

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOE HOLLAND CHEVROLET, INC.

Plaintiff

v.

LIBERTY MUTUAL INSURANCE COMPANY,
and GREG CHANDLER'S FRAME & BODY, LLC,

Defendants

FILED
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CIVIL ACTION NO. 13-C-978

**DEFENDANT GREG CHANDLER'S FRAME & BODY, LLC'S ANSWER TO
COMPLAINT, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Comes now the Defendant Greg Chandler's Frame & Body, LLC (hereinafter referred to as "Chandler"), by counsel, Clarence E. Martin, III, Matthew R. Whitler and Martin & Seibert, L.C., and as its Answer to the Plaintiff's Complaint, does hereby state as follows:

ANSWER TO COMPLAINT

Parties

1. Upon information and belief, Chandler admits that Joe Holland is a West Virginia Corporation with its principal place of business in South Charleston, Kanawha County, West Virginia. Chandler is without sufficient knowledge or information to admit or deny the truth of the remaining allegations set forth in Paragraph No. 1 of the Complaint, and therefore denies the same.

2. Upon information and belief, Chandler admits the allegations contained in Paragraph No. 2 of the Complaint.

3. Chandler admits the allegations contained in Paragraph No. 3 of the Complaint.

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Background Allegations

4. Upon information and belief, Chandler admits the allegations contained in Paragraph No. 4 of the Complaint.

5. Upon information and belief, Chandler admits the allegations contained in Paragraph No. 5 of the Complaint.

6. Upon information and belief, Chandler admits that as part of Liberty Mutual's services to automobile insurance policyholders and claimants under policies issued to its insureds, Liberty Mutual maintains a list of preferred body shops, known as Total Liberty Care ("TLC") Shops, which provide estimates for vehicles that are involved in accidents or are otherwise damaged. These preferred body shops are selected based upon the quality of their workmanship and their willingness to provide estimates and complete repairs within a designated time period. The owners of the damaged vehicles are under no obligation to have the repairs performed at the TLC Shop, and they may take the TLC Shop's estimate to any body shop of their choosing. For owners that do select the TLC Shop to perform the repairs, Liberty Mutual provides, among other benefits, a limited lifetime warranty on the repairs for as long as they own the vehicle. To the extent that the allegations set forth in Paragraph No. 6 of the Complaint are inconsistent with this admission, they are denied.

7. Paragraph No. 7 of the Complaint is directed, in part, to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 7 of the Complaint that relate to other parties and therefore denies the same. However, to the extent that the allegations of Paragraph No. 7 of the Complaint are deemed to be directed against it,

Chandler admits that one of the benefits to becoming a participant in the TLC program is the potential for gaining or retaining business when a Liberty Mutual insured or claimant's vehicle is in need of repairs. However, upon information and belief, Liberty Mutual is under no obligation to refer vehicles to participants in the TLC Shop program. To the extent that the allegations set forth in Paragraph No. 7 of the Complaint are inconsistent with this admission, they are denied.

8. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 8 of the Complaint, and therefore denies the same.

9. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 9 of the Complaint, and therefore denies the same.

10. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 10 of the Complaint, and therefore denies the same.

11. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 11 of the Complaint, and therefore denies the same.

12. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 12 of the Complaint, and therefore denies the same.

13. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 13 of the Complaint, and therefore denies the same.

14. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 14 of the Complaint, and therefore denies the same.

15. Chandler admits that it specializes in collision and mechanical repairs of motor vehicles and that the Plaintiff is one of Chandler's competitors with respect to these services. To the extent that the allegations set forth in Paragraph No. 15 of the Complaint are inconsistent with this admission, they are denied.

16. Chandler admits that on or about March 30, 2011, Liberty Mutual informed Chandler that it intended to implement its policy concerning the use of recycled OEM crash parts in West Virginia. Under this policy, when negotiating repairs in West Virginia for motor vehicles in the year of their manufacture or in the two succeeding years thereafter, Liberty Mutual required Chandler to write estimates for such motor vehicles without the use of "Aftermarket Crash Parts", as that term is strictly defined by W.Va. Code § 46A-6B-3. Chandler further admits that Liberty Mutual requested that Chandler write such estimates in compliance with Liberty Mutual's understanding of the requirements and/or provisions set forth in the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, and factory warranties issued by new car manufacturers. In addition, Chandler admits that Liberty Mutual required, for a period of time and where appropriate, that Chandler utilize recycled OEM crash parts that were (a) manufactured by the original manufacturer; (b) from a vehicle of the same model year or newer; and (c) with the same number of miles or fewer than the vehicle to be repaired, in compliance with their respective understanding of the requirements and/or provisions set forth in the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, and factory warranties issued by new car

manufacturers. However, Chandler affirmatively states that no repairs were made by it until permission was obtained from the vehicle's owner or authorized representative. To the extent that the allegations set forth in Paragraph No. 16 of the Complaint are inconsistent with this admission, they are denied.

17. Paragraph No. 17 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler admits that after obtaining authorization from the owner, it performed repairs upon a 2009 Chevrolet Aveo in compliance with Liberty Mutual's policy concerning the use of recycled OEM crash parts where appropriate. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations that the 2009 Chevrolet Aveo was purchased from the Plaintiff as set forth in Paragraph No. 17 of the Complaint. To the extent that the allegations set forth in Paragraph No. 17 of the Complaint are inconsistent with this admission, they are denied.

18. Chandler admits that on April 9, 2012, during proceedings before the Circuit Court of Kanawha County, West Virginia, in Civil Action No. 11-C-2231, styled as *State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General v. Liberty Mutual Insurance Company and Greg Chandler's Frame & Body, LLC*, Liberty Mutual, Chandler and the West Virginia Attorney General ("WVAG") reached an agreement with respect to a preliminary injunction concerning the use of recycled OEM crash parts in West Virginia. As part of the agreement, Liberty Mutual agreed to immediately cease requiring the use of recycled OEM crash parts when negotiating repairs, and Chandler agreed to cease using such parts in the repair, of motor vehicles in the year of their manufacture or in the two succeeding years without the written consent of the owner of the motor vehicle. Although an agreement was reached with

respect to this preliminary injunction, Chandler affirmatively states that it did not waive any of its defenses and objections to the factual allegations and legal conclusion contained in the WVAG's Complaint and Petition for Temporary and Permanent Injunction. To the extent that the allegations set forth in Paragraph No. 18 of the Complaint are inconsistent with this admission, they are denied.

19. Upon information and belief, Chandler admits that the Plaintiff is not a participant in the TLC program. Chandler is without sufficient knowledge or information to admit or deny the truth of the remaining allegations set forth in Paragraph No. 19 of the Complaint, and therefore denies the same.

20. Paragraph No. 20 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler admits that it prepared estimates, and completed repairs when authorized by the owner, for motor vehicles in the year of their manufacture or in the two succeeding years thereafter, in compliance with Liberty Mutual's understanding of the requirements and/or provisions set forth in the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, and factory warranties issued by new car manufacturers. Chandler further admits that on April 9, 2012, during proceedings before the Circuit Court of Kanawha County, West Virginia, in Civil Action No. 11-C-2231, styled as *State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General v. Liberty Mutual Insurance Company and Greg Chandler's Frame & Body, LLC*, Liberty Mutual, Chandler and the West Virginia Attorney General ("WVAG") reached an agreement with respect to a preliminary injunction concerning the use of recycled OEM crash parts in West Virginia. As part of the agreement, Liberty Mutual agreed to immediately cease requiring the use of recycled OEM crash

parts when negotiating repairs, and Chandler agreed to cease using such parts in the repair, of motor vehicles in the year of their manufacture or in the two succeeding years without the written consent of the owner of the motor vehicle. Although an agreement was reached with respect to this preliminary injunction, Chandler affirmatively states that it did not waive any of its defenses and objections to the factual allegations and legal conclusion contained in the WVAG's Complaint and Petition for Temporary and Permanent Injunction. To the extent that the allegations set forth in Paragraph No. 20 of the Complaint are inconsistent with this admission, they are denied.

21. Paragraph No. 21 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. In the event a response is deemed to be required, Chandler denies the allegations set forth in Paragraph No. 21 of the Complaint and demands strict proof thereof.

Count I: Breach of Contract Against Liberty Mutual

22. In response to Paragraph No. 22 of the Complaint, Chandler incorporates and re-alleges its responses to Paragraph Nos. 1 through 21 of the Complaint as though fully set forth herein.

23. Paragraph No. 23 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 23 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny

the truth of the allegations set forth in Paragraph No. 23 of the Complaint that relate to other parties and therefore denies the same.

