3. TO THE EXTENT IT BENEFITS:
  - a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY;

- b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;

4. FOR PUNITIVE OR EXEMPLARY DAMAGES; OR
5. FOR AN *INSURED* WHILE OPERATING A VEHICLE, IF THAT *INSURED'S* DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.

**If Other Uninsured Motor Vehicle Coverage Applies**

1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
  - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
  - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
  - a. If:
    - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
    - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other

than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

#### **Our Payment Options**

*We* may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

### **PHYSICAL DAMAGE COVERAGES**

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

This policy provides:

1. Comprehensive Coverage if "D";
2. Collision Coverage if "G";
3. Emergency Road Service Coverage if "H";
4. Car Rental and Travel Expenses Coverage if "R1"

is shown under "SYMBOLS" on the Declarations Page.

If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

#### **Additional Definitions**

**Covered Vehicle** means:

1. *your car*;
2. *a newly acquired car*;
3. *a temporary substitute car*;

4. a camper that is designed to be mounted on a pickup truck and shown on the Declarations Page;
5. a *non-owned car* while it is:
  - a. being driven by an *insured*; or
  - b. in the custody of an *insured* if at the time of the *loss* it is:
    - (1) not being driven; or
    - (2) being driven by a *person* other than an *insured* and being *occupied* by an *insured*;
6. a *non-owned trailer* while it is being used by an *insured*; and
7. a *non-owned camper* while it is being used by an *insured*;

including its parts and its equipment that are common to the use of the vehicle as a vehicle. However, parts and equipment of *trailers* and campers must be securely fixed as a permanent part of the *trailer* or camper.

**Daily Rental Charge** means the sum of:

1. the daily rental rate;
2. mileage charges; and
3. related taxes.

**Insured** means *you* and *resident relatives*.

**Loss** means:

1. direct, sudden, and accidental damage to; or
2. total or partial theft of

a *covered vehicle*. *Loss* does not include any reduction in the value of any *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

**Loss Caused By Collision** means a *loss* caused by:

1. a *covered vehicle* hitting or being hit by another vehicle or another object; or
2. the overturning of a *covered vehicle*.

Any *loss* caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal is not a **Loss Caused By Collision**.

**Non-Owned Camper** means a camper designed to be mounted on a pickup truck that is in the lawful possession of an *insured* and that neither:

1. is *owned by*:
  - a. an *insured*;

- b. any other *person* who resides primarily in *your* household; or
  - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

**Non-Owned Trailer** means a *trailer* that is in the lawful possession of an *insured* and that neither:

1. is *owned by*:
  - a. an *insured*;
  - b. any other *person* who resides primarily in *your* household; or
  - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

**Uninsured Motor Vehicle** means a motor vehicle that is:

1. not insured under any insurance policy;
2. an insured motor vehicle for which the insurer is unable to make payment within the insured liability limits due to insolvency; or
3. an insured motor vehicle that at the time of the accident had limits of liability insurance that were lower than the minimum liability limits required for a motor vehicle liability policy pursuant to applicable law.

**Insuring Agreements**

1. **Comprehensive Coverage**

*We* will pay:

- a. for *loss*, except *loss caused by collision*, to a *covered vehicle*; and
- b. transportation expenses incurred by an *insured* as a result of the total theft of *your car* or a *newly acquired car*. These transportation expenses are payable:
  - (1) during the period that:
    - (a) starts on the date *you* report the theft to *us*; and
    - (b) ends on the earliest of:
      - (i) the date the vehicle is returned to *your* possession in a drivable condition;
      - (ii) the date *we* offer to pay for the *loss* if the vehicle has not yet been recovered; or

(iii) the date *we* offer to pay for the *loss* if the vehicle is recovered, but is a total loss as determined by *us*; and

(2) during the period that:

- (a) starts on the date the vehicle is left at a repair facility if the stolen vehicle is recovered, returned to *your* possession in a drivable condition, and has unrepaired damage that resulted from the total theft; and
- (b) ends on the date the vehicle is repaired.

These transportation expenses must be reported to *us* before *we* will pay such incurred expenses.

## 2. Collision Coverage

*We* will pay for *loss caused by collision* to a *covered vehicle*.

The deductible shall not apply if:

- a. the *loss* is caused by an *uninsured motor vehicle*;
- b. the operator of the *uninsured motor vehicle* has been positively identified; and
- c. the operator of the *uninsured motor vehicle* is solely at fault.

## 3. Emergency Road Service Coverage

*We* will pay the fair cost incurred by an *insured* for:

- a. up to one hour of labor to repair a *covered vehicle* at the place of its breakdown;
- b. towing to the nearest repair facility where necessary repairs can be made if a *covered vehicle* is not drivable;
- c. towing a *covered vehicle* out of a location where it is stuck if the vehicle is on or immediately next to a public road;
- d. delivery of gas, oil, battery, or tire necessary to return a *covered vehicle* to driving condition. *We* do not pay the cost of the gas, oil, battery, or tire; and
- e. up to one hour of labor for locksmith services to unlock a *covered vehicle* if its key is lost, stolen, or locked inside the vehicle.

## 4. Car Rental and Travel Expenses Coverage

### a. Car Rental Expense

*We* will pay the *daily rental charge* incurred when *you* rent a *car* from a *car*

*business* while *your car* or a *newly acquired car* is:

- (1) not drivable; or
- (2) being repaired

as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage.

*We* will pay this *daily rental charge* incurred during a period that:

(1) starts on the date:

- (a) the vehicle is not drivable as a result of the *loss*; or
- (b) the vehicle is left at a repair facility if the vehicle is drivable; and

(2) ends on the earliest of:

- (a) the date the vehicle has been repaired or replaced;
- (b) the date *we* offer to pay for the *loss* if the vehicle is repairable but *you* choose to delay repairs; or
- (c) five days after *we* offer to pay for the *loss* if the vehicle is:
  - (i) a total loss as determined by *us*; or
  - (ii) stolen and not recovered.

The amount of any such *daily rental charge* incurred by *you* must be reported to *us* before *we* will pay such amount.

### b. Travel Expenses

*We* will pay expenses for commercial transportation, lodging, and meals if *your car* or a *newly acquired car* is not drivable as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage. The *loss* must occur more than 50 miles from *your* home. *We* will only pay these expenses if they are incurred by:

(1) an *insured* during the period that:

- (a) starts after the *loss* occurs; and
- (b) ends on the earlier of:
  - (i) the *insured's* arrival at his or her destination or home if the vehicle is left behind for repairs; or
  - (ii) the repair of the vehicle if the *insured* waits for repairs before continuing on to his or her destination or returning home; and

- (2) *you*, or any *person you* choose, to travel to retrieve the vehicle and drive it to either the original destination or *your* home if the vehicle was left behind for repairs.

These expenses must be reported to *us* before *we* will pay such incurred expenses.

c. **Rental Car – Repayment of Deductible Expense**

*We* will pay the comprehensive coverage deductible or collision coverage deductible an *insured* is required to pay the owner of a *car* rented from a *car business*.

**Supplementary Payments – Comprehensive Coverage and Collision Coverage**

If the *covered vehicle* sustains *loss* for which *we* make a payment under Comprehensive Coverage or Collision Coverage, then *we* will pay reasonable expenses incurred to:

1. tow the *covered vehicle* immediately after the *loss*:
  - a. for a reasonable distance from the location of the *loss* to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable; or
  - b. to any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*. *We* will also pay reasonable expenses incurred to tow the *covered vehicle* for a reasonable distance from this facility to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable;
2. store the *covered vehicle*, if it is not drivable immediately after the *loss*, at:
  - a. any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*; and
  - b. any one repair facility chosen by the owner of the *covered vehicle*, and *we* determine such vehicle is a total loss.

If the owner of the *covered vehicle* consents, then *we* may move the *covered vehicle* at *our* expense to reduce storage costs. If the owner of the *covered vehicle* does not consent, then *we* will pay only the storage costs that would have resulted if *we* had moved the damaged *covered vehicle*; and

3. clean up debris from the *covered vehicle* at the location of the *loss*. The most *we* will pay to clean up the debris is \$250 for any one *loss*.

**Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage**

1. *We* have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

- a. Pay the cost to repair the *covered vehicle* minus any applicable deductible.

- (1) *We* have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

- (a) The cost agreed to by both the owner of the *covered vehicle* and *us*;

- (b) A bid or repair estimate approved by *us*; or

- (c) A repair estimate that is written based upon or adjusted to:

- (i) the prevailing competitive price;

- (ii) the lower of the price agreed to by both the *insured's* paintless dent repair provider and either *us* or a third party *we* have a contract with, or the paintless dent repair price that is competitive in the market; or

- (iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the *covered vehicle* is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the *covered vehicle* to its pre-loss condition.

