

We are appealing the Keene District Court's unknown ruling for dismissing our case on collecting the insurance proceeds and debt that was owed to Caleb Meagher from his insurer, State Farm Insurance.

We attest the State Farm insured, Caleb Meagher, was able to assign the insurance proceeds that are payable on his loss to Keene Auto Body. NH Section 382-A:5-114, states (a) "In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value or delivered upon honor or giving of value by the issuer or a nominated person under the letter of credit". Section (b) of this law states "A beneficiary may assign its right to part or all of the proceeds of a letter of credit". NH Section 382-A:9-102 (64) (E) defines "proceeds" to mean "Insurance payable by reason of the loss".

On December 17, 2020, the insured sustained a loss to his 2020 Toyota that was insured for damages by State Farm Insurance. December 21, 2020, State Farm completed a virtual remote "pocket estimate" using photos supplied by the insured in the amount of \$2388.29. January 11, 2021, the insured, Caleb Meagher, signed a repair contract with Keene Auto Body to repair his damaged vehicle. Keene Auto Body contacted State Farm Insurance on January 13, 14 and 15th, on behalf of Meagher, about his insurer's deficient amount that they placed on his repairs based upon the State Farm estimate, according to the procedures printed within the State Farm estimate. State Farm refused to make the necessary corrections to their estimate or amount for Meagher to be repaid the money to have his vehicle correctly and properly repaired in the amount of \$3481.66 by Keene Auto Body. January 15th, Meagher, the beneficiary of the insurance proceeds, entered in a contract with Keene Auto Body assigning the insurance proceeds to Keene Auto Body, that State Farm Insurance should have made available per the insurance contract that State Farm sold to Meagher, and according to the NH laws. Instead, State Farm unjustly withheld these insurance proceeds from Meagher and now Keene Auto Body, the assignee. At no time did State Farm attempt to contact Keene Auto Body from the date of loss until delivery of the repaired vehicle.

Keene Auto Body's customer, Caleb Meagher, agreed that his repairs and charges were fair and reasonable. State Farm is not Keene Auto Body's customer nor is a customer of any repair shop in New Hampshire. A repair shop is unable to force prices unto an insurance company such as State Farm Insurance, as State Farm Insurance has been alleging, unless that insurance company is the customer or consumer. If this was the case that Keene Auto Body was forcing prices onto the consumer or customer, then these consumers or customers could go elsewhere for their

repairs. Instead, the fair market determined that Keene Auto Body's repairs and prices were fair and reasonable, thus the customer, Caleb Meagher, hired Keene Auto Body to complete his repairs. No prices for vehicle repairs were forced onto State Farm Insurance as they have alleged. State Farm does not authorize repairs. Caleb Meagher, the consumer and customer, authorize vehicle repairs, NH 358-D:3 and determines what is fair and reasonable, and what is not.

The contract assignment of insurance proceeds between Meagher and Keene Auto Body, gave Keene Auto Body a viable claim against State Farm on collecting this debt that was owed to Meagher from State Farm. Meagher, as the beneficiary of these proceeds, did not need State Farm's authority to enter the assignment of proceeds contract, as State Farm has alleged, as the contract was between Meagher and Keene Auto Body. 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). State Farm should be bound to repay Meagher for the amount that was necessary to repair his damaged property, Toyota Corolla, as an insurance policy in New Hampshire is a contract of indemnification.

The State Farm Policy does not rule the New Hampshire laws, but instead the New Hampshire laws rule the State Farm policy. Per the State Farm policy "Choice of Law" that "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". It is clear that New Hampshire laws override the State Farm policy allowing the beneficiary to assign these insurance proceeds to the assignee without State Farm's authority. Thus, making State Farm's anti-assignment clause in the policy invalid. Therefore, State Farm has no right to dispute Keene Auto Body's claim to this debt and money that was owed to Meagher from State Farm on his insurance loss.

State Farm agrees that "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 insurance contract states the choice of law is New Hampshire and not State Farm Insurance.

