STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket No. 2021-0156

Keene Auto Body Inc. v. State Farm Mutual Automobile Insurance Company

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RULE 7 APPEAL FROM MOTION TO DISMISS
ORDER OF THE 8TH CIRCUIT – DISTRICT DIVISION – KEENE, SMALL CLAIMS DIVISION
(Judge James D. Gleason)

BRIEF OF APPELLEE
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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STATEMENT OF THE CASE AND STATEMENT OF FACTS

I. The Repair Of Caleb Meagher's Vehicle.

Keene Auto Body Inc. ("Keene Auto Body") is an automobile repair facility that has filed numerous small claims complaints against insurers regarding the costs necessary to repair insureds' vehicles. *See* State Farm's Brief Appendix, ("App.") at 3. These complaints have been repeatedly dismissed by the Small Claims Division of the 8th Circuit – District Division – Keene. *See* App. at 3.

This matter involves Keene Auto Body's repair of Caleb Meagher's ("Mr. Meagher's") vehicle. *See* New Hampshire Automobile Dealers Association's Brief Appendix ("Amicus App.") at 3-5. At some point, Mr. Meagher's vehicle became damaged. *See* Amicus App. at 5. Mr. Meagher brought his vehicle to Keene Auto Body for repairs. *See* Amicus App. at 5. At all relevant times, Mr. Meagher's vehicle was insured through a policy issued by State Farm Mutual Automobile Insurance Company ("State Farm"). Amicus App. at 5, 6.

Keene Auto Body quoted Mr. Meagher a price for the repairs to his vehicle. Amicus App. at 99. Mr. Meagher allegedly agreed to Keene Auto Body's price. Amicus App. at 99. State Farm never agreed to Keene Auto Body's price for the repairs to Mr. Meagher's vehicle. *See* Amicus App. at 7, 99. State Farm prepared its own estimate for the repairs to Mr. Meagher's vehicle, and its estimate was less than the price quoted by Keene Auto Body. *See* Amicus App. at 8-9. Without waiting for an agreement with State Farm regarding the amount necessary to repair Mr. Meagher's vehicle, Keene Auto Body repaired the vehicle according to its quoted price. *See* Amicus App. at 116.

Mr. Meagher did not file an action against State Farm regarding the discrepancy between State Farm's estimate and the price quoted by Keene Auto Body. Amicus App. at 3-5. Instead, Keene Auto Body claims that Mr. Meagher assigned his right to dispute this discrepancy to Keene Auto Body. Amicus App. at 4-5. State Farm did not approve this assignment. *See* Amicus App. at 104. Based on this purported assignment, Keene Auto Body initiated this action against State Farm. *See* Amicus App. at 4-5. Keene Auto

Body claims that the difference between its unilaterally-imposed price for the repairs to Mr. Meagher's vehicle and State Farm's estimate is $1,093.37. Amicus App. at 4.

II. The Language Of State Farm's Policy.

Mr. Meagher's State Farm automobile policy (the "Policy") includes the following provision:

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

Amicus App. at 88. This anti-assignment clause is in the "General Terms" section of the Policy. Amicus App. at 85. The Policy defines "us" as "the Company issuing this policy as shown on the Declarations Page." Amicus App. at 63. This company is State Farm. *See* Amicus App. at 7.

III. The Trial Court's Order.

Keene Auto Body filed a small claims complaint against State Farm related to its repair of Mr. Meagher's vehicle on February 10, 2021. Amicus App. at 4. The Claim Description from Keene Auto Body's small claims complaint reads:

> 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 prices increases, one time non reusable parts, safety related repairs, replacement of damaged parts, Aim radar, Covid precautions.

Amicus App. at 5. State Farm moved to dismiss Keene Auto Body's small claims complaint on the grounds that the Policy's anti-assignment clause barred the purported assignment from Mr. Meagher to Keene Auto Body, Mr. Meagher had no authority to bind State Farm to Keene Auto Body's price for repairs, and State Farm's estimate for the repairs to Mr. Meagher's vehicle was reached through a procedure consistent with New Hampshire law. Amicus App. at 6-11.

On April 5, 2021, the trial court granted State Farm's motion to dismiss. *See infra*, April 5, 2021 order (the "Order"), p. 30. The Order was consistent with the numerous other orders granting motions to dismiss in small claims matters filed by Keene Auto Body against insurers. *See* App. at 3.

SUMMARY OF THE ARGUMENT

This Court should affirm the trial court's order as Mr. Meagher's purported assignment to Keene Auto Body is barred by the Policy's anti-assignment clause. The anti-assignment clause applies to all assignments. It makes no distinction between pre-loss and post-loss assignments. Pursuant to the anti-assignment clause, Mr. Meagher cannot assign the benefits of his Policy to Keene Auto Body.

Interpreting the Policy's anti-assignment clause pursuant to its plain language is consistent with New Hampshire law. The terms of the Policy's anti-assignment clause are unambiguous: without State Farm's approval, Mr. Meagher cannot transfer the rights or benefits of the Policy to anyone. New Hampshire has a longstanding tradition of respecting parties' freedom of contract. Consistent with this tradition, the Court should analyze the anti-assignment clause based on the ordinary meaning of terms used therein.