*You* agree with *us* that the repair estimate may include new, used, recycled, and reconditioned parts. To the extent not prohibited by New Hampshire laws or regulations, any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

*You* also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- (2) The cost to repair the *covered vehicle* does not include any reduction in the value of the *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

- (3) If the repair or replacement of a part results in betterment of that part, then *you* or the owner of the *covered vehicle* must pay for the amount of the betterment.
  - (4) If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
- b. Pay the actual cash value of the *covered vehicle* minus any applicable deductible.
- (1) The owner of the *covered vehicle* and *we* must agree upon the actual cash value of the *covered vehicle*. The actual cash value of the *covered vehicle* will be determined in accordance with New Hampshire laws and regulations. If there is disagreement as to the actual cash value of the *covered vehicle*, then the disagreement will be resolved by appraisal upon written request of the owner or *us*, using the following procedures:
    - (a) The owner and *we* will each select a competent appraiser.
    - (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or *we* may petition a court that has jurisdiction to select the third appraiser.
    - (c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.
    - (d) The appraisers shall only determine the actual cash value of the *covered vehicle*. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.
    - (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the *covered vehicle* and *us*.
    - (f) *We* do not waive any of *our* rights by submitting to an appraisal.
  - (2) The damaged *covered vehicle* must be given to *us* in exchange for *our* payment, unless *we* agree that the owner may keep it. If the owner keeps the *covered vehicle*, then *our* payment will be reduced by the value of the *covered vehicle* after the *loss*; or
  - c. Return the stolen *covered vehicle* to its owner and pay, as described in 1.a. above, for any direct, sudden, and accidental damage that resulted from the theft.
2. The most *we* will pay for transportation expenses under Comprehensive Coverage is \$25 per day subject to an aggregate limit of \$750 per *loss*.
  3. The most *we* will pay for *loss* to a *non-owned trailer* or a *non-owned camper* is \$2,500.
- Limits – Car Rental and Travel Expenses Coverage**
1. **Car Rental Expense**  
 The limit for Car Rental Expense is shown on the Declarations Page under “Limit – Car Rental Expense – Each Day, Each Loss”.
    - a. The limit shown under “Each Day” is the most *we* will pay for the *daily rental charge*. If:
      - (1) a dollar amount is shown, then *we* will pay the *daily rental charge* up to that dollar amount;
      - (2) a percentage amount is shown, then *we* will pay that percentage of the *daily rental charge*.
    - b. Subject to the “Each Day” limit, the limit shown under “Each Loss” is the most *we* will pay for Car Rental Expense incurred as a result of any one *loss*.
  2. **Travel Expenses**  
 The most *we* will pay for Travel Expenses incurred by all *insureds* as a result of any one *loss* is \$500.
  3. **Rental Car – Repayment of Deductible Expense**  
 The most *we* will pay for Rental Car – Repayment of Deductible Expense incurred as a result of any one *loss* is \$500.
- Nonduplication**  
*We* will not pay for any *loss* or expense under the Physical Damage Coverages for which the *insured* or owner of the *covered vehicle* has already received payment from, or on behalf of, a party who is legally liable for the *loss* or expense.
- Exclusions**  
 THERE IS NO COVERAGE FOR:
1. ANY **COVERED VEHICLE** THAT IS:
    - a. INTENTIONALLY DAMAGED; OR
    - b. STOLEN;

- BY OR AT THE DIRECTION OF AN **INSURED**;
2. ANY **COVERED VEHICLE** WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN **INSURED**;
  3. ANY **COVERED VEHICLE** WHILE IT IS USED TO CARRY **PERSONS** FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
  4. ANY **COVERED VEHICLE** DUE TO:
    - a. THEFT;
    - b. CONVERSION;
    - c. EMBEZZLEMENT; OR
    - d. SECRETION

BY AN **INSURED**, A CONSIGNEE, AN AGENT OF A CONSIGNEE, OR A **PERSON** WHO OBTAINS POSSESSION OF THE **COVERED VEHICLE** WITH THE PERMISSION OF A CONSIGNEE OR AGENT OF A CONSIGNEE. This exclusion does not apply to the extent of the interest of an *insured* who had no knowledge of or participation in the theft, conversion, embezzlement, or secretion;
  5. **LOSS TO YOUR CAR OR A NEWLY ACQUIRED CAR** IF AN **INSURED** VOLUNTARILY RELINQUISHES POSSESSION OF THAT **CAR** TO A **PERSON** OR ORGANIZATION UNDER AN ACTUAL OR PRESUMED SALES AGREEMENT;
  6. ANY **COVERED VEHICLE** TO THE EXTENT **OUR** PAYMENT WOULD BENEFIT ANY CARRIER OR OTHER BAILEE FOR HIRE THAT IS LIABLE FOR **LOSS** TO SUCH **COVERED VEHICLE**;
  7. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM:
    - a. NUCLEAR REACTION;
    - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
    - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
  8. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM THE TAKING OF OR SEIZURE OF THAT **COVERED VEHICLE** BY ANY GOVERNMENTAL AUTHORITY;
  9. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM WAR OF ANY KIND;
  10. **YOUR CAR** WHILE SUBJECT TO ANY:
    - a. LIEN AGREEMENT;
    - b. RENTAL AGREEMENT;
    - c. LEASE AGREEMENT; OR
    - d. SALES AGREEMENT

NOT SHOWN ON THE DECLARATIONS PAGE;
  11. ANY **NON-OWNED CAR** WHILE IT IS:
    - a. BEING MAINTAINED OR USED BY ANY **PERSON** WHILE THAT **PERSON** IS EMPLOYED IN OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**; OR
    - b. USED IN ANY BUSINESS OR OCCUPATION OTHER THAN A **CAR BUSINESS**. This exclusion (11.b.) does not apply to a *private passenger car*;
  12. ANY PART OR EQUIPMENT OF A **COVERED VEHICLE** IF THAT PART OR EQUIPMENT:
    - a. FAILS OR IS DEFECTIVE; OR
    - b. IS DAMAGED AS A DIRECT RESULT OF:
      - (1) WEAR AND TEAR;
      - (2) FREEZING; OR
      - (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION

OF THAT PART OR EQUIPMENT.

This exclusion does not apply if the *loss* is the result of theft of the *covered vehicle*;
  13. ANY PART OR EQUIPMENT:
    - a. THAT IS NOT LEGAL FOR USE IN OR ON THE **COVERED VEHICLE** IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED; OR
    - b. THE USE OF WHICH IS NOT LEGAL IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED BECAUSE OF HOW OR WHERE THAT PART OR EQUIPMENT IS INSTALLED IN OR ON THE **COVERED VEHICLE**.

However, if there is a legal version of the part or equipment that is necessary for the safe operation of the *covered vehicle*, then *we* will pay the cost that *we* would otherwise have paid to repair the vehicle with the legal version of the part or equipment. *We* will not pay any cost necessary to modify the vehicle for installation of the legal version of the part or equipment;

14. TIRES. This exclusion does not apply if:
  - a. *loss* is caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal; or
  - b. *loss caused by collision* to another part of the *covered vehicle* causes *loss* to tires;
15. REMOVABLE PRODUCTS USED FOR STORAGE OF AUDIO, VIDEO, OR OTHER DATA, INCLUDING BUT NOT LIMITED TO TAPES, DISCS, AND MEMORY CARDS, NOR IS THERE COVERAGE FOR THE RECONSTRUCTION OF DATA CONTAINED THEREIN;
16. ANY EQUIPMENT USED TO DETECT OR INTERFERE WITH SPEED MEASURING DEVICES;
17. A CAMPER, INCLUDING ITS PARTS AND ITS EQUIPMENT, THAT IS:
  - a. DESIGNED TO BE MOUNTED ON A PICKUP TRUCK;
  - b. **OWNED BY AN INSURED**; AND
  - c. NOT SHOWN ON THE DECLARATIONS PAGE; OR
18. ANY **COVERED VEHICLE** WHILE IT IS:
  - a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
  - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (18.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

**If Other Physical Damage Coverage or Similar Coverage Applies**

1. If the same *loss* or expense is payable under more than one of the physical damage coverages provided by this policy, then only the one coverage that pays the most for that *loss* or expense applies.

2. If any of the physical damage coverages provided by this policy and one or more other policies issued to an *insured* by the *State Farm Companies* apply to the same *loss* or expense, then only one policy applies. *We* will select a policy that pays the most for the *loss* or expense.

3. The physical damage coverages provided by this policy apply as primary coverage for a *loss* to *your car*.

If similar coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same *loss* or expense, then the *State Farm Companies* will pay the proportion of the *loss* or expense payable as primary that the maximum amount that may be paid by the *State Farm Companies* bears to the sum of such amount and the limits of all other similar coverage that applies as primary coverage.

4. Except as provided in 3. above, the physical damage coverages provided by this policy apply as excess coverage.

If similar coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same *loss* or expense, then the *State Farm Companies* will pay the proportion of the *loss* or expense payable as excess that the maximum amount that may be paid by the *State Farm Companies* bears to the sum of such amount and the limits of all other similar coverage that applies as excess coverage.

**Financed Vehicle**

1. If a creditor is shown on the Declarations Page, then any Comprehensive Coverage or Collision Coverage provided by this policy applies to that creditor's interest in *your car*. Coverage for the creditor's interest is only provided for a *loss* that is payable to *you*. If a *loss* is not payable in part or whole due to:

- a. General Terms provision 12. Concealment or Fraud; or
- b. Exclusion 4. of Physical Damage Coverages, then that will not exclude coverage for the creditor's interest.

However, if this policy is cancelled or nonrenewed, then *we* will provide coverage for the creditor's interest until *we* notify the creditor of the termination of such coverage. This coverage for the creditor's interest is only provided for a *loss* that would have been payable under any Comprehensive Coverage or Collision Coverage provided by this policy, if this policy had not been cancelled or nonrenewed. The



date such termination is effective will be at least 10 days after the date *we* mail or electronically transmit a notice of the termination to the creditor.

