

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2009-CP-40-07413

Southern Glass & Plastics Company, Inc., ... Respondents,

v.

USAA Casualty Insurance Company, USAA General Indemnity Company and USAA
United Services Automobile, ... Appellants.

RECORD ON APPEAL

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JUN 20 2012

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case Nos.: 2009-CP-40-7413

Southern Glass & Plastics Company,)
Inc.,)

Plaintiff,)

vs.)

USAA Casualty Insurance)
Company, USAA General)
Indemnity Company and USAA)
United Services Automobile,)

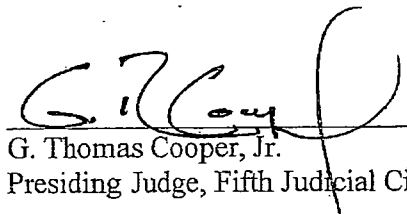
Defendants.)

ORDER

RICHLAND COUNTY
FILED
2011 JUN 14 PM 1:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

This came before the Court on March 11, 2011 by way of Defendants' Appeal of the Order of the Honorable W.H. Womble, Jr. granting Judgment to Southern Glass & Plastics Company, Inc. After careful consideration of the record in this case, and the submissions of counsel, this Court affirms the Magistrate's Court Order dated September 17, 2009.

AND IT IS SO ORDERED.


G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

June 14, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Southern Glass & Plastics Company, Inc.,)
)
Plaintiff,)
)
v.)
)
USAA Casualty Insurance Company, USAA)
General Indemnity Company and USAA)
United Services Automobile,)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No.: 2009-CP-40-7413

**ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER**

RICHLAND COUNTY
FILED
2011 OCT 19 PM 2:41
JEANETTE M. McBRIDE
Clerk, S.C. & G.S.

This matter comes before the Court by way of Defendant(s)' USAA Casualty Insurance Company, USAA General Indemnity Company, and USAA United Services Automobile Motion to Reconsider pursuant to Rules 59 SCRPC. Specifically, the Defendant(s) ask this Court to reconsider its Order of June 14, 2011 affirming the judgment of the Magistrate for the Plaintiff.

After careful consideration of the record in this case and the submissions of the parties, this 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 facts not appropriately considered.¹ Accordingly, this Court hereby DENIES Applicant's Motion pursuant to Rules 59(e) SCRPC to reconsider this Court's Order filed June 14, 2011. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.

October 15, 2011
Columbia, South Carolina

RECEIVED
NOV 09 2011
SC Court of Appeals
G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

¹ Although not the basis for this Court's decision, the Court also notes that a copy of the Defendants' Motion to Reconsider was not provided to the Court and thus does not comply with Rule 59(g) SCRPC.

STATE OF SOUTH CAROLINA)

2009CV401101259
CIVIL CASE NUMBER

COUNTY OF RICHLAND)

IN THE MAGISTRATE'S COURT

JUDGMENT

Southern Glass & Plastics
Company Inc.
1819 Taylor Street
Columbia, SC 29201
(803) 771-7878

PLAINTIFF(S)

Vs

U S A A Casualty
Insurance CompanyU S A A General
Indemnity CompanyU S A A UNITED
SERVICES
AUTOMOBILE
ASSOCIATION
9800 Fredericksburg
Rd
San Antonio, TX
782889800 Fredericksburg
Rd
San Antonio, TX
782880009800 Fredericksburg
Rd.
San Antonio, TX
78288

DEFENDANT(S)

The issues in this action were tried in the RICHLAND County Magistrate's Court on September 17, 2009 at which time a Judgment for the Plaintiff, Southern Glass & Plastics Company Inc., was rendered in the amount of \$7,500.00.

IT IS THEREFORE ORDERED that the Plaintiff recover from the Defendant(s):

U S A A Casualty Insurance Company

U S A A General Indemnity Company

U S A A UNITED SERVICES AUTOMOBILE ASSOCIATION

the total amount of \$7,580.00 which includes other relief, if any, as stated below.

Court Costs / Filing Fees

80.00

DATE

JUDGE

Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204
Phone: (803) 576-2590 Fax: (803) 576-2599

William H. Womble, Jr.
Chief Summary Court Judge
Richland County
(803) 576-2590

MV6

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USAA Confidential

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

2009C 01101259
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Southern Glass & Plastics
Company Inc.
1819 Taylor Street
Columbia, SC 29201
(803) 771-7878

PLAINTIFF(S)

Vs

U S A A Casualty
Insurance Company

U S A A GENERAL
INDEMNITY
COMPANY

U S A A UNITED
SERVICES
AUTOMOBILE
ASSOCIATION

9800 Fredericksburg
Rd
San Antonio, TX
78288000

9800 Fredericksburg
Rd.
San Antonio, TX
78288

9800 Fredericksburg
Rd
San Antonio, TX
78288

DEFENDANT(S)

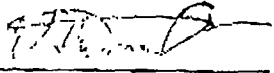
TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

RICHLAND County
Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204
Phone: (803) 576-2590 Fax: (803) 576-2599

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. If you desire a jury trial, you must request one within five (5) days before the date of trial. If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand:


JUDGE

READ ATTACHED INSTRUCTIONS CAREFULLY

MV 38

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CIV CASE NUMBER

IN THE MAGISTRATE'S COURT

COMPLAINT

Southern Glass + Plastics Co., Inc

819 Taylor St

Columbia, SC 29201

PLAINTIFF(S)

Vs

USAA Casualty Insurance Co.

4800 Fredericksburg Rd

San Antonio, TX 78288-0000

USAA General Indemnity Co.

4800 Fredericksburg Rd

San Antonio, TX 78288

USAA United Services

Automobile Association

DEFENDANT(S)

I, Alan Exley, President of Southern Glass + Plastics Co., Inc the plaintiff(s) in this civil action do make the following claims:

1. I believe that the defendant(s)

USAA Casualty Insurance Co.

USAA General Indemnity Co.

USAA United Services Automobile Assoc.

SC Department of Insurance

SC Department of Insurance

SC Department of Insurance

Company code # 100311

Company code # 101369

Insurance Company code # 101353

is/are a resident(s) of Richland County, or this Complaint is properly filed in Richland County.

2. I make this complaint on the following:

See attached sheet for the factual allegation of the complaint.

(Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$ 7337.07 and/or relief as below requested:

including any costs resulting in this action.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE STATED FACTS ARE TRUE EXCEPT THOSE BASED ON MY BEST INFORMATION THAT I BELIEVE TO BE TRUE.

Signature of Plaintiff/Attorney

Factual allegations for complaint

Southern Glass performed auto glass replacement services for 67 insureds of defendant USAA Insurance Company. For each of the replacements performed, Southern Glass received from its customer an assignment of the insurance proceeds owed to the customer by the defendant. In each instance, Southern Glass submitted its invoices directly to the defendant or defendant's third party administrator. Consistent with the assignment, defendant or its third party administrator issued a payment directly to Southern Glass. Defendant, however, failed to pay Southern Glass's invoice in full. Defendant's insurance policy obligates it to pay the full amount of Southern Glass's invoice and therefore defendant has breached the terms of its insurance policy and is indebted to Southern Glass in the amount of \$7337.07.

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF RICHLAND

Civil Action No.: 2009-CV-40-1101259

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

ANSWER AND COUNTERCLAIM

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

Defendants.

**TO: SOUTHERN GLASS & PLASTICS COMPANY, INC. AND ALAN EPLEY,
PRESIDENT OF THE PLAINTIFF ABOVE NAMED:**

The Defendants, USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile, answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
2. Upon information and belief, the Defendants admit that the Plaintiff performed automobile glass replacement services for sixty-seven (67) insureds of the Defendants.
3. In response to the Plaintiff's Complaint, the Defendants state that they lack sufficient information to form a belief as to the truth or falsity of the Plaintiff's receipt of assignments from its customers of the insurance proceeds owed to the customer by the Defendants and therefore deny the same and demand strict proof thereof.
4. In response to the Plaintiff's Complaint, the Defendants state that they lack

sufficient information to form a belief as to the truth or falsity of the Plaintiff's submittal of invoices directly to the Defendants or to the Defendants' third party administrator and therefore deny the same and demand strict proof thereof.

5. In response to the Plaintiff's Complaint, the Defendants state that they lack sufficient information to form a belief as to the truth or falsity of the Plaintiff's receipt of payment directly from the Defendants consistent with the assignment and therefore deny the same and demand strict proof thereof.

6. In response to the Plaintiff's Complaint, the Defendants admit only that they paid the amount due on the invoices that was specified by the insurance contract and agreed upon before the Plaintiff began work on the insureds' vehicles. However, the Defendants deny the remaining allegations that they did not pay the full amount of the Plaintiff's invoices.

7. In response to the Plaintiff's Complaint, the Defendants deny that their insurance policy obligates them to pay the full amount of the Plaintiff's invoices.

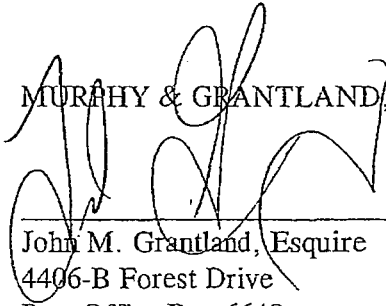
8. In response to the Plaintiff's Complaint, the Defendants deny they breached the terms of the insurance policy.

9. In response to the Plaintiff's Complaint, the Defendants deny they are indebted to the Plaintiff in the amount of \$7337.07.

FOR A SECOND DEFENSE

10. The Defendant would show upon information and belief, that the Complaint fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and therefore, the Plaintiff's Complaint should be dismissed with costs.

This the 11th day of September, 2009, in Columbia, South Carolina.



MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire

4406-B Forest Drive

Post Office Box 6648

Columbia, SC 29260

Tel.: (803) 782-4100; Fax: (803) 782-4140

Attorney for Defendants

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF RICHLAND

Civil Action No.: 2009CV401101259

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

Defendants.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants, do hereby certify that I have served a copy of the foregoing, ANSWER, in connection with the above-referenced case by mailing a copy of the same by United States Mail, Certified Mail – Return Receipt, postage prepaid, to the following address(es):

Southern Glass & Plastics Company, Inc.
Attn: Alan Epley
1819 Taylor Street
Columbia, SC 29201



Joyce Linker, Legal Assistant

Columbia, South Carolina
September 14, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2009-CV-40-1101259

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

Defendants.

**NOTICE OF APPEAL AND
GROUNDS FOR APPEAL**

USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile (collectively "USAA") appeals the Order of the Honorable W. Womble, Jr, granting Judgment to Southern Glass & Plastics Company, Inc. ("Respondent"), on September 17, 2009. USAA has not received written notice of entry of this order. Pursuant to S.C. Code Ann. § 18-7-20 and Rule 74, SCRCP, the grounds for appeal are hereinafter enumerated.

BACKGROUND

In the course of its automobile glass repair and replacement business, Respondent performed automobile glass replacement services for 67 insureds of USAA. For each replacement performed, Respondent received from the insured an assignment of any insurance proceeds owed to the insured under his or her automobile insurance policy with USAA. Pursuant to these assignments, Respondent submitted invoices to USAA which purportedly were not paid in full. Respondent's complaint contained one singular allegation that USAA breached the terms of the policy issued by USAA to its insureds by failing to pay the full amount of

Respondent's invoices. On September 16 and 17, 2009, a trial was held before Richland County Magistrate W.H. Womble, Jr., who, after hearing the testimony and arguments of both parties, ruled in favor of Respondent. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. §§ 18-7-140 and -170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E.2d 20 (1984); see also Redfearn v. Douglass, 35 S.C. 569, 15 S.E. 244 (1892) (holding the Circuit Court on appeal can review errors of fact in magistrate's court).

GROUND'S FOR APPEAL

D) THE MAGISTRATE ERRED IN RULING IN FAVOR OF RESPONDENT WHEN USAA FULLY COMPLIED WITH THE TERMS OF THE INSURANCE POLICY.