24. Paragraph No. 24 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 24 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 24 of the Complaint that relate to other parties and therefore denies the same.

25. Paragraph No. 25 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 25 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 25 of the Complaint that relate to other parties and therefore denies the same.

26. Paragraph No. 26 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 26 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 26 of the Complaint that relate to other parties and therefore denies the same.

Count II: Wrongful Termination of Contractual Agreement
Against Liberty Mutual

27. In response to Paragraph No. 27 of the Complaint, Chandler incorporates and re-alleges its responses to Paragraph Nos. 1 through 26 of the Complaint as though fully set forth herein.

28. Paragraph No. 28 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent that a response is deemed to be required, Liberty Mutual asserts that West Virginia Law concerning contracts speaks for itself.

29. Paragraph No. 29 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 29 of the Complaint that relate to other parties and therefore denies the same.

30. Paragraph No. 30 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 30 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 30 of the Complaint that relate to other parties and therefore denies the same.

31. Paragraph No. 31 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 31 of the Complaint is directed to parties other than Chandler and therefore, no

response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 31 of the Complaint that relate to other parties and therefore denies the same.

Count III: Tortious Interference with Prospective Business Relations
Against Liberty Mutual

32. In response to Paragraph No. 32 of the Complaint, Liberty Mutual incorporates and re-alleges its responses to Paragraph Nos. 1 through 31 of the Complaint as though fully set forth herein.

33. Paragraph No. 33 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 33 of the Complaint, and therefore denies the same.

34. Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 34 of the Complaint, and therefore denies the same.

35. Paragraph No. 35 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 35 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny

the truth of the allegations set forth in Paragraph No. 35 of the Complaint that relate to other parties and therefore denies the same.

36. Paragraph No. 36 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 36 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 36 of the Complaint that relate to other parties and therefore denies the same.

37. Paragraph No. 37 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 37 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 37 of the Complaint that relate to other parties and therefore denies the same.

38. Paragraph No. 38 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 38 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 38 of the Complaint that relate to other parties and therefore denies the same.

39. Paragraph No. 39 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 39 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 39 of the Complaint that relate to other parties and therefore denies the same.

40. Paragraph No. 40 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler denies the allegations contained in Paragraph No. 40 of the Complaint and demands strict proof thereof.

41. Paragraph No. 41 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 41 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 41 of the Complaint that relate to other parties and therefore denies the same.

42. Paragraph No. 42 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Furthermore, Paragraph No. 42 of the Complaint is directed in part to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to

admit or deny the truth of the allegations set forth in Paragraph No. 42 of the Complaint that relate to other parties and therefore denies the same. However, to the extent that the allegations of Paragraph No. 42 of the Complaint are deemed to be directed against Chandler, they are denied and Chandler demands strict proof thereof.

43. Paragraph No. 43 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Moreover, Paragraph No. 43 of the Complaint is directed to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 43 of the Complaint that relate to other parties and therefore denies the same.

Count IV: Tortious Interference with Prospective Business Relations
Against Greg Chandler

44. In response to Paragraph No. 44 of the Complaint, Chandler incorporates and re-alleges its responses to Paragraph Nos. 1 through 43 of the Complaint as though fully set forth herein.

45. Paragraph No. 45 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler is without sufficient knowledge or information to admit or deny the truth of the allegations set forth in Paragraph No. 45 of the Complaint, and therefore denies the same.

46. Chandler admits the allegations set forth in Paragraph No. 46 of the Complaint.

47. Chandler states that it markets its services to customers with the hope that they will select it over its competitors, based upon Chandler's experience, quality standards, customer service, and the warranties provided on the work it performs. To the extent that the allegations set forth in Paragraph No. 47 of the Complaint are inconsistent with this admission, they are denied.

48. Chandler admits that on or about March 30, 2011, Liberty Mutual informed Chandler that it intended to implement its policy concerning the use of recycled OEM crash parts in West Virginia. Under this policy, when negotiating repairs in West Virginia for motor vehicles in the year of their manufacture or in the two succeeding years thereafter, Liberty Mutual required Chandler to write estimates for such motor vehicles without the use of "Aftermarket Crash Parts", as that term is strictly defined by W. Va. Code § 46A-6B-3. Chandler further admits that Liberty Mutual requested that Chandler write such estimates in compliance with Liberty Mutual's understanding of the requirements and/or provisions set forth in the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, and factory warranties issued by new car manufacturers. In addition, Chandler admits that Liberty Mutual required, for a period of time and where appropriate, that Chandler utilize recycled OEM crash parts that were (a) manufactured by the original manufacturer; (b) from a vehicle of the same model year or newer; and (c) with the same number of miles or fewer than the vehicle to be repaired, in compliance with their respective understanding of the requirements and/or provisions set forth in the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, and factory warranties issued by new car manufacturers. However, Chandler affirmatively states that no repairs were made by it until permission was obtained from the vehicle's owner or authorized representative. To the extent

that the allegations set forth in Paragraph No. 48 of the Complaint are inconsistent with this admission, they are denied.

49. Paragraph No. 49 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler denies the allegations contained in Paragraph No. 49 of the Complaint and demands strict proof thereof.

50. Paragraph No. 50 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler denies the allegations contained in Paragraph No. 50 of the Complaint and demands strict proof thereof.

Count V: Civil Conspiracy Between Liberty Mutual and Greg Chandler

51. In response to Paragraph No. 51 of the Complaint, Chandler incorporates and realleges its responses to Paragraph Nos. 1 through 50 of the Complaint as though fully set forth herein.

52. Paragraph No. 52 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Furthermore, Paragraph No. 52 of the Complaint is directed in part to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 52 of the Complaint that relate to other parties and therefore denies the same. However, to the extent that the allegations

of Paragraph No. 52 of the Complaint are deemed to be directed against Chandler, they are denied and Chandler demands strict proof thereof.

53. Paragraph No. 53 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Furthermore, Paragraph No. 53 of the Complaint is directed in part to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 53 of the Complaint that relate to other parties and therefore denies the same.

54. Paragraph No. 54 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Furthermore, Paragraph No. 54 of the Complaint is directed in part to parties other than Chandler and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 54 of the Complaint that relate to other parties and therefore denies the same.

55. Paragraph No. 55 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. To the extent a response is deemed to be required, Chandler denies the allegations contained in Paragraph No. 55 of the Complaint and demands strict proof thereof.

56. Paragraph No. 56 of the Complaint sets forth legal conclusions to which no response is required pursuant to the West Virginia Rules of Civil Procedure. Furthermore, Paragraph No. 56 of the Complaint is directed in part to parties other than Chandler and

therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Chandler Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 56 of the Complaint that relate to other parties and therefore denies the same. However, to the extent that the allegations of Paragraph No. 56 of the Complaint are deemed to be directed against Chandler, they are denied and Chandler demands strict proof thereof.

Prayer for Relief and Demand for Jury Trial

- A. The relief requested by the Plaintiff in Paragraph No. A is denied in its entirety.
- B. The relief requested by the Plaintiff in Paragraph No. B is denied in its entirety.
- C. The relief requested by the Plaintiff in Paragraph No. C is denied in its entirety.
- D. The relief requested by the Plaintiff in Paragraph No. D is denied in its entirety.
- E. The relief requested by the Plaintiff in Paragraph No. E is denied in its entirety.
- F. The relief requested by the Plaintiff in Paragraph No. F is denied in its entirety.
- G. The relief requested by the Plaintiff in Paragraph No. G is denied in its entirety.

AFFIRMATIVE DEFENSES

Chandler hereby sets forth its separate and distinct defenses to the Complaint. Chandler sets forth the following matters to apprise the Plaintiff of certain potentially applicable defenses. By listing any matter as a separate defense, Chandler does not assume the burden of proving any matter upon which the Plaintiff bears the burden of proof under the applicable law.

FIRST AFFIRMATIVE DEFENSE

Chandler denies each and every allegation of the Complaint except as specifically hereinbefore admitted.

SECOND AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense that the Complaint, and the relief sought therein, may be barred, in whole or in part, to the extent that there may be no actual, justiciable case or controversy between the Plaintiff and Chandler.

THIRD AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense that the Plaintiff's claims may be barred, in whole or in part, to the extent that the Plaintiff may have failed to institute suit within the period of time required by any applicable statute of limitations and/or to the extent that such claims otherwise may be time-barred.

FOURTH AFFIRMATIVE DEFENSE

Chandler specifically reserves the right to test the legal sufficiency of the pleadings and the evidence adduced thereunder by preserving the affirmative defense that the Complaint, or specific allegations contained therein, fails to state a claim against it upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense that the Plaintiff's Complaint is barred, in whole or in part, for failure to join an indispensable party or parties, pursuant to West Virginia Rules of Civil Procedure, Rule 19.