2. If *we* pay such creditor, then *we* are entitled to the creditor's right of recovery against *you* to the extent of *our* payment. If a *loss* was not payable in part or whole due to:
  - a. General Terms provision 12. Concealment or Fraud; or
  - b. Exclusion 4. of Physical Damage Coverages, then *our* entitlement does not apply to a party who had no knowledge of or participation in the activity described in General Terms provision 12. or Exclusion 4. *Our* right of recovery does not impair the creditor's right to recover the full amount of its claim.

#### Our Payment Options

1. **Comprehensive Coverage and Collision Coverage**
  - a. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle owned by you*:

- (1) *You*;
  - (2) The repairer; or
  - (3) A creditor shown on the Declarations Page, to the extent of its interest.
- b. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle not owned by you*:
    - (1) *You*;
    - (2) The owner of such vehicle;
    - (3) The repairer; or
    - (4) A creditor, to the extent of its interest.

2. **Emergency Road Service Coverage and Car Rental and Travel Expenses Coverage**

*We* may, at *our* option, make payment to one or more of the following:

- a. *You*;
- b. The *insured* who incurred the expense; or
- c. Any party that provided the service for which payment is owed.

### DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE (This Is Not Life, Accident, Or Health Insurance Coverage, as defined by NH Rule 1901.06(k))

**DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE (This Is Not Life, Accident, Or Health Insurance Coverage, as defined by NH Rule 1901.06(k))**

This policy provides Death, Dismemberment and Loss of Sight Coverage if "S" is shown under "SYMBOLS" on the Declarations Page. This is not life, accident, or health insurance coverage.

#### Additional Definitions

*Insured* means a *person* whose name is shown under "Death, Dismemberment and Loss of Sight Coverage – Persons Insured" on the Declarations Page.

*Dismemberment* means:

1. The hand must be cut off through or above the wrist;
2. The foot must be cut off through or above the ankle; or
3. The whole thumb or finger must be cut off.

#### Insuring Agreement

1. *We* will pay the highest applicable benefit described below under **Benefits** if an *insured*:

- a. dies; or
- b. suffers *dismemberment* or permanent loss of sight, as described under **Benefits**

as the direct result of an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause.

2. The *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer at the time of the accident. The death, *dismemberment*, or permanent loss of sight must occur within 90 days immediately following the date of the accident.
3. The applicable benefit described below is the most *we* will pay for any one *insured* in any one accident. Any benefit paid or payable for *dismemberment* or permanent loss of sight reduces the death benefit.
4. The **Benefits** described below are doubled for an *insured* who at the time of the accident was *occupying a private passenger car* and using a seat belt in the manner recommended by the vehicle's manufacturer.

## Benefits

1. If the amount shown on the Declarations Page for the *insured* is \$5,000, then *we* will pay the applicable benefit shown below for death or for the described *dismemberment* or permanent loss of sight; if:
  - a. Death, then \$5,000.
  - b. Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye, then \$5,000.
  - c. Loss of one hand or one foot; or all sight of one eye, then \$2,500.
  - d. Loss of the thumb and a finger on one hand; or any three fingers, then \$1,500.
  - e. Loss of any two fingers, then \$1,000.
2. If the amount shown on the Declarations Page for the *insured* is \$10,000, then *we* will pay the applicable benefit shown below for death or for the described *dismemberment* or permanent loss of sight; if:
  - a. Death, then \$10,000.
  - b. Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye, then \$10,000.
  - c. Loss of one hand or one foot; or all sight of one eye, then \$5,000.
  - d. Loss of the thumb and a finger on one hand; or any three fingers, then \$3,000.
  - e. Loss of any two fingers, then \$2,000.

### LOSS OF EARNINGS COVERAGE (This Is Not Life, Accident, Or Health Insurance Coverage, as defined by NH Rule 1901.06(k))

This policy provides Loss of Earnings Coverage if "Z" is shown under "SYMBOLS" on the Declarations Page. This is not life, accident, or health insurance coverage.

#### Additional Definitions

*Insured* means a *person* whose name is shown under "Loss of Earnings Coverage – Persons Insured" on the Declarations Page.

*Total Disability* means the *insured's* inability to work, either full or part time, in his or her occupation or any other similar occupation for which he or she is reasonably fitted by education, training, or experience.

*Weekly Earnings* means 85% of all earnings for the *insured's* services before any deductions. When *weekly earnings* cannot be determined on a weekly

basis an average will be used. The average is 85% of the total earnings for the 52 weeks just prior to the accident divided by 52.

#### Insuring Agreement

*We* will pay the *insured* his or her loss of *weekly earnings*, which occur while the *insured* is living, due to continuous *total disability* that:

1. is the direct result of *bodily injury* caused by an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause. At the time of the accident, the *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer; and
2. starts within 20 days immediately following the date of the accident and lasts for a period of at least 30 consecutive days. *We* will not pay for the first seven days of the 30 day period.

#### Limit

The most *we* will pay any one *insured* is:

1. \$250 for each full workweek of *total disability*; and
2. a pro rata portion of \$250 for less than a full workweek of *total disability*.

Subject to the workweek limit, the most *we* will pay any one *insured* for all loss of *weekly earnings* due to any one accident is \$15,000.

*We* will pay once every two weeks the *insured's* loss of *weekly earnings* owed.

#### Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE DO NOT APPLY TO AN *INSURED*:

1. WHILE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN A *CAR BUSINESS*;
2. WHILE *OCCUPYING*, LOADING, OR UNLOADING:
  - a. AN EMERGENCY VEHICLE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT;
  - b. A VEHICLE, OTHER THAN AN EMERGENCY VEHICLE, WHILE USED IN THE:
    - (1) *INSURED'S* BUSINESS; OR
    - (2) COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN OTHER THAN A *CAR BUSINESS*.

- This exclusion (2.b.) does not apply if the vehicle is a *private passenger car*;
- c. A MILITARY VEHICLE; OR
  - d. A VEHICLE WHILE IT IS:
    - (1) BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
    - (2) ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (2.d.(2)) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
3. WHILE *OCCUPYING*, LOADING, UNLOADING, OR WHO IS STRUCK AS A *PEDESTRIAN* BY:
- a. A MOTOR VEHICLE THAT RUNS ON RAILS OR CRAWLER-TREADS;
  - b. A MOTOR VEHICLE THAT IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
  - c. A MOTOR VEHICLE OR ANY TYPE OF TRAILER, EITHER OF WHICH IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES; OR
4. FOR DEATH, DISMEMBERMENT, LOSS OF SIGHT, OR *TOTAL DISABILITY* THAT RESULTS FROM:
- a. WAR OF ANY KIND;
  - b. NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE, OR THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
  - c. SUICIDE OR ATTEMPTED SUICIDE REGARDLESS OF WHETHER THE *INSURED* WAS SANE OR INSANE; OR
  - d. DISEASE except pus-forming infection due to *bodily injury* sustained in the accident.
- Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage**
- We* may, at *our* option, make payment to one or more of the following:
- 1. The *insured*;
  - 2. The *insured's* surviving spouse;
  - 3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
  - 4. A *person* or organization authorized by law to receive such payment.

### INSURED'S DUTIES

- 1. **Notice to Us of an Accident or Loss**  
The *insured* must give *us* or one of *our* agents notice of the accident or *loss* as soon as reasonably possible. The notice must give *us*:
  - a. *your* name;
  - b. the names and addresses of all *persons* involved in the accident or *loss*;
  - c. the hour, date, place, and facts of the accident or *loss*; and
  - d. the names and addresses of witnesses to the accident or *loss*.
- 2. **Notice to Us of a Claim or Lawsuit**
  - a. If a claim is made against an *insured*, then that *insured* must immediately send *us* every demand, notice, and claim received.
  - b. If a lawsuit is filed against an *insured*, then that *insured* must immediately send *us* every summons and legal process received.
- 3. **Insured's Duty to Cooperate With Us**
  - a. The *insured* must cooperate with *us* and, when asked, assist *us* in:
    - (1) making settlements;
    - (2) securing and giving evidence; and
    - (3) attending, and getting witnesses to attend, depositions, hearings, and trials.
  - b. The *insured* must not, except at his or her own cost, voluntarily:
    - (1) make any payment to others; or
    - (2) assume any obligation to others unless authorized by the terms of this policy.

- c. Any *person* or organization making claim under this policy must, when *we* require, give *us* proof of loss on forms *we* furnish.
4. **Questioning Under Oath**  
Under:
- a. Liability Coverage, each *insured*;
  - b. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
  - c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other *person* or organization making claim or seeking payment;
- must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person's* or organization's legal representative, *our* representatives, any *person* or *persons* designated by *us* to record the questions and answers, and no other *person* present.
5. **Other Duties Under the Physical Damage Coverages**  
When there is a *loss*, *you* or the owner of the *covered vehicle* must:
- a. protect the *covered vehicle* from additional damage. *We* will pay any reasonable expense incurred to do so that is reported to *us*;
  - b. make a prompt report to the police when the *loss* is the result of theft;
  - c. allow *us* to:
    - (1) inspect any damaged property before its repair or disposal;
    - (2) test any part or equipment before that part or equipment is removed or repaired; and
    - (3) move the *covered vehicle* at *our* expense in order to conduct such inspection or testing;
  - d. provide *us* all:
    - (1) records;
    - (2) receipts; and
    - (3) invoices
- that *we* request and allow *us* to make copies; and
- e. not abandon the *covered vehicle* to *us*.
6. **Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage**  
A *person* making claim under:
- a. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must:
    - (1) notify *us* of the claim and give *us* all the details about the death, injury, treatment, and other information that *we* may need as soon as reasonably possible after the injured *insured* is first examined or treated for the injury. If the *insured* is unable to give *us* notice, then any other *person* may give *us* the required notice;
    - (2) be examined as reasonably often as *we* may require by physicians chosen and paid by *us*. A copy of the report will be sent to the *person* upon written request;
    - (3) provide written authorization for *us* to obtain:
      - (a) medical bills;
      - (b) medical records;
      - (c) wage, salary, and employment information; and
      - (d) any other information *we* deem necessary to substantiate the claim.