Courts outside New Hampshire that similarly value parties' freedom of contract have ruled that anti-assignment clauses apply to pre-loss and post-loss assignments. These courts' analyses of the clause are almost identical to the analyses undertaken by this Court with respect to other provisions of insurance policies. The trial court similarly recognized that the Policy's anti-assignment clause barred Mr. Meagher's purported assignment to Keene Auto Body. Its order granting State Farm's motion to dismiss is consistent with its many other orders granting insurers' motions to dismiss in matters brought by Keene Auto Body where the applicable insurance policies included anti-assignment language.

The logic underlying contrary authority, specifically, that allowing post-loss assignments does not increase the risk undertaken by an insurer, is flawed. Interpreting the clause in this manner allows an automobile repair facility, like Keene Auto Body, to unilaterally determine a price for a vehicle's repairs, then sue an insurer to recover this price without attempting to reach an agreement regarding the price or otherwise resolve the dispute without litigation. Such an interpretation of an anti-assignment clause increases the risk undertaken by insurers as it incentivizes automobile repair facilities to impose higher prices for repairs, knowing that they can force insurers to incur litigation costs

defending lawsuits seeking to recover the higher prices. The numerous cases filed by Keene Auto Body against insurers demonstrate that allowing post-loss assignments increases the risk undertaken by insurers.

ARGUMENT

I. The Policy's Anti-Assignment Clause Bars Post-Loss Assignments Pursuant To Its Plain Language.

The Policy's anti-assignment clause states:

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

Amicus App. at 88. The Policy defines "us" as "the Company issuing this policy as shown on the Declarations Page." Amicus App. at 63. This company is State Farm. *See* Amicus App. at 7. The anti-assignment clause makes no distinction between pre-loss and post-loss assignments, nor does it suggest that the clause's applicability is limited to a particular type of assignment.

This Court has repeatedly confirmed that New Hampshire will honor and enforce the terms of an insurance policy. *See, e.g.*, *Godbout v. Lloyd's Ins. Syndicates*, 150 N.H. 103, 105 (2003) ("The language of an insurance policy is binding… ."); *Green Mountain Ins. Co. v. Bonney*, 131 N.H. 762, 767 (1989) ("Even oral contracts for insurance are enforceable so long as there is agreement upon the subject-matter, the parties, the risk insured, the amount, the time for the coverage to begin to run, the duration of the coverage, and the premium." (internal citation omitted)). "An insurance policy is a contract." *Tuttle v. N.H. Med. Malpractice Joint Underwriting Assoc.*, 159 N.H. 627, 642 (2010). The language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mut. Ins. Co.*, 142 N.H. 144, 146 (1997). "Policy terms are construed objectively, and 'where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning.'" *Godbout*, 150 N.H. at 105 (quoting *Concord Hosp. v. N.H. Medical Malpractice Joint Underwriting Ass'n*, 137 N.H. 680, 683 (1993)).

Neither Keene Auto Body, nor the amicus, the New Hampshire Association of Automobile Dealers ("NHADA"), argues that the Policy's anti-assignment clause is ambiguous. They argue that the clause applies only to pre-loss assignments based on

limiting language that does not appear in the clause. "While a court has the duty to construe an insurance contract in a reasonable manner, it is not free to rewrite its terms by giving them a meaning which they never had." *Consoli v. Com. Ins. Co.*, 97 N.H. 224, 226 (1951). "'[W]hen a policy's meaning and intent are clear, it is not the prerogative of the courts to create ambiguities where none exist or to rewrite the contract in attempting to avoid harsh results.' The same prohibition applies to attempts to rewrite a policy to avoid a result claimed to be unreasonable." *Catholic Med. Ctr. v. Exec. Risk Indem., Inc.*, 151 N.H. 699, 703 (2005) (quoting *Harbor Insurance Co. v. United Services Automobile Ass'n*, 559 P.2d 178, 181 (Ariz. 1976)).

Parties to a contract "are bound by the terms of an agreement freely and openly entered into, and courts cannot make better agreements than the parties themselves have entered into… ." *Mills v. Nashua Fed. Savings and Loan Assoc.*, 121 N.H. 722, 726 (1981). "[W]hen construing an insurance policy," this Court reads "it as a whole and from the vantage point of an ordinary person." *Great Am. Dining, Inc. v. Philadelphia Indem. Ins. Co.*, 164 N.H. 612, 619 (2013). The terms in the Policy's anti-assignment clause are not ambiguous, and the clause does not conflict with another provision of the Policy. An ordinary person would understand that the anti-assignment clause applies to pre-loss and post-loss assignments as the clause does not draw a distinction between them.

This Court has recognized that recovering pursuant to an automobile insurance policy is a benefit. *See Langevin v. Travco Ins. Co.*, 170 N.H. 660, 666 (2018) (explaining that a particular statute evidenced "legislative intent to ensure an insured's choice over how to use his or her health and automobile insurance benefits"); *Rand v. Aetna Life & Cas. Co.*, 132 N.H. 768, 769 (1990) (noting that the plaintiff "made a claim for insurance benefits under an Aetna automobile policy"). Keene Auto Body has also described the amount that it claims to be owed as "insurance benefits." Amicus App. at 99. The Policy's anti-assignment clause prohibits Mr. Meagher from assigning his benefits to Keene Auto Body.