SIXTH AFFIRMATIVE DEFENSE

To the extent the Plaintiff lacks standing or capacity to bring or maintain this action or to assert any claim against Chandler, dismissal of this action may be required or some or all of the requested relief may be improper.

SEVENTH AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense of misjoinder.

EIGHTH AFFIRMATIVE DEFENSE

Chandler asserts that Automotive Crash Parts Act, § 46A-6B-1, *et seq.*, is ambiguous.

NINTH AFFIRMATIVE DEFENSE

Chandler asserts the doctrine of legal expectations based upon the ambiguity of the Automotive Crash Parts Act, § 46A-6B-1, *et seq.*

TENTH AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense that the Plaintiff's claims may be barred, in whole or in part, by the doctrines of waiver, release, laches, estoppel, and/or unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Chandler reserves unto itself the affirmative defense that the Plaintiff may have failed to mitigate its damages, if any, it incurred.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint contains insufficient information to permit Chandler to raise all appropriate defenses, and therefore Chandler reserves its right to amend and/or supplement this Answer and these defenses and to assert additional defenses.

THIRTEENTH AFFIRMATIVE DEFENSE

Chandler asserts that it did not participate, engage, or assist in any act or conduct which could form the basis for an award of punitive damages and that punitive damages are, therefore, not recoverable to any extent whatsoever against it.

FOURTEENTH AFFIRMATIVE DEFENSE

Any award of punitive damages against Chandler would violate the constitutional safeguards, including the right to due process and equal protection under the law, afforded by the Constitution of the United States of America and the Constitution of the State of West Virginia.

FIFTEENTH AFFIRMATIVE DEFENSE

Chandler asserts that punitive damages may not be awarded in the absence of compensatory damages, and when awarded, the punitive damages must bear a reasonable relationship to the potential harm caused by the defendant(s) actions and the harm actually caused.

SIXTEENTH AFFIRMATIVE DEFENSE

Chandler has not obtained all the necessary documents and information to permit it to determine all applicable defenses, and Chandler reserves its right to supplement this answer and to set forth additional defenses if and when additional facts become known.

SEVENTEENTH AFFIRMATIVE DEFENSE

Chandler reserves unto itself those other defenses enumerated by Rule 8 and Rule 12 of the West Virginia Rules of Civil Procedure, not set forth herein.

EIGHTEENTH AFFIRMATIVE DEFENSE

Chandler reserves the right to amend and/or supplement its Answer and Affirmative Defenses to assert any and all pertinent affirmative defenses ascertained through discovery in this action.

WHEREFORE, Chandler having fully answered each and every allegation of the Complaint, respectfully requests that this Court:

- A. deny the relief requested in the Complaint;
- B. dismiss the Complaint in its entirety;
- C. award Chandler its attorneys' fees and costs for its defense to the Complaint; and
- D. for any other and further relief as to this Court may seem just and proper.

CHANDLER DEMANDS A JURY TRIAL ON ALL TRIABLE ISSUES.

**DEFENDANT/RESPONDENT GREG CHANDLER'S FRAME & BODY, LLC'S
COUNTERCLAIM AGAINST JOE HOLLAND CHEVROLET, INC.**

Comes now the Defendant and Counter-Plaintiff, Greg Chandler's Frame & Body, LLC (hereinafter referred to as "Chandler"), by counsel, Clarence E. Martin, III, Matthew R. Whitler and Martin & Seibert, L.C., and as its Counterclaim against the Plaintiff and Counter-Defendant, Joe Holland Chevrolet, Inc., does state as follows:

PARTIES

1. Liberty Mutual is a foreign corporation organized under the laws of Massachusetts, with its principal place of business in Boston, Massachusetts, and is engaged in the business of insurance in West Virginia.

2. Greg Chandler's Frame & Body, LLC ("Chandler") is a West Virginia corporation doing business as a motor vehicle body shop and is a participant in Liberty Mutual's Total Liberty Care ("TLC") program.

3. Joe Holland Chevrolet, Inc. ("Joe Holland") is a West Virginia corporation doing business as an automobile dealership. As an automobile dealership, the Plaintiff is engaged in the sale of new and used vehicles, vehicle repairs, vehicle warranty repairs and the authorized sale of original equipment manufacturer (OEM) General Motors replacement parts to consumers, including other car and body repair shops.

4. Chandler and Joe Holland are competitors in the automobile repair business.

JURISDICTION AND VENUE

5. This Court has jurisdiction and venue over the parties and the subject matter of this civil action.

AUTOMOTIVE CRASH PARTS ACT

6. In the automobile repair industry there are three basic classifications of parts that are typically available for the repair of vehicles, namely genuine Original Equipment Manufacturer ("OEM") parts, aftermarket parts, and reconditioned or recycled OEM parts.

7. The Crash Parts Act, W.Va. Code § 46A-6B-1, *et seq.* (hereinafter referred to as the "Crash Part Act") was enacted by the West Virginia Legislature to:

require disclosure to motor vehicle owners of information on certain replacement crash parts for repairs to their motor vehicles and to prevent both motor vehicle body shops and insurance companies from requiring the use of aftermarket crash parts for repair unless the motor vehicle owner consents in writing at the time of the repair.

W.Va. Code § 46A-6B-1.

8. The Crash Parts Act defines "crash parts" as:

exterior or interior sheet metal or fiberglass panels and parts that form the superstructure or body of a motor vehicle, including, but not limited to, fenders, bumpers, quarter panels, door panels, hoods, grills, fire walls, permanent roofs, wheel wells and front and rear lamp display panels

W.Va. Code § 46A-6B-2(c).

9. The Crash Parts Act defines "genuine crash parts" as crash parts that are:

- (1) Manufactured by or for the original manufacturer of the motor vehicle to be repaired; and
- (2) That are authorized to carry the name or trademark of the original manufacturer of the motor vehicle.

W.Va. Code § 46A-6B-2(d).

10. The Crash Parts Act defines "aftermarket crash parts" as crash parts that are:

- (1) Manufactured by a person other than the original manufacturer of the motor vehicle to be repaired; and
- (2) For which the original manufacturer of the motor vehicle has not authorized the use of its name or trademark by the manufacturer of the crash parts.

W.Va. Code § 46A-6B-2(a).

11. With respect to the use of genuine and aftermarket crash parts in the repair of motor vehicles, the Crash Parts Act provides as follows:

For all motor vehicles requiring repair by motor vehicle body shops in the year of their manufacture or in the two succeeding years thereafter, motor vehicle body shops must use genuine crash parts sufficient to maintain the manufacturer's warranty for fit, finish, structural integrity, corrosion resistance, dent resistance and crash performance unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts. No insurance company may require the use of aftermarket crash parts when negotiating repairs of the motor vehicle with any repairer for a period of three years, the year the motor vehicle was manufactured and the two succeeding years thereafter, unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts.

W.Va. Code § 46A-6B-3.

12. Since July 1, 1995, before beginning repair work on crash parts, pursuant to the Crash Parts Act, a motor vehicle body shop has been required to:

- (1) Provide a list to the vehicle owner of the replacement crash parts that the body shop intends to use in making repairs;
- (2) Specify whether the replacement parts are genuine crash parts; and
- (3) Identify the manufacturer of the parts if the replacements parts are aftermarket crash parts;
- (b) If the replacement crash parts to be used by the body shop in the repair work are aftermarket crash parts, the body shop shall include with its estimate the following written statement: "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS THAT ARE NOT MANUFACTURED BY THE ORIGINAL MANUFACTURER OF THE VEHICLE OR BY A MANUFACTURER AUTHORIZED BY THE ORIGINAL MANUFACTURER TO USE ITS NAME OR TRADEMARK. THE USE OF AN AFTERMARKET CRASH PART MAY INVALIDATE ANY REMAINING WARRANTIES OF THE ORIGINAL MANUFACTURER ON THAT CRASH PART."
- (c) The notices and statements required under this section shall be made in writing in a clear and conspicuous manner on a separate piece of paper in ten-point capital type.

W.Va. Code § 46A-6B-4.

13. The Crash Parts Act does not contain a definition for recycled OEM crash parts.

14. The Federal Trade Commission "FTC" has defined a recycled OEM part as a part that was made for and installed in a new vehicle by the manufacturer or the original equipment manufacturer, and later removed from the vehicle and made available for resale or reuse.

15. The Crash Parts Act does not contain any required notice provisions for recycled OEM crash parts.

16. The West Virginia Legislature did not promulgate, as part of the Crash Parts Act, specifically W.Va. Code § 46A-6B-4, a separate written statement that is to be used when recycled OEM crash parts are used for repairs to motor vehicles in the year of their manufacture or the two succeeding years thereafter.