If an injured *insured* is a minor, unable to act, or dead, then his or her legal representative must provide *us* with the written authorization.

If the holder of the information refuses to provide it to *us* despite the authorization, then at *our* request the *person* making claim or his or her legal representative must obtain the information and promptly provide it to *us*; and
  - (4) allow *us* to inspect the vehicle that the *insured occupied* in the accident;
- b. Uninsured Motor Vehicle Coverage must report an accident, involving a motor vehicle whose owner and driver remain unknown, to the police within 24 hours or as soon as reasonably practicable, and to *us* within 30 days;

- c. Uninsured Motor Vehicle Coverage must send *us* immediately a copy of all lawsuit papers if the *insured* files a lawsuit against the party liable for the accident; and
- d. Loss of Earnings Coverage must:
  - (1) make a claim under this policy;
  - (2) report to *us* when that *person* has a *total disability*; and
  - (3) provide proof of continued *total disability* when *we* ask for it.

## GENERAL TERMS

### 1. When Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur during the policy period. The policy period is shown on the Declarations Page and is for successive periods of six months each for which the renewal premium is paid. The policy period begins and ends at 12:01 AM Standard Time at the address shown on the Declarations Page.

### 2. Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- a. in the United States of America and its territories and possessions;
- b. in Canada; and
- c. while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage apply anywhere in the world.

### 3. Limited Coverage in Mexico

This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plans to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

### a. Liability Coverage

For claims brought against an *insured* in Mexico, the Supplementary Payments provision of this policy's Liability Coverage is changed to read:

*We* may, in addition to the damages described in item 1 of the Insuring Agreement of this policy's Liability Coverage, pay or reimburse, at *our* option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

### b. Medical Payments Coverage

### c. Physical Damage Coverages

Any amount payable for the repair or replacement of the *covered vehicle* under the Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

**WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.**

**WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF NEW HAMPSHIRE IN THE UNITED STATES OF AMERICA.**

All other policy provisions not in conflict with the provisions in this Limited Coverage in Mexico provision of this policy apply.

### If Other Coverage Applies

Any coverage provided by this Limited Coverage in Mexico provision is excess over any other applicable insurance.

### Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of New Hampshire in the United States of America.

#### 4. Newly Owned or Newly Leased Car

If *you* want to insure a *car* newly owned by *you* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then *you* must either:

a. request *we* replace the *car* currently shown on the Declarations Page of this policy with the *car* newly owned by *you* and pay *us* any added amount due. If *you* make such request while this policy is in force and:

- (1) before the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date the *car* newly owned by *you* is delivered to *you*. The added amount due will be calculated based on that date; or
- (2) after the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date and time *you* make the request. The added amount due will be calculated based on that date; or

b. apply to the *State Farm Companies* for a separate policy to insure the *car* newly owned by *you*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

#### 5. Changes to This Policy

##### a. Changes in Policy Provisions

*We* may only change the provisions of this policy by:

- (1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or
- (2) revising this policy to give broader coverage without an additional premium

charge. If any coverage provided by this policy is changed to give broader coverage, then *we* will give *you* the broader coverage as of the date *we* make the change effective in the state of New Hampshire without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.

##### b. Change of Interest

(1) No change of interest in this policy is effective unless *we* consent in writing.

(2) Except under Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage, if a named insured shown on the Declarations Page dies, then the definition of *insured* under each of the coverages provided by this policy is changed to include:

- (a) any *person* with lawful custody of *your car*, a *newly acquired car*, or a *temporary substitute car* until a legal representative is qualified; and then
- (b) the legal representative of the deceased named insured.

This only applies while such *person* is maintaining or using *your car*, a *newly acquired car*, or a *temporary substitute car*.

Policy notice requirements are met by mailing the notice to the most recent policy address that *we* have on record for the deceased named insured.

##### c. Joint and Individual Interests

If *you* consists of more than one *person* or entity, then each acts for all to change or cancel the policy.

#### 6. Premium

a. Unless as otherwise provided by an alternative payment plan in effect with the *State Farm Companies* with respect to the premium for this policy, the premium is due and payable in full on or before the first day of the policy period shown on the most recently issued Declarations Page or Renewal Notice.

b. The renewal premium for this policy will be based upon the rates in effect, the coverages carried, the applicable limits, deductibles, and other elements that affect the premium that apply at the time of renewal.

- c. The premium for this policy may vary based upon:
- (1) the purchase of other products or services from the *State Farm Companies*;
  - (2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or
  - (3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.
- d. The premium for this policy is based upon information *we* have received from *you* or other sources. *You* must inform *us* if any information regarding the following is incorrect or incomplete, or changes during the policy period, and *you* must answer questions *we* ask regarding the following:
- (1) *Your car*, or its use, including annual mileage;
  - (2) The *persons* who regularly drive *your car*, including newly licensed family members;
  - (3) *Your* marital status; or
  - (4) The location where *your car* is primarily garaged.
- If the above information or any other information used to determine the premium is incorrect, incomplete, changes during the policy period, or is not provided to *us* when *we* ask, then *we* may decrease or increase the premium during the policy period. If *we* decrease the premium during the policy period, then *we* will provide a refund or a credit in the amount of the decrease. If *we* increase the premium during the policy period, then *you* must pay the amount of the increase.
7. **Renewal**
- We* agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless *we* mail or deliver a nonrenewal notice or a cancellation notice as set forth in 8. and 9. below.
8. **Nonrenewal**
- If *we* decide not to renew this policy, then, at least 45 days before the end of the current policy period, *we* will mail or deliver a nonrenewal notice to the most recent policy address that *we* have on record for the named insured who is shown on the Declarations Page.
9. **Cancellation**
- a. **How You May Cancel**
- You* may cancel this policy by providing to *us* advance notice of the date cancellation is effective. *We* may confirm the cancellation in writing.
- b. **How and When We May Cancel**
- We* may cancel this policy by mailing or delivering a written notice to the most recent policy address that *we* have on record for the named insured who is shown on the Declarations Page. The notice will provide the date cancellation is effective.
- (1) If *we* mail or deliver a cancellation notice:
    - (a) during the first 59 days following this policy's effective date; or
    - (b) because the premium is not paid when due,
 then the date cancellation is effective will be at least 10 days after the date *we* mail or deliver the cancellation notice.
  - Otherwise, the date cancellation is effective will be at least 45 days after the date *we* mail or deliver the cancellation notice.
  - (2) After this policy has been in force for more than 59 days, *we* will not cancel this policy before the end of the current policy period except:
    - (a) for failure to pay premium when due; or
    - (b) for failure to sign the New Hampshire Residency Form.
- c. **Return of Unearned Premium**
- If *you* cancel this policy, then premium may be earned on a short rate basis. If *we* cancel this policy, then premium will be earned on a pro rata basis.
- Any unearned premium shall become due upon the date of cancellation as stated in the notice. Delay in the return of any unearned premium does not affect the cancellation date.

10. **Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

11. **Bankruptcy or Insolvency of the Insured**

Bankruptcy or insolvency of the *insured* or his or her estate will not relieve *us* of *our* obligations under this policy.

12. **Concealment or Fraud**

There is no coverage under this policy if *you* or any other *person* insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy. This does not apply to the extent of the interest of an *insured* who had no knowledge of or participation in any concealment, misrepresentation, or fraud.

13. **False Statement of Residency**

There is no coverage under this policy for any *person* who falsely attested to the New Hampshire Residency Form. However, payments shall be made with respect to accidents, which occur in New Hampshire, for all valid bodily injury and property damage liability claims and all valid uninsured motor vehicle claims by individuals other than the applicant or applicants for insurance who falsely attested to residency.

*We* are legally entitled to reimbursement from *you* for all such paid claims.

14. **Our Right to Recover Our Payments**

a. Under Medical Payments Coverage, Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage payments are not recoverable by *us*.

b. Under Uninsured Motor Vehicle Coverage:

(1) *We* are entitled to recover our payments after the injured party has been fully compensated for his or her damages.

(2) **Subrogation**

If *we* are obligated under Uninsured Motor Vehicle Coverage to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment, subject to (1) above.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

(a) doing nothing to impair that legal right;

(b) executing any documents *we* may need to assert that legal right; and

(c) taking legal action through *our* representatives when *we* ask.

(3) **Reimbursement**

If *we* make payment under Uninsured Motor Vehicle Coverage and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

(a) hold in trust for *us* the proceeds of any recovery; and

(b) reimburse *us* to the extent of *our* payment,

subject to (1) above.

c. Under all other coverages the following apply:

(1) **Subrogation**

If *we* are obligated under this policy to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

(a) doing nothing to impair that legal right;

(b) executing any documents *we* may need to assert that legal right; and

(c) taking legal action through *our* representatives when *we* ask.