The plain language of the Policy's anti-assignment clause demonstrates that it applies to pre-loss and post-loss assignments of an insured's rights and benefits under the

Policy. The trial court was correct to grant State Farm's motion to dismiss as Mr. Meagher never received State Farm's approval to assign his rights or benefits under the Policy to Keene Auto Body. *See* Amicus App. at 104. Without an assignment, Keene Auto Body cannot maintain this action.

II. Interpreting The Policy's Anti-Assignment Clause Pursuant To Its Plain Language Is Consistent With New Hampshire Law.

Although this Court has not ruled on the scope of the Policy's anti-assignment clause, its holdings demonstrate that the clause applies to pre-loss and post-loss assignments. In *Margolis v. St. Paul Fire & Marine Ins. Co.*, a furniture store purchased fire insurance policies with three year terms. *See* 100 N.H. 303, 304 (1956). During these policies' terms, the furniture store "made an assignment of all of its assets for the benefit of its creditors." *Id.* Soon thereafter, a newly-formed corporation purchased these assets, including the policies. *Id.* Approximately six months later, a fire occurred at the insured location. *Id.* The policies in question provided "that if it is assigned with the assent of the insurer, the assignee 'may bring an action thereon' and 'may recover the full amount due upon the policy'. … . If the insurer's assent is not secured, it is a condition of the policy that it shall be 'void and inoperative during the existence or continuance' of that condition." *Id.* The insurers' assent to the assignment of the policies was never requested, nor received. *See id.* at 307. Given these facts, this Court held that "[t]he assignment of the policies rendered them void and inoperative unless and until the insurers assented thereto. The policies so provided in express language and no action on the part of the defendants was required to make them so… ." *Id.* at 308. The Court also noted that:

> It is not required, however, as claimed by the plaintiff, that such an assignment be shown to have actually increased the risk materially in order that the policy be inoperative and void. … . The stipulation is one which is concerned with the insurer's indemnity obligation to the named insured as the other party to the contract of insurance and is intended to make the benefits of the policy unavailable unless and until the insurer's assent to accept the assignee in substitution for the original insured is given, without regard to whether the assignment actually results in a material increase in the risk.

Id. at 305. As *Margolis* demonstrates, an insurer need not prove that an assignment increases the insurer's risk to enforce an anti-assignment clause.

The trial court's repeated dismissals of Keene Auto Body's small claims complaints similarly supports that the Policy's anti-assignment clause applies to post-loss assignments. Although the trial court has not issued written orders in the other Keene Auto Body cases, it has consistently dismissed them where the applicable policy includes an anti-assignment clause. *See* App. at 3. These orders are consistent with this Court's holding in *Margolis* and with authority outside the insurance context where the Court has restricted the right of assignment. *See, e.g.*, *Dillman v. Town of Hooksett*, 153 N.H. 344, 347-48 (2006) (preventing a union from assigning "its right to demand arbitration under a collective bargaining agreement to an individual employee in exchange for a discharge from its duty of fair representation"); *Opinion of the Justices*, 103 N.H. 381, 383 (1961) (holding that "the assignment of wages of a state official or employee is not authorized by any existing legislation, the State is not bound to honor assignments of the wages of state employees or officials"); *Abbott v. Baldwin*, 61 N.H. 583, 583 (1881) (noting that "[a] verbal contract for the sale of land is not assignable"); *see also Singer Asset Fin. Co., LLC v. Wyner*, 156 N.H. 468, 474 (2007) (enforcing the language of a clear and unequivocal anti-assignment clause in a settlement agreement under New York law).

NHADA cites two New Hampshire authorities in support of its contention that the Policy's anti-assignment clause does not apply to post-loss assignments. *Breeyear v. Rockingham Farmers Mut. Fire Ins. Co.* is over a century old, and the Court's suggestion in that case that "an increase of the moral risk" undertaken by an insurer is required for an anti-assignment clause to apply is directly contradicted by the more recent and better-reasoned *Margolis*. *Compare Breeyear v. Rockingham Farmers' Mut. Fire Ins. Co.*, 52 A. 860, 860-61 (N.H. 1902)*, with Margolis*, 100 N.H. at 305 ("It is not required, however, as claimed by the plaintiff, that such an assignment be shown to have actually increased the risk materially in order that the policy be inoperative and void."). This Court should not rely on a single ancient authority to limit the effect of the Policy's anti-assignment clause

when doing so would be inconsistent with "[t]he fundamental goal of interpreting an insurance policy": "to carry out the intent of the contracting parties" based on "the plain and ordinary meaning of the policy's words in context." *Exeter Hosp., Inc. v. Steadfast Ins. Co.*, 170 N.H. 170, 174 (2017) (internal quotation omitted); *see* Amicus App. at 88.