State Farm's "estimate" was not consistent with New Hampshire law as State Farm has alleged. The NH law for a repair "estimate" is only valid for repair shops, see NH law 358-D:2, "Upon request of any customer, a motor vehicle repair facility shall provide a written estimate to the customer in advance of performing any service work or repair

work”. State Farm does not meet the definition of a “repair shop” in NH 358-D:1 V., as “any person who performs services or repair work on any motor vehicle.”. State Farm is registered in the State of NH as being in the business of insurance and finance. State Farm was in error about their claim that their “estimate was reached through a procedure consistent with the New Hampshire law”.

NH Ins.1002.17 (a) is the rule that State Farm must abide by also. This reads “Every settlement offer that is based upon an appraisal conducted on behalf of the insurer relative to property and liability insurance shall: (1) Represent the fair and reasonable price in the area charged by repair shops or facilities providing similar services with the usual and customary guarantees to materials and workmanship”. A “estimate” conducted by a State Farm employee is not an “appraisal” conducted on State Farm’s behalf, as is required by NH Ins. 1002.17.

According to the Uniform Standards of Professional Appraisal Practice (USPAP), that is authorized by Congress, defines “appraisal” to be “The act or process of developing an opinion of value”. In this case the appraisal value is monetary. The NH Asb. 301.55 reads “Uniform standards of professional appraisal practice (USPAP)” means the generally accepted and recognized standards of appraisal practice printed by The Appraisal Foundation as authorized by Congress as the source of appraisal standards and appraiser qualifications”. NH Rev 601.44 reads the “Uniform standards of professional appraisal practice (USPAP)” means the generally accepted recognized standards of appraisal practice printed by The Appraisal Foundation as authorized by congress as the sound appraisal standards and appraiser qualifications. According to the USPAP the appraiser must comply with the USPAP when obligated by law or regulation. The appraiser must perform their duties “with impartiality, objectivity, and independence” per the USPAP. The appraiser must conduct themselves within the USPAP code of ethics.

The fair and reasonable price is determined by the transaction between the independent repair shop and the consumer, Meagher. An “independent repair shop” means per NH Ins. 1002.02(f) “has no arrangement with respect to repair prices or services with the insurer making a payment or settlement of the damaged motor vehicle”. NH Chapter 417:4 XX defines “fair and reasonable price” shall mean the price available from a recognized, competent and conveniently located, independent repair shop or facility which is willing and able to repair the damaged automobile within a reasonable time. The New Hampshire Insurance Department in INS No. 98-010-AB issued to the New Hampshire insurers states “that fair and reasonable price does not mean the “lowest price available”; it means a range

of available prices (including the average area price available) to perform the work using the parts of like kind and quality with the provision for the usual and customary guarantees as to materials and workmanship”.

State Farm refused to complete an “independent evaluation” of Meagher’s damaged Toyota “based upon all the available information”. See NH Chapter 417 XV. (12) Unfair Insurance Trade Practices. State Farm refused to acknowledge the vehicle manufacturer’s repair procedures in their “pocket estimate” and settlement offer to Meagher. State Farm refused to repay Meagher for numerous repair procedures listed in the Toyota repair manuals and website as being required for Meagher’s repairs. Some examples are, but not all, apply disinfectant pre and post repair due to the Covid pandemic, proper repair scans per Toyota’s repair procedures, disable and enable the airbags/supplemental restraint system, perform the occupant classification system re-calibration as it related to the restraint system, aiming of the millimeter front radar which operates the adaptive cruise system of the vehicle, finish sand and buff of newly applied paint, subscription fee to access the Toyota repair procedures, one-time use parts as designated by Toyota. Keene Auto Body, on Meagher’s behalf, supplied to State Farm the Toyota repair documentation in the hope that Meagher would be repaid by State Farm, this did not happen.

State Farm refused to repay Meagher for repairs that are legally required of the repair shop to perform, for the repair shop to comply with NH Chapter 358-D:11, that involved the diagnostics, removing and reinstalling components related to the vehicle’s airbag, restraints and diagnostic systems.