17. Pursuant to W.Va. Code § 46A-6B-6, violations of any provision of the Crash Parts Act is considered to be an unfair or deceptive act or practice within the meaning of W.Va. Code 46A-6-102 of the West Virginia Consumer Credit and Protection Act.

18. In May 1996, the West Virginia Insurance Commissioner, in West Virginia Informational Letter No. 97 stated that the Crash Parts Act did not "address whether the manufacturers <sic> warranty will be maintained if damaged motor vehicles are repaired with used original equipment manufacturer (OEM) parts." However, it did observe that the West Virginia Attorney General ("WVAG") had obtained "information" that "certain manufacturers will not warrant used OEM parts when used to repair damaged motor vehicles."

19. Since May 1996, the West Virginia Insurance Commissioner has not released any further informational letters concerning the Crash Parts Act and/or recycled OEM crash parts.

20. West Virginia Informational Letter No. 97 has not been rescinded by the West Virginia Insurance Commissioner.

21. During the 1997 regular session of the West Virginia Legislature, Senate Bill No. 466 was introduced. The stated purpose of Senate Bill 466 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." Senate Bill No. 466 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; and (b) add a sub-part (3) to state "are new and never used". Senate Bill 466 was not passed by the Senate.

22. During the 1999 regular session of the West Virginia Legislature, House Bill No. 2647 was introduced. The stated purpose of House Bill No. 2647 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." House Bill No. 2647 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; (b) add a sub-part (3) to state "are new and never used"; and (c) replace the use of the term "genuine crash parts" with "unused genuine crash parts" in W.Va. Code §§ 46A-6B-3 and 46A-6B-4. No amendments were proposed with respect to the language for the required notice provision as set forth at W.Va. Code § 46A-6B-4(b) which only references "aftermarket crash parts". After introduction, this Bill was sent to the House Judiciary Committee where it remained for the rest of the Session.

23. During the 2000 regular session of the West Virginia Legislature, House Bill No. 2647 was introduced. The stated purpose of House Bill No. 2647 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." House Bill No. 2647 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; (b) add a sub-part (3) to state "are new and never used"; and (c) replace the use of the term "genuine crash parts" with "unused genuine crash parts" in W.Va. Code §§ 46A-6B-3 and 46A-6B-4. No amendments

were proposed with respect to the language for the required notice provision as set forth at W.Va. Code § 46A-6B-4(b) which only references "aftermarket crash parts". After introduction, this Bill was sent to the House Judiciary Committee where it remained for the rest of the Session.

24. During the 2001 regular session of the West Virginia Legislature, House Bill No. 2248 was introduced. The stated purpose of House Bill No. 2647 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." House Bill No. 2248 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; (b) add a sub-part (3) to state "are new and never used"; and (c) replace the use of the term "genuine crash parts" with "unused genuine crash parts" in W.Va. Code §§ 46A-6B-3 and 46A-6B-4. No amendments were proposed with respect to the language for the required notice provision as set forth at W.Va. Code § 46A-6B-4(b) which only references "aftermarket crash parts". After introduction, this Bill was sent to the House Judiciary Committee where it remained for the rest of the Session.

25. During the 2002 regular session of the West Virginia Legislature, House Bill No. 2248 was introduced. The stated purpose of House Bill No. 2647 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." House Bill No. 2248 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; (b) add a sub-part (3) to state "are new and never used"; and (c) replace the use of the term "genuine crash parts" with "unused genuine crash parts" in W.Va. Code §§ 46A-6B-3 and 46A-6B-4. No amendments were proposed with respect to the language for the required notice provision as set forth at W.Va. Code § 46A-6B-4(b) which only references "aftermarket crash parts". After introduction, this Bill was sent to the House Judiciary Committee where it remained for the rest of the Session.

26. During the 2003 regular session of the West Virginia Legislature, House Bill No. 2455 was introduced. The stated purpose of House Bill No. 2455 was to "require that genuine crash parts used for the repair of motor vehicles by body shops be unused genuine crash parts." House Bill No. 2647 was introduced with the intent of amending W.Va. Code § 46A-6B-2(d) to (a) replace the term "genuine crash parts" with "unused genuine crash parts"; (b) add a sub-part (3) to state "are new and never used"; and (c) replace the use of the term "genuine crash parts" with "unused genuine crash parts" in W.Va. Code §§ 46A-6B-3 and 46A-6B-4. No amendments were proposed with respect to the language for the required notice provision as set forth at W.Va. Code § 46A-6B-4(b) which only references "aftermarket crash parts". After introduction, this Bill was sent to the House Judiciary Committee where it remained for the rest of the Session.

27. From 2004 to the present, no further bills have been introduced by the House or the Senate during any session of the West Virginia Legislature with the intent of amending the Crash Parts Act in order to broaden its application and require that only unused OEM crash parts be used for the repair of motor vehicles by body shops in West Virginia.

28. Pursuant to W.Va. Code § 46A-6B-2(a), recycled OEM crash parts are separate and distinct from aftermarket crash parts since they (a) are manufactured by or for the original manufacturer of the motor vehicle and (b) are authorized to carry the name or trademark of the original manufacturer of the motor vehicle.

29. As reflected by its the clear and unambiguous language, the Crash Parts Act does not address, nor impose any restrictions, with respect to the use of recycled OEM crash parts.

MAGNUSON-MOSS WARRANTY ACT

30. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, (hereinafter referred to as the "Magnuson-Moss Warranty Act") was enacted by Congress in 1975 in order to assure minimum warranty protection for consumers, to promote consumer understanding of warranties, to assure warranty performance, and to improve product reliability.

31. The Magnuson-Moss Warranty Act provides that the Federal Trade Commission (hereinafter referred to as the "FTC") is responsible for enforcement of its provisions in order to provide a level of protection for consumers.

32. The Magnuson-Moss Warranty Act defines "consumer product" as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes . . ." In that regard, motor vehicles would come under the scope of the Magnuson-Moss Warranty Act.

33. With respect to conditions placed upon written or implied warranties, the Magnuson-Moss Warranty Act states as follows:

(c) Prohibition on conditions for written or implied warranty; waiver by Commission. No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

- (1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and
- (2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

15 USCS § 2302.

34. If a State desires to enact a law that is not identical to the provisions of 15 U.S.C.

§ 2302 of the Magnuson-Moss Warranty Act, such will be allowed only when:

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies

(A) affords protection to consumers greater than the requirements of this chapter and

(B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

15 U.S.C. § 2311(c)(2).

35. The FTC has interpreted 15 USCS § 2302 of the Magnuson-Moss Warranty Act as the same applies to repairs to a consumer product and the use of replacement parts and has implemented the following regulation:

(a) Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.

(b) Under a limited warranty that provides only for replacement of defective parts and no portion of labor charges, section 102(c) prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement parts. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.

(c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as, "This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102 (c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability

under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

§ 700.10 Section 102(c).

36. In July 2011, the FTC issued a consumer alert, which among other things, addressed whether the use of aftermarket or recycled OEM parts would serve to void a new car factory warranty. Indicating that the use of such parts would not void the warranty, the FTC stated:

An 'aftermarket' part is a part made by a company other than the vehicle manufacturer or the original equipment manufacturer. A 'recycled' part is a part that was made for and installed in a new vehicle by the manufacturer or the original equipment manufacturer, and later removed from the vehicle and made available for resale or reuse. Simply using an aftermarket or recycled part does not void your warranty. The Magnuson-Moss Warranty Act makes it illegal for companies to void your warranty or deny coverage under the warranty simply because you used an aftermarket or recycled part. Still, if it turns out that the aftermarket or recycled part was itself defective or wasn't installed correctly, and it causes damage to another part that is covered under the warranty, the manufacturer or dealer has the right to deny coverage for that part and charge you for any repairs. The FTC says the manufacturer or dealer must show that the aftermarket or recycled part caused the need for repairs before denying warranty coverage.

37. Upon information and belief, no warrantor of new motor vehicles has applied to the FTC to obtain its permission to condition its warranty on the use of new OEM parts.

38. Upon information and belief, neither the WVAG, nor any agency of the State of West Virginia, has made an application to the FTC requesting permission to enact a law that provides more protection than the Magnuson-Moss Warranty Act pursuant to 15 U.S.C. § 2311(c)(2).

39. Pursuant to the Magnuson-Moss Warranty Act, as clarified by the FTC's July 2011 Alert, it is illegal for new car manufacturers to void a factory warranty, or to deny that

warranty simply because a recycled OEM crash part was used in repairing a motor vehicle. The new car manufacturer only has the right to deny coverage under the factory warranty if it can demonstrate that the recycled OEM crash part itself was defective or was installed incorrectly.