The only other New Hampshire authority cited by NHADA is *Total Waste Mgmt. Corp. v. Commercial Union Ins. Co.*, a case from the United States District Court for the District of New Hampshire in which the court analyzed the effect of an anti-assignment clause on a transfer occurring by operation of law. *See* 857 F. Supp. 140, 152 (D.N.H. 1994). *Total Waste Mgmt. Corp.* does not control this matter as Mr. Meagher's assignment did not occur by operation of law. Mr. Meagher purported to assign his benefits under the Policy to Keene Auto Body through a voluntary agreement, *see* Amicus App. at 5, not as the result of any provision of New Hampshire law. Although *Total Waste Mgmt. Corp.* includes a sentence suggesting than an anti-assignment clause applies only when the assignment would increase the insurer's risk, that sentence is dicta, *see Pesaturo v. Kinne*, 161 N.H. 550, 553 (2011) ("This statement… is dicta and is not controlling here."), is inconsistent with this Court's analysis in *Margolis*, *see* 100 N.H. at 305, and apparently has never been cited favorably by this Court in the over twenty-seven years since *Total Waste Mgmt. Corp.* was decided.

Neither New Hampshire authority cited by NHADA demonstrates that the Policy's anti-assignment clause applies only to pre-loss assignments. The language of the clause, this Court's analysis in *Margolis*, and the trial court's dismissal of Keene Auto Body's many cases confirm that the anti-assignment clause applies to pre-loss and post-loss assignments. Consistent with this authority, this Court should affirm the Order.

III. Interpreting The Policy's Anti-Assignment Clause Pursuant To Its Plain Language Is Consistent With New Hampshire Public Policy.

Although NHADA argues that interpreting the Policy's anti-assignment clause such that it applies only to pre-loss assignments is consistent with New Hampshire public policy, *see* NHADA Brief, p. 18-19, it cites no New Hampshire authority supporting this position. This Court has long cautioned that public policy "is a very unruly horse, and when once

you get astride it, you never know where it will carry you. It may lead you from the sound law." *Hill v. Spear*, 50 N.H. 253, 274 (1870). In New Hampshire, "[m]atters of public policy are reserved for the legislature." *In re Kilton*, 156 N.H. 632, 645 (2007). "[T]he declaration of public policy with reference to a given subject is regarded as a matter primarily for legislative action." *Welch v. The Frisbie Memorial Hosp.*, 90 N.H. 337, 340-41 (1939). The question of "what is the public policy of a state, and what is contrary to it... will be found to be one of great vagueness and uncertainty" and one that falls outside the range of a court's traditional "duty and functions." *Glover v. Baker*, 83 A. 916, 932 (N.H. 1912) (noting that since "men may and will complexionally differ" on questions of public policy, such questions "scarcely come within the range of judicial duty and functions."); *see also Tamelleo v. New Hampshire Jockey Club, Inc.*, 102 N.H. 547, 549 (1960) (holding that making drastic changes to public policy "is not a proper function of this court."). Although judicial authority "undoubtedly exists to declare public policy unsupported by legislative announcement," such a judicially-declared policy "must be based on a thoroughly developed, definite, persistent and united state of the public mind. There must be no substantial doubt about it." *Welch*, 90 N.H. at 340-41.; *see also Welzenbach v. Powers*, 139 N.H. 688, 689-90 (1995) (citation omitted).

Neither NHADA, nor Keene Auto Body has identified any developed, definite, persistent, and/or united state of public mind supporting that the Policy's anti-assignment clause applies only to pre-loss assignments. The New Hampshire Insurance Commissioner reviews and approves provisions before they are incorporated into New Hampshire automobile insurance policies. *See* N.H. Rev. Stat. Ann. § 412:5 (providing for mandatory review and approval for automobile insurance policies). Nothing supports, nor suggests that the Commissioner rejected the Policy's anti-assignment clause and/or required that the clause make a distinction between pre-loss and post-loss assignments. The Commissioner is charged with disapproving policy language that "does not comply with the requirements of law, is not in the public interest, is contrary to public policy, is inequitable, misleading, deceptive, or encourages misrepresentation of such policy." *Id.* That the Commissioner approved the Policy with a broad anti-assignment clause is *prima facie* evidence that the

clause is lawful and comports with New Hampshire public policy. *See In re Town of Bethlehem*, 154 N.H. 314, 318 (2006) ("Agency findings are deemed *prima facie* lawful and reasonable and we do not sit as a trier of fact in reviewing them.").

New Hampshire public policy supports that "parties to a contract are bound by the terms of an agreement freely and openly entered into and courts cannot improve the terms or conditions of an agreement that the parties themselves have executed or rewrite contracts merely because they might operate harshly or inequitably." *Zannini v. Phenix Mut. Fire Ins. Co.*, 172 N.H. 730, 734 (2019). "[A]s a matter of efficiency and freedom of choice, parties should be able to contract freely about their affairs. … . Under this rule, parties may bargain for various levels of risk and benefit as they see fit." *Barnes v. New Hampshire Karting Ass'n, Inc.*, 128 N.H. 102, 106 (1986). Pursuant to the plain language of the anti-assignment clause, Mr. Meagher cannot assign his rights or benefits under the Policy to anyone. This Court has long recognized the importance of freedom of contract in New Hampshire law. It should not depart from this fundamental public policy when NHADA and Keene Auto Body have identified no New Hampshire authority suggesting that such a departure is appropriate.

