

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

JOE HOLLAND CHEVROLET, INC.

Plaintiff

v.

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

Defendants

2013 JUN 21 PM 2:48

KANAWHA COUNTY COURT

CIVIL ACTION NO. 13-C-978

**DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S ANSWER TO  
COMPLAINT AND AFFIRMATIVE DEFENSES**

Comes now the Defendant Liberty Mutual Insurance Company (hereinafter referred to as "Liberty Mutual"), 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, Liberty Mutual admits that Joe Holland is a West Virginia Corporation with its principal place of business in South Charleston, Kanawha County, West Virginia. Liberty Mutual 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. Liberty Mutual admits the allegations contained in Paragraph No. 2 of the Complaint.

3. Upon information and belief, Liberty Mutual admits the allegations contained in Paragraph No. 3 of the Complaint.

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### **Background Allegations**

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

5. Liberty Mutual admits the allegations contained in Paragraph No. 5 of the Complaint.

6. Liberty Mutual admits that as part of its services to automobile insurance policyholders and claimants under policies issued to its insureds, it 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. Liberty Mutual 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, Liberty Mutual affirmatively states that it 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. Paragraph No. 8 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 the December 18, 2008 TLC Repair Shop Agreement executed by the Plaintiff and Liberty Mutual speaks for itself with respect to the allegations set forth in Paragraph No. 8 and therefore no response is required under the West Virginia Rules of Civil Procedure.

9. Liberty Mutual admits that participants in the TLC program are required to use Audatex estimating software. Liberty Mutual is without knowledge or information sufficient to admit or deny the truth of the remaining allegations set forth in Paragraph No. 9 of the Complaint, and therefore denies the same.

10. Liberty Mutual 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. Liberty Mutual admits that on or about March 30, 2011, it informed its TLC Shops 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 its TLC Shops 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. Liberty Mutual further admits that it requested that its TLC Shops write such estimates in compliance with its 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, Liberty Mutual admits it required, for a

period of time and where appropriate, that its TLC Shops 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, Liberty Mutual affirmatively states that no repairs were to be made by the TLC Shop until permission was obtained from the vehicle's owner or authorized representative. To the extent that the allegations set forth in Paragraph No. 11 of the Complaint are inconsistent with this admission, they are denied.

12. Liberty Mutual admits that on or about April 12, 2011, that a representative of the Plaintiff contacted a representative for Liberty Mutual concerning the use of recycled OEM crash parts in West Virginia and requested further clarification with respect to the policy. Liberty Mutual further admits that the Plaintiff's representative directed Liberty Mutual's representative to an unreported trial court decision in Kanawha County, West Virginia, styled as *West Virginia Automotive Dismantlers and Recyclers Association, the West Virginia Insurance Federation, Inc. and State Farm Mutual Automobile Insurance Company v. McGraw, et al.*, C.A. 97- C-2797. To the extent that the allegations set forth in Paragraph No. 12 of the Complaint are inconsistent with this admission, they are denied.

13. Liberty Mutual denies the allegations set forth in Paragraph No. 13 of the Complaint.

14. Liberty Mutual 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. Upon information and belief, Liberty Mutual admits that Chandler 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. Liberty Mutual admits that on or about March 30, 2011, it 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. Liberty Mutual further admits that it requested that Chandler write such estimates in compliance with its 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, Liberty Mutual admits it 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, Liberty Mutual affirmatively states that no repairs

were to be made by Chandler 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, Liberty Mutual, upon information and belief, admits that Chandler, after obtaining authorization from the owner, performed repairs upon a 2009 Chevrolet Aveo in compliance with its policy concerning the use of recycled OEM crash parts where appropriate. Liberty Mutual is without sufficient knowledge or information to admit or deny the truth of the allegation 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. Liberty Mutual 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, Liberty Mutual 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. Liberty Mutual admits that the Plaintiff is not a participant in the TLC program. To the extent that the allegations set forth in Paragraph No. 19 of the Complaint are inconsistent with this admission, they are denied.

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, Liberty Mutual, upon information and belief, admits that Chandler 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. Liberty Mutual 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, Liberty Mutual 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. Furthermore, Paragraph No. 21 of the Complaint is directed in part to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 21 of the Complaint that relate to other parties and therefore denies the same. However, to the extent that the allegations of Paragraph No. 21 of the Complaint are deemed to be directed against Liberty Mutual, they are denied.