(2) **Reimbursement**

If *we* make payment under this policy and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

(a) hold in trust for *us* the proceeds of any recovery; and

(b) reimburse *us* to the extent of *our* payment.

15. **Legal Action Against Us**

Legal action may not be brought against *us* until there has been full compliance with all the provisions of this policy. In addition, legal action may only be brought against *us* regarding:



- a. Liability Coverage after the amount of damages an *insured* is legally liable to pay has been finally determined by:
  - (1) judgment after an actual trial, and any appeals of that judgment if any appeals are taken; or
  - (2) agreement between the claimant and *us*.
- b. Medical Payments Coverage if the legal action relating to this coverage is brought against *us* within four years immediately following the date of the accident.
- c. Uninsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative within three years immediately following the date of the accident:
  - (1) presents an Uninsured Motor Vehicle Coverage claim to *us*; and
  - (2) files a lawsuit in accordance with the **Deciding Fault and Amount** provision of the Uninsured Motor Vehicle Coverage.

Except as provided in c.(2) above, no other legal action may be brought against *us* relating to Uninsured Motor Vehicle Coverage for any other causes of action that arise out of or are related to these coverages until there has been full compliance with the provisions titled **Consent to Settlement and Deciding Fault and Amount**.
- d. Physical Damage Coverages if the legal action relating to these coverages is brought against *us* within one year immediately following the date of the accident or *loss*.

16. **Choice of Law**

Without regard to choice of law rules, the law of the state of:

- a. New Hampshire will control, except as provided in b. below, in the event of any disagreement as to the interpretation and application of any provision in this policy; and
- b. Illinois will control in the event of any disagreement as to the interpretation and application of this policy's:
  - (1) Mutual Conditions provision found on the most recently issued Declarations Page, if this policy was issued by the State Farm Mutual Automobile Insurance Company; or
  - (2) Participating Policy provision found on the most recently issued Declarations Page, if this policy was issued by any subsidiary or affiliate of the State Farm Mutual Automobile Insurance Company.

17. **Severability**

If any provision of this policy is held invalid or unenforceable by a court that has jurisdiction, then:

- a. such provision will remain in full force to the extent not held invalid or unenforceable; and
- b. all other provisions of this policy will remain valid and enforceable.

Policy Form 9829A  
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## 6128L AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

### 1. DEFINITIONS

*Newly Acquired Car* is changed to read:

*Newly Acquired Car* means a *car* newly owned by you or a *resident relative*. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the *car* as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the *car* is delivered to you or a *resident relative*.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500.

### 2. LIABILITY COVERAGE

#### a. Additional Definition

Item 4. of *Insured* is changed to read:

*Insured* means any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This provision applies only if the vehicle is:

- a. neither *owned by*, nor hired by, that other *person* or organization; and
- b. neither available for, nor being used for, carrying *persons* for a charge.

#### b. Exclusions

(1) Exclusion 6. is changed to read:

THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES

ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS:

- a. MADE AVAILABLE; OR
- b. BEING USED

TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;

(2) The exception to exclusion 10. is changed to read:

This exclusion does not apply to damage to a:

- a. motor vehicle *owned by* the employer of you or the employer of any *resident relative* if such damage is caused by an *insured* while operating another motor vehicle;
- b. residence while rented to or leased to an *insured*; or
- c. private garage while rented to or leased to an *insured*;

### 3. MEDICAL PAYMENTS COVERAGE

#### Exclusions

Exclusion 4. is changed to read:

THERE IS NO COVERAGE FOR AN *INSURED* WHO IS *OCCUPYING* A VEHICLE WHILE IT IS:

- a. MADE AVAILABLE; OR
- b. BEING USED

TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to:

- a. the use of a *private passenger car* on a share-the-expense basis; or
- b. an *insured* while *occupying* a *non-owned car* as a passenger;

4. UNINSURED MOTOR VEHICLE COVERAGE

**Additional Definitions**

Item 1.b.(3)(b) of “*Uninsured Motor Vehicle* means a land motor vehicle” is change to read:

*Uninsured Motor Vehicle* means a land motor vehicle the ownership, maintenance, and use of which is insured, self-insured, or bonded for bodily injury liability at the time of the accident; but the total limits of insurance, bonds, and self-insurance for bodily injury liability from all sources have been reduced by payments to *persons* other than the *insured* making claim to less than the Uninsured Motor Vehicle Coverage limits of this policy;

5. PHYSICAL DAMAGE COVERAGES

a. The paragraph that reads:

If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

is changed to read:

**Deductible**

1. If “D” is shown under “SYMBOLS” on the Declarations Page, then the deductible that applies to Comprehensive Coverage, if any, is the dollar amount shown on the Declarations Page next to the title of this coverage. However, *we* will not deduct more than \$500 for any *loss* to a *newly acquired car*.
2. If “G” is shown under “SYMBOLS” on the Declarations Page, then the deductible that applies to Collision Coverage is the dollar amount shown on the Declarations Page next to the title of this coverage. However, *we* will not deduct

more than \$500 for any *loss caused by collision* to a *newly acquired car*.

b. Insuring Agreements

**Car Rental and Travel Expenses Coverage**

Item 4.a. Car Rental Expenses is changed to read:

**Car Rental Expense**

*We* will pay the *daily rental charge* incurred when an *insured* rents a *car* from a *car business* while *your car* or a *newly acquired car* is:

- (1) not drivable; or
- (2) being repaired

as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage.

*We* will pay this *daily rental charge* incurred during a period that:

- (1) starts on the date:
  - (a) the vehicle is not drivable as a result of the *loss*; or
  - (b) the vehicle is left at a repair facility if the vehicle is drivable; and
- (2) ends on the earliest of:
  - (a) the date the vehicle has been repaired or replaced;
  - (b) the date *we* offer to pay for the *loss* if the vehicle is repairable but *you* choose to delay repairs; or
  - (c) seven days after *we* offer to pay for the *loss* if the vehicle is:
    - (i) a total loss as determined by *us*; or
    - (ii) stolen and not recovered.

The amount of any such *daily rental charge* incurred by an *insured* must be

reported to *us* before *we* will pay such amount.

**c. Exclusions**

Exclusion 3. is changed to read:

THERE IS NO COVERAGE FOR ANY **COVERED VEHICLE** WHILE IT IS:

- a. MADE AVAILABLE; OR
- b. BEING USED

TO CARRY **PERSONS** FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;

**6. INSURED'S DUTIES**

a. Item 6.a.(3) is changed to read:

A *person* making claim under:

a. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must:

- (3) provide written authorization for *us* to obtain medical bills, medical records, wage information, salary information, employment information, and any other information *we* deem necessary to substantiate the claim.

Such authorizations must not:

- (a) restrict *us* from performing *our* business functions in:
  - (i) obtaining records, bills, information, and data; nor
  - (ii) using or retaining records, bills, information, and data collected or received by *us*;
- (b) require *us* to violate federal or state laws or regulations;

- (c) prevent *us* from fulfilling *our* data reporting and data retention obligations to insurance regulators; or

- (d) prevent *us* from disclosing claim information and data:

- (i) to enable performance of *our* business functions;
- (ii) to meet *our* reporting obligations to insurance regulators;
- (iii) to meet *our* reporting obligations to insurance data consolidators; and
- (iv) as otherwise permitted by law.

If an injured *insured* is a minor, unable to act, or dead, then his or her legal representative must provide *us* with the written authorization.

If the holder of the information refuses to provide it to *us* despite the authorization, then at *our* request the *person* making claim or his or her legal representative must obtain the information and promptly provide it to *us*;

b. The following is added to item 6.:

A *person* making claim under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must submit to *us* all information *we* need to comply with federal and state laws and regulations.

**7. GENERAL TERMS**

a. The following is added to **Newly Owned or Newly Leased Car**:

If a *resident relative* wants to insure a *car* newly owned by the *resident relative* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then the *resident relative* must apply to the *State Farm Companies* for a separate policy to insure the *car* newly owned by the *resident relative*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

b. The following are added to **GENERAL TERMS**:

**Electronic Delivery**

With *your* consent, *we* may electronically deliver any document or notice, including a notice to renew, nonrenew, or cancel, instead of mailing it or delivering it by other means. Proof of transmission will be sufficient proof of notice.

**Our Rights Regarding Claim Information**

a. *We* will collect, receive, obtain, use, and retain all the items described in item b.(1) below and use and retain the information described in item b.(3)(b) below, in accordance with applicable federal and state laws and regulations and consistent with the performance of *our* business functions.

b. Subject to a. above, *we* will not be restricted in or prohibited from:

- (1) collecting, receiving, or obtaining records, receipts, invoices, medical bills, medical records, wage information, salary information, employment information, data, and any other information;

- (2) using any of the items described in item b.(1) above; or

- (3) retaining:

- (a) any of the items in item b.(1) above; or

- (b) any other information *we* have in *our* possession as a result of *our* processing, handling, or otherwise resolving claims submitted under this policy.

c. *We* may disclose any of the items in item b.(1) above and any of the information described in item b.(3)(b) above:

- (1) to enable performance of *our* business functions;

- (2) to meet *our* reporting obligations to insurance regulators;

- (3) to meet *our* reporting obligations to insurance data consolidators;

- (4) to meet other obligations required by law; and

- (5) as otherwise permitted by law.

d. *Our* rights under a., b., and c. above shall not be impaired by any:

- (1) authorization related to any claim submitted under this policy; or

- (2) act or omission of an *insured* or a legal representative acting on an *insured's* behalf.