IV. Courts Outside New Hampshire That Respect Parties' Freedom Of Contract Have Ruled That Anti-Assignment Clauses Apply To Pre-Loss And Post-Loss Assignments.

Courts from other jurisdictions have split on the scope of anti-assignment clauses in insurance policies. *See* NHADA Brief, p. 15-18. Jurisdictions sharing New Hampshire's respect for freedom of contract have ruled that anti-assignment clauses apply to pre-loss and post-loss assignments based on the clauses' plain language. *See, e.g.*, *Keller Foundations, Inc. v. Wausau Underwriters Ins. Co.*, 626 F.3d 871, 874-75 (5th Cir. 2010) (summarizing Texas cases enforcing "non-assignment clauses even for assignments made post-loss" and concluding that the non-assignment clause at issue applied to a post-loss assignment as "no transfer of the insurance coverage for the pre-acquisition losses could have been valid without the consent of [the insurer], and it is undisputed that [the insurer] never consented to such a transfer"); *Texas Farmers Ins. Co. v. Gerdes By & Through*

Griffin Chiropractic Clinic, 880 S.W.2d 215, 217, 218 (Tex. App. 1994) (holding that "the non-assignment clause contained in the insurance contract effectively barred an assignment of rights" and noting that "[n]on-assignment clauses have been consistently enforced by Texas courts"). This Court should do the same.

In *Del Monte Fresh Produce (Hawaii), Inc. v. Firemen's Fund Ins. Co.*, the Supreme Court of Hawaii enforced anti-assignment clauses in a number of insurance policies despite the loss in question, groundwater contamination, having occurred before the assignment. 183 P.3d 734, 738, 746-47 (Haw. 2007). It was "undisputed that the insurance policies in the instant case contain a no assignment clause that requires the consent of the insurer to bind it to any assignment made by Del Monte Corp., who is the named insured." *Id.* at 738. Del Monte Corp. attempted to assign its right to recover under its policies to Del Monte Fresh, "notwithstanding the no assignment provisions in the policies." *Id.* at 746. The Supreme Court of Hawaii rejected the attempted assignment, explaining:

> The relevant insurance policies in the instant case contain a no assignment clause that requires the consent of the insurer to bind it to any assignment made by the named insured. It is undisputed that Del Monte Corp. is the only named insured covered by the policies. It is also undisputed that Del Monte Corp. did not obtain any of the insurers' consent prior to the 1989 assignment. Because the policies were assigned by Del Monte Corp. without the insurers' consent, we hold that Del Monte Fresh is not an insured under any of the Defendant–Appellant insurers' policies… .

Id. at 747. As the court noted, "liability insurers have the same rights as individuals to limit their liability, *and to impose whatever conditions they please on their obligation,* provided they are not in contravention of statutory inhibitions or public policy." *Id.* (emphasis in original) (internal quotation omitted).

This Court has recognized that insurers can limit their liability through the language of a policy. *See Russell v. NGM Ins. Co.*, 170 N.H. 424, 429 (2017) ("Insurers are free to contractually limit the extent of their liability through use of a policy exclusion provided it violates no statutory provision."). Like the Supreme Court of Hawaii, this Court will

enforce language limiting an insurer's liability "[a]bsent a statutory provision or public policy to the contrary." *Barking Dog, Ltd. v. Citizens Ins. Co. of Am.*, 164 N.H. 80, 83-84 (2012) (internal quotation omitted). As this Court employs the same reasoning as the Supreme Court of Hawaii with to respect insurance policy interpretation, it should reach the same result with respect to the scope of the Policy's anti-assignment clause.

In *In re Katrina Canal Breaches Litigation*, the Supreme Court of Louisiana concluded that "[t]here is no public policy in Louisiana which precludes an anti-assignment clause from applying to post-loss assignments. However, the language of the anti-assignment clause must clearly and unambiguously express that it applies to post-loss assignments, and thus it must be evaluated on a policy by policy basis." 63 So. 3d 955, 957 (La. 2011). This matter involved individuals' assignments of their right to recover under homeowners' policies to the State of Louisiana with respect to claims arising from damage caused by Hurricane Katrina and/or Hurricane Rita. *See id.* at 957-58. The court recognized "the vast amount of national jurisprudence distinguishing between pre-loss and post-loss assignments and rejecting restrictions on post-loss assignments, however we find no public policy in Louisiana favoring free assignability of claims over freedom of contract. This court has long recognized that the freedom to contract is an important public policy." *Id.* at 962. The court also noted that "[n]othing in the facts of this case support a finding that the non-assignment clauses contained in the policies have a deleterious effect on the public or that they violate public policy. Further, public policy determinations are better suited to the legislative, rather than the judicial forum." *Id.* at 963.