USAA fully complied with the terms of its insurance policy and, therefore, the Magistrate erred in ruling in favor of Respondent on its claim that USAA breached the policy. Under the plain and unambiguous terms of the policy, Respondent is not entitled to the full payment of its invoices by USAA. The policy of insurance issued by USAA to its insureds and relied on by Respondent pursuant to Respondent's assignments states:

LIMIT OF LIABILITY

B. ...

1. Our limit of liability under comprehensive coverage and collision coverage is the *amount necessary to repair the loss based on our estimate or an estimate that we approve*, if submitted by you or a third-party. Upon request, we will identify at least one facility that is willing and able to complete the repair for the amount of the estimate.

(USAA policy p. 3 of Amendment of Policy Provisions, Defendant's Trial Exhibit #4) (emphasis added).

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).

The only argument that Respondent made concerning the policy was that the language was ambiguous. (9/16 Trial Transcript p. 17.) Relying on policy provisions that are no longer in effect, Respondent mistakenly argued at trial that the policy was ambiguous and should be construed in favor of the insured or, in this case, the Respondent as the assignee of the insured. Specifically, Respondent argued the policy only refers to "repair" and, therefore, is inapplicable to glass "replacement". (9/16 Trial Transcript p. 16.) Respondent also argued the policy required USAA to pay one hundred percent of his invoices because the policy states that USAA is bound to pay "the amount necessary to repair or replace the damage without deduction for depreciation." (9/16 Trial Transcript p. 52 (citing USAA Policy p. 20 of 26, Defendant's Trial Exhibit #4).)

In response, USAA clarified that the provisions relied upon by Respondent had been replaced in their entirety by an amendment to the policy which clearly set forth the limit of liability as "the amount necessary to repair the loss based on our estimate or an estimate that we

approve,” and clearly defined repair as “restoring the damaged property to its pre-loss operational safety, function, and appearance ... includ[ing] the replacement of component parts.” (9/17 Trial Transcript p. 22.) The policy amendment went into effect December 17, 2005, and predated all of Respondent’s invoices. (9/17 Trial Transcript p. 64.) The amendment specifically replaced the provisions relied on by Respondent and purposefully resolved any ambiguity in the policy. Therefore Respondent’s claim that USAA breached its policy is completely meritless.

USAA’s policy clearly obligates it to pay the amount necessary to repair the loss based on a predetermined estimate or an estimate approved of by USAA. The amount paid by USAA to Respondent reflects the estimated amount approved of by USAA to repair the insureds’ automobile glass. Under the plain terms of the policy, Respondent is entitled to no more than what USAA has agreed to pay and has no right to further payment. See Couch on Insurance § 170.3 (“In the absence of contrary or modifying provisions in a statute, the liability of an insurer and the extent of the loss under a policy of automobile liability insurance must be determined, measured, and limited by the terms of the contract.”). USAA’s policy is not ambiguous and Respondent, as the assignee under the insureds’ policies, is bound to the terms of the insurance policy and is not entitled to the insurance proceeds claimed in this action.

As a final attempt to attack USAA’s policy, Respondent argued that USAA never gave an “estimate” pursuant to the policy terms because the price was given to Respondent by an individual who was not a licensed adjuster. (9/16 Trial Transcript p. 19.) This argument is also meritless considering no adjuster is required for glass claims. Adjustment of a claim is neither required nor necessary when a windshield is damaged and needs to be replaced. Therefore, USAA did not breach its policy by not providing a licensed adjuster to give the estimate for the

glass claim.

Despite the unambiguous terms of USAA's policy and the absolute failure of Respondent to come up with any evidence that USAA breached its policy, the Magistrate essentially found that the policy did not control. Ignoring the entire basis of the lawsuit and failing to respond to the one and only claim asserted by Respondent, the Magistrate found that Respondent was not bound to USAA's pre-approved estimate and ruled that Respondent was entitled not only to its unpaid balances but also to a percentage of all 67 invoices submitted to USAA. (9/17 Trial Transcript p. 143.) In finding the Respondent was owed more than \$7,500.00, the Magistrate completely failed to rely on the insurance policy, the terms of which controlled the transactions between USAA and Respondent and formed the entire basis of Respondent's complaint. In failing to rely on or even make any reference to the contract which controlled the entire case, the Magistrate clearly erred and his decision should be reversed.

II) THE MAGISTRATE ERRED IN IGNORING CASE LAW AND FAILING TO FIND THAT PLAINTIFF WAS BOUND BY CONTRACT TO USAA'S QUOTED PRICE.

Not only is Respondent bound by the clear and unambiguous terms of the policy, but it is also bound by the unilateral contract it entered into when it performed services on the insureds' vehicles. The evidence presented at trial showed that Respondent was notified of USAA's quoted price in two ways before the service was performed on the insureds' vehicles. First, Respondent, the insured, and USAA's third-party claims' administrator, Safelite, all participated in a phone call in which Safelite obtained the necessary insurance and vehicle information from the insured before giving Respondent the pre-approved estimate for the work pursuant to the terms of the policy. Second, Safelite, on behalf of USAA, faxed a work order to Respondent detailing the pre-approved cost of the repair or replacement and specifically stating:

“Performance of services constitutes acceptance of the above price and billing instructions.”

(Work Order, Defendant’s Trial Exhibit #1.)

In support of its argument that Respondent’s performance of the services bound it to USAA’s price, USAA presented a North Carolina Court of Appeals’ opinion with nearly identical facts. In CIM Insurance Corporation v. Cascade Auto Glass, Inc., 660 S.E.2d 907 (N.C. App. 2008), an auto glass repair shop like Respondent brought the exact same claim as Respondent when it alleged that the insurance company had breached its policy by failing to pay the shop’s invoices in full. Like the instant case, the insurance company in CIM handled glass claims through its third-party administrator, Safelite Solutions. The insurance company, through Safelite, communicated the prices it was willing to pay the glass shop for services rendered to its insureds. As in this case, the prices were communicated via telephone when the initial claims were made, via work order or confirmation fax after claims were made but before work was performed, and via eventual payment of invoices at the quoted rate rather than at the glass shop’s rate. Id. at 910. The work order in CIM stated the exact same language as the work order sent from USAA via Safelite to Respondent: “Performance of services constitutes acceptance of the above price” Id. at 909. Finally, like Respondent, the glass shop in CIM accepted the stated price of the insurance company by performing the services and cashing the checks it received from the insurance company.

The North Carolina Court of Appeals affirmed summary judgment for the insurance company based on its compliance with the terms of its insurance contract, its payment to the glass shop in accordance with unilateral contracts the insurance company entered into with the glass shop, and the glass shop’s actions in cashing checks sent to it by the insurance company which constituted an accord and satisfaction of any potential claim the glass shop might assert.

Id. Citing the “fundamental concept of contract law that the offeror is the master of his offer,” the court held that because the glass shop performed the requested repairs or replacements, it accepted the terms of the insurance company’s offers, forming valid unilateral contracts at the insurance company’s stated prices. Id. at 910 (citing MacEachern v. Rockwell Int. Corp., 254 S.E.2d 263 (N.C. App. 1979)). In both CIM and the instant case, the offer stated that acceptance was by performance. Because Respondent performed the requested repairs or replacements, it accepted the terms of USAA’s offers, forming valid unilateral contracts at USAA stated prices. Id.; 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).

In an attempt to deny that a contract was ever entered into, Respondent cited the case of Auto Glass Express, Inc. v. Hanover Ins. Co., 975 A.2d 1266 (Ct. 2009). Unlike the CIM case, Respondent’s Hanover case presents a completely different set of facts. In Hanover, the defendant insurance company issued periodic “pricing letters” to the plaintiff glass shops informing the shops of pricing standards and stating: “Bills that are accurate and are not more than this pricing structure will be paid promptly as submitted.” Hanover, 975 A.2d at 1269. The Connecticut court agreed that the pricing letters conveyed to the shops offers that invited acceptance through performance. However, the court disagreed that performance of glass repairs, without more, constituted acceptance of the terms set forth in the pricing letters. Id. at 1272. The court found that nothing in the language of the pricing letters suggests that mere performance of glass repairs was sufficient to bind the shops to the defendant’s prices. Instead, the only exchange proposed by the defendant was its promise to pay bills timely in exchange for the submission of bills that do not exceed its proposed pricing structure. Id. at 1273.

Pursuant to the language of the pricing letters in Hanover, the glass shops would only

enter unilateral contracts if they submitted invoices that conformed to the defendant's prices. See Id. at 1269 ("Bills that are accurate and are not more than this pricing structure will be paid promptly as submitted."). In contrast, the work orders sent to Respondent by USAA stated that "Performance of services constitutes acceptance of the above price." The Hanover case interprets completely different language and, therefore, does not apply.

Despite the unmistakable persuasiveness and applicability of CIM, the Magistrate completely disregarded it and ordered a judgment in direct contradiction of the very holding of CIM when he ruled that there was no contract between USAA and Respondent. The Magistrate failed to base his ruling on any statute or case law, choosing instead to completely misconstrue testimony elicited from USAA's only witness, Amy Palmer - USAA's Auto Claims Staff Advisor. During cross-examination of Ms. Palmer, Respondent questioned USAA's legal relationship with its third-party administrator for glass claims, Safelite. Ms. Palmer verified that "USAA contracts with Safelite Solutions to be our third-party administrator for auto glass." (9/17 Trial Transcript p. 127.) She testified that USAA does not enter any such contracts with glass repair companies in response to Respondent's attempt to characterize USAA as engaging in illegal practices. (9/17 Trial Transcript p. 128.) The Magistrate then interjected: "Did you just tell him that y'all do not enter into contracts with glass replacement companies such as himself?" (9/17 Trial Transcript p. 129.) In the context of USAA's contract for the administration of glass claims with Safelite, Ms. Palmer confirmed that USAA does not enter such contracts with glass shops.

In an apparent complete lack of understanding, the Magistrate took Ms. Palmer's response to mean that there was no contract to perform services for the quoted price between USAA and Respondent. The Magistrate then did nothing short of twisting Ms. Palmer's truthful

response to an unrelated question and using it as the basis of a completely erroneous ruling with no foundation in statutory or case law. When ruling in favor of Respondent, the Magistrate stated, "I asked her three times ... Did you ever enter a contract with this company or any other company other than Safelite and her answer was no It was never a contract." (9/17 Trial Transcript p. 143.) According to Ms. Palmer's testimony, there was never a contract for administration of glass claims. However, she never denied the existence of a contract to perform services at the estimated price. Thus, the Magistrate's ruling was based on a complete misapplication of Ms. Palmer's testimony. The Magistrate's failure to apply CMI and consequent failure to find a valid and binding contract between USAA and Respondent was error and should be reversed.

III) THE MAGISTRATE ERRED IN BASING HIS RULING ON IN ADMISSIBLE AND IRRELEVANT EVIDENCE.

Not only did the Magistrate err in failing to find that USAA did not breach the terms of its policy and in failing to find the existence of a valid and binding contract between Respondent and USAA, but he also erred in allowing inadmissible and irrelevant evidence. Under Rule 401, S.C.R.Evid., "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." By admitting evidence wholly irrelevant to the allegation of the complaint, the Magistrate erred and his decision should be reversed.

Any evidence that assists in getting at the truth of the issue is relevant and admissible, unless because of some legal rule it is incompetent. Toole v. Salter, 249 S.C. 354, 361, 154 S.E.2d 434, 437 (1967). In determining a dispute concerning the relevancy of proffered evidence, the question to be resolved is as to whether there is a logical or rational connection between the fact which is sought to be presented and a matter of fact which has been made an

issue in the case. Id. Relevancy is that quality of evidence which renders it properly applicable in determining the truth and falsity of matters in issue between the parties to a suit. All that is required to render evidence admissible is that the fact shown thereby legally tends to prove, or make more or less probable, some matter in issue, and bear directly or indirectly thereon. Ellison v. Simmons, 238 S.C. 364, 120 S.E.2d 209 (1961).