## **6929A AMENDATORY ENDORSEMENT**

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This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

### **1. LIABILITY COVERAGE**

#### **Exclusions**

The following exclusion is deleted:

THERE IS NO COVERAGE FOR AN *INSURED* EXCEPT AS TO THE MINIMUM FINANCIAL RESPONSIBILITY LIMITS, WHILE OPERATING A VEHICLE, IF THAT *INSURED'S* DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.

### **2. MEDICAL PAYMENTS COVERAGE**

#### **Exclusions**

The following exclusion is deleted:

THERE IS NO COVERAGE FOR AN *INSURED* WHILE OPERATING A VEHICLE, IF THAT *INSURED'S* DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.

### **3. UNINSURED MOTOR VEHICLE COVERAGE**

#### **Exclusions**

The following exclusion is deleted:

THERE IS NO COVERAGE FOR AN *INSURED* WHILE OPERATING A VEHICLE, IF THAT *INSURED'S* DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED.

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
<http://www.courts.state.nh.us>

Court Name: 8th Circuit - District Division - Keene  
Case Name: Keene Auto Body Inc. v. State Farm Mutual Automobile Insurance Compan  
Case Number: 449-2021-SC-00079  
(if known)

**OBJECTION TO:** Motion to Dismiss

1. I \_\_\_\_\_ am filing this objection on my own behalf.

OR

I am a person authorized by court rules to appear on behalf of another in this case. I am filing this objection on behalf of Keene Auto Body Inc.

2. I object to the motion filed by Brendan Daniel O'brien asking for:

See lengthy explain that is attached to this objection

3. The specific basis or reasons for this objection are as follows:

see attached document





To Objection

**Service Information (Continued)**

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party: State Farm Mutual Automobile Insurance Compan

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party: Michael Tipsord

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Brendan Daniel O'brien

**Signature**

Signed by Steve B Piispanen with permission of Keene Auto Body Inc.

Small Claims # 449-20121-SC-00079

The State Farm contract reads that “The owner of the covered vehicle and we (State Farm) **must** agree upon the actual cash value of the covered vehicle”. State Farm did not come to agree with their insured. The SF contract goes onto read “If there is a disagreement as to the actual cash value of the covered vehicle, then the disagreement will be resolved by appraisal upon written request.” SF did not attempt to settle and resolve their disagreement of the actual cash value with the insured, Caleb Meagher. SF goes onto allege that Meagher refuses to accept the amount that State Farm has agreed to pay to repair his vehicle. State Farm did not authorize the repairs, nor did they pay for any portion of the repairs as they are alleging. State Farm must come to an agreement with Caleb, which State Farm did not and pay Caleb the actual cash value to settle his loss, this does not mean that State Farm is paying for his repairs as they are alleging. Caleb is paying for his repairs that Caleb approved & authorized as he is required to do per NH repair laws 358-D. Caleb does not have the actual cash value amount from State Farm to pay for his repairs. Keene Auto does not need State Farm’s approval to pay for the repairs as they are alleging is required, the vehicle owner approves the repairs & amount for those repairs, this is NH repair law 358-D

Keene Auto Body is not forcing insurance companies to pay unilaterally imposed prices for repairs as State Farm is alleging. The vehicle owners, including Caleb, have a choice to where to have their vehicles repaired. These vehicle owners, including Caleb, choose Keene Auto Body to repair their vehicles. State Farm is unilaterally imposing repair prices and specifying unsafe repairs for Caleb’s vehicle, including the other insurers that State Farm’s attorney mentions in this case. State Farm and none of these other insurers are repair professionals, nor did any of these insurers take the settlement option to repair any vehicle. State Farm and these other insurers took the settlement option to pay the claimant with money for the actual cash value of the covered vehicle. The National Association of Insurance Commissioners defines “actual cash value” to mean repayment value for indemnification due to loss or damage of property. State Farm is breaching their contract with their insured when they refused to pay Caleb the actual cash value of the covered vehicle’s repairs. These are the proceeds payable by reason of reason insurance loss that Caleb assigned to Keene Auto Body per NH Law 382-A:5-114. The insurance loss already happened; the insurance benefits are already

owed to Caleb by State Farm. Now State Farm wants to impose restrictions on Caleb outside of the insurance contract and what Caleb can do with these insurance proceeds that are owed to him by SF. There is no NH law or insurance contract language that allows State Farm to restrict Caleb's rights with who he assigns these proceeds to post loss. Caleb has had control of his contract rights and met his duties to State Farm. State Farm has not met their contract duties to their insured and is trying to restrict Caleb's rights.

State Farm's allegations that Caleb assigned his policy benefits of his loss to Keene Auto Body are false. The policy benefits are listed on page 24 of the insurance contract. The proceeds that Caleb assigned to Keene Auto are not listed as a contract benefit.

Caleb entered in the assignment of proceeds contract with Keene Auto Body after the loss and after he realized that State Farm was attempting to breach their contract with him at the completion of his repairs. Caleb had a debt that he owed to Keene Auto Body, he was sold an indemnification policy by State Farm. Keene Auto had a lien on his vehicle. Keene Auto Body took the contract of assignment of proceeds to collect the remaining actual cash value balance owed to Caleb from State Farm for indemnification. This is not putting any new burden or risk on State Farm. This becomes the relationship between Keene Auto Body and State Farm. Creditor and debtor, and that is it.

State Farm had to choices to settle with Caleb per the contract's language on pages 19 & 20. Pay the cost of the repairs or pay the actual cash value. State Farm is not our customer and Caleb was responsible to pay for his cost of repairs. State Farm took the payment of loss option to pay Caleb the actual cash value amount of the covered vehicle. If State Farm did in fact take the option to pay the cost to repair, then they had that right to dictate unsafe repairs with their estimate and alleged prevailing competitive price scheme that they use to short pay claimants, but they did not. Instead, State Farm took the payment of loss to pay Caleb the actual cash value amount of the covered vehicle.

This case should be heard as State Farm should not be able to specify unsafe repairs that run counter to the Toyota repair procedures and NH repair laws for any damaged vehicle in their settlement offers, including Caleb's. State Farm never physically inspected this damaged vehicle. Here is a partial list of necessary

repairs & costs that Caleb's agreed too and were different than State Farm's specified repairs & settlement offer. State Farm does not agree with Caleb that these costs were not necessary to repair his Toyota. All these costs are necessary according to Toyota, whom is the company that engineered & manufactured this vehicle.

Necessary Repair Costs that SF denied coverages and reimbursement to the insured.

Apply Disinfectant Pre & Post Repair- Covid Pre-Caution \$80

Pre & Post Repair Exterior Wash \$30

Proper Toyota Scans for scan devices and software \$169.95

Replacement for non-reusable parts per Toyota- pads & emblem \$45.52

Price increase for headlamp \$269.76

Replacement for damaged absorbers, lower grille \$238.95

Disable Airbags for repairs \$21

Perform Occupant Classification System Re-calibration per Toyota repair procedure \$21

Finish, Sand & Buff per Toyota repair procedure & SF estimate guide \$36

Aim Millimeter Wave Radar per Toyota repair procedures \$131.25

Transport To & From Toyota to Aim Radar \$100

Tint Color for color match & Materials \$30

State Farm alleged competitive prevailing labor rate

Denial of full costs for paint materials/price increase \$48.03

Subscription fee to Toyota repair website \$20 & labor \$60 to research and retrieve repair info. Per SF estimate guide these costs are additional to the repair costs

State Farm and the other insurers in the exhibits time and again are either alleging that they the ones that approve repair costs or are repairing the damaged vehicles for our customers by acting as the subcontractor for the repairs, when they are not. State Farm and these other insurers are confused and trying to misrepresent their role in the repair process, they do not have one. They promised to pay the vehicle owner, like Caleb, the actual cash value of their vehicle. This is not happening. We are asking the courts to hold State Farm to their promise and contract requirements that they have with Caleb, instead of allowing State Farm to breach their contract like they have on the other small claim's cases. The contract requirements are that State Farm pay Caleb the actual cash value of the covered vehicle, Caleb legally assigned these proceeds post loss to Keene Auto Body. State Farm is upset that these proceeds are owed to Caleb, they are standing their ground that they do not have to resolve their disagreement with Caleb when the contract states they "must" resolve the disagreement & State Farm is upset that their insured agrees with the Toyota repair procedures that Keene Auto Body used to repair his damaged property.

State Farm has no right to withhold the actual cash value amount that is owed to Caleb. Who Caleb assigns these insurance proceeds to after the loss are not a matter for State Farm to dispute, the NH law allows Caleb to assign these post loss insurance proceeds.

State Farm is bound to pay Meagher the actual cash value, which is defined by the National Association of Insurance Commissioners. State Farm has not indemnified Caleb for his loss.

The actual cash value was already owed to Caleb from State Farm before he assigned these proceeds to Keene Auto Body. State Farm is trying to misrepresent to the court's that Keene Auto Body is somehow benefitting from the contract that State Farm sold to Caleb. This amount is already owed to Caleb. State Farm is refusing to indemnify Caleb and pay the actual cash value of the insurance proceeds to Caleb. All Caleb is doing is assigning this money that is already owed to him by his insurer, to settle his debt that he owes at Keene Auto Body.