Like Louisiana, New Hampshire has a strong public policy supporting the freedom of contract. *See Pro Done, Inc. v. Basham*, 172 N.H. 138, 153 (2019) (confirming that the Court respects the freedom of contract as recognized in *Barnes*). New Hampshire has no contrary public policy supporting that the Policy's anti-assignment clause applies only to pre-loss assignments. This Court has noted that "matters of public policy are reserved for the legislature." *In re Plaisted*, 149 N.H. 522, 526 (2003). As the New Hampshire legislature has not announced any public policy limiting the scope of anti-assignment clauses, this Court should "not undertake the extraordinary step of creating legislation

where none exists." *Id.* Consistent with its case law regarding the freedom of contract, the Court should rule that the Policy's anti-assignment clause applies to pre-loss and post-loss assignments based on its plain language.

In *Holloway v. Republic Indem. Co. of Am.*, the Supreme Court of Oregon noted that "[t]he central issue in this insurance contract case is whether an anti-assignment clause providing that '[y]our rights or duties under this policy may not be transferred without our written consent[ ]' is ambiguous and thus should be construed against its drafter." 341 Or. 642, 644 (2006). The matter involved a post-loss assignment by an insured restauranteur to an employee who was allegedly sexually harassed at work. *See id.* at 646-47. The court concluded that the anti-assignment provision was not ambiguous and explained:

> The anti-assignment clause here is worded broadly; it contains no exceptions or qualifications. It explicitly prohibits, without Republic's written consent, the assignment of "[y]our [the insured's] rights or duties under this policy[.]" According to those terms, the clause applies to whatever rights or duties the insured may have under the policy. Nothing in the clause suggests a limitation to pre-loss rights or duties or provides an exception for post-loss rights or duties. Reading such an exception into the policy would not be reasonable and would "insert what has been omitted."

Id. at 651. Based on this analysis, the Supreme Court of Oregon concluded:

> In sum, the only reasonable interpretation of the anti-assignment clause at issue in this case is that it prohibits the assignment of the insured's rights or duties without regard to whether they arose pre-loss or post-loss. In other words, none of the insured's rights or duties could be assigned without Republic's written consent.

Id. at 652. As the insured did not obtain the insurer's written consent to assign its rights, the court held that the assignment was invalid. *See id.* at 653.

This Court has recognized that it cannot rewrite insurance policies. *See Catholic Med. Ctr.*, 151 N.H. at 703; *Consoli*, 97 N.H. at 226. It also interprets terms in insurance policies pursuant to their "natural and ordinary meaning." *Rizzo v. Allstate Insurance Company*, 170 N.H. 708, 719 (2018). The terms used in the Policy's anti-assignment

provision are clear. They draw no distinction between pre-loss and post-loss assignments. Like the Supreme Court of Oregon, this Court should rule that Mr. Meagher's attempted assignment to Keene Auto Body is barred by the Policy's anti-assignment clause.

The Supreme Court of Colorado has noted that allowing post-loss assignments when an insurance policy contains an anti-assignment clause "would be to force [an insurer] to deal with parties with whom it has not contracted, regardless of the fact that its policy contains an express contractual provision requiring its prior consent to any assignment of interests in the policy." *Parrish Chiropractic Centers, P.C. v. Progressive Cas. Ins. Co.*, 874 P.2d 1049, 1055 (Colo. 1994). As the court explained, "the public policy in favor of the freedom of contract, and the corollary right of the insurer to deal only with the party with whom it contracted, outweigh the general policy favoring the free alienability of choses in action." *Id.* at 1054. "[W]hile the free assignment of choses in action may be a valuable and important goal of public policy, it is not superior to competing public interests. The policy supporting free alienability is not such an absolute one that it must override a contract provision prohibiting assignment in a specific context." *Id.* at 1054-55 (internal quotation omitted).

This Court has repeatedly confirmed its respect for parties' freedom of contract. *See Pro Done, Inc.*, 172 N.H. at 153; *Barnes*, 128 N.H. at 106. It has also limited parties' right to assignment. *See Dillman*, 153 N.H. at 347-48; *Opinion of the Justices*, 103 N.H. at 383; *Abbott*, 61 N.H. at 58. That New Hampshire has generally recognized the right to assign choses in action, *see Thompson v. Emery*, 27 N.H. 269, 272-74 (1853), does not demonstrate that the Court should ignore its longstanding policies of respecting parties' freedom of contract and interpreting contracts pursuant to their plain language. *Cf. Appeal of Town of Bedford*, 142 N.H. 637, 640 (1998) ("The principle that doubt should be resolved in favor of arbitration does not relieve a court of the responsibility of applying traditional principles of contract interpretation in an effort to ascertain the intention of the contracting parties.") (quoting *Affiliated Food Distributors, Inc. v. Local Union No. 229*, 483 F.2d 418, 420 (3d Cir. 1973)).

That more courts have found that anti-assignment clauses apply only to pre-loss assignments does not control how this Court should rule. In *Rizzo*, although more courts had declined to enforce the *de novo* clause in Allstate's policy, this Court rejected that position and ruled that the clause was enforceable. *See* 170 N.H. at 714-15. The Court's analysis did not involve counting the number of jurisdictions that had ruled a particular way, but rather by interpreting the plain language of the *de novo* clause and considering New Hampshire public policy. *See id.* at 713. A similar analysis in this matter leads to the conclusion that the Policy's anti-assignment clause applies to pre-loss and post-loss assignments.