State Farm issued a document to their Select Service shops, better known as contracted or direct repair shops who have agreements in respect to prices and repairs, in about Spring of 2019, that stated “Most vehicle manufacturers offer collision repairers step by step technical repair procedures that are specific to a particular repair process. Certain technical repair procedures include the need for a pre and/or post scan. Select Service repairers are expected to prepare estimates in accordance with these specific repair procedures. In many cases, even though a pre scan is needed, a post scan may not be necessary, or may be included in a calibration process. Calibration and related steps are considered from scan activities”. State Farm acknowledges that repairs need to be completed per the technical repair procedures that the vehicle manufacturer’s offer and they will pay for this type of repair if completed by a State Farm Select Service contracted repair shop. Since Meagher did not have his repairs completed at a contracted Select Service repair shop, then he was not entitled to this same type of repair or repayment as outlined in this internal State

Farm document, Select Service Vehicle Scanning, unless his vehicle was being repaired at a State Farm contracted repair shop. This silence from State Farm when Keene Auto Body contacted State Farm on Meagher's behalf about the additional repairs and costs could be construed as an attempt by State Farm to "coerce" or "intimidate" Meagher into using a State Farm contracted shop, a potential violation of NH Unfair Trade Practice 417:4V.(a) & NH Ins. 1002.17 (h). This agreement between State Farm and three State Farm contracted shops, whom are not by protected the NH insurance laws or are not in the business of insurance, in the Keene NH repair market that are willing to discount their retail prices to all having the same prices to secure favors and benefits from State Farm, such as being named by the State Farm employees to the claimants and named on the State Farm website for purposes to direct repairs to these shops might be considered in violation of the New Hampshire Consumer Laws 356:1 and Federal Trade Commission's statement for "price fixing". The three contract repair shops listed on the State Farm website for Keene, NH are J&L Auto Body, Stan's Auto Body and Quality Care Collision.

The Uniform Standards of Professional Appraisal Practice states in their code of ethics that an appraiser "must not agree to perform an assignment that includes the reporting of predetermined opinions and conclusions". State Farm had already agreed to predetermined values for Meagher's damaged Toyota upon an alleged prevailing competitive price survey completed by State Farm and allegedly supported by the price fixing agreements between three repair shops that agreed to the same discounted prices, if they were to repair a State Farm claimant's damaged vehicle, such as Meagher's.

State Farm refused to acknowledge price increases for necessary parts and materials once the repairs were completed for Meagher to be repaid for his loss. For example, headlamp and repair materials. Retail list price for the headlamp is \$1128.31, State Farm repaid only \$858.55 of the retail cost of the headlamp. Leaving a deficiency of \$269.76 owed to Meagher. Retail costs for the necessary paint materials was \$252.03. State Farm repaid \$204 for paint materials. Leaving a deficiency of \$48.03 owed to Meagher. Repair shops are required by NH repair law 358-D:10 to invoice the customer for the retail cost of parts and labor. State Farm does not meet the NH definition of "customer" per NH 358-D:1, a "customer" means any person, or representative thereof, who is seeking to have performed, is having performed, or has performed, any service or repair work on a motor vehicle. Parts invoices were provided to State

Farm on Meagher's behalf for documentation purposes, State Farm still denied repayment of the retail list costs for the necessary repair parts to Meagher.

State Farm refused repayment to Meagher for replacement of damaged parts that could not be seen in the photos that were initially supplied to State Farm's pocket "estimate". These damaged parts were not visible in the original photos due to being installed under the vehicle's front bumper cover that was visible to the photographer. Example the front bumper absorbers and grille. Photos of these damaged parts once removed were supplied to State Farm on Meagher's behalf by Keene Auto Body. State Farm refused to repay Meagher for replacing these damaged parts.

State Farm conducted what they labeled as a "pocket estimate", as is stated on their estimate. No actual physical inspection of the damaged vehicle is required of a "pocket estimate". According to the State Farm website this pocket estimate was just an initial estimate and settlement offer based on a few photos of the damaged vehicle. If the repair shop found additional damages, all the shop had to do is contact State Farm per the State Farm website on the customer's behalf with an insurance supplement request uploaded to the State Farm b2b website as recommended by State Farm on top of their estimate, in the hope to maybe get Meagher repaid from State Farm for their repairs.

Keene Auto Body contacted State Farm as they recommended on the behalf of Meagher. State Farm denied repaying Meagher for the necessary repairs and costs to repair his damaged Toyota.