1998 CIRCUIT COURT OF KANAWHA, WEST VIRGINIA DECISION

40. Approximately one year after the West Virginia Insurance Commissioner issued Informational Letter No. 97 concerning the Crash Parts Act, a declaratory judgment action was filed on behalf of the West Virginia Automotive Dismantlers and Recyclers Association, the West Virginia Insurance Federation, Inc., and State Farm Mutual Automobile Insurance Company against the WVAG and the West Virginia Insurance Commissioner in the Circuit Court of Kanawha County, West Virginia, (*West Virginia Automotive Dismantlers and Recyclers Association, et al. v. McGraw*, Civil Action No. 97-C-2797), seeking a declaratory judgment as to whether W.Va. Code § 46A-6B-1, *et seq.* restricts the use of used crash parts in the repair of motor vehicles by insurance companies and motor vehicle body shops without the written consent of the owner of the motor vehicle.

41. On August 20, 1998, the Kanawha Circuit Court entered an Order finding that W.Va. Code § 46A-6B-3 is ambiguous and declaring that when automobile insurance companies negotiate the repairs of automobiles, and when body shops repair automobiles, they must negotiate and effect the repair of such using new OEM crash parts sufficient to maintain the factory warranty unless consent is given by the consumer to use aftermarket and/or salvage OEM parts. Specifically, the Kanawha Circuit Court stated:

The stated legislative purpose of Article 6B is to require disclosure of information about certain replacement crash parts and to prevent motor vehicle body shops and insurance companies from requiring the use of "aftermarket crash parts," unless the owner of the motor vehicle consents in writing. As explicitly stated in §

46A-6B-3 and the language of the notice required by W.Va. Code § 46A-6B-4, under no circumstances may motor vehicle body shops or insurance companies require the use of crash parts that void automobile manufacturers' new car warranties, unless the owner of the motor vehicle expressly consents in writing to their use.

None of the parties contend that the legislature intended to prohibit the use of "salvage crash parts." In spite of the fact that the first sentence of W.Va. Code § 46A-6B-3 gives some indication that their use is prohibited, the Court is of the opinion that this is not what the legislature intended. Instead, considering all of the provisions of Article 6B, the Court finds that the legislature's overarching intent is to prevent motor vehicle body shops and insurers from requiring the installation of replacement crash parts that would void automobile manufacturers' new car warranties, unless they complied with certain requirements. Specifically, motor vehicle body shops and insurers are required to ensure that the owners of motor vehicles requiring repairs are made aware that these types of parts are to be installed, that the owners are made aware that installation of these types of parts will void their new car warranties and that the owners of the motor vehicles give their informed, express and written consent to the installation of these types of replacement parts. Since "salvage crash parts" void automobile manufacturers' new car warranties, the consent of the owners of motor vehicles to be repaired is required before "salvage crash parts" are installed.

See Kanawha Circuit Court's August 20, 1998 Order.

42. The Kanawha Circuit Court's 1998 Order was entirely contingent upon its determination that the use of recycled OEM crash parts in repairing a vehicle would serve to void the manufacturer's warranty. More specifically, the Kanawha Circuit Court stated:

Based upon undisputed evidence in the record respecting automobile manufacturers' new car warranties, "salvage crash parts" installed on an automobile void new car warranties with respect to those "salvage crash parts", at least to the extent that the original parts are affected by the "salvage crash parts."

See Kanawha Circuit Court's August 20, 1998 Order, page 4.

43. The Kanawha Circuit Court's 1998 Order did not address the potential confusion and ambiguity that would be created between its interpretation of W.Va. Code § 46A-6b-3 and the notice provisions of W.Va. Code § 46A-6b-4(b), when the same are read *in pari materia*. Specifically, W.Va. Code § 46A-6b-4(b) requires that consumers be given notice that the

estimate has been prepared based on the use of aftermarket crash parts, that are not manufactured by the original manufacturer of the vehicle or by a manufacturer authorized by the original manufacturer to use its name or trademark. Since these statements are not accurate with respect to recycled OEM crash parts, consumers are being misled as to the exact type and nature of parts that are available for the repair of their vehicle.

44. The Kanawha Circuit Court's 1998 Order did not address the interplay between the Crash Parts Act and the Magnusson-Moss Warranty Act which specifically mandates that new car manufacturers cannot simply invalidate a factory warranty because recycled OEM crash parts are used in the repairs of a motor vehicle.

45. The statutory requirement that the exact wording as set forth at W.Va. Code § 46A-6b-4(b) continue to be given as a disclosure to the vehicle owner when recycled OEM crash parts are available for use in repairing a motor vehicle, serves to mislead the consumer and unfairly characterize the same as aftermarket parts which are generally viewed by the public as substandard, shoddy and unsafe, when in fact, they are not.

46. The Kanawha Circuit Court's August 20, 1998 Order was an unpublished trial court decision.

47. As an unpublished trial court decision, the Kanawha Circuit Court's August 20, 1998 Order has no precedential value.

48. The Defendants were not parties to *West Virginia Automotive Dismantlers and Recyclers Association, et al. v. McGraw* and exercised no control whatsoever over the conduct of the litigation.

49. Since the entry of the Kanawha Circuit Court's 1998 Order, new car warranties issued by manufacturers, including the warranties for motor vehicles sold by Joe Holland, have been substantially revised, amended and/or rewritten.

**POSITION OF JOE HOLLAND WITH RESPECT TO
CRASH PARTS AND NEW CAR WARRANTIES**

50. Joe Holland's website contains a section entitled "Body Shop Frequently Asked Questions, and a copy of this html webpage is attached here as Exhibit "A" and incorporated herein by reference.

51. With respect to recycled OEM parts, Joe Holland's website provides that:

A recycled/used part is one that has come off of a salvaged vehicle. While it was made by the original manufacturer, it has been used on another vehicle and carries no warranty from the vehicle manufacturer. In the case of remanufactured parts, these are parts that have come off another vehicle and have been remanufactured (rebuilt and/or repaired) by someone other than the original equipment manufacturer. These parts may or may not be warranted by the remanufacturer, but are never warranted by the original vehicle manufacturer.

52. With respect to the Crash Part Act, Joe Holland's website provides the following opinion:

A couple of years ago, the West Virginia State Legislature passed the collision repair parts law. This law requires the use of new, original equipment parts on vehicle that are of the current year model and the two (2) previous model years. For example, new parts would be repaired on 1997, 1996 and 1995 vehicles. The law does not require the use of new OEM parts on vehicle on vehicles beyond these model years. The type of parts used in this repair, OEM, aftermarket, used or remanufactured, is at the discretion of the insurance company. If you have any questions about the use of non-original equipment parts in the repair of your vehicle, you should contact your insurance company and/or the State of West Virginia Office of the Attorney General.

53. Joe Holland's publicly published opinion that the Crash Parts Act requires the use of new OEM parts on vehicles that are of the current year model and the two (2) previous model years is erroneous and misrepresents the stated purpose of the Act.

54. As set forth on its website, a large portion of Joe Holland's body shop business stems from insurance estimates.

55. As an authorized OEM parts dealer for General Motors, Joe Holland profits from the sale of OEM parts to other repair shops in West Virginia.

56. As an authorized OEM parts dealer for General Motors, Joe Holland has a vested interest in the prohibition of recycled OEM crash parts since new OEM crash parts may only be purchased directly from it or other authorized dealerships, at higher costs, thereby increasing its revenue and market share.

57. With respect to repairs that are conducted by Joe Holland, Joe Holland's website states that there is a twelve (12) month warranty on General Motors parts and labor performed.

58. Upon information and belief replacement parts, including new OEM crash parts, purchased directly from Joe Holland only come with a twelve (12) month warranty, separate and distinct from the factory warranty. In such circumstances, even the use of new OEM crash parts in motor vehicle collision repairs is not sufficient to maintain the factory warranty.

59. At all times pertinent herein, the Chevrolet New Vehicle Limited Warranty, issued with new vehicles sold by Joe Holland, provides that covered repairs during the warranty period will be performed using "new, remanufactured, or refurbished parts."

60. At all times pertinent herein, the Chevrolet New Vehicle Limited Warranty, issued with new vehicles sold by Joe Holland, provides that covered repairs during the warranty

period to some vehicle components may be performed "service replacement parts which may be new, remanufactured, reconditioned, or repaired, depending on the component involved."

61. The Chevrolet New Vehicle Limited Warranty, issued with new vehicles sold by Joe Holland, specifically precludes coverage for damages caused by a collision, accident, nature or the environment, thereby enabling Chevrolet/General Motors to deny coverage for any future claim which it believes was caused by (a) the prior accident damage or damage caused by the use or the environment; (b) or the repair of the same, even if new OEM crash parts were utilized in the repairs.

62. Upon information and belief, Joe Holland, as an authorized Chevrolet/General Motors dealer, performs covered repairs in compliance with the Chevrolet New Vehicle Limited Warranty in effect for the vehicle at issue.

63. Since OEM crash parts may only be purchased directly from the new car manufacturers themselves, at higher costs, and Joe Holland, as evidenced by its website, is actively informing consumers that only new OEM parts may be used in the repairs of their vehicles, Joe Holland has created, and is fostering, a tying arrangement with respect to OEM parts sold by it, which is in direct contravention of the Magnuson-Moss Warranty Act.

BACKGROUND ALLEGATIONS

64. In an effort to further reduce the cost of premiums for its insureds, in 2011 Liberty instituted a policy for its TLC Shops concerning the use of recycled OEM crash parts. Liberty directed its TLC Shops to repair vehicles utilizing recycled OEM crash parts where available and appropriate, which satisfied the following criteria: (a) manufactured by the original manufacturer; (b) from a vehicle of the same model year or newer; and (c) with the same number

of miles or fewer than the vehicle to be repaired. However, Liberty's policy that aftermarket crash parts should not be utilized did not change.

65. Following the implementation of this policy, Joe Holland voiced an objection to Liberty Mutual concerning the use of recycled OEM crash parts.

66. Unable to resolve their respective differences over this issue, Joe Holland, upon information and belief, was removed from Liberty's TLC program.

67. Following its removal from the TLC program, Joe Holland authorized its counsel, Frank A. Baer, III, to contact the WVAG and request that the matter be investigated, despite the fact that no customer complaints had been received at that time.

68. Acting on behalf of Joe Holland, Frank A. Baer, III, sent a letter dated July 18, 2011, to Deputy Attorney General Jill Miles of the WVAG requesting that the WVAG intercede on its behalf with respect to its dispute with Liberty Mutual concerning the use of recycled OEM crash parts in the repair of motor vehicles.

69. Following receipt of the July 18, 2011, letter from Plaintiff's Counsel, the WVAG initiated an investigation of Liberty Mutual concerning its purported practice of negotiating repairs in West Virginia with the use of recycled OEM crash parts for motor vehicles in the year of their manufacture or in the two succeeding years thereafter with motor vehicle body shops in West Virginia.

70. In the fall of 2011, the WVAG issued fourteen investigative subpoenas to select motor vehicle body shops in West Virginia, including but not limited to Chandler, seeking information with respect to Liberty Mutual's negotiation of repairs for motor vehicles in the year of their manufacture or in the two succeeding years thereafter with motor vehicle body shops in West Virginia, for the past three years.

71. Although it had been a part of the TLC program during this time period, the WVAG did not issue an investigative subpoena to Joe Holland.

72. Following its investigation concerning the use of recycled OEM crash parts by Liberty Mutual and Chandler, the WVAG filed an action in the Circuit Court of Kanawha County, West Virginia on December 15, 2011, seeking a preliminary and permanent injunction to enjoin Liberty Mutual and Chandler from using recycled OEM crash parts in the repair of motor vehicles in violation of the Crash Parts Act, and for an award of civil fines and penalties for each violation. For unspecified reasons, the WVAG did not name the other thirteen (13) motor vehicle body shops as Defendants that conducted business with Liberty Mutual.

73. In further retaliation for its removal from the TLC Program, Joe Holland filed suit against Liberty Mutual and Chandler as reflected by its Complaint filed on May 17, 2013.

74. Upon information and belief, Joe Holland has actively disparaged Liberty Mutual and Chandler concerning the use of recycled OEM crash parts in the repair of motor vehicles, both to the general public and industry trade circles.

75. Upon information and belief, Joe Holland has realized increased profits following its request that the WVAG initiate an investigation against the Defendants.

**COUNT I – TORTIOUS INTERFERENCE WITH CHANDLER’S BUSINESS
RELATIONSHIP WITH LIBERTY MUTUAL**

76. Chandler incorporates and re-alleges the allegations set forth in Paragraph Nos. 1 through 75 of the Counter Claim as though fully set forth herein.

77. Joe Holland had foregoing knowledge that Chandler was a participant in Liberty Mutual’s TLC program prior to (a) requesting the WVAG to investigate Liberty Mutual with

respect to its policy on recycled OEM parts; and (b) the filing of its Complaint against Liberty Mutual and Chandler.

78. As a participant in the TLC program, Chandler had a reasonable expectation that a certain number of Liberty Mutual's insureds and/or claimants under policies issued to Liberty Mutual's insureds would have their motor vehicle repairs performed by it.

79. After it was removed from the TLC program, Joe Holland conspired to undermine and interfere with Chandler's business relationship with Liberty Mutual by:

- a. requesting the WVAG to investigate Liberty Mutual with respect to its policy on recycled OEM parts;
- b. aiding and assisting the WVAG in its investigation of, and subsequent lawsuit against, Liberty Mutual and Chandler;
- c. the filing of its Complaint against Liberty Mutual and Chandler;
- d. By its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts is unlawful in West Virginia;
- e. By its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts will cause a new car warranty to be voided by the manufacturer; and
- f. By its misrepresentations to the general public and within industry trade circles that Chandler's adherence to Liberty Mutual's policy with respect to the use of recycled OEM crash parts is unlawful, fraudulent, deceptive and/or unsafe.

80. The actions of Joe Holland as hereinbefore stated were intended to injure the reputation of Chandler and persuade Liberty Mutual's insureds and/or claimants under policies issued to Liberty Mutual's to have their motor vehicle repairs performed by Joe Holland instead.

81. The actions of Joe Holland as hereinbefore stated have caused a number of Liberty Mutual's insureds and/or claimants under policies issued to Liberty Mutual's insureds to have their work performed by other body shops, including but not limited to Joe Holland.

82. As a direct result of Joe Holland's interference, Chandler has suffered a substantial and significant decline in the number customers that are Liberty Mutual's insureds and/or claimants under policies issued to Liberty Mutual's insureds.

83. As a direct result of Joe Holland's interference, Chandler has suffered a loss of income and has further suffered consequential and incidental damages.

**COUNT II – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP
BETWEEN CHANDLER AND OTHER INSURANCE CARRIERS**

84. Chandler incorporates and re-alleges the allegations set forth in Paragraph Nos. 1 through 83 of the Counter Claim as though fully set forth herein.

85. A large portion of Chandler's revenue is derived from repairs to motor vehicles that are covered by automobile insurance. As such, Chandler has reached agreements and/or relationships with multiple insurance carriers to serve as a direct repair facility.

86. Joe Holland had foregoing knowledge that a large portion of Chandler's customers were derived from agreements and/or relationships that Chandler had with multiple insurance carriers as a direct repair facility prior to: (a) requesting the WVAG to investigate Liberty Mutual with respect to its policy on recycled OEM parts; and (b) the filing of its Complaint against Liberty Mutual and Chandler.

87. As a direct repair facility with multiple insurance carriers, Chandler had a reasonable expectation that a certain number of policy holders and/or claimants from these insurance carriers would have their motor vehicle repairs performed by it.

88. After it was removed from the TLC program, Joe Holland conspired to undermine and interfere with the business relationships that Chandler had established with other insurance carriers by:

- a. requesting the WVAG to investigate Liberty Mutual with respect to its policy on recycled OEM parts;
- b. aiding and assisting the WVAG in its investigation of, and subsequent lawsuit against, Liberty Mutual and Chandler;
- c. the filing of its Complaint against Liberty Mutual and Chandler;

- d. By its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts is unlawful in West Virginia;
- e. By its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts will cause a new car warranty to be voided by the manufacturer; and
- f. By its misrepresentations to the general public and within industry trade circles that Chandler's adherence to Liberty Mutual's policy with respect to the use of recycled OEM crash parts is unlawful, fraudulent, deceptive and/or unsafe.

89. The actions of Joe Holland as hereinbefore stated were intended to injure the reputation of Chandler and persuade insureds and/or claimants of other insurance carriers to have their motor vehicle repairs performed by Joe Holland instead.

90. The actions of Joe Holland as hereinbefore stated have caused a number of insureds and/or claimants of other insurance carriers to have their work performed by other body shops, including but not limited to Joe Holland.

91. As a direct result of Joe Holland's interference, Chandler has suffered a substantial and significant decline in the number customers that are policyholders or claimants of other insurance carriers that it has established a business relationship with as a direct repair facility.