"[T]his court is the final authority on New Hampshire law." *State v. Ball*, 124 N.H. 226, 232 (1983). It has repeatedly affirmed that contractual intent is "determined from the plain meaning of the language used in the contract." *Robbins v. Salem Radiology*, 145 N.H. 415, 418 (2000); *see also Royal Oak Realty Tr. v. Mordita Realty Tr.*, 146 N.H. 578, 581 (2001) (same); *Lawyers Title Ins. Corp. v. Groff*, 148 N.H. 333, 337 (2002) (same); *Ryan James Realty, LLC v. Villages at Chester Condo. Ass'n*, 153 N.H. 194, 197 (2006) (same); *Birch Broadcasting, Inc. v. Capitol Broadcasting Corp.*, 161 N.H. 192, 197 (2010) (same). "An insurance policy is a contractual obligation between the insured and the insurer. Insurers are free to limit their liability through clear and unambiguous policy language." *Concord Gen. Mut. Ins. Co. v. Green & Co. Bldg. & Dev. Corp.*, 160 N.H. 690, 694 (2010). The Policy's anti-assignment clause is clear and unambiguous. It applies to all assignments. Case law from outside New Hampshire that reads a limitation into the clause is neither controlling on this Court, nor consistent with New Hampshire law.

V. Allowing Post-Loss Assignments Of Insurance Benefits Increases The Risk Undertaken By Insurers.

Cases that have applied anti-assignment clauses only to pre-loss assignments rely on the premise that allowing post-loss assignments does not increase the risk undertaken by insurers. This reasoning is flawed. As Keene Auto Body's litigation history demonstrates, if automobile repair facilities are able to take post-loss assignments from insureds, insurers will have to defend countless lawsuits where a facility quotes a price,

then sues the insurer to recover that price. *See* App. at 3. Individual insureds do not have the ability to set a price for repairs, then sue to recover that price from insurers. If Keene Auto Body and NHADA's interpretation of the anti-assignment clause were accepted, an automobile repair facility would have that power. It could unilaterally quote a price, reach an agreement with an insured regarding that price, take an assignment of the insured's rights under his or her automobile policy, then sue the insurer to recover the facility's unilaterally-imposed price when the insurer has never agreed to that price. Such an interpretation of the anti-assignment clause unquestionably increases the risk undertaken by insurers as it makes them more likely to face lawsuits regarding vehicle repair costs.

In *Mercedes-Benz of West Chester v. American Family Insurance,* the plaintiff was an automobile repair facility ("Elite") that took assignments from three American Family insureds after the facility's repair charges "surpassed the amount American Family agreed to pay." 2010 WL 2029048, at *1 (Ohio Ct. App. May 24, 2010). "American Family paid Elite the amount of money it estimated was necessary to repair the damages pursuant to the insurance contract. After American Family refused to pay the remaining charges, Elite brought three separate actions." *Id.* The trial court granted American Family's motion for summary judgment based on an anti-assignment clause in its policy that stated "interest in this policy may be assigned only with our written consent." *Id.* In describing why the policy's anti-assignment clause applied to the assignments in question, the court of appeals explained:

> had the assignment been validated, it would have materially changed American Family's duty and materially increased its burden or risk under the contract. Specifically, had Elite been assigned the insured's interest in the policy to seek proceeds for their damaged vehicles, American Family would have no recourse to challenge or dispute Elite's declaration of the proper amount of damages. While the insureds have a general right to contest a coverage estimate from American Family, the right to negotiate is markedly different than a third party's demand for payment in full. Supplanting the right of negotiation between an insured and its insurer with an obligation to pay an invoice increases an insurer's burden and risk under any policy.

> {¶ 21} If the anti-assignment clause were not to stand, and as demonstrated in the case at bar, American Family would be forced to pay whatever amount is charged by a third party or face litigation. The threat of facing increased litigation certainly raises the burden and risk under any contract should the anti-assignment be invalidated.
>
> {¶ 22} We also note that American Family never agreed to insure or owe duties to Elite, as it did the insureds. By seeking assignment, Elite tried to create contractual privity between itself and American Family, and now claims that American Family owes it money simply because it charged a certain amount for repairs. At best, and as is stated in *West Broad,* the only contractual privity that existed is between Elite and its three insureds. Without conforming to proper contract formation requirements, Elite cannot impute a legally binding obligation to pay against American Family based simply on an invalid assignment. To find otherwise would place an undue risk and burden on American Family

Id. at * 4. Like American Family, State Farm's risk would materially increase if its insureds could assign their rights or benefits under the Policy to automobile repair facilities like Keene Auto Body. As the Court of Appeals of Ohio recognized, "the automobile repair shop" presents a particularly problematic entity with respect to assignments as demonstrated by Elite demanding "payment from American Family based solely on what charges it considered reasonable. Instead of seeking the balance from American Family insureds, Elite filed suit against American Family itself even though the anti-assignment clause barred any assignment of interest to Elite." *Id.*

Allowing post-loss assignments of insurance benefits increases the risk undertaken by insurers as it increases the likelihood that insurers will face litigation. *See Michigan Ambulatory Surgical Ctr. v. Farm Bureau Gen. Ins. Co. of Michigan*, 2020 WL 6811671, at *6 (Mich. Ct. App. Nov. 19, 2020) (Swartzle, J. dissenting) (noting that "while setting aside the anti-assignment clause did not increase the insurer's liability under the insurance policy, it certainly did increase the risk that the insurer would be exposed to future litigation by unanticipated assignees"). Keene Auto Body's repeated filing of small claims

complaints against insurers despite the trial court consistently dismissing them demonstrates that interpreting the Policy's anti-assignment clause as Keene Auto Body and NHADA suggest would materially increase insurers' risk. *See* App. at 3.