#### **Count I: Breach of Contract Against Liberty Mutual**

22. In response to Paragraph No. 22 of the Complaint, Liberty Mutual 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, to the extent that the Plaintiff is making reference to the TLC Repair Shop Agreement in effect for the 2011 calendar year, that document speaks for itself and no responsive pleading to such



allegations are required under the West Virginia Rules of Civil Procedure. In the event a response is deemed to be required, Liberty Mutual admits that the TLC Repair Shop Agreement in effect for the 2011 calendar year speaks for itself with respect to the allegations set forth in Paragraph No. 23 of the Complaint. To the extent that the allegations set forth in Paragraph No. 23 are inconsistent with this admission, they are denied.

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, to the extent that the Plaintiff is making reference to the TLC Repair Shop Agreement in effect for the 2011 calendar year, that document speaks for itself and no responsive pleading to such allegations are required under the West Virginia Rules of Civil Procedure. In the event a response is deemed to be required, Liberty Mutual admits that the TLC Repair Shop Agreement in effect for the 2011 calendar year speaks for itself with respect to the allegations set forth in Paragraph No. 24 of the Complaint. To the extent that the allegations set forth in Paragraph No. 24 of the Complaint are inconsistent with this admission, they are denied.

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. In the event a response is deemed to be required, Liberty Mutual denies the allegations set forth in Paragraph No. 25 of the Complaint and demands strict proof thereof.

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. In the event a response is deemed to be required, Liberty Mutual denies the allegations set forth in Paragraph No. 26 of the Complaint and demands strict proof thereof.

**Count II: Wrongful Termination of Contractual Agreement**  
**Against Liberty Mutual**

27. In response to Paragraph No. 27 of the Complaint, Liberty Mutual 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. Liberty Mutual denies the allegations set forth in Paragraph No. 29 of the Complaint and demands strict proof thereof.

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. In the event a response is deemed to be required, Liberty Mutual denies the allegations set forth in Paragraph No. 30 of the Complaint and demands strict proof thereof.

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. In the event a response is deemed to be required, Liberty Mutual denies the allegations set forth in Paragraph No. 31 of the Complaint and demands strict proof thereof.

**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, Liberty Mutual denies the allegations contained in Paragraph No. 33 of the Complaint and demands strict proof thereof.

34. Liberty Mutual 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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 35 of the Complaint and demands strict proof thereof.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 36 of the Complaint and demands strict proof thereof.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 37 of the Complaint and demands strict proof thereof.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 38 of the Complaint and demands strict proof thereof.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 39 of the Complaint and demands strict proof thereof.

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, Liberty Mutual 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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 41 of the Complaint and demands strict proof thereof.

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 Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual 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 Liberty Mutual, they are denied and Liberty Mutual 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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 43 of the Complaint and demands strict proof thereof.

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

44. In response to Paragraph No. 44 of the Complaint, Liberty Mutual 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, Liberty Mutual denies the allegations contained in Paragraph No. 45 of the Complaint and demands strict proof thereof.

46. Upon information and belief, Liberty Mutual admits the allegations set forth in Paragraph No. 46 of the Complaint.

47. Paragraph No. 47 of the Complaint is directed to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 47 of the Complaint that relate to other parties and therefore denies the same.

48. Paragraph No. 48 of the Complaint is directed to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 48 of the Complaint that relate to other parties and therefore denies the same.

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. Moreover, Paragraph No. 49 of the Complaint is directed to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 49 of the Complaint that relate to other parties and therefore denies the same.

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. Moreover, Paragraph No. 50 of the Complaint is directed to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 50 of the Complaint that relate to other parties and therefore denies the same.

**Count V: Civil Conspiracy Between Liberty Mutual and Greg Chandler**

51. In response to Paragraph No. 51 of the Complaint, Liberty Mutual incorporates and re-alleges 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 Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual 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 Liberty Mutual, they are denied.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 53 of the Complaint and demands strict proof thereof.

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. To the extent a response is deemed to be required, Liberty Mutual denies the allegations contained in Paragraph No. 54 of the Complaint and demands strict proof thereof.