State Farm alleges that their pocket estimates labor costs were fair and reasonable. The State Farm policy, Limits and Loss Settlement states "The prevailing competitive price means prices charged by the majority of the repair market in the area where the covered vehicle is to be repaired as determined by us." State Farm does not state in the policy of excluding specific labor costs or repair procedures. State Farm has not shown to Meagher this prevailing competitive price survey to justify their pocket estimate and settlement offer to repair his damaged Toyota. It has been observed that State Farm's three contracted repair shops in the Keene NH market have their legally posted retail costs more than the \$48 per body/refinish labor unit. These three contracted non-insurance repair shops have colluded with State Farm to only charge the State Farm claimants in the Keene NH repair market for repair costs below their posted retail labor costs and retail prices for parts, in return for State Farm to list these repair shops on State Farm's website and to have repairs directed to those repair shops that agree to charge State Farm claimants below their retail prices. NH RSA 358-D:10 (d) requires the repair shop to invoice the work at "the retail costs of such labor". In essence these

labor price agreements between State Farm and these repair shops that are included in the State Farm survey have price fixed what is being repaid to the claimants on their insurance losses and repairs in the Keene NH market area. In an independent survey of 216 repair shops in the Keene NH repair market completed by National Auto Body Research on February 10, 2021, the average body or refinish labor unit cost was \$56. With a highest price in this independent survey being \$84 per body or refinish labor unit. Keene Auto Body's retail body and refinish labor costs per unit is \$60, Meagher agreed to Keene Auto Body's labor costs, with the understanding that State Farm would repay him for these labor costs, State Farm did not repay Meagher. Keene Auto Body retail labor costs are not the lowest or the highest and is within the range of prices in this independent survey. State Farm's website states "Hourly labor rates vary widely across the country. The rate could range, on average, anywhere from \$70 to \$125 per hour." State Farm refused to repay Meagher for Keene Auto Body's retail labor costs of \$60 per labor unit.

If State Farm was unhappy with the price that Keene Auto Body charged and was agreed to by Meagher, and this actual cash value amount that Keene Auto Body charged was the amount that State Farm needed to make repayment to Meagher, for Meagher to be indemnified for his loss. Then State Farm had the insurance contract duty to resolve their disagreement with Meagher by "appraisal". The State Farm policy reads "The owner of the covered vehicle and we (State Farm) 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 a 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." The insurance policy is the contract of indemnity. State Farm forfeited their right to dispute the actual cash value that was charged and agreed to by Meagher for his repairs when State Farm failed to resolve their disagreement with their insured per the insurance policy language.

We believe that New Hampshire laws and regulations require that "appraisals" need to be conducted according to the Uniform Standards of Professional Appraisal Practice (USPAP) as authorized by Congress.

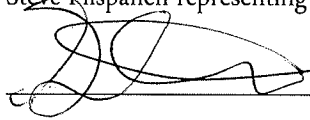
We disagree with State Farm and the Keene District Court opinion that Meagher was unable to assign his insurance proceeds to Keene Auto Body, that State Farm's "estimate" is consistent with the New Hampshire laws and that State Farm's settlement offer to Meagher was "fair and reasonable".

We wish for the New Hampshire Supreme court to answer the following questions.

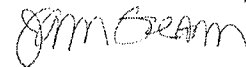
1. Is the assignment of insurance proceeds valid when the insurer has an anti-assignment clause written into their insurance coverage?
2. Does the insurer owe the claimant the money for a repair according to the vehicle manufacturers repair procedures, less parts usage? IE. Aftermarket parts vs new manufacturer replacement parts.
3. Does the insurer owe the claimant for materials and parts price increases above the prices on the repair estimate?
4. Is the State Farm document titled "estimate" conducted by State Farm meet the NH Ins. 1002.17 (a) requirements?
5. Is the fair and reasonable price for New Hampshire collision repairs the lowest price that the insurer can arrange with another repair shop?
6. What is the court's definition of fair and reasonable pricing for collision repairs?
7. Did State Farm pay the fair and reasonable price for this repair?

We certify that we are appealing the decision of Judge James Gleason of the Keene District Court to dismiss our case against State Farm Insurance.

Steve Piispanen representing Keene Auto Body in the NH Supreme Court.



7/8/21



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
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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

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

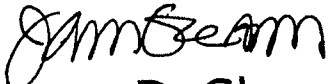
Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

**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