Interpreting an anti-assignment clause as Keene Auto Body and NHADA suggest also materially increases an insurer's risk because automobile repair facilities and insureds have inherently different interests with respect to the amount charged to repair a vehicle. An insured's interest is to have a damaged vehicle repaired in a safe and efficient manner. An insured normally pays a deductible regardless of the total amount charged to repair the vehicle, and he or she has no interest in trying to force an insurer to pay a higher amount. By contrast, an automobile repair facility has an obvious interest in making an insurer pay the highest amount possible as the facility maximizes its profit by doing so. An automobile repair facility's interest in forcing an insurer to pay the highest amount possible inevitably factors into negotiations with the insurer. *See Mercedes-Benz of West Chester*, 2010 WL 2029048, at *4. Negotiating with an entity that is motivated by maximizing its profits, as opposed to safely and cost-effectively repairing a vehicle, is not a risk that is contemplated by an insurer when it issues a policy to an insured. Accordingly, a policy's anti-assignment clause applies to post-loss assignments to prevent an insurer from being forced to negotiate with an entity that has different motivations than its insured.

VI. Even If The Policy's Anti-Assignment Clause Were Inapplicable To Keene Auto Body's Claim, The Trial Court Was Correct To Dismiss The Small Claims Complaint.

New Hampshire law does not support that an automobile repair facility can unilaterally impose a price for repairs on an insurer, then sue the insurer to recover that amount. 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). 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. Keene Auto Body repaired Mr. Meagher's vehicle without an agreement with State Farm regarding the price for those repairs. *See* App. at 99. Neither N.H. Rev. Stat. Ann. § 417:4, XX(c), nor New Hampshire Insurance Department Regulation 1002.17 authorizes a repair facility to perform repairs without an agreement, then demand its unilaterally-imposed price from an insurer. In fact, the statute and the regulation specifically allow an insurer to limit the amount that it pays.

This Court reviews "motions to dismiss to determine whether the plaintiff's allegations are reasonably susceptible of a construction that would permit recovery." *Garod v. Steiner Law Office*, *PLLC*, 170 N.H. 1, 5 (2017). "If the facts pleaded do not constitute a basis for legal relief, we will affirm the trial court's grant of the motion to dismiss." *Riso v. Dwyer*, 168 N.H. 652, 654 (2016) (internal quotation omitted). Even if the Policy's anti-assignment clause were inapplicable to Mr. Meagher's alleged assignment, Keene Auto Body has not stated a viable claim. 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 Mr. Meagher's vehicle and trying to force State Farm to pay whatever price Keene Auto Body wishes to charge for the work. If Keene Auto Body was unhappy with State Farm's estimate for the repairs to Mr. Meagher's vehicle, it could have elected not to repair the vehicle. State Farm has no obligation to pay Keene Auto Body its unilaterally-imposed price for the repairs to Mr. Meagher's vehicle.

CONCLUSION

For the foregoing reasons, this Court should affirm the Order and rule that Keene Auto Body cannot maintain a claim against State Farm.

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

By Its Attorneys,

PRIMMER PIPER EGGLESTON & CRAMER PC,

Date: August 23, 2021 By: /s/ Brendan D. O'Brien

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STATEMENT WITH RESPECT TO ORAL ARGUMENT

State Farm does not request oral argument. This Court can decide this matter based on the plain language of the Policy's anti-assignment clause and New Hampshire law. In the event that this Court decides that oral argument is necessary, State Farm designates Brendan D. O'Brien to represent its interests.

Date: August 23, 2021 /s/ Brendan D. O'Brien
Brendan D. O'Brien (N.H. Bar No. 267995)

CERTIFICATION OF WORD LIMIT

I hereby certify that the total words in this Brief do not exceed 9,500 words.

Date: August 23, 2021 /s/ Brendan D. O'Brien
Brendan D. O'Brien (N.H. Bar No. 267995)

CERTIFICATION

I hereby certify that on this day a copy of this Brief was served via the Court's electronic filing system on Keene Auto Body and counsel for the New Hampshire Automobile Dealers Association.

Date: August 23, 2021 /s/ Brendan D. O'Brien
Brendan D. O'Brien (N.H. Bar No. 267995)

BRIEF ADDENDUM

April 5, 2021 Order Granting State Farm's Motion to Dismiss 30

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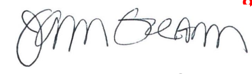

Judge James D. Gleason

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

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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
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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