FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2014CP0401787

Grange Mutual Casualty and Trustgard Insurance Co.
PLAINTIFF(S)

20/20 Auto Glass, LLC
DEFENDANT(S)

| Submitted by: Court | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant |
|---|---|

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
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| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

| Circuit Court Judge | 2752 Judge Code | Date |
|---|---|---|



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## For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Anderson Common Pleas

**Case Caption:** Grange Mutual Casualty VS Twenty Twenty Auto Glass LLC

**Case Number:** 2014CP0401787

**Type:** Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-04-1787

Grange Mutual Casualty and Trustgard Insurance Company,

Plaintiffs,

v.

20/20 Auto Glass, LLC,

Defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL JUDGMENT**

This declaratory judgment action was tried before the Court on October 26, 2016. The bench trial was conducted based on stipulated facts and exhibits agreed to and submitted by the parties. Present at the bench trial were Jason P. Luther, Esquire, attorney for the Plaintiffs, and Charles J. Lloyd, Esquire and Joshua M. Henderson, Esquire, attorneys for the Defendant. The Court, having heard the Parties' arguments, read the submissions of counsel, and considered the evidence, now enters a declaration in favor of Plaintiffs Grange Mutual Casualty and Trustgard Insurance Company (collectively herein "Plaintiffs" or "Grange") based on the following findings of fact and conclusions of law.

## BACKGROUND

On August 21, 2014, Plaintiffs commenced this declaratory judgment action in the Anderson County Court of Common Pleas, seeking a declaration of the rights and obligations of the Parties under a certain standard personal automobile insurance policy (referred to herein collectively as the "Policy") issued by Plaintiffs to certain South Carolina insureds. More particularly, Plaintiffs seek a declaration that: (1) Grange did not breach the Policy and no further

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sums are due to Defendant 20/20 Auto Glass under the terms of the Policy for each claim; (2) 20/20 Auto Glass is contractually bound to the rates it accepted when it entered unilateral contracts with Grange upon performance of the glass repair or replacement services for the Insureds; and (3) 20/20 Auto Glass has no basis for asserting the appraisal provision of the Policy and Grange is not obligated to participate in the appraisal process with 20/20 Auto Glass. In response, 20/20 Auto Glass counterclaimed for a declaration that Grange is required to participate in the appraisal process and that the failure to pay 20/20 Auto Glass's invoices in full is a breach of the Policy.

Plaintiffs filed a Motion for Summary Judgment, which was heard on February 6, 2015. On June 8, 2015, the Court denied Plaintiff's Motion on the grounds that there were genuine issues of material fact that precluded summary judgment at that time. Thereafter, the parties engaged in written discovery and depositions, and by Order of the Honorable J. Cordell Maddox, Jr. dated February 14, 2016, this action was assigned to the undersigned for a bench trial.

## FINDINGS OF FACT

Because all facts are stipulated by the parties and not in dispute, the Court adopts the Stipulation of Facts previously filed by the parties as its factual findings and incorporates those facts fully herein. However, the Court finds the following facts particularly relevant to its conclusions of law:

1. This action arises from a dispute relating to windshield replacement services performed for five insureds of Grange, an automobile insurance company, by 20/20 Auto Glass, LLC (20/20 Auto Glass), an automobile glass repair and replacement business.

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2. Grange insured Iranell Hampton, Cinnimon Collins, Kelly Gregg, Keith Perkins, and David Kellogg (hereinafter "Claimants" or "Insureds") under its standard personal auto policy.

3. The Policy limits Grange's liability for glass-related damage as follows:

**PART D – COVERAGE FOR DAMAGE TO YOUR AUTO**
**LIMIT OF LIABILITY**

A. Our limit of liability for loss will be the lesser of the:

1. Actual cash value of the stolen or damaged property, reduced by the salvage value if you or the owner retain the salvage; or
2. Amount necessary to repair or replace the property using parts from the vehicle's manufacturers or parts from other manufacturers.

4. The Policy also contains an appraisal provision, which provides as follows:

**Appraisal**

A. If **we** and **you** do not agree on the actual value of the vehicle, either party may demand an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, the will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

B. **We** do not waive any of **our** rights under this policy by agreeing to an appraisal.

5. At the heart of this case is the dispute between Grange and 20/20 Auto Glass over the rates that Grange pays for vehicle glass repairs. Grange's glass claims are generally handled through a third-party administrator, Safelite Solutions ("Safelite").