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. Furthermore,

Paragraph No. 55 of the Complaint is directed in part to parties other than Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty Mutual states that it is without knowledge or information sufficient to admit or deny the truth of the allegations set forth in Paragraph No. 55 of the Complaint that relate to other parties and therefore denies the same.

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 Liberty Mutual and therefore, no response is required by this answering Defendant. To the extent a response is deemed to be required, Liberty 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 Liberty Mutual, they are denied and Liberty Mutual 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**

Liberty Mutual hereby sets forth its separate and distinct defenses to the Complaint. Liberty Mutual sets forth the following matters to apprise the Plaintiff of certain potentially applicable defenses. By listing any matter as a separate defense, Liberty Mutual 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**

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

### **SECOND AFFIRMATIVE DEFENSE**

Liberty Mutual 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, justifiable case or controversy between the Plaintiff and Liberty Mutual.

### **THIRD AFFIRMATIVE DEFENSE**

Liberty Mutual 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**

Liberty Mutual 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**

Liberty Mutual reserves unto itself the affirmative defense that the 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 Petitioners lack standing or capacity to bring or maintain this action or to assert any claim against Liberty Mutual, dismissal of this action may be required or some or all of the requested relief may be improper.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Liberty Mutual reserves unto itself the affirmative defense of misjoinder.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Liberty Mutual asserts that Automotive Crash Parts Act, W.Va. Code § 46A-6B-1, *et seq.*, is ambiguous.

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

Liberty Mutual 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**

Liberty Mutual affirmatively asserts that the law of the State of Ohio governs any and all disputes arising from the Total Liberty Care Repair Shop Agreement in effect for 2011 between it and Joe Holland.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Liberty Mutual reserves unto itself the affirmative defense that the Plaintiff breached its contractual obligations under the Total Liberty Care Repair Shop Agreement in effect for 2011.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Liberty Mutual affirmatively asserts that it acted appropriately pursuant to rights and obligations conferred upon it by the clear and unambiguous terms of the Total Liberty Care Repair Shop Agreement in effect for 2011 between it and the Plaintiff and denies that it breach any contractual terms of the agreement, and demands strict proof thereof.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

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

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

Liberty Mutual 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.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Any award of punitive damages against Liberty Mutual 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.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

Liberty Mutual 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.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

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

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Liberty Mutual 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.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

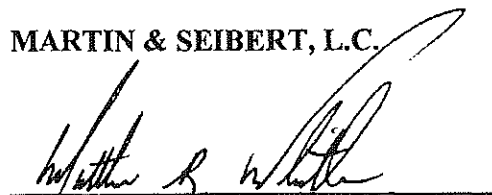
- A. deny the relief requested in the Complaint;
- B. dismiss the Complaint in its entirety;
- C. award Liberty Mutual its attorneys' fees and costs for its defense to the Complaint; and
- D. for any other and further relief as to this Court may seem just and proper.

**LIBERTY MUTUAL DEMANDS A JURY TRIAL ON ALL TRIABLE ISSUES.**

**Dated: June 19, 2013**

**LIBERTY MUTUAL INSURANCE COMPANY,  
a Massachusetts corporation  
BY COUNSEL**

**MARTIN & SEIBERT, L.C.**



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Facsimile: (304) 267-0731  
*Counsel for Liberty Mutual Insurance Company*

**CERTIFICATE OF SERVICE**

**FILED**

2013 JUN 21 PM 2:48

KANAWHA COUNTY COURT

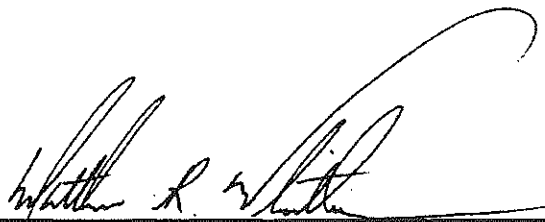
I, Clarence E. Martin, III, counsel for the Defendant/Respondent, Liberty Mutual Insurance Company, do hereby certify that I served a true copy of the foregoing **DEFENDANT**

**LIBERTY MUTUAL INSURANCE COMPANY'S ANSWER TO COMPLAINT AND**

**AFFIRMATIVE DEFENSES**, upon the following individual(s), via U.S. Mail, postage prepaid,

on this the 19<sup>th</sup> 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



**Matthew R. Whitler**  
*Counsel for Defendant Liberty Mutual Insurance Company*