92. As a direct result of Joe Holland's interference, Chandler has suffered a loss of income and has further suffered consequential and incidental damages.

COUNT III – TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

93. Chandler incorporates and re-alleges the allegations set forth in Paragraph Nos. 1 through 92 of the Counter Claim as though fully set forth herein.

94. A large portion of Chandler's revenue is derived from repairs to motor vehicles that are covered by automobile insurance. As such, Chandler has reached agreements and/or relationships with multiple insurance carriers to serve as a direct repair facility.

95. Based upon its experience and reputation, Chandler had a reasonable expectation that would acquire additional business and/or contractual relationships with other insurance carriers with respect to the repair of motor vehicles for their insureds or claimants.

96. Based upon its experience and reputation, Chandler had a reasonable expectation that it would acquire additional business and/or contractual relationships with other business entities.

97. Based upon its experience and reputation, Chandler had a reasonable expectation that it would acquire return customers from individuals that had used its services previously as: (a) an insured or claimant of Liberty Mutual; or (b) an insured or claimant of other insurance carriers that it had a business/contractual business relationship with as a direct repair facility.

98. Joe Holland had foregoing knowledge that a large portion of Chandler's customers were derived from agreements and/or relationships that Chandler had with multiple insurance carriers as a direct repair facility, prior to: (a) requesting the WVAG to investigate Liberty Mutual with respect to its policy on recycled OEM parts; and (b) the filing of its Complaint against Liberty Mutual and Chandler.

99. After it was removed from the TLC program, Joe Holland conspired to undermine and interfere with the aforesaid prospective business relationships that Chandler reasonably expected to acquire by:

- a. requesting the WVAG to investigate Liberty Mutual with respect to its policy on recycled OEM parts;
- b. aiding and assisting the WVAG in its investigation of, and subsequent lawsuit against, Liberty Mutual and Chandler;

- c. the filing of its Complaint against Liberty Mutual and Chandler;
- d. by its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts is unlawful in West Virginia;
- e. by its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts will cause a new car warranty to be voided by the manufacturer; and/or
- f. by its misrepresentations to the general public and within industry trade circles that Chandler's adherence to Liberty Mutual's policy with respect to the use of recycled OEM crash parts is unlawful, fraudulent, deceptive and/or unsafe.

100. The actions of Joe Holland as hereinbefore stated were intended to injure the reputation of Chandler and dissuade prospective business partners from entering into agreements, contacts or any other type of business relationship with Chandler.

101. As a direct result of Joe Holland's interference, Chandler's ability to acquire new business relationships has diminished.

102. The actions of Joe Holland as hereinbefore stated were intended to injure the reputation of Chandler and persuade prospective customers to have their motor vehicle repairs performed by Joe Holland instead.

103. The actions of Joe Holland as hereinbefore stated have caused a number of prospective customers to have their work performed by other body shops, including but not limited to Joe Holland.

104. As a direct result of Joe Holland's interference, Chandler has suffered a substantial and significant decline in the number customers seeking to have their motor vehicles repaired.

105. As a direct result of Joe Holland's interference, Chandler has suffered a loss of income and has further suffered consequential and incidental damages.

COUNT IV — UNFAIR AND DECEPTIVE BUSINESS PRACTICES

106. Chandler incorporates and re-alleges the allegations set forth in Paragraph Nos. 1 through 105 of the Counter Claim as though fully set forth herein.

107. The FTC has opined that simply using recycled OEM parts in motor vehicle repairs does not void the manufacturers' new car warranty.

108. The FTC has opined that the Magnuson-Moss Warranty Act makes it illegal for automobile manufacturers to void a warranty or deny coverage under the warranty simply because recycled OEM parts have been used.

109. Joe Holland has used its position as an authorized dealer of General Motors OEM replacement parts to influence vehicle owners to insist upon the use of only new OEM crash parts in the repair of vehicles three years old or newer by informing such owners directly or indirectly that the use of such parts is unlawful in West Virginia in order to gain an unfair competitive advantage over Chandler and similarly situated body shops in West Virginia.

110. Joe Holland's public representations, including, but not limited to, those statements contained on its website, that West Virginia law requires the use of new OEM parts on vehicles that are of the current year model and the two (2) previous model years is false and misleading and has further created the likelihood of confusion or misunderstanding concerning the permissible use of recycled OEM parts under federal and West Virginia law which constitutes an unfair method of competition and unfair deceptive act or practice which is unlawful pursuant to the provisions of W.Va. Code § 46A-6-102(7) and W.Va. Code § 46A-6-104.

111. As a direct and consequent result of Joe Holland's unfair and deceptive business practices, Chandler has suffered a loss of income and has further suffered consequential and incidental damages.

112. As an authorized dealer of General Motors OEM replacement parts, part of Joe Holland's business plan includes an expectation that repair shops will be required to purchase new OEM parts directly from its parts department in order to conduct and complete repairs with the public's expectation that new OEM parts will be used for the repair of vehicles three years old or newer.

113. Since new OEM crash parts may only be purchased at higher costs directly from the new car manufacturers themselves or their representatives, Joe Holland has created and/or facilitated a tying arrangement for such parts, which is in direct contravention of the anti-tying provisions of the MMWA.

114. The tying arrangement that Joe Holland has created and/or facilitated with respect to the use of new OEM crash parts in the repair of vehicles three years old or newer has given it an unfair competitive advantage over Chandler and similarly situated body shops in West Virginia.

115. As a direct and consequent result of the tying arrangement that Joe Holland has created and/or facilitated with respect to the use of new OEM crash parts, Chandler has suffered a loss of income and has further suffered consequential and incidental damages.

COUNT V --- BUSINESS DISPARAGEMENT

116. Chandler incorporates and re-alleges the allegations set forth in Paragraph Nos. 1 through 115 of the Counter Claim as though fully set forth herein.

117. Joe Holland has falsely disparaged Chandler with the intent of causing Liberty Mutual's insureds, claimants under policies issued to its insureds and prospective consumers to form an unfavorable impression of Chandler's services by:

- a. requesting that the WVAG initiate an investigation against Liberty Mutual and actively assisting in that investigation;
- b. filing a civil suit against Chandler concerning the use of recycled OEM crash parts in West Virginia despite clear federal law which provides that the use of such parts does not automatically serve to void new car warranties;
- c. by its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts is unlawful in West Virginia;
- d. by its misrepresentations to the general public and within industry trade circles that the use of recycled OEM crash parts will cause a new car warranty to be voided by the manufacturer; and/or
- e. by its misrepresentations to the general public and within industry trade circles that Chandler's adherence to Liberty Mutual's policy with respect to the use of recycled OEM crash parts is unlawful, fraudulent, deceptive and/or unsafe.

118. As an authorized dealer for Chevrolet and General Motors, Joe Holland knew, or should have known, that automobile manufacturers cannot void a warranty simply because recycled OEM crash parts are utilized in repairs.

119. As an authorized dealer for Chevrolet and General Motors, Joe Holland knew, or should have known, that it is not unlawful to utilize recycled OEM crash parts in the repair of motor vehicles.

120. As an authorized dealer for Chevrolet and General Motors, Joe Holland knew that its statements concerning recycled OEM crash parts, Liberty Mutual's policy with respect to the same, and Chandler's adherence to that policy, were without factual basis and untrue.

121. Joe Holland has acted in willful and reckless disregard of the truth or falsity of its statements concerning the use of recycled OEM crash parts in the repair of motor vehicles and Liberty Mutual's policy with respect to the same, and Chandler's adherence to that policy, in retaliation for its removal from the TLC Program.

122. Joe Holland has acted in willful and reckless disregard of the truth or falsity of its statements concerning the use of recycled OEM crash parts in the repair of motor vehicles and Liberty Mutual's policy with respect to the same, and Chandler's adherence to that policy, in order to increase its revenue and market share with respect to the sale of new OEM parts.

123. As a result of Joe Holland's misrepresentations and actions, Chandler has suffered damage to its name and reputation in West Virginia.

124. As a result of Joe Holland's misrepresentations, Chandler has suffered economic losses and has further suffered consequential and incidental damages.

PRAYER FOR RELIEF

WHEREFORE, Greg Chandler's Frame & Body, LLC prays for the following relief:

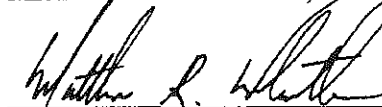
- a. compensatory damages;
- b. punitive damages;
- c. that the Court award Chandler its costs associated with the prosecution of its Counterclaim, including, if appropriate, its reasonable attorneys' fees.
- d. pre- and post-judgment interest and costs.
- e. such other and further relief as the Court deems appropriate.

CHANDLER DEMANDS A JURY TRIAL ON ALL TRIABLE ISSUES.

Dated: June 19, 2013.

GREG CHANDLER'S FRAME & BODY, LLC,
BY COUNSEL

MARTIN & SEIBERT, L.C.



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W.Va. State Bar No. 2334

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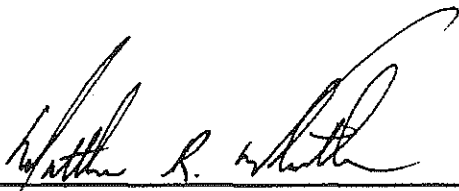
Counsel for Greg Chandler's Frame & Body, LLC

CERTIFICATE OF SERVICE

FILED

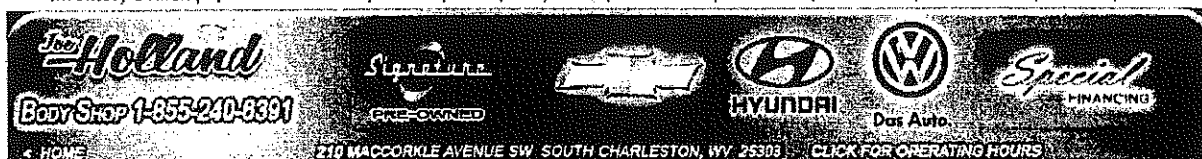
I, Clarence E. Martin, III, counsel for the Defendant/Respondent, Liberty Mutual Insurance Company, do hereby certify that I served a true copy of the foregoing DEFENDANT GREG CHANDLER'S FRAME & BODY, LLC'S ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES AND COUNTERCLAIM, upon the following individual(s), via U.S. Mail, postage prepaid, on this the 19th day of June, 2013.

Stuart Calwell, Esq.
Alex McLaughlin, Esq.
The Calwell Practice PLLC
Law and Arts Center West
500 Randolph Street
Charleston, WV 25302
Counsel for Joe Holland Chevrolet, Inc.



Matthew R. Whitler
Counsel for Greg Chandler's Frame & Body, LLC

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BODY SHOP

Body Shop Frequently Asked Questions

ESTIMATES

- Q.** Is there a charge for obtaining an estimate from Joe Holland Chevrolet, Inc.?
- A.** No. We provide a free estimate service for all customers. The estimates are done by highly qualified individuals using the most up to date crash texts and computer estimating system available. As the owner of a motor vehicle damaged in an accident, you have the right to choose the shop where you wish to have your vehicle repaired. This is the law!
- Q.** Do I need more than one estimate?
- A.** No. Do not waste your time or that of several shops getting estimates. Select a repair facility that you feel comfortable with, then notify your agent or insurance company, or ask the shop to make the call on your behalf. Your insurance adjuster may have to inspect the damage. This can be done at an insurance drive thru claim center or at the shop you have chosen.
- Q.** Do I need an appointment to obtain an estimate?
- A.** Although, you do not need an appointment to obtain an estimate, for your convenience it is recommended. Our Body Shop hours are from 8:00 A.M. to 5:00 P.M. Monday through Friday, excluding holidays.
- Q.** Does Joe Holland Chevrolet, Inc. repair vehicles from insurance estimates?
- A.** Yes. A large portion of our work stems from insurance estimates. We at Joe Holland pride ourselves for having a good rapport with those in the insurance field and will do everything in our power to handle insurance estimates expeditiously.
- Q.** What if damages are found that are not listed on the estimate?
- A.** This damage is known as "hidden damage" and once found, the insurance company and/or customer is notified as to the nature of the damage and the cost of the repair to be performed.
- Q.** Is your work limited to Chevrolet vehicles?
- A.** No. We service all makes and models of automobiles and trucks. We welcome the opportunity to assist you with your repair needs.

PARTS

- Q.** Does Joe Holland carry the parts needed to repair my vehicle?
- A.** In most cases the answer would be "yes". However, no repair facility, regardless of how large or small, can anticipate every part that will be needed to make a repair. We at Joe Holland have access to the parts inventories of other dealers in the vicinity from which parts may be obtained. In the event that parts are unavailable locally, the parts will be ordered directly from the manufacturer. If this occurs, the average time involved is approximately one (1) business day to two (2) weeks for delivery.

WARRANTY PERIOD

- Q.** Is there a warranty period on parts and labor performed in the Body Shop?
- A.** Yes. There is a twelve (12) month warranty on General Motors (GM) parts and labor performed. Warranty on non-GM parts varies from manufacturer to manufacturer. We will help you to obtain this information.

PAYMENT

- Q.** If I am having work performed under an insurance estimate, who is responsible for payment?
- A.** The owner of the vehicle is responsible for payment of repairs. We at Joe Holland will be happy to assist you in making the necessary arrangements with your Insurance Company.
- Q.** Can my car be released without payment?
- A.** No. Company Policy requires that payment be made in the form of an insurance check, personal check, credit card, or cash. Payment must be obtained prior to releasing the vehicle unless other arrangements have been made (direct to pay). Occasionally, checks are issued by insurance companies made payable to financial institutions. Please understand ALL endorsements must be present before we can accept a check for payment.

RENTAL CARS/TRANSPORTATION

- Q.** Does Joe Holland supply rental or loaner cars?
- A.** During this time, loss of transportation is solely the responsibility of the party or insurance company accepting liability for your loss or damages. We cannot provide loaner or rental vehicles, but would be more than willing to get you in contact with the appropriate companies that can. We pledge to provide quality repairs to your



vehicle as quickly as possible. We can only estimate the time your vehicle will take to complete; however, situations may occur delaying the delivery date. Examples of this are; supplemental or hidden damage, additional parts needing to be ordered and insurance approvals.

OTHER FACTS YOU SHOULD KNOW

1. No law requires you to get more than one estimate.
2. You are not obligated to use any particular shop to obtain repairs. You choose the shop and authorize the repairs.
3. You do not have to accept the Insurance Company appraisal of damage. Check the "appraisal clause" in your policy on how to resolve difficulties.
4. There is a big difference between shops. Any shop can give a lower price by leaving something out or overlooking parts. The Body Personnel at Joe Holland Chevrolet, Inc. are "craftsmen" and will do a good job of repairing your vehicle at a fair price.
5. Sometimes an insurance estimate will include items referred to as "LKQ" or "Like, Kind, and Quality" parts, remanufactured parts and/or recycled or used parts. These are not new parts from the original manufacturer of your vehicle. A recycled/used part is one that has come off of a salvaged vehicle. While it was made by the original manufacturer, it has been used on another vehicle and carries no warranty from the vehicle manufacturer. In the case of remanufactured parts, these are parts that have come off another vehicle and have been remanufactured (rebuilt and/or repaired) by someone other than the original equipment manufacturer. These parts may or may not be warranted by the remanufacturer, but are never warranted by the original vehicle manufacturer. Aftermarket parts are new but are manufactured by someone other than the original vehicle manufacturer. These parts may be certified by CAPA, an aftermarket collision parts association, for fit and finish; however, they are not certified for fit, finish, or corrosion resistance by the original vehicle manufacturer. In addition, they do not carry any warranty from the vehicle manufacturer. The aftermarket manufacturer may or may not offer a warranty on these parts. If you have any questions about the warranty on these types of parts, you should ask your insurance company. Please be advised that estimates written by Joe Holland Chevrolet, Inc are written using Original Equipment parts, exact duplicate of the ones that came on your vehicle.
6. A couple of years ago, the West Virginia State Legislature passed the collision repair parts law. This law requires the use of new, original equipment parts on vehicle that are of the current year model and the two (2) previous model years. For example, new parts would be required on 1997, 1996 and 1995 vehicles. The law does not require the use of new OEM parts on vehicle on vehicles beyond these model years. The type of parts used in this repair, OEM, aftermarket, used or remanufactured, is at the discretion of the insurance company. If you have any questions about the use of non-original equipment parts in the repair of your vehicle, you should contact your insurance company and/or the State of West Virginia Office of the Attorney General.

Please be advised that these are only a few of the most frequently asked questions of the Joe Holland Chevrolet, Inc. Body Shop. Please feel free to contact any of the staff at the Body Shop concerning repair costs, estimates, or parts. The Body Shop Staff and the entire staff of Joe Holland Chevrolet, Inc. are willing and able to assist you in all of your automotive needs. We welcome your suggestions and comments and strive for complete customer satisfaction.

Thank you for considering Joe Holland Chevrolet and Imports for all of your automotive needs. Please address any correspondence to:

Joe Holland Chevrolet, Inc.
210 MacCorkle Avenue
So. Charleston, West Virginia 25303
304/744-1561

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