6. Grange, in conjunction with Safelite, has established rates and prices it will pay for vehicle glass repairs or replacements.

7. Grange has informed the glass companies in South Carolina what those rates and prices are, including in a letter sent by Safelite on Grange's behalf dated April 15, 2011, which

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20/20 Auto Glass received. One hundred fifteen (115) glass companies in South Carolina perform glass services for Grange at the rates and pricing it has established.

8. 20/20 Auto Glass is not a member of the Grange network of glass shops or providers and does not have a pre-established agreement with Grange regarding prices or rates. However, 20/20 Auto Glass acknowledges that it has dealt with both Safelite and Grange before and is familiar with their practices regarding payment to non-network glass shops.

9. 20/20 Auto Glass does not agree with Grange's rates, and for each of the claims at issue it seeks to collect an amount greater than what Grange is willing to pay.

10. 20/20 Auto Glass performed glass services for the Insureds between March 2013 and July 2014. The same or substantially similar process was followed by both Grange and 20/20 Auto Glass for each of these respective claims.

11. The claim was initially reported by telephone to Safelite by the Insureds and a representative of 20/20 Auto Glass. During each phone call when the claims were initially reported, the Safelite claims representative advised the Insureds and 20/20 Auto Glass what pricing or rates Grange was willing to pay for each job. 20/20 Auto Glass then read a scripted response, stating that 20/20 Auto Glass "[does] not accept the stated rates or pricing, but [it does] accept the job." The Insured was then informed that he/she might be responsible to pay any additional amounts charged by 20/20 Auto Glass in excess of what Grange was willing to pay. The Insureds understood and agreed to these terms.[1]

[1] The South Carolina General Assembly has enacted specific legislation governing the duties and responsibilities of insurance companies with respect to vehicle glass repair procedures. See S.C. Code Ann. § 38-57-75. Importantly, the statute specifically addresses a scenario in which the glass company chosen by the insured refuses to accept the rate of reimbursement provided by the insurer or third party administrator. See § 38-57-75(E)(1). In that instance, the insurer or third party administrator "may inform the insured that he will be responsible for additional costs." Id. This is precisely what happened with each of the subject claims, and Grange followed the exact

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12. After each phone call ended, Safelite sent a "referral sheet" to 20/20 Auto Glass, which contained the dispatch or referral number and other information pertaining to each job.

13. 20/20 Auto Glass received each referral sheet before performing the work on each Insured's vehicle. The referral sheets confirmed the pricing and rates that Grange was willing to pay for each job, consistent with the pricing and rates communicated during the phone call.[2]

14. 20/20 Auto Glass did not find the pricing and rates communicated by the claims representative or contained in the referral sheets to be ambiguous, but understood it to mean that Grange did not agree to pay any amount greater than the stated pricing or rates.

15. Importantly, the referral sheets also contained the following language: "Performance of services constitutes acceptance of the communicated billing price and billing instructions."

16. After receiving the fax referral sheet, 20/20 Auto Glass performed the glass services. It then submitted invoices to Grange for amounts greater than what Grange had stated it was willing to pay.

17. In each instance, Grange paid an amount equal to or greater than the amount it had quoted over the phone and on the referral sheet, and 20/20 Auto Glass accepted and deposited this payment.

18. Thereafter, 20/20 Auto Glass sent "Short Pay Invoices" to Grange, demanding payment for the difference between the amount Grange had paid and the amount billed by 20/20 Auto Glass in the initial invoice.

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procedure as outlined by the statute. Notably, the statute does not require the insurer to pay the rates charged by the glass company.

[2] The referral sheets including the following statement regarding Grange's pricing: "W/S list - 41%; labor $30.00 flat plus $30.00 per hour; and W/S 1.0 $15.00." The referral sheets also stated "Grange Insurance has determined the amount of such work is [the price quoted on the phone]."

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19. When Grange refused to pay the Short Pay Invoices, 20/20 Auto Glass demanded an appraisal of the glass repair job.

20. 20/20 Auto Glass asserted then, and now, that it had obtained an assignment from the Insureds for all rights under the Policy, and that it was invoking the "right of appraisal" under the Policy.

21. Grange refused to participate in the appraisal process with 20/20 Auto Glass.

## CONCLUSIONS OF LAW

1. Under South Carolina law, insurance policies are subject to general rules of contract construction. *Sloan Construction Company, Inc. v. Central National Insurance Company of Omaha,* 269 S.C. 183, 236 S.E.2d 818, 819 (1977).

2. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992). Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

3. "The necessary elements of a contract are an offer, acceptance, and valuable consideration. A valid offer 'identifies the bargained for exchange and creates a power of acceptance in the offeree.'" Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003).

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4. "A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance." Id. at 405, 581 S.E.2d at 165–66 (citation omitted) (emphasis added).

5. A binding, enforceable, unilateral contract for payment at the insurer's listed prices is created when a glass company accepts a glass repair job from the insurance company and performs vehicle glass repair services for the insureds after receiving a fax referral sheet that clearly states: "Performance of services constitutes acceptance of the above price . . . ." Southern Glass & Plastics Co., Inc. v. Kemper, 399 S.C. 483, 492, 498, 732 S.E.2d 205, 210, 212 (Ct. App. 2012). When a binding unilateral contract has been created by the glass company's performance of services, the glass company cannot subsequently claim that it had been underpaid, and the insurer has fully complied with its obligations under the insurance contract. Id.[3]

6. The Court finds that the dispositive facts of the Kemper case are indistinguishable from the relevant facts of this case, and therefore the reasoning and holding of Kemper is controlling in the instant action.

7. 20/20 Auto Glass was indisputably on notice of the amount Grange was willing to pay prior to performing the glass repair services. Grange had informed 20/20 Auto Glass of the

[3] See also CIM Ins. Corp. v. Cascade Auto Glass, Inc., 190 N.C.App. 808, 660 S.E.2d 907, 910 (2008) (holding that insurance company had paid the glass company pursuant to the terms of its unilateral contract, and therefore the glass company had not been "underpaid" and was not owed any further payments); Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co., 135 Wash. App. 760, 145 P.3d 1253 (2006) (holding glass company created binding unilateral contracts each time it repaired or replaced auto glass for insureds after receiving the insurer's offer, and glass company was entitled to no more than those amounts the insurance company promised to pay); and Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co., 141 Idaho 660, 115 P.3d 751, 755 (2005) (holding that because the glass company was paid in full the amount that the insurer had previously indicated it would pay, the glass company "has been paid all the money to which it was entitled under the policy and there is no breach of the insurance contract"), all of which were relied upon by the Court of Appeals in the Kemper case.

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rates it was willing to pay for services rendered to its insureds in at least four ways: (1) via periodic letter when Grange revised is rates, (2) via telephone when initial claims were made, (3) via confirmation fax or referral sheet after claims were made but before the work was performed, and (4) via eventual payment of invoices at Grange's rates rather than 20/20 Auto Glass's rates. See Kemper, 399 S.C. at 493, 732 S.E.2d at 210. 20/20 Auto Glass was familiar with Grange, and did not find their pricing or rates to be vague or ambiguous.

8. The pricing offer communicated during the initial telephone call and confirmed in the fax referral sheet stated that "[p]erformance of services constitutes acceptance of the communicated price and billing instructions." By proceeding with the work after receiving notice of the prices via letter, phone conversation, and fax referral sheet, 20/20 Auto Glass accepted Grange's prices through its performance, thereby creating a valid, binding unilateral contract at Grange's stated pricing. Id. at 497, 732 S.E.2d at 212 (citing CIM, 190 N.C. App. at 808, 660 S.E.2d at 910); see also Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452 (1987) (holding that performance of a specific act constitutes acceptance of the offer when the offer so provides).

9. Moreover, under the plain terms of the Policy, Grange is obligated to pay only the amount "necessary to repair or replace the property" (i.e. the damaged glass). The Policy does not state a specific price or dollar amount that Grange is obligated to pay, nor does it grant the Insureds (or 20/20 Auto Glass as the alleged assignee) the ability to set or determine whether the amount Grange is willing to pay is reasonable or necessary. When 20/20 Auto Glass performed the work and completed the job, a unilateral contract at Grange's pricing schedule was created, thereby binding 20/20 Auto Glass to the stated rates and pricing.

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10. Therefore, the Court further finds that when Grange paid 20/20 Auto Glass the amount it promised to pay, 20/20 Auto Glass received the amount to which it was entitled under the unilateral contract which, by definition, also became the amount necessary to repair the damaged glass. Accordingly, when Grange issued payment for the completed repairs that 20/20 Auto Glass accepted and deposited, Grange satisfied its contractual obligation to its Insureds under the Policy to pay the amount necessary to complete the repairs. See Progressive, 145 P.3d 1258.

11. Finally, in each of these claims, 20/20 Auto Glass invoked the "appraisal provision" of the Policy and demanded in writing that Grange appraise each loss. However, 20/20 Auto Glass did not invoke the right to appraisal until after the job was completed and 20/20 Auto Glass had accepted and deposited Grange's payment for the work. For the reasons stated above, at that point Grange had fulfilled any obligations it had under the Policy and did not have any further obligations with respect to the glass claim. Accordingly, Grange is not required to participate in an appraisal with 20/20 Auto Glass regarding these claims.

12. 20/20 Auto Glass contends that no unilateral contracts were formed between Grange and 20/20 Auto Glass. In particular, 20/20 Auto Glass argues that the unilateral contract theory adopted by the Court of Appeals in Kemper should be disregarded in this case because it has been rejected by the United States Court of Appeals for the Eighth Circuit and the Connecticut Supreme Court. This Court has considered these and 20/20 Auto Glass's other arguments against the existence of a unilateral contract, but finds them unpersuasive. The two cases relied upon by 20/20 Auto Glass, Alpine Glass, Inc. v. Illinois Farmers Ins. Co., 643 F.3d 659, 661 (8th Cir. 2011) and Auto Glass Exp., Inc. v. Hanover Ins. Co., 975 A.2d 1266, 1274 n.11 (Conn. 2009), were previously examined and rejected by the Court of Appeal in Kemper. See Kemper, 399 S.C. at 497, 732 S.E.2d at 212 ("The present case can be distinguished from the Connecticut and

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the Eighth Circuit cases. . . . The present case is more in line with the North Carolina, Idaho, and Washington cases.").

13. Further, contrary to 20/20 Auto Glass's argument, the undisputed facts establish that the unilateral contracts contained clear offers and were supported by adequate consideration. Although 20/20 Auto Glass may not like the pricing terms of the unilateral contract offer that was made by Grange, it is undisputed that they understood what those pricing terms were before they performed the job.

14. Moreover, the unilateral contracts did not lack consideration because 20/20 Auto Glass was ultimately paid the amount that Grange offered to pay.

## CONCLUSION

For the foregoing reasons, it is hereby **DECLARED** that 20/20 Auto Glass is contractually bound to Grange's rates because it accepted those rates when it performed the work and created a unilateral contract with Grange; that 20/20 Auto Glass has not been underpaid and Grange does not owe 20/20 Auto Glass any further sum of money for the work performed on behalf of the Insureds; that Grange did not breach the terms of the Policy; and that Grange is not obligated to participate in the appraisal process with 20/20 Auto Glass.

It is further **DECLARED** that the claims asserted in the counterclaim are denied in that there is no legal or factual basis for 20/20 Auto Glass to assert any claim for additional payment from Grange.

**AND IT IS SO ORDERED.**

[SIGNATURE PAGE TO FOLLOW]

Walhalla, SC

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Anderson Common Pleas

**Case Caption:** Grange Mutual Casualty VS Twenty Twenty Auto Glass LLC

**Case Number:** 2014CP0401787

**Type:** Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON<br>Grange Insurance,<br>Plaintiff,<br>v.<br>20/20 Auto Glass, LLC,<br>Defendants. | ) | IN THE COURT OF COMMON PLEAS<br>CASE NO.: 2014CP0401787<br>ORDER DENYING DEFENDANT'S MOTION TO ALTER, AMEND OR RECONSIDER |

After careful consideration of the filings of counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant's Motion, pursuant to Rule 59, SCRCP, is DENIED.

AND, IT IS SO ORDERED.

[*Judicial signature page to follow*]

Walhalla, South Carolina

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Anderson Common Pleas

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Tenth Judicial Circuit