State Farm is once again alleging that we need their consent to transfer Caleb's rights & benefits under the policy to Keene Auto Body. Caleb has had his rights to the policy throughout the settlement process, no one asked Caleb to assign his

rights to the policy to Keene Auto Body, as State Farm is alleging. Caleb has full access to his insurance contract rights and benefits, these were never assigned to Keene Auto Body as State Farm continues to allege.

Caleb entered into the contract agreement of assigning the insurance proceeds to Keene Auto, who is only acting as a creditor at this time, post loss. This contract between Caleb and the creditor, Keene Auto Body, do not need State Farm's consent as they are alleging. This is the relationship between Keene Auto & State Farm, creditor and debtor.

Since the assignment of proceeds are valid, State Farm agrees that assignee's rights are the same as the assignor. Then this means that State Farm owes Keene Auto Body, the creditor, the actual cash value of the covered vehicle. State Farm alleges that their estimate & settlement offer was reached through a procedure consistent with NH law. But the fact remains that State Farm was unable to reach an agreement & amount to settle with Caleb. State Farm refused to resolve this disagreement that they had with their insured per the insurance contract language. State Farm did not leave the provision of hidden costs connected to the damaged vehicle open to Caleb, per NH Ins 1002.17. On Caleb's behalf we presented State Farm with their errors and omissions on their preliminary estimate that they completed remotely without inspect the vehicle in person, they had no interest in making the necessary changes to their estimate when presented with the Toyota repair documentation and documentation from their estimate guides and other sources. The State Farm estimators stated that they are only able to estimate as they were instructed by their supervisor's and not to negotiate with Keene Auto Body. Countless times in front of customers and employees from Keene Auto, State Farm estimators tells us they are told by State Farm Claim's to not negotiate with Keene Auto Body because of these small claim's cases, this another false allegation by State Farm in this case that they will attempt to negotiate an agreed upon repair price. When the truth is we have no rights to settle our customer's insurance loss per the insurance contract language and the NH Insurance Department as we are not the claimant per the HN insurance Department.

State Farm's prices allege that the prices that they made available according to their prevailing competitive price scheme is the "Fair and reasonable price" for



Caleb's repairs. The independent repair shop makes the "fair and reasonable price" available to the vehicle owner to accept or not accept. The insurer does not make the fair and reasonable price available. In 1998 the NH Insurance Department issued a bulletin to the NH insurance industry to remind them that the lowest price is not the fair and reasonable price, but it is a range of prices.

State Farm then alleges that if an agreement is not reached with the repair shop that Caleb can leave his vehicle at Keene Auto Body but only receive the amount reflected on the insurer's estimate. Again, this is an unsupported allegation by State Farm. State Farm does not make the fair and reasonable prices available for the NH collision repair industry, the independent repair shops make the fair and reasonable prices available for the vehicle owners to either accept or reject according to the NH laws. This is called a free market. State Farm is once again trying to present to the courts that they are the consumer of our repairs, when they are not. State Farm has a choice to pay the actual cash value that they promised in the insurance contract to Caleb or breach the insurance contract by withholding amounts of money that are owed to Caleb. Those are the only choices that State Farm has in this case. They are not purchasing repairs, nor are they consumer of our services.

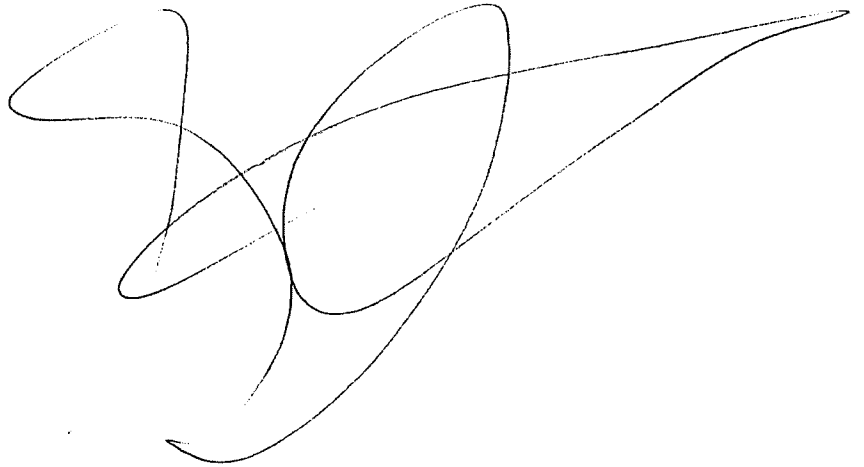
State Farm continues in their allegations to defend their reasons to short pay Caleb by stating that " The insurer **may** limit such work based on the fair and reasonable price in the area by repair shops.....". The law is clear that the insurer **may** limit, but only if their price meets the definition of the law for fair and reasonable, which State Farm's price does not. And if State Farm meets their contract obligations to Caleb for the actual cash value that is owed to Caleb.

State Farm has no right to unilaterally impose & restrict prices onto the NH collision repair industry and Caleb. State Farm's estimated prices do not reflect a safe repair at a fair and reasonable price that is being charged by the independent repair shops, which is a legal requirement of State Farm per NH Ins 1002.17.

State Farm is upset they were unable to resolve their disagreement with Caleb and that Caleb agrees that his vehicle should be properly repaired. Versus repairing as State Farm unsafely specified in their guess and estimated settlement offer.

We wish for the court to rule in our favor and award the money that was owed to indemnify Caleb for his insurance loss to Keene Auto Body, the creditor.

Keep the small claims case open for all to be heard why State Farm feels that they can breach the contract with Caleb and does not owe the creditor this money that was payable by reason of the insurance loss.

A handwritten signature in black ink, consisting of several overlapping loops and a long, thin tail extending to the right.

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

8TH CIRCUIT - DISTRICT DIVISION – KEENE  
SMALL CLAIMS DIVISION

Docket No.: 449-2021-SC-00079

Keene Auto Body Inc.

v.

State Farm Mutual Automobile Insurance Company

**REPLY IN FURTHER SUPPORT OF  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S  
MOTION TO DISMISS SMALL CLAIMS COMPLAINT WITH PREJUDICE**

NOW COMES the defendant, State Farm Mutual Automobile Insurance Company (“State Farm”), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and hereby replies in further support of its motion to dismiss the small claims complaint filed against it by plaintiff Keene Auto Body Inc. (“Keene Auto Body”). In further support of its motion to dismiss, State Farm states as follows:

1. Keene Auto Body’s objection to State Farm’s motion to dismiss confirms that this small claims complaint should be dismissed for the same reasons as the many small claims complaints previously filed by Keene Auto Body. Keene Auto Body acknowledges that it is attempting to recover money that State Farm allegedly owes to its insured, Caleb Meagher (“Meagher”). Keene Auto Body cannot recover money that is allegedly owed to Meagher under Meagher’s policy with State Farm as that policy includes the following anti-assignment provision:

**Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

State Farm Car Policy (the “Policy”), Assignment Provision, attached to State Farm’s motion to dismiss as Exhibit B, p. 30 (bold and italics in original). Neither Meagher, nor Keene Auto Body

ever sought or received State Farm's approval for Meagher to transfer his rights under the Policy to Keene Auto Body. Without State Farm's approval, Meagher could not transfer his rights under the Policy to Keene Auto Body, and Keene Auto Body therefore has no right to bring a claim against State Farm based on the Policy.

2. Even if the anti-assignment provision were not determinative, Keene Auto Body's small claims complaint should still be dismissed as the amount of State Farm's estimate was reached through a procedure consistent with New Hampshire law, and neither Meagher, nor his alleged assignee, Keene Auto Body, can succeed on a claim against State Farm with respect to the excess cost allegedly owed to Keene Auto Body. *See* N.H. Rev. Stat. Ann. § 417:4, XX(c); Ins. 1002.17. Nothing in New Hampshire law supports that a repair facility, like Keene Auto Body, can unilaterally impose a price for repairs on an insurer. Keene Auto Body appears to be rejecting the choices available under New Hampshire law in favor of its own desired outcome: keeping the business of repairing Meagher's vehicle and trying to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. Such an outcome is contrary to New Hampshire law, and to elemental principles of contract.

3. This Court has already dismissed at least one matter where the anti-assignment provision was not determinative. In *Keene Auto Body Inc. & Peter Case v. David Doyle & Allstate Fire and Casualty Insurance Co.*, Case No. 449-2020-SC-00068, Allstate's insured, Peter Case ("Case"), was a plaintiff and the Allstate policy's anti-assignment provision was not applicable to his claim. Nevertheless, the Court granted Allstate's motion to dismiss, recognizing that Case had no viable claim against Allstate that could require Allstate to pay a price for vehicle repairs that Allstate had never agreed to pay. *See* December 7, 2020 Order from Case No. 449-2020-SC-00068, attached hereto as Exhibit C. As the Court has already dismissed a similar claim where an

insured was a plaintiff, the Court has acknowledged that even without the Policy's anti-assignment language, the claim at issue here is not viable. Keene Auto Body, like Case, cannot force an insurer to pay an amount that it has not agreed to.

4. The statute referenced by Keene Auto Body in its objection, N.H. Rev. Stat. Ann. § 382-a:5-114, applies to letters of credit under the Uniform Commercial Code. *See* N.H. Rev. Stat. Ann. § 382-a:5-103. It has no bearing on the purported assignment of rights under an insurance policy when that policy contains an anti-assignment provision. As this Court has repeatedly recognized, the Policy's anti-assignment provision prohibits an insured from assigning his or her rights under the Policy to Keene Auto Body.

5. Keene Auto Body's suggestion that this matter is somehow different from the dozens of other cases that Keene Auto Body has brought against insurance carriers is wrong. Keene Auto Body has relied on the same theories of liability in each case, and in each case, this Court has determined that Keene Auto Body does not have a viable claim. To the extent that Keene Auto Body claims that State Farm breached the terms of Meagher's policy, Keene Auto Body cannot maintain a breach of contract claim against State Farm on Meagher's behalf. *See Brooks v. Trustees of Dartmouth College*, 161 N.H. 685, 697 (2011) (recognizing that nonparties to a contract generally have "no remedy for breach of contract.").

6. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Meagher's vehicle, Keene Auto Body could have elected not to perform the work on Meagher's vehicle. Having chosen to do the work without an agreement with State Farm, Keene Auto Body can either accept the State Farm estimate or it can attempt to recover the excess cost from Meagher if Meagher agreed to pay that excess amount. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Meagher's vehicle.

WHEREFORE, State Farm respectfully requests that this Honorable Court:

- A. GRANT State Farm's motion to dismiss;
- B. DISMISS the small claims complaint with prejudice;
- C. SCHEDULE a hearing on this motion, if necessary; and
- D. GRANT any other relief it deems just and proper.

Respectfully submitted,

**STATE FARM MUTUAL  
AUTOMOBILE INSURANCE CO.**

by its attorneys,

**PRIMMER PIPER  
EGGLESTON & CRAMER PC**

Dated: March 26, 2021

by: /s/ Brendan D. O'Brien  
Brendan D. O'Brien, Esq., #267995  
P.O. Box 3600  
Manchester, NH 03105-3600  
603.626.3300  
bobrien@primmer.com

**Certificate of Service**

I hereby certify that a copy of the foregoing motion was forwarded this day to the plaintiff via the Court's ECF system.

/s/ Brendan D. O'Brien  
Brendan D. O'Brien

# Exhibit C

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

8th Circuit - District Division - Keene  
33 Winter Street, Suite 1  
Keene NH 03431-0364

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

Case Name: **Keene Auto Body Inc., Peter Case v. David Doyle, Allstate and Fire and  
Casualty Insurance Comp**  
Case Number: **449-2020-SC-00068**

11/30/2020-MOTION HEARING

After hearing oral argument, this matter is dismissed.

Ordered by the Court: DEC 07 2020

  
James D. Gleason



THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
<http://www.courts.state.nh.us>

Court Name: 8th Circuit - District Division - Keene  
Case Name: Keene Auto Body Inc. v. State Farm Mutual Automobile Insurance Compan  
Case Number: 449-2021-SC-00079  
(if known)

**OBJECTION TO:** Motion to Dismiss

1. I \_\_\_\_\_ am filing this objection on my own behalf.

OR

I am a person authorized by court rules to appear on behalf of another in this case. I am filing this objection on behalf of Keene Auto Body Inc.

2. I object to the motion filed by Brendan Daniel O'brien asking for:

see attached document for objection

3. The specific basis or reasons for this objection are as follows:

see attached document for objection

Case Name: Keene Auto Body Inc. v. State Farm Mutual Automobile Insurance Compan  
Case Number: 449-2021-SC-00079

**OBJECTION**

I state that on this date I am  e-serving through the court's electronic filing system, or  mailing by U.S. mail, or  hand-delivering a copy of this document to: [See Attachment 'Service Information (Continued)']

Steve B Piispanen or \_\_\_\_\_  
Other party Other party's attorney

Filing Statement:

I am filing this pleading on my own behalf. The information contained in this pleading is true to the best of my knowledge and belief. I understand that making a false statement in this pleading may subject me to criminal penalties.

OR

I am an attorney filing this pleading on behalf of my client or I am a person authorized by court rules to appear on behalf of another. To the extent this pleading contains facts not apparent in the case file, I am attaching an affidavit or statement signed under penalty of criminal prosecution attesting to the truth of those facts.

Steve B Piispanen  
Name  
  
543 Main Street  
Address  
Keene, NH 03431  
City State Zip code

/s/ Steve B Piispanen 3/26/21  
Signature [See 'Signature' Attachment] Date  
(603) 352-3103  
Telephone  
STEVE-KAB@KEENE-AUTOBODY.COM  
E-mail

TurboCourt.com Form Set #5553236

To Objection

**Service Information (Continued)**

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party: State Farm Mutual Automobile Insurance Compan

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party: Michael Tipsord

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Brendan Daniel O'brien

**Signature**

Signed by Steve B Piispanen with permission of Keene Auto Body Inc.

449-2021-SC-00079

Caleb Meagher assigned the insurance proceeds of his loss to Keene Auto Body. These insurance proceeds were already owed to Caleb for his loss before he assigned these proceeds to Keene Auto Body. There was no assignment of benefits or other transfer of rights of this insurance contract as SF is alleging. Caleb was already owed these post loss proceeds prior to him signing the contract assigning the insurance proceeds to Keene Auto Body.

No one can point to law that restricts Caleb from assigning his insurance proceeds to Keene Auto Body.

State Farm alleges that they do not owe Caleb for price increases to parts and materials, along with other numerous necessary repair procedures that Toyota states in their repair procedures. State Farm specified an unsafe repair in their settlement offer to Caleb, Caleb recognized this. Nothing in the NH insurance law supports that an insurer, like State Farm, can impose repair prices on an independent repair shop. State Farm is trying to base their prices on agreements that they have with their contracted repair shops or have arranged with other repair shops. Arranged insurance prices between the insurer and a repair shop do not meet the NH insurance law definition for a "Fair and reasonable price", see NH 417:4 XX ( c ) & Ins 1002.02 (f). State Farm alleges that if Keene Auto was not happy with the prices that they were offering for a repair that they cannot authorize then we should have rejected the work. If State Farm can dictate repair prices and authorize repairs as they allege, then why didn't State Farm take the damaged vehicle to one these shops to have repaired for the State Farm price.

State Farm alleges that we are trying to unilaterally impose a price for repairs on an insurer, State Farm failed to state that they are not the consumer of the repairs and that they decided to settle the loss with money for the actual cash value of the covered vehicle with Caleb & not by acting as the subcontractor of the repairs or as our customer. We did not force repair prices onto SF as they are alleging, Caleb accepted our repairs and charges in free market conditions.

State Farm cites insurance law, but Keene Auto Body is not in the business of insurance, nor is the insurance industry our customer. State Farm cites other insurers as a defense where the courts dismissed other similar cases. But the courts did not have all the information that we have now. We are still in the learning stages of court, while State Farm has hired professionals to silence our

legitimate small claim's cases. Keene Auto Body is in the repair business and need to follow the NH repair laws.

No insurer sets the fair and reasonable price for the NH collision repair market, the free market & independent repair shops determine the fair and reasonable prices for the NH collision repair market. Keene Auto Body does not set State Farm's prices and State Farm does not set our prices. The free market sets the prices in the insurance industry and collision repair industry.

Once these insurers decide to select the payment of loss option to repair the vehicle, instead with money for the actual cash value. Then maybe we may repair a damaged vehicle for State Farm, then State Farm can make a legal case where we are trying to force repair prices onto them, as they are alleging in this case.

The courts need to remember that Keene Auto Body is not the claimant or insured. We are not forcing our prices onto State Farm as they are alleging. They are not our customer. Their customer is Caleb, and they need to indemnify Caleb for his loss per the contract language. This not happening and State Farm claims they can breach the insurance contract by not reimbursing Caleb the actual cash value of the covered vehicle. Keene Auto Body met their repair contract to Caleb and satisfied their obligation to Caleb.

State Farm is upset that they are unable to resolve their disagreement with Caleb per the contract language & coerce Caleb into having his repairs completed at the State Farm contracted repair shop.

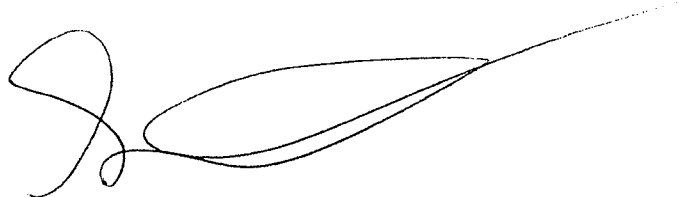
The courts need to remember that the insurers are not settling their losses by repairing the damaged vehicles or are the repair shop's customer. These insurers are settling their loss with money for the actual cash value of the covered vehicle.

State Farm is trying to impose Caleb into accepting an unsafe repair and unfair amount of money onto Caleb. State Farm is not the repair professional hired to repair the vehicle. State Farm is the insurer that promised to indemnify Caleb, and this is not happening.

State Farm is trying to restrict the free market of collision repair.

Keene District Court there is evidence coming to your office. It is in transit.

Steve Piispanen

A handwritten signature in black ink, appearing to read 'Steve Piispanen', with a long, sweeping horizontal stroke extending to the right.