Although Respondent's sole allegation was the breach of the policy terms by USAA, Respondent was permitted to exhaust the majority of his argument and evidence on issues which had absolutely no "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Rule 401, S.C.R.Evid. From the outset, it was abundantly clear that Respondent's agenda was wholly unrelated to his underlying complaint. Respondent did not present any evidence to support his claim that USAA breached the policy. Instead, Respondent focused almost entirely on USAA's legal relationship with its third-party administrator, Safelite Solutions. At the beginning of trial, Respondent stated: "We believe that there are set ups, if you will, sir, that we're not privileged to that have never come out in a court of law as to why an insurance company would hire a glass company to take the first notice of loss in glass claims with all this conflict of interest." (9/16 Trial Transcript p. 13.) It was apparent from the outset that Respondent would take as many liberties as the Magistrate would allow in order to air out theories that may be pertinent in a valid antitrust suit but had absolutely no bearing on the breach of contract claim at hand.

Despite the fact that all of the Respondent's invoices in question were from 2007 and 2008, Respondent was allowed to introduce evidence of pricing structures from 2005 and to argue extensively as to USAA's prior payment practices and current pricing methods. (9/17

Trial Transcript pp. 7-8.) Respondent was also allowed to introduce evidence of a 2006 "Safelite Network Participation Agreement" and to argue ad nauseam about USAA's legal relationship with its third-party administrator, Safelite Solutions. (9/17 Trial Transcript p. 12.) In an attempt to attack USAA's glass claims process in general as opposed to focusing on the terms of USAA's policy, Respondent was permitted ask USAA's witness, Ms. Palmer, completely irrelevant questions which were wholly unsupported by any evidence. For example, Respondent asked about the use of parts from China, about Safelite's market share in South Carolina, and about pricing indexes such as National Auto Glass Specifications. (9/17 Trial Transcript p. 86, 89.)

The Magistrate exercised no control over Respondent's examination of Ms. Palmer and at one point stated, "[Ms. Palmer] is the queen of safety glass from USAA. He's going to get to ask her whatever he wants to about glass." (9/17 Trial Transcript pp. 88-89.) The undersigned objected no less than thirteen times on the basis of relevance and stated, "This has nothing to do with this case or the 67 invoices ... we're way afield of what his case his about against USAA." (9/17 Trial Transcript pp. 102-103.) Respondent disagreed and stated, "This all has to do [with] how a third-party competitor of ours is controlling things in the industry and has for many years." (9/17 Trial Transcript p. 103.) Respondent apologized to Ms. Palmer and justified himself by stating "we just wanted a lot of information to come out on here on how this whole shebang works." (9/17 Trial Transcript p. 132.)

In J.B. Colt Co. v. Robinson, 135 S.E. 312, 313 (S.C. 1926), the South Carolina Supreme Court determined that the lower court erred in admitting testimony regarding alleged transactions between the plaintiff and persons other than the defendant in the case, with reference to the plaintiff's methods of dealing with such persons regarding the sale of items similar to that sold to

the defendant, and to statements alleged to have been made to these persons by agents of the plaintiff during such negotiations. This testimony was inadmissible because there was no connection or relationship between these transactions and the transaction alleged to have taken place between the plaintiff and the defendant. Similarly, there was no connection between testimony and arguments presented by Respondent and the Respondent's breach of contract claim. Therefore, the Magistrate erred in allowing the Respondent to go on what the Magistrate admitted was a "large fishing expedition." (9/17 Trial Transcript p. 132.) The lack of control exercised by the Magistrate in admitting irrelevant evidence and allowing Respondent to "ask [Ms. Palmer] whatever he wants to about glass" requires reversal of the case. (9/17 Trial Transcript pp. 88-89.)

IV) THE MAGISTRATE VIOLATED THE CODE OF JUDICIAL CONDUCT AND DEPRIVED USAA OF A FAIR TRIAL WHEN HE CONDUCTED AN INDEPENDENT INVESTIGATION OF THE FACTS.

Finally, the Magistrate erred in conducting his own investigation of the facts. A judge must not independently investigate facts in a case and must consider only the evidence presented. Rule 501, SCACR, Code of Jud. Conduct, Canon 3. Magistrates are bound to the Code of Judicial Conduct. See Id., Application of the Code of Judicial Conduct ("Anyone, whether or not a lawyer, who is an officer of the unified judicial system and who performs judicial functions, including an officer such as a magistrate, master-in-equity or special referee, is a judge within the meaning of this Code.) Besides admitting to googling statutes and regulations that had no bearing on the case, the Magistrate apparently conducted his own investigation into the internal structure of Safelite and USAA's relationship with their third-party administrator. (9/17 Trial Transcript pp. 23, 138.) He asked Ms. Palmer who the Chairman of the Board is for Safelite Auto Glass and when Ms. Palmer did not know the answer, the Magistrate said, "It just

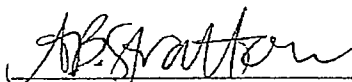
so happens that I know the answer. I just wanted to know if you did.” (9/17 Trial Transcript p. 138.) By independently investigating facts outside of the evidence presented, the Magistrate violated the Code of Judicial Conduct and deprived USAA of a fair trial.

CONCLUSION

USAA did not breach the terms of its policy when it paid Respondent’s invoices based on USAA’s estimate or an estimate it approved. Also, by performing the services and accepting payment from USAA, Respondent entered into a unilateral contract to perform services at USAA’s price. Finally, in conducting his own independent investigation, failing to exercise any control over the trial, and in allowing irrelevant testimony and arguments, the Magistrate deprived USAA of a fair trial. For these reasons, USAA respectfully requests this Court reverse the ruling of the Magistrate and find that USAA did not breach the terms of its policy.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
Ashley B. Stratton, Esquire
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for the Appellant

Columbia, South Carolina
October 15, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2009CV401101259

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

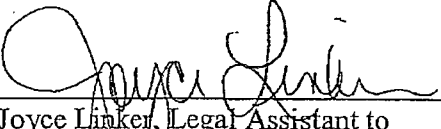
Defendants.

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants, do hereby certify that I have served a copy of the foregoing, **NOTICE OF APPEAL AND GROUNDS FOR APPEAL**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, Certified Mail – Return Receipt, postage prepaid, to the following address(es):

Southern Glass & Plastics Company, Inc.
Attn: Alan Epley
1819 Taylor Street
Columbia, SC 29201

Columbia, South Carolina
October 15, 2009


Joyce Linker, Legal Assistant to
John M. Grantland, Esquire

2009 OCT 16 AM 10:29
JEANETTE M. BRIDE
C.C.P. CLERK
RICHLAND COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2009-CP-40-07413

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

Defendants.

**DEFENDANTS' MOTION TO
RECONSIDER**

ANETTE M. McBRIDE
C.C.P. & G.S.

2011 JUL - 1 PM 2:38

FILED

**TO: ROBERT L. JACKSON, ATTORNEY FOR THE PLAINTIFF AND TO THE
ABOVE-NAMED PLAINTIFF:**

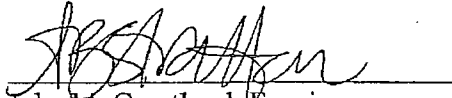
YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendants, USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile, will move before the presiding judge of the Richland County Court of Common Pleas at the Richland County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for a reconsideration of the order affirming the judgment of the Magistrate for Plaintiff. This order was filed June 14, 2011, and received by counsel for Defendants June 20, 2011. This motion is based on the absence of any analysis or basis for the affirming of the judgment when (1) USAA fully complied with the terms of the insurance policy; (2) there was a binding unilateral contract between Plaintiff and USAA; (3) the judgment of the Magistrate was based on inadmissible and irrelevant evidence; and (4) the Magistrate violated the Code of Judicial Conduct and deprived USAA of a fair trial.

The motion is supported by the pleadings and the Grounds for Appeal already filed with

the Court.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

A handwritten signature in dark ink, appearing to read "J. Grantland", is written over a horizontal line.

John M. Grantland, Esquire

Ashley B. Stratton, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendants

Columbia, South Carolina
July 1, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2009-CP-40-07413

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

USAA Casualty Insurance Company, USAA
General Indemnity Company and USAA
United Services Automobile,

Defendants.

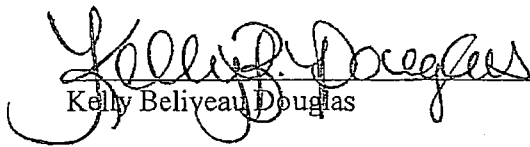
CERTIFICATE OF SERVICE

FILED
2011 JUL -1 PM 2:38
JAMETTE W. REBRIDE
C.C.P. & G.S.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants, do hereby certify that I have served a copy of the foregoing, Motion to Reconsider, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Robert L. Jackson, Esquire
Jackson & Jackson
P.O. Box 7065
1415 Richland Street
Columbia, SC 29202

Columbia, South Carolina
July 1, 2011


Kelly Beliveau Douglas

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
3
4 Southern Glass and)
Plastics Company, Inc.,) TRANSCRIPT OF RECORD
5 Plaintiff,) 2009-CP-40-7413
6 -vs-)
7 USAA Casualty Insurance)
Company,)
8 Defendant.) March 11, 2011
9 Columbia, South Carolina
10
11
12

13 B E F O R E:

14 HONORABLE G. THOMAS COOPER, JR., JUDGE
15

16 A P P E A R A N C E S:

17 ROBERT L. JACKSON, ESQ.
18 Attorney for the Plaintiff

19 ASHLEY B. STRATTON, ESQ.
20 Attorney for the Defendant
21
22
23

24 **COPY**
25

Margaret A. Woods
Circuit Court Reporter

1 THE COURT: Southern Glass and Plastics vs. USAA
2 Casualty. Yes, ma'am, you are?
3 MS. STRATTON: I'm Ashley Stratton on behalf of USAA.
4 THE COURT: Alright, thank you. Have a seat, I know who
5 you are, Mr. Jackson. I said I know who you are.
6 MR. JACKSON: Yes, sir. Thank you.
7 THE COURT: You don't need to identify yourself for the
8 record.
9 MR. JACKSON: Okay, sir.
10 THE COURT: Your appeal?
11 MS. STRATTON: Yes, Your Honor. This is an appeal from a
12 trial before Judge Womble in 2009 and I think you're probably
13 aware of what the factual situation is. Um, ---
14 THE COURT: Not in this case.
15 MS. STRATTON: Not in this case. There -- there's a
16 similar fact pattern here, the same -- a similar complaint has
17 been brought against numerous insurance companies by Southern
18 Glass and Plastics. This is probably one of the first cases
19 that got litigated and the claim is they did work for the
20 insureds, they got an assignment, submitted invoices to the
21 insurer and those invoices weren't paid in full so the claim
22 is they were underpaid. The trial in magistrate's court was a
23 2-day trial, the verdict was for the plaintiff. Judge Womble
24 said he wanted to award 'em over \$9,000 but limited it to 7500
25 plus cost.

1 The the basis of this case is really centered on two
2 contracts; the first one is the actual insurance policy
3 because Southern Glass and Plastics had an assignment, they of
4 course stepped into the shoes of the insured and their bound
5 by the terms of the insurance policy. That policy says in
6 regards to glass claims that, The limit of liability is the
7 amount necessary to repair the loss based on our estimate or
8 an estimate we approve.

9 THE COURT: Alright, so -- I'm trying to find out what's
10 in this file.

11 MS. STRATTON: Okay.

12 THE COURT: Says your notice of grounds for appeal,
13 there's a transcript, 2-day transcript.

14 MS. STRATTON: Right.

15 THE COURT: Looks like evidentiary Exhibit 1, Exhibit 2,
16 Exhibit 3, Exhibit 4, Exhibit 5 some sort of recording.

17 MS. STRATTON: Right, which is transcribed there. That
18 is a phone conversation that occurred between Southern Glass's
19 customer, an employee for their company, and the third party
20 administrator for the insurer whenever the glass claim was
21 initially filed.

22 THE COURT: Alright. I don't -- where is the ruling of
23 the magistrate?

24 MS. STRATTON: When we submitted the notice of appeal, I
25 believe that we had not gotten a a form ruling on that but we

1 were worried about our time expiring so we wanted to go ahead
2 and appeal and I have the the judgment right here.

3 THE COURT: It's not a part of this file.

4 MS. STRATTON: I can -- would you like a copy of it?

5 MR. JACKSON: I've not seen it yet either, Judge.

6 MS. STRATTON: It's -- let's see, we received it on
7 November 2nd and I believe we had filed our notice of appeal
8 before that out of caution of the time runnin' out.

9 (Whereupon, plaintiff's counsel examined the document.)

10 THE COURT: Well that's fine. I just need a -- I need
11 some sort of a record from the magistrate as ---

12 MS. STRATTON: Okay.

13 THE COURT: --- to what he did and why he did it.

14 MR. JACKSON: Judge, this is a a statement of of the
15 amount that he awarded to the plaintiff but this -- it doesn't
16 qualify as a return.

17 (Whereupon, counsel handed the document to the Court.)

18 THE COURT: Well all I can do is ask him. I mean, this
19 is maybe all he did; I don't know.

20 MS. STRATTON: Your Honor, that's all we received.

21 THE COURT: Okay.

22 MR. JACKSON: My client never received it.

23 THE COURT: Alright, well we got the same problem in the
24 last case. I don't have any -- this was a bench trial or a
25 jury trial?

1 MS. STRATTON: A bench trial and and as you can see we
2 also enclosed the transcript of the whole trial.

3 THE COURT: You -- did the magistrate do it or you did
4 that?

5 MS. STRATTON: We submitted the transcript. We had our
6 own court reporter there and ---

7 THE COURT: You got a copy of the transcript?

8 MR. JACKSON: I I believe they did send a copy of the
9 transcript yes, sir, but there's a lot of, a lot of testimony
10 in there that really doesn't relate to the issue of whether or
11 not USAA owns -- owes Southern Glass any money but without the
12 magistrate's return we don't know the basis for his decision.

13 THE COURT: Well ---

14 MR. JACKSON: --- and without knowing that I can't argue
15 one way or the other that the appellants have set forth their
16 notice of appeal and the grounds therefore but I don't know
17 whether that comports with what Judge Womble was looking
18 at ---

19 THE COURT: Why don't I just ask him. I'll ask him.

20 MR. JACKSON: Okay.

21 MS. STRATTON: Well then, Your Honor, I would argue I
22 mean, we have a judgment and we both have copies of the
23 transcript and it's completely clear in the transcript but he
24 based his judgment on it ---

25 THE COURT: Oh, there is?

1 MS. STRATTON: Attorney ---
2 THE COURT: I didn't, ---
3 MS. STRATTON: --- Jackson ---
4 THE COURT: --- I didn't ---
5 MS. STRATTON: --- was ---
6 THE COURT: What what -- I just looked, I didn't see.
7 MS. STRATTON: It's at the end of day two and I -- let's
8 see, I can tell you what page it's on and and this
9 situation ---
10 THE COURT: That's what I was looking for.
11 MS. STRATTON: Mr. Jackson actually was not there,
12 obviously he wasn't involved in the magistrate trial, and
13 Mr. Eppley who is sitting with him might know better.
14 Actually, let's see ---
15 THE COURT: This is a *pro se* ---
16 MS. STRATTON: Yes, ---
17 THE COURT: --- trial?
18 MS. STRATTON: --- it was, yes. We have it cited in our
19 notice of appeal as well, look and see, see Page 143.
20 THE COURT: I'm reading it.
21 MS. STRATTON: Okay.
22 THE COURT: It just says, "I'm awarding the defense
23 because there never was an acceptance of their offer and they
24 agreed that there never was, there was never a contract; you
25 sent me an authorization to do the repair, never was a dispute

1 with Safelite, didn't say do the repair and then faxed over an
2 offer and they didn't accept it; it's not a contract but it
3 was an offer in acceptance, both of you agree that didn't
4 happen; you said it didn't happen, she said it didn't happen,
5 was no contract, for that reason I'm ruling in favor of the
6 defendant on this claim." I just read the, I just read 144 he
7 said he was realing -- ruling for the defendant.

8 MS. STRATTON: Yes, he ---

9 THE COURT: Then he said, Oh, I'm sorry, I'm ruling for
10 the plaintiff.

11 MS. STRATTON: Right. That is his ruling though. He he
12 found there wasn't a contract and that's what he based his
13 ruling on.

14 THE COURT: I guess -- I don't know that Judge Womble
15 would have anything different to say than that Mr. Jackson.

16 MR. JACKSON: He probly wouldn't, Judge, but given that
17 as his return our position is that the judgment should be
18 upheld based on Judge Womble's reasoning. There was never a
19 contract between Southern Glass and Plastics and and USAA to
20 make repairs for any amount. They took an assignment from
21 their -- the insured, did the repairs, sent the bill to USAA
22 and it wasn't paid in full.

23 THE COURT: Okay. Well, because I've had to listen to
24 you most of this week I think I understand the issues in this
25 case.

1 MR. JACKSON: Thank you, sir.

2 MS. STRATTON: And, respectfully, that that is -- I know
3 that the unilateral contract issue has been argued in a lot of
4 these cases and you heard that earlier. We have, you know,
5 another contract here based on the actual terms of the policy
6 that we're relying on as well and I would like to address
7 that.

8 THE COURT: Go ahead. Is it part of your ---

9 MS. STRATTON: It is, it is part of the notice of
10 appeal ---

11 THE COURT: Notice.

12 MS. STRATTON: --- grounds, the policy is also attached
13 to that. Your Honor, the actual provision that determines
14 what USAA is gonna pay this is not determining what the shop
15 can charge, USAA doesn't dictate what they can charge, they
16 can charge the customer anything, but the insurance is only
17 gonna cover what USAA approves and that's what the term says,
18 The amount necessary to repair the loss based on our estimate
19 or an estimate that we approve. And, Your Honor, we would --
20 we argue that that term was not violated in this case, it's
21 not an ambiguous term. USAA abided by the policy and the
22 plaintiff's claim that the policy was breached this doesn't
23 hold up when you read this policy.

24 THE COURT: Okay.

25 MS. STRATTON: And, you know, the other basis is

1 unilateral contract, you know all about that and the North
2 Carolina case that ruled on that so unless you wanna get into
3 that, we we don't have to.

4 THE COURT: Now what about it this -- well, Mr. Jackson,
5 you have their return, I mean, their notice of appeal?

6 MR. JACKSON: Yes. In response to that, Your Honor, ---

7 THE COURT: Well ---

8 MR. JACKSON: --- USAA ---

9 THE COURT: --- the -- wait a minute. I was gonna ask
10 about the distract about this independent investigation you
11 charge that he did.

12 MS. STRATTON: Yes, Your Honor. You know that if you
13 read through the whole transcript it was, as coach Ray Tanner
14 said, there were a lot of shenanigans it seemed like that went
15 on in this trial. Mainly, you know, Judge Womble is up there
16 Googling on his computer learning about Safelite, the third
17 party administrator for USAA, during the trial asking the
18 witness, you know, Do do you know who the chairman of the
19 board is for the company, I do, and he had just, you know,
20 been up there searching on his computer. He also was
21 specifically citing different rules and statutes he was
22 looking up that he thought might apply to glass claims wh
23 --which weren't an issue at all in the case and over quite a
24 few objections just continued to do things of that nature.

25 THE COURT: Alright. Mr. Jackson.

1 MR. JACKSON: Judge, she's arguing the language in this
2 contract as to the amount necessary to repair the loss based
3 on our estimate or an estimate that we approved. USAA ever
4 provided Southern Glass and Plastics an estimate one way or
5 the other. What they did was they had their third party
6 administrator, Safelite, call up and say, This is what we're
7 gonna pay you, we don't care what it costs to repair, this is
8 what we're gonna pay you. Based on that they're alleging that
9 they created a unilateral contract. We have denied that on
10 more than one occasion with other insurance companies, we
11 denied it as to USAA and we will continue to deny it. They're
12 trying to interject themselves into a relationship between the
13 glass shop and the insured. The insured wants their
14 automobile repaired, the glass shop was in the business of
15 repairing glass and replacing glass and that's where the
16 contract is and it's not with Safelite; they take an
17 assignment of the proceeds of the insurance policy. The
18 insurance companies most of 'em are paying the the amount
19 submitted on the invoice, there's a couple: USAA, Kemper, are
20 trying to to to create a factual situation in the State of
21 South Carolina where they can continue to dictate the glass
22 companies and Judge Womble rightfully acknowledged that there
23 was no contract between the glass shop, Southern Glass, and
24 USAA other than from the, from the insurance policy that said
25 we will pay to have your car repaired but then they don't

1 provide an estimate. What's the insured supposed to do?
2 What's the glass shop supposed to do? And I know this is is
3 not involving this case but if you recall on Monday when we
4 were -- Mr. Powell was arguing the business about arbitration,
5 well his company's never offered arbitration in those cases
6 either. You got the same thing here: USAA never offered an
7 estimate.

8 THE COURT: Alright.

9 MR. JACKSON: We think that the judgment should stand.

10 THE COURT: Alright, I'll take a look at it.

11 MR. JACKSON: Okay, sir. Thank you.

12 THE COURT: Thank you very much.
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on March 11, 2011 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 11, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

August 28, 2011

Margaret A. Woods 11/13/11

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

CONDENSED TRANSCRIPT
WORD INDEX

**HEARING
DAY ONE**

Southern Glass & Plastics Company, Inc.

vs.

USAA Casualty Insurance Company, USAA General Indemnity
Company and USAA United Services Automobile

Docket No: 2009-CV-40-1011259

09/16/09

WILLIAMS REPORTING
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State of South Carolina
County of Richland

In the matter of:)
Southern Glass & Plastics)
Company, Inc.,)
Plaintiff,)
vs.)
DAY ONE
Docket No. 2009-CV-40-1101259
USAA Casualty Insurance)
Company, USAA General)
Indemnity Company and)
USAA United Services)
Automobile,)
Defendants.)

Hearing before

The Honorable
W.H. Womble, Jr.

Taken before Cheri B. Williams, Certified Verbatim
Reporter and Notary Public in and for the State of South
Carolina, commencing at the hour of 11:42 a.m.,
Wednesday, September 16, 2009, at the Waverly
Magistrate, 2712 Middleburg Drive, Suite 106, Columbia,
South Carolina.

Reported by:
Cheri B. Williams, CVR

Exhibits

Defendant's Exhibit No. 1, Fax to Southern Glass from
Safelite regarding Thad Miller; one page.

Defendant's Exhibit No. 2, Invoice from Southern Glass
to USAA regarding Thad Miller; one page.

Defendant's Exhibit No. 3, Assignment; one page.

Defendant's Exhibit No. 4, USAA Insurance Policy; 30
pages.

(All Exhibits retained by the Court)

APPEARANCES

Hearing Officer: The Honorable W.H. Womble, Jr.
Waverly Magistrate
For the Plaintiff: Pro Se
For the Defendant: John M. Grantland, Esq.
Ashley B. Stratton, Esq.
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260
Reported By: Cheri B. Williams, CVR
Witnesses: Alan Epley
Ryan Brown

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Court Reporter's Note: Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off.

1 The Court: Good morning.
 2 Mr. Epley: Good morning, Your Honor. My
 3 name is Alan Epley.
 4 Mr. Grantland: Your Honor, I'm John
 5 Grantland. I represent USAA.
 6 The Court: All right. Southern Glass
 7 and Plastics?
 8 Mr. Epley: Yes, sir.
 9 The Court: What's your complaint?
 10 Mr. Epley: Our complaint is listed in
 11 the answer from Grantland. In the course of
 12 automobile replacement business, we have
 13 performed automobile glass replacement for 67
 14 insureds of USAA. For each replacement
 15 performed, plaintiff received the -- from the
 16 insured an assignment of all insurance
 17 proceeds owed to the insured under his or her
 18 automobile policy with USAA. Pursuant to
 19 these assignments, we have submitted to --
 20 the invoices to USAA and they were not paid
 21 in full. We claim that USAA, by the contract
 22 that they have with the insured, owes this
 23 amount -- owes this money and we would like
 24 to present our case for that, sir.
 25 Mr. Grantland: Thank you, Your Honor.

1 May it please the court? Your Honor, I'm
 2 John Grantland. I represent USAA. This is
 3 Amy Palmer. Amy is the glass -- a glass
 4 claims advisor with USAA from their home
 5 office in San Antonio, Texas. She flew here
 6 today -- she flew from Texas to be here for
 7 this trial, Your Honor, so that court will
 8 know firsthand what USAA's policy is what
 9 their glass claims procedure -- how their
 10 glass claims procedure works. That's who we
 11 are. Why are we here? We're here because
 12 Mr. Epley did work on 67 cars whose owners
 13 are insured through USAA. He did glass work
 14 on those cars. He submitted invoices to USAA
 15 for the amount of the glass repair work.
 16 USAA paid those invoices, but they did not
 17 pay the invoices in full. Mr. Epley --
 18 rather than pursue the balance from the
 19 customer, Mr. Epley took an assignment from
 20 the customers so that he could sue the
 21 customer -- so that he could sue USAA
 22 directly and he has alleged that USAA has
 23 breached their policy to their customer by
 24 not paying his invoices in full. Your Honor,
 25 we don't believe his allegations are true

1 because our policy does not require -- the
 2 evidence will be that our policy does not
 3 require that invoices be paid in full. The
 4 policy requires that USAA pays invoices that
 5 they approve. If an invoice is submitted by
 6 a third party, USAA will pay what they
 7 approve. That's the policy. I have a copy
 8 of the policy, if you'd like to see it. But
 9 that is the -- that's the issue. Did USAA
 10 violate their policy by not paying a hundred
 11 percent of Southern Glass's invoices. Your
 12 Honor, in the evidence you'll hear how our
 13 glass claims process works. If a USAA
 14 insured wants to make -- wants to go to
 15 Southern Glass and have Southern Glass repair
 16 their work -- have Southern Glass repair
 17 their glass, that's fine. Southern Glass
 18 will talk to the insured and find out who
 19 they have insurance with. If it's USAA,
 20 Southern Glass will call USAA. Safelite
 21 Solutions manages all glass claims for USAA.
 22 When Southern Glass calls USAA, they are
 23 referred to Safelite who manages the program
 24 for USAA. Safelite takes down the
 25 information from the insured about the car

1 and about the policy and about what happened.
 2 Then they ask Southern Glass if they will
 3 accept USAA prices. The price -- again, the
 4 policy says USAA will pay what they approve
 5 for glass claims. If Southern Glass says
 6 they'll pay -- they'll accept USAA's prices,
 7 then the phone call is ended and the Southern
 8 Glass --
 9 The Court: Let me stop you.
 10 Mr. Grantland: Yes, sir.
 11 The Court: Is that actual dollar amount
 12 talked at that time or just --
 13 Mr. Grantland: Yes, sir. Yes, sir. The
 14 price is discussed over the phone.
 15 The Court: Okay.
 16 Mr. Grantland: Then a work order is
 17 submitted. From that phone call a work order
 18 is submitted that says the maximum amount
 19 that USAA has approved. For every 67..
 20 invoiced -- every 67 customers that he claims
 21 he has an assignment from, there was a work
 22 order generated from Safelite to Southern
 23 Glass laying out this is the maximum amount
 24 USAA will pay. And it also says performance
 25 of the work constitutes acceptance of the

9 1 price. Southern Glass performed the work. 2 They submitted an invoice to Safelite and 3 USAA. Safelite and USAA paid that maximum 4 amount that they approved. Mr. Epley, rather 5 than go to the customer and say -- and this 6 ranges, Your Honor. He has 67 invoices. 7 They range from being \$20 difference between 8 the maximum approved price and his invoice to 9 be a hundred and \$150 or \$200 difference. 10 But they range in price between what USAA 11 approved and what Southern Glass's invoice 12 was. But the invoice was submitted. 13 Safelite paid on behalf of USAA the maximum 14 amount that USAA approved. Southern Glass 15 cashed the check. Then, rather than ask the 16 customer for the difference in price, they 17 took an assignment so that he could file a 18 claim against USAA. And his assignment by 19 its terms say -- his assignment is based on 20 the terms of the policy. And the policy, 21 Your Honor, says very clearly that USAA will 22 pay for all repairs to glass either based on 23 their estimate or an estimate that they 24 approve if submitted by a third party. In 25 this case, there will be no evidence that	11 1 complaint and Mr. Grantland has explained his 2 position pretty clearly. We want you to know 3 that the -- we feel in many different ways 4 that the area that Mr. Grantland is referring 5 to, the limit of liability under 6 comprehensive and collision coverage, is the 7 amount necessary to repair while based on our 8 estimate or an estimate we approve. First of 9 all, sir, we don't have an estimate. There's 10 somebody on the other end of the line to talk 11 to the policyholder that works for a 12 competing glass company, Safelite Glass 13 Company, who has businesses just right down 14 the street here, presently on Elmwood and 15 Bull Street, and they're a international far- 16 known company. They also administrate all 17 the glass claims for this insurance company. 18 So the insured, when he has a glass claim, 19 actually speaks to our competitor, and a lot 20 of fireworks happen at that time with the 21 third party obviously trying to dissuade the 22 consumer from going to our place of business. 23 Mr. Grantland: Objection, Your Honor. 24 There is -- I mean, he is mischaracterizing 25 the facts and I'd ask him just to stick to
10 1 USAA didn't do just that. They paid what 2 they approved, only what they approved. They 3 didn't pay a hundred percent of his invoice. 4 They're not required to under the policy. 5 Amy will answer any questions you have about 6 the policy. She came here from the home 7 office. 8 Mr. Epley: I'd like to present the case, 9 sir. 10 The Court: Yes, sir. 11 Mr. Epley: Okay. To begin with, we are 12 -- have been in business for 20 years. We 13 enjoy a very good reputation in this area. 14 I've been in this business in this area for 15 34 years. Consumers that come to us pay us 16 with their insurance proceeds which we have 17 an assignment for. The buyer, by law in this 18 state, is the consumer. The consumer is 19 allowed to go wherever they want to go to. I 20 don't think counsel would object to that. 21 Insured is this payer in this case. And the 22 proceeds on the claim are -- belong to the 23 policyholder, the insured. So the issue 24 there is the amount that is payable under 25 this policy. We have read the facts of the	12 1 the facts and not -- 2 Mr. Epley: These are the facts. This is 3 what happens. This is exactly what happens. 4 The Court: I'll hear it. Go ahead. 5 Mr. Epley: This is exactly what happens. 6 They give a number of different reasons to 7 the insured; you may have to pay out-of- 8 pocket, you may have to pay your deductible. 9 Now, we've heard that twice this week. There 10 is no -- there are no deductibles by law in 11 the State of South Carolina. Anything to 12 dissuade the consumer from their legal right 13 of choice. 14 The Court: Now that I let you tell me 15 about that, tell me why they're the one. 16 What makes them the golden child? 17 Mr. Epley: Not for us they're not the 18 golden child. 19 The Court: No. I mean, for the 20 insurance company. Why do they want this one 21 company? 22 Mr. Epley: That's a good question, and 23 I'd like to ask Ms. Palmer. 24 The Court: I mean, do they buy that -- 25 do they buy that privilege? Do they bid on

1 it or --

2 Mr. Epley: We believe that there are set
3 ups, if you will, sir, that we're not
4 privileged to that have never come out in a
5 court of law as to why an insurance company
6 would hire a glass company to take the first
7 notice of loss in glass claims with all this
8 conflict of interest. And --

9 The Court: Let me go back a little bit
10 further. Your contention is that the policy
11 says they can choose any glass company that
12 they want; is that right? You agree with
13 that?

14 Mr. Grantland: Your Honor, I don't
15 dispute that an insured can choose whatever
16 glass company they want to -- but the policy
17 says that USAA will pay the claims based on
18 either their estimate or an estimate that
19 they approve if submitted by a third party.

20 Mr. Epley: We counter that, sir, that
21 there --

22 The Court: Wait a minute. Hold on.

23 Mr. Grantland: And I can --

24 The Court: They can chose any company
25 they want, but the insurance company can pay

1 what they want? Is that what you're saying?

2 Mr. Grantland: Yes, sir. The policy is
3 just like health insurance.

4 The Court: How can you chose what they
5 want if they get to chose the price?

6 Mr. Grantland: Well, they can chose what
7 they want and if -- and in many cases, Your
8 Honor, as Amy can tell you, there are plenty
9 of USAA approved shops throughout the
10 country. And --

11 The Court: How about throughout the
12 metropolitan Columbia area?

13 Mr. Grantland: Yes, sir. Yes, sir.
14 Absolutely.

15 The Court: So there's more than one he's
16 talking about?

17 Mr. Grantland: Absolutely.

18 The Court: Safelite's the only one or
19 not?

20 Mr. Grantland: Safelite is not the only
21 one.

22 The Court: All right. Go ahead.

23 Mr. Epley: I object to that, sir.

24 The Court: Go ahead.

25 Mr. Epley: Safelite testified two years

1 ago in the South Carolina Senate in front of
2 the Banking and Insurance Committee that
3 there are approximately 200 glass companies
4 in the State of South Carolina, of which 100
5 are on the preferred provider list. The
6 preferred provider list is run by the glass
7 company, so the contracts they have with
8 other glass companies to fix the price are
9 between two different competitors in the same
10 area. So Safelite says if you'll meet these
11 conditions, including this price, they will
12 allow you on a preferred provider list. We
13 choose not to do that. We think it is wrong
14 inherently to discuss price with your
15 competitor, first of all. So USAA, and some
16 other companies, have hired this glass
17 company to do this. The damage to our -- I
18 don't want to get off track here, but the
19 damage to our business has been what we call
20 steering or stolen jobs, which is in the
21 thousands over the years. This started
22 happening about ten or 12 years ago when fine
23 companies like USAA started hiring third-
24 party administrators that have a conflict of
25 interest. This conflict of interest is also

1 --

2 Mr. Grantland: Your Honor, --

3 Mr. Epley: -- to the fact where they pay
4 the bill, they take the claims, they discuss
5 the particulars with the insured, they tell
6 the insured different things to dissuade
7 them. They -- sometimes -- we've had people
8 at our place of business in tears over this.
9 We have a witness that we'll call in a minute
10 and how he was handled and what happened on
11 how he was paid and how he was reimbursed,
12 which is directly opposite of what Mr.
13 Grantland's explaining to you. We also would
14 like for you to understand, sir, that in the
15 glass industry -- and USAA, like all
16 insurance companies, are well aware -- there
17 are replacements and there are repairs.
18 Repairs are little chips in windshields that
19 are approximately 20 percent of the business,
20 and it is very much different. Repair and
21 replacement are two different procedures, and
22 that's mentioned many times in the policy.
23 The -- what Mr. Grantland is relying on says
24 only repairs. The 67 claims that we have are
25 replacements. They're not repairs. That's

1 ambiguous. We'll be glad to show you a case
 2 -- I need to slow down -- of Garrett versus
 3 Pilot Life, which our counsel tells us is the
 4 benchmark case in this. And I'll be glad to
 5 give you a copy of it, sir. But Mr.
 6 Grantland, I believe, is right. When there
 7 is no ambiguity, then the contracts cannot be
 8 interfered by the courts. But it also says,
 9 that he has left out -- it's a well-settled
 10 rule that the terms of the insurance policy
 11 must be construed most liberally in favor of
 12 the insured, and where the words of a policy
 13 are ambiguous or where there are capable of
 14 two reasonable interpretations, that
 15 construction will be adopted which is most
 16 favorable to the insured. Mr. Grantland and
 17 Ms. Stratton would have you -- would have
 18 these insureds pay us more out of their
 19 pocket. This is a pretty involved procedure.
 20 We want you to understand that there is no
 21 mention of replacement in this particular
 22 area. Webster designs -- Webster describes
 23 repair as a mend. We didn't mend anything.
 24 We completely replaced every door glass,
 25 every back glass and every windshield on the

1 complaint. We did not -- so we believe
 2 that's ambiguous. We also believe that the
 3 insurance company are very intelligent
 4 people, and there are about six places in the
 5 body of the policy itself where it defines
 6 repair and replace and there's in all in
 7 bold. If you have a copy of the policy, sir,
 8 or I'll read it to you, page 19 of 26, in
 9 part, says the loss does not include
 10 diminishment in value that remains after the
 11 damaged or stolen property or parts thereof
 12 have been repaired or replaced. In bold.
 13 Paragraph E in bold; repair or replace means
 14 restoring the damaged property or parts
 15 thereof to their pre-accident operational
 16 safety, function and appearance. Page 20 of
 17 26 in the body of the policy; the deductible
 18 will be waived for loss -- for loss to glass
 19 that can be repaired rather than replaced.
 20 Full safety glass. Deductible not -- does
 21 not apply in the cost of repairing or
 22 replacing damaged glass -- damaged automobile
 23 safety glass. It also says on page 21 of 26,
 24 we may pay for loss in money or repair or
 25 replace. So the consumer, as one of our

1 witnesses will tell you, has received a
 2 reimbursement in monies to compensate himself
 3 for the amount he paid us, which is our rates
 4 that we charge. So we believe there are
 5 several -- not only was there no estimate, as
 6 it says. The only price given was by
 7 somebody that was hired by the insurance
 8 company that is not an adjustor. You have to
 9 be licensed in South Carolina to be an
 10 adjustor. Did not look at the claim. And
 11 every other property claim that you have --
 12 if you have damage to your house or if you
 13 get in a wreck, adjustors come out and look
 14 at it. So there was no estimate in this
 15 case. Plus all the ambiguous language that
 16 this area that Mr. Grantland is relying on.
 17 If it pleases you, sir, I'd like to call a
 18 witness, Mr. Ryan Brown.

19 Mr. Grantland: Your Honor, I'd like to
 20 ask Mr. Epley questions.

21 The Court: Okay.

22 Mr. Epley: If that's so, I'd certainly
 23 like to ask Ms. Palmer some questions.

24 Mr. Grantland: You will, Mr. Epley.

25 The Court: You'll get an opportunity to

1 do that after you testify. Go ahead.

2 Mr. Grantland: Your Honor, does he need

3 --

4 The Court: Do it right there where he
 5 is. All this is videotaped and this is the
 6 only place they'll get a good shot.

7 Cross-examination

8 By Mr. Grantland:

9 Q Mr. Epley, I have some -- you can sit or stand if
 10 you want. I have some questions for you.

11 The Court: Just one minute before we go.
 12 Folks, the rest of you that are here, if you
 13 want to say and listen to this case, that's
 14 fine. If not, I can tell you right now --
 15 I'm pretty good at this. We're not going to
 16 hear anymore cases until about two o'clock.
 17 If you want to leave and come back at two
 18 o'clock, feel free to do so. I will not call
 19 another case until two. This looks like it's
 20 going to go on for an hour or so at least.
 21 It's 12 o'clock now and at some point we've
 22 got to have some lunch for my staff. And
 23 along those same lines, let's take a five
 24 minute bathroom break.

25 (Off the record from 12:00 p.m. to 12:19

p.m.)

Mr. Epley: Your Honor, I'd like to clarify a couple things before Mr. Grantland continues. He stated a couple things that --

The Court: Wait a minute. He's got some questions he can ask you first.

Mr. Epley: Yes, sir.

The Court: And you can rebut those later, but right now he's got the right to cross-examine you.

Mr. Grantland: Thank you, Your Honor. Where would you like me to stand?

The Court: Right there is fine.

Mr. Grantland: Okay. Thank you, Your Honor.

Mr. Epley: Would you like me to stand?

The Court: Just consider we're at home in the den.

Cross-examination continues

By Mr. Grantland:

Q Mr. Epley, I have some questions for you. First, Southern Glass has been approved -- has been a preferred glass vendor for USAA in the past, have they not?

A That's correct, sir.

Q And you're very familiar with how glass companies like your company work with insurance companies?

A They're all different.

Q But you've had a lot of experience dealing with insurance companies?

A A lot.

Q And let me ask you about the basis of this lawsuit. In this lawsuit you claim you did glass work for 67 USAA insureds and you did not get paid in full for your work.

A That's correct.

Q You have all 67 invoices?

A I believe I do, yes, sir. I've also given them to you.

Q Yes, sir. You have all 67 assignments from the customer to you?

A We do.

Q Did you keep all 67 work orders that were submitted from Safelite to Southern Glass?

A I believe they're on file in my office, but I don't know if they're here or not.

Q Those work orders are like an estimate, are they not, Mr. Epley?

A I don't agree, sir.

Q But you admit that you received work orders from

Safelite to Southern Glass?

A I agree that I received a amount that someone said they wanted to pay.

Q I'll get to that. I'll ask you some more questions about work orders in a second. Let me ask you about how the glass repair process works. When a customer came to your shop, I assume you figured out first they had insurance? That's one of the questions you would ask?

A How would they like to pay for it.

Q Right. And you're very aware that Safelite manages USAA's glass claim program?

A I'm not happy about it, but I'm aware of it.

Q And Safelite does glass installation. You consider them a competitor?

A Absolutely.

Q And in the case of USAA, your customer, Safelite and someone from -- your customer, Safelite and someone from Southern Glass would speak on the phone before work was done; is that correct?

A In most cases, yes, sir.

Q Okay. And the price of glass work is discussed over the phone?

A A price of the glass work is discussed by a person that's not an adjuster that works for a

competitive glass company.

Q The price is discussed between Safelite and Southern Glass; is it not?

A They say what price they want to pay. It's not agreed to.

Q But on these phone calls, Southern Glass is asked if they accept USAA's pricing; is that correct?

A That is -- in most cases, they do ask. Sometimes they do, but sometimes they don't.

Q And in any of these invoices that you're claiming you were shorted, did Southern Glass agree to USAA's prices?

A Not to my knowledge.

Q How about the Zwart invoice? Is Zwart one of your invoices? I'll represent to you that it is.

A I think I saw that one, sir. Do you have the date of it?

Q I can get the date. I have it listed alphabetically.

Ms. Palmer: I'll get it real quick, John.

A I will add to that, sir, that on occasion we may agree to a price. On occasion.

Ms. Palmer: May 7, 2008.

A May 7th?

Q Mr. Epley, I'll represent to you that you

1 submitted an invoice for Zwart.
 2 A I'll take your word for it, sir.
 3 Q And you claim you were shorted \$116 on that job.
 4 A Okay. Go ahead.
 5 Q Now, do you have a Tony at Southern Glass?
 6 A A Tony?
 7 Q Yes.
 8 A No.
 9 Q Okay. Are you sure you've never had -- you don't
 10 have a Tony employed by Southern Glass, not in
 11 2008, at the time of this -- at the time of the
 12 Zwart claim?
 13 A Two of my top employees are right here. Do you
 14 remember any Tony?
 15 Ms. Lown: No. There was no Tony at
 16 Southern Glass.
 17 Q Are you sure your -- whoever the employee is, are
 18 you sure he never agreed to USAA's pricing when
 19 the claim was submitted to USAA?
 20 A I am not there on each and every one. But that's
 21 our policy is not to agree. Most times we say we
 22 don't discuss this. We're happy to discuss this
 23 with the insurance company, but not with our --
 24 we'll not discuss price with our competitor. The
 25 insurance company has not hired us. There are --

1 there is no contract.
 2 Q You're right. There's no contract between
 3 Southern Glass and USAA.
 4 A That's correct.
 5 Q And -- well, if you have an employee, Mr. Epley,
 6 who agreed to USAA's pricing, you would agree you
 7 would not be able -- you would not have the right
 8 to go and demand more after the fact?
 9 A I'd have to ask counsel about that, sir. Since we
 10 are not hired, there is -- since we're not hired
 11 and there is no contract, I don't know if that
 12 statement is correct or not. It sounds like it's
 13 correct. So I really don't know.
 14 Q Do you know if any of your employees ever agreed
 15 to USAA's prices in any of your other invoices?
 16 A We have -- we had 11 locations, sir. Because of
 17 the way this -- these are -- claims are handled by
 18 our competitor, we now have five locations. And
 19 our policy is not to discuss or accept price at a
 20 certain point. I believe it was somewhere in
 21 2006.
 22 Q Now, in phone calls where Southern Glass -- well,
 23 let me ask you. I thought we ought to -- you say
 24 you didn't have a Tony. Your Honor, we have -- I
 25 have tape recordings of at least two phone calls I

1 think would be pertinent for the court to hear.
 2 We can either hear them now or we can wait.
 3 The Court: Let's hear them in your case.
 4 Mr. Grantland: Okay. We'll hear them in
 5 my case.
 6 Q In phone calls where Southern Glass does not
 7 accept USAA's prices -- that's what you say is --
 8 is what you --
 9 A That is our policy.
 10 Q Your employees -- that's your policy.
 11 A Is it possible, sir, that on occasion somebody
 12 will make a mistake and accept that, but they are
 13 certainly not authorized and they're certainly not
 14 authorized by the company to make those decisions.
 15 Q Well, in cases where you don't agree with the USAA
 16 prices, Safelite would tell Southern Glass and the
 17 customer that the customer would pay the
 18 difference between USAA's approved price and
 19 Southern Glass's bill if there is a difference?
 20 A They say that. We don't -- this is what we're
 21 here for. We don't agree that that's their
 22 responsibility. We think it's the responsibility
 23 of the insurance companies.
 24 Q But you agree that Safelite, on the phone, will
 25 tell Southern Glass and the customer that this is

1 our maximum price. If Southern Glass charges
 2 more, you, customer, may be responsible for the
 3 difference?
 4 A Again, sir, that is our competitor, but they do --
 5 in most cases. Not all cases, but in a lot of
 6 cases they do state a price that they want to pay.
 7 Q Right. Now, would you have ever told a customer
 8 that he will not have to pay more than USAA's
 9 approved amount?
 10 A I don't think so.
 11 Q How about Thad Miller job? Do you have an invoice
 12 for Thad Miller? What is the date on that?
 13 Ms. Palmer: Miller is 5/2 of '08.
 14 Q May 2nd of '08.
 15 A I've got one for 5/01 here.
 16 Q Is that Thad Miller?
 17 A It's a Mr. Frye.
 18 Q I'll give you a copy of it.
 19 A Okay.
 20 Q Is that an invoice you would have submitted for
 21 Thad Miller?
 22 A It looks like one of our invoices, yes, sir.
 23 Q Okay. And do you recall ever talking to Safelite
 24 and Mr. Miller about glass prices?
 25 A No, sir.

1 Q Do you recall telling -- do you recall Safelite
2 telling you and Mr. Miller that the maximum amount
3 that USAA would pay is \$235 and if you charge him
4 more the customer would be responsible for the
5 difference?
6 A I certainly didn't take the call, sir, so I can't
7 answer that.
8 Q You did not take the Miller call?
9 A No, sir, I did not.
10 Q Okay. And you don't recall telling your customer
11 that he would never have to pay anything more than
12 what USAA approved?
13 A To my knowledge, we haven't charged anything more
14 to any customer. To my knowledge.
15 Q The bottom line is Southern Glass knows before
16 repairs start what USAA's maximum price is that it
17 will pay for glass repair; is that correct?
18 A We didn't repair anything, sir. We replaced
19 everything.
20 Q But you know -- before you replace anything, you,
21 Southern Glass, knows what USAA's maximum price
22 is?
23 A I'll repeat again, sir. We know what a
24 competitive glass company tells us what the
25 maximum that their client, USAA, thinks is fair

1 and reasonable.
2 Q Did you know -- you keep calling Safelite your
3 competitive glass company. Did you know that
4 Safelite Solutions is a third-party administrator
5 for USAA?
6 A I do, sir.
7 Q That they work for USAA?
8 A They certainly do.
9 Q Okay. Let me --
10 Mr. Grantland: Your Honor, may I --
11 The Court: Are they a glass company?
12 Mr. Epley: Yes, sir.
13 The Court: Is that allowed in this
14 state?
15 Mr. Grantland: Yes, sir.
16 The Court: Insurance companies can own
17 glass companies?
18 Mr. Grantland: No. They don't own it.
19 They are -- Safelite -- and Amy can speak to
20 this. Safelite is a separate company and
21 they, Safelite Solutions, is a third-party
22 administrator.
23 The Court: How can a company that is --
24 how can industry be barred from owning a
25 glass company; then go in and say well, we're

1 going to hire you as a third-party
2 administrator to administer to everybody
3 else? That's the same as owning it. That's
4 exactly -- if it doesn't violate the letter
5 of the law, it certainly violates the spirit,
6 doesn't it?
7 Mr. Grantland: No, sir. I mean, they're
8 -- it's a -- and I can let Amy address this,
9 but, Your Honor, this is a -- Safelite is a --
10 -- they have a glass repair business. They
11 have a contract with USAA to administer the
12 claims. I mean, it's not -- it's not a --
13 they're not a part of USAA.
14 The Court: But I'm asking you, would
15 that not put them in the same light as if
16 you, USAA, owned the company because they've
17 either got to do what USAA says or lose the
18 contract? And that's exactly what the
19 statute, I think, prohibits, doesn't it?
20 Isn't that the reason -- tell me if I'm
21 wrong.
22 Mr. Grantland: Yes, sir. And I'm not
23 trying to --
24 The Court: This is not an area that I
25 know a lot about. I'm just asking you, is

1 that -- if the Legislature of this state says
2 an insurance company cannot own a glass
3 company, there's a reason for it.
4 Mr. Grantland: Yes, sir.
5 The Court: Well, then, wouldn't the
6 hiring of one to administer to everyone else
7 the same as owning it?
8 Mr. Grantland: I do not think so, Your
9 Honor.
10 The Court: Okay. Let's go ahead with
11 your questions.
12 Mr. Grantland: Yes, sir. I definitely,
13 with all due respect --
14 The Court: I'm not making a ruling. I'm
15 just asking a question.
16 Mr. Grantland: Yes, sir. Yes, sir.
17 Q Back to my questions, Mr. Epley. After the phone
18 call, do you agree or disagree that a work order
19 is submitted to Southern Glass from Safelite?
20 A A fax comes over stating pertinent information
21 with what they call a referral number. Nothing is
22 referred to us. These are customers that come to
23 us on their own. On that fax -- and I have
24 several copies of them here -- it states the
25 breakdown of the pricing, in most cases, according

1 to labor, the list price that's suggested by NAGS.
2 NAGS is National Auto Glass Specifications. And
3 other materials such as mouldings and the glass
4 that are used. It's called the retention systems
5 or the kits. So, yes, sir, a fax does come over
6 that we use as a claim tracking number only.

7 Q Okay. Well, let me ask you about that fax because

8 --

9 The Court: I didn't understand that. I
10 hate to interrupt. NAG?

11 Mr. Epley: NAGS is the suggested list
12 price. It's put out by a company that's
13 owned my Mitchell, and Mitchell is the
14 database for the body shops. They also own
15 the glass part of -- it's a numbering --

16 The Court: I'm familiar with it.

17 Mr. Epley: NAGS is a numbering --

18 The Court: They send you over what they
19 say you should be paid?

20 Mr. Epley: NAGS, Your Honor, sir, is a
21 numbering system for the lowest price after-
22 market, in our opinion, junk that's on the
23 market. There are other list prices that are
24 used in our industry, expressly put out by
25 PBG industries, which is a well-known

1 American manufacturer. But the glass -- the
2 insurance people right now insist on using
3 NAGS as a suggested list price. NAGS means
4 National Auto Glass Specifications. It
5 started years ago when everything was flat
6 and they made patterns that you could cut
7 glass and put the flat in cars. And it
8 developed into a numbering system that said
9 if you have a 2004 Saturn Vue, Part #1234 was
10 the door glass. 1235 was the back glass.
11 XYZ was the windshield.

12 The Court: And they send you what they
13 say the price should be?

14 Mr. Epley: They publish that once a
15 quarter, sir, and they base that on only
16 after-market price.

17 The Court: Okay.

18 Q I want to show you -- you call it a fax. I call
19 it a work order.

20 Mr. Grantland: Your Honor, may I admit
21 this into evidence and give you a copy and
22 give him a copy?

23 The Court: Show him first.

24 Mr. Grantland: Yes, sir.

25 Q Is this a Safelite Solutions fax that would have

1 been sent to Southern Glass on behalf of Thad
2 Miller.

3 A Looks very similar to what they send us.

4 Mr. Grantland: Your Honor, may I admit
5 this into evidence and let you see it. I'll
6 give Mr. Epley another copy while asking
7 questions. This will be our first exhibit.
8 Defendant's Exhibit No. 1, Fax to Southern
9 Glass from Safelite regarding Thad Miller;
10 one page.

11 Mr. Grantland: I'd like for you to see
12 it while I ask him questions, Your Honor.

13 Q Okay. Now, Thad Miller is one of the invoices
14 you're claiming you were shorted on; is that
15 correct?

16 A Just a second, please, sir. And I don't want to
17 take too much of your time, but I'd like somebody
18 from my office to go and see if they can find that
19 through here. But go right ahead, sir.

20 Q Okay. So --

21 A Yes, sir.

22 Q And we can call it whatever you want. The fax was
23 sent -- the work order/fax was sent from Safelite
24 to Southern Glass; is that correct?

25 A Uh-huh.

1 Q It's dated June 4, 2008?

2 A The fax?

3 Q Yes.

4 A No, sir. Just a second.

5 Q At the top.

6 A It is.

7 Q 15:33 in the afternoon.

8 A Correct.

9 Q The work order includes Mr. Miller's name, type of
10 vehicle; is that right?

11 A That's correct.

12 Q Okay. The work order states that USAA has
13 determined the maximum amount of such work as
14 \$235.86 less any deductible; is that correct?

15 A It certainly does say that, sir, but above that it
16 also does give the breakdown on how that number
17 was derived.

18 Q I understand that. This is -- the price USAA has
19 agreed to pay is in every work order; is it not?

20 A Has agreed to pay?

21 Q The price that USAA has determined is the maximum
22 amount is in every work order; is it not?

23 A No, sir, that's not correct.

24 Q Well, the price that -- are you saying these work
25 orders are sent without any prices?

1 A Yes, sir.
 2 Q How about without the 38 percent, \$40 per hour?
 3 Are you saying none of the work -- are you saying
 4 you receive work orders without any of those
 5 prices?
 6 A Hold on one second. Yes, sir, I have one here I
 7 can show. I'd be happy to show the Judge also. I
 8 blotted out -- for privacy purposes, the names.
 9 It's the same form.
 10 Q Right.
 11 A This one is dated 8/17.
 12 Q Okay.
 13 A That does not show --
 14 Q A max price?
 15 A It does not show a price, but it shows the
 16 breakdown.
 17 Q It shows the breakdown of the price?
 18 A Uh-huh.
 19 Q Okay. I'm happy for you to show that to the
 20 Judge. Do you have a copy I can compare with this
 21 one?
 22 A I do not, sir.
 23 Q If I can look at that -- if I can just make sure
 24 I'm on the same page with you. On that invoice --
 25 on both invoices that you submitted -- that -- the

1 work order I sent to the Judge and the work order
 2 you gave to the Judge, the work order says in the
 3 middle paragraph, "Performance of services
 4 constitutes acceptance of the above price and
 5 billing instructions." Does it not?
 6 A It does. Again, sir, I don't have it in front of
 7 me, but I don't doubt your word.
 8 Q I just gave it to you.
 9 A I gave it to the Judge, I believe, unless I put it
 10 down. I'm sorry. Is this it right here on
 11 Miller?
 12 Q Yes. On any work order that Safelite sent to
 13 Southern Glass, the work order says performance of
 14 services constitutes acceptance of the above price
 15 and billing instructions.
 16 Mr. Epley: I have a comment on this,
 17 Your Honor. Is it timely to do it now?
 18 The Court: You've got to answer his
 19 question and then you can say whatever you'd
 20 like.
 21 A Okay. Is that what it says on most invoices or
 22 all invoices?
 23 Q That's what it says on -- I'll represent to you
 24 that's what it says on every work order I've seen.
 25 A Probably so.

1 Q Okay. So that means --
 2 Mr. Epley: It is time now to do it, sir,
 3 Your Honor?
 4 The Court: Once you've answered you can
 5 say whatever you'd like.
 6 Mr. Epley: Okay, sir.
 7 A I would like to call your attention, Counselor, to
 8 a court decision, which, I'm sorry, I do not have.
 9 But I'm sure that the nice folks at USAA are well
 10 aware of it. It was brought to the Supreme Court
 11 in the State of Connecticut on just what you're
 12 talking about called unilateral -- a unilateral
 13 demand.
 14 Mr. Grantland: Your Honor, I object to
 15 his response.
 16 The Court: We'll hear it.
 17 A The State of Connecticut at the Supreme Court
 18 level ruled that these types of unilateral, one-
 19 sided demands are not legal, and it's the same
 20 thing that we're claiming. On other parts of this
 21 policy it's ambiguous and is detrimental to the
 22 insured -- it's to the detriment of the insured.
 23 This is a unilateral demand. It's one-sided. If
 24 indeed somebody at our company made an error on
 25 one here or there, we'll honor what they do even

1 though we do not have a contract with this
 2 insurance company. The State of Connecticut just
 3 says at the Supreme Court level that these
 4 unilateral contracts are just that, they're one-
 5 sided, and I agree with them.
 6 Q I appreciate that. We're in South Carolina, Mr.
 7 Epley. And my question to you is in every work
 8 order you have -- this sentence is in there.
 9 "Performance of services constitutes acceptance of
 10 the above price and billing instructions." Isn't
 11 that true?
 12 A I'm sure it is, sir.
 13 Q Okay. That means if you do the work, you're
 14 accepting the price, correct?
 15 A That's what our business is is to do the work.
 16 Our business is not to refuse anything.
 17 Q Okay. For every customer you have an assignment
 18 for, you receive a fax stating either a breakdown
 19 of the price or a maximum price that it also
 20 includes that sentence. "Performance of services
 21 constitutes acceptance of the above price."
 22 A I'm sure it is in there if you say so.
 23 Q Now let me ask you this, Mr. Epley. Did you ever
 24 send -- did Southern Glass -- and you were talking
 25 about the insured. This was sent to Southern

1 Glass, not to the insured; is that correct?
 2 A That's correct.
 3 Q Did you ever send a work order back and tell
 4 Safelite no, we're not doing it for that amount?
 5 A Maybe not on this amount, but we do -- we
 6 certainly do do that, sir.
 7 Q Did you ever get a work order and tell the
 8 customer we're not going to do it because the
 9 maximum price is too low?
 10 A No, sir, we do not.
 11 Q You did the work knowing what maximum price USAA
 12 has agreed to pay, either whether it was broken
 13 down or whether it was listed out like the Miller
 14 case?
 15 A I hear what you're saying, sir, and that's where
 16 we disagree. We don't believe that there -- the
 17 contract does state that this is the amount they
 18 are required to pay.
 19 Q In all 67 customers, what you charged was more
 20 than the price in the work order that was sent to
 21 you by Safelite?
 22 A It's not a work order, sir. It's claim tracking
 23 number.
 24 Q Whatever it is, you agree that in all 67 customers
 25 you charged more than the price that's in the fax?

1 A We did, sir.
 2 Q And, in fact, your invoice on Mr. Miller is dated
 3 June 6th and it's for \$367. I'll give you a copy
 4 and if I can -- do you have that? Do you have
 5 that in front of you?
 6 A Uh-huh.
 7 Mr. Grantland: Your Honor, may I admit
 8 this into evidence? Let me get the court
 9 reporter to --
 10 Defendant's Exhibit No. 2, Invoice from
 11 Southern Glass to USAA regarding Thad Miller;
 12 one page.
 13 Q This is a work order -- excuse me. This is an
 14 invoice that you sent to USAA in care of SGC
 15 Network, Columbus, Ohio; is that correct?
 16 A Correct.
 17 Q And it's for -- and you claim -- you have
 18 handwritten on here, you claim USAA owes you
 19 \$119.56?
 20 A I'm sure that's one of our bookkeepers making a
 21 notation.
 22 Q Okay. Now, let me just make sure I'm -- I want
 23 you to have the fax from USAA in your hands and
 24 your invoice. Okay. We're still using Thad
 25 Miller as an example. Okay. On June 4 you get a

1 fax that say USAA's maximum amount is \$235; is
 2 that right?
 3 A We did get a fax. We didn't ask for a fax. We
 4 asked for a claim tracking number, and it could
 5 have been given to us verbally but they did send a
 6 fax.
 7 Q The fax said performance of work -- of services
 8 constitutes acceptance of the price.
 9 A That's what it says and that's -- we did not agree
 10 to that.
 11 Q You never sent this back?
 12 A This one, probably -- maybe not. Probably not.
 13 Did not.
 14 Q You didn't call? It also has a 614 number. Did
 15 you call up and say no, we dispute this price?
 16 A It's on record. We've written letters to Safelite
 17 that we do not agree with their pricing structure.
 18 Q Did you call them on the Miller invoice?
 19 A On this particular, probably not, sir.
 20 Q You did the work?
 21 A Dang right we do. That's what we're in business
 22 for.
 23 Q And two days later -- after getting this fax of
 24 June 4th, two days later you sent an invoice for
 25 367.46; is that correct?

1 A On this particular one, yes, sir.
 2 Q Now, what gives you the right to invoice USAA more
 3 when they gave you the price and you accepted the
 4 work for the price?
 5 A We did not accept the work for their price, sir.
 6 Q You just ignored the paragraph that says
 7 performance of services constitutes acceptance of
 8 price?
 9 A That's a demand from their hired party, which is
 10 our competitor, and we certainly didn't agree with
 11 that. And that's our policy not to agree with
 12 that.
 13 Q And you never asked Mr. Miller to pay the
 14 difference?
 15 A No, sir, we didn't. Our policy is not to.
 16 Q Okay. In fact, you told Mr. Miller he wouldn't
 17 have to pay anything?
 18 A We believe -- again, like I stated before, we
 19 believe that's the responsibility of the insurance
 20 company. It should not --
 21 Q Okay. And instead of asking your customer for the
 22 difference in what USAA approved and what Southern
 23 Glass charged, you took an assignment from the
 24 customer?
 25 A We took an assignment. We take assignments from

1 all customers now.

2 Q I want to show you a copy that you provided me and
3 make sure -- is this a copy of an assignment that
4 you have for all 67 of your insureds?

5 A It appears to be the same thing, yes, sir.

6 Mr. Grantland: May I admit this into
7 evidence, Your Honor? I'll hand you a copy
8 of it.

9 Defendant's Exhibit No. 3, Assignment; one
10 page.

11 Q When you're ready, Mr. Epley, let me ask you some
12 questions about the assignment.

13 A Yes, sir.

14 Q Well, I want you to have a copy of it.

15 A I've got it.

16 Q Okay. Good. Your assignment states in payment
17 for work performed by Southern Glass, I assign the
18 claim and all policy proceeds due me under the
19 terms of my insurance policy for that claim to
20 Southern Glass.

21 A Yes, sir.

22 Q Okay. So instead of asking the customer for
23 payment, Southern Glass says assign me your rights
24 under the terms of the policy and I'll pursue
25 payment from your insurance?

1 A I believe that's legal in the state as suggested
2 by Ms. Stratton on our last visit to this Court.

3 Q And I assume your customer was aware of the bill
4 for Southern Glass's work?

5 A I hope they were.

6 Q Did you tell your customer that Safelite/USAA was
7 only going to pay so much of the bill?

8 A Probably not.

9 Q Well, you told your customer give me an assignment
10 and customer, you won't have to pay anything out-
11 of-pocket?

12 A That's correct. We'll fight for what that believe
13 is --

14 Q And your assignment --

15 A We'll fight for what we believe is their rightful
16 benefits under the policy for this claim only.

17 Q Your assignment, by its words, is only for
18 proceeds that may be due under the terms of the
19 policy?

20 A That's correct, sir.

21 Q If proceeds are due under the terms of the policy
22 the money is to go to Southern Glass?

23 A I believe that's right, sir.

24 Q Likewise, if there are no proceeds due under the
25 policy, under the terms of the policy, then money

1 is to go to Southern Glass?

2 A I'd have to think about that, but I think you're
3 correct, sir.

4 Q The terms of the policy are very important?

5 A The terms of the policy are. That's the contract
6 in play, yes, sir.

7 Q And you have a copy of the USAA policy?

8 A I do, sir.

9 Q And you've read -- let's pull it. You've read
10 what the policy says about glass claims?

11 A It's the limit of liability.

12 Q You've read page three of five that says our limit
13 of liability coverage under comprehensive coverage
14 and collision coverage is the amount necessary to
15 repair the loss based on our estimate or an
16 estimate that we approve as submitted by you or a
17 third party.

18 A Again, we're stating that that's ambiguous and
19 that we did not repair this person's car. We
20 replaced the windshield or whatever the part was
21 on this car.

22 Q And you've read -- you read to the Judge -- and I
23 can -- I'll be happy to show the Judge what I'm
24 reading from. Page 19 of 26 of the policy.

25 A Hold on one second, sir. Okay.

1 Q Nineteen of 26 says repair or replace means
2 restoring the damaged property or parts thereof to
3 their pre-accident operational safety, function
4 and appearance.

5 A And that's what we did.

6 Q And so repair and replace basically mean we're
7 putting the window back in its pre-accident
8 condition?

9 A No, sir. Repair is a different process all
10 together in the auto glass business, and the
11 insurance companies are well aware of that.

12 Q But the policy says you're putting the window back
13 in its pre-accident condition?

14 A We did, sir.

15 Mr. Grantland: Your Honor, may I admit
16 this into evidence for the Court.
17 Defendant's Exhibit No. 4, USAA Insurance
18 Policy; 30 pages.

19 Mr. Grantland: Your Honor, I'm handing
20 to you a certified copy of USAA policy
21 actually on Mr. Zwart, who is one of the
22 invoices -- one of the assignments Mr. Epley
23 is presenting.

24 Q In any of the -- let me ask you this, Mr. Epley.
25 In any of the 67 claims where Southern Glass

1 repair -- replaced glass for a USAA insured, was
 2 the Southern Glass estimate approved by USAA?
 3 A There was no estimate, sir. There was no
 4 adjustor. There was --
 5 Q You refused to discuss price with US -- with
 6 Safelite over the phone, don't you?
 7 A We refuse to discuss price with our competitor,
 8 Safelite, yes, but we say all the time that we're
 9 happy to discuss this with the insurance company
 10 and they never do discuss it with us or call us,
 11 survey us or anything else.
 12 Q Well, did USAA approve of any of your bills you
 13 submitted?
 14 A Obviously not.
 15 Q All right. And Safelite didn't approve your bills
 16 submitted, did they?
 17 A With all due respect, sir, we could give a doggone
 18 about Safelite, our competitor.
 19 Q The policy says USAA will pay for repairs based on
 20 their estimate or an estimate that they approve,
 21 doesn't it?
 22 A That's what it says, and we did not repair
 23 anything, sir.
 24 Q Right. And in any of the replacement -- again,
 25 just to make sure I'm clear. Any of the work that

1 you did, whether it was repair or replacement that
 2 you're asking this court to award you money, you
 3 agree USAA did not approve your bill and you agree
 4 you did not even submit an estimate because you
 5 wouldn't talk to USAA or Safelite about price?
 6 A No, sir. We'd be happy to talk to USAA. I'm
 7 happy to see Ms. Palmer. That's the first person
 8 I've seen or talked to from USAA, by gosh, it's
 9 got to be 15 years. We do not get any calls. We
 10 haven't had any surveys. The only communication
 11 is through our competitor, which we are very
 12 uncomfortable with discussing any terms of any our
 13 business, period.
 14 Q And you recognize that -- you call Safelite your
 15 competitor. You recognize that they administrate
 16 glass claims for USAA?
 17 A We believe that they have a -- I'm sure Ms. Palmer
 18 would agree and you'll agree that they have a
 19 contract to administrate, pay the bills, take the
 20 phone calls, talk to the insured, give them
 21 information. And we also think that there's other
 22 agreements in place behind the scenes.
 23 Mr. Grantland: And I object to his
 24 answer, Your Honor. I'll move on.
 25 Q Mr. Epley, if your rights -- if Southern Glass's

1 rights under your assignment are based on the
 2 terms of the policy and the policy says USAA pays
 3 what it approves, what claim do you have against
 4 USAA? I mean, you obviously have --
 5 A Mr. Grantland, again, we believe that the policy
 6 does not address it, does not address -- let me
 7 get back to this. It doesn't address -- it says
 8 based on estimate. We don't believe that there
 9 was an estimate by any licensed adjustor. We
 10 believe that it says necessary to repair the loss.
 11 We didn't repair anything. Repair is a separate
 12 entity in our industry and our business. It's a
 13 chip repair. It's a mend. We did not mend
 14 anything. We believe that this does not address
 15 our claims or your statements in any way, sir.
 16 Q No. No. Repair and replace -- you read the
 17 policy. It says put it back in the pre-accident
 18 condition.
 19 The Court: Y'all have about beat that
 20 horse to death.
 21 Mr. Grantland: All right. We'll move
 22 on.
 23 Q USAA paid you less than your estimate? Or less
 24 than your invoice?
 25 A Indeed.

1 Q But they paid you what they approved?
 2 A Again, we never talked to anybody from USAA, only
 3 out competitor.
 4 Q Does anywhere in the policy say USAA has to pay a
 5 hundred percent of your invoice?
 6 A In so many words, I believe it does. Just a
 7 second. I'll find that for you. In the absence
 8 of anything that's stated, in the last paragraph B
 9 of 20 of 25 for partial losses under comprehensive
 10 is the amount necessary to repair or replace the
 11 damage without deduction for depreciation. We
 12 believe that states that that's their
 13 responsibility, and the amount necessary was the
 14 amount that we submitted, which the consumer has
 15 every legal right to go to our place of business
 16 and get high quality goods and services.
 17 Q So if you billed USAA a million dollars, would
 18 USAA be required to pay that?
 19 A Like I told Ms. Stratton in front of the Judge
 20 last time, I'm the first one to say that fair and
 21 reasonable is very, very important. On the
 22 contrary, since you asked, sir, what's to say the
 23 insurance company or their third party or whatever
 24 decides tomorrow that \$5 is all they're going to
 25 pay on a brand new windshield on a Mercedes Benz.

1 Q So your question -- so your answer is fair and
2 reasonable. Now, does the policy say anything
3 about we will pay fair and reasonable prices?
4 A The amount necessary.
5 Q And -- but you also agree that the policy also
6 says USAA will pay what it approves?
7 A For repair. Again, we didn't repair anything.
8 Q And instead of asking the customer for the
9 difference you took the assignment so that you
10 could sue USAA?
11 A No. We don't want to sue USAA. We wanted to talk
12 to USAA. We tried on many occasions to
13 communicate with USAA. Calls, everything goes
14 through -- every phone call goes through -- that
15 has to do with glass goes to our competitor and
16 there is no discussing this with our -- not even
17 if we wanted to, they won't discuss it. This is --
18 -- they will say that nothing they can do about it.
19 Q Who else are you suing besides USAA?
20 A Who else? We have filed about seven of them. All
21 of them have to do -- all of them are connected
22 with the Safelite Corporation in one way or the
23 other.
24 Q I know you sued Kemper in this -- Kemper Insurance
25 Company in this Court.

1 A Correct.
2 Q I know you've sued Hartford Insurance Company.
3 A That's correct.
4 Q And you've sued USAA.
5 A That's correct.
6 Q All for the same issues.
7 A That's correct, sir.
8 Q Who else have you sued in Judge Womble's court?
9 A We have sued Encompass and received judgment. We
10 have sued Bristol West Insurance Company, which is
11 a fairly big writer in these parts, and they have
12 paid us -- settled and paid us in full. We have
13 sued Safeco Insurance Company in this court. They
14 have immediately paid us and are continuing to pay
15 us in full. They pay the short pay separately.
16 They do not instruct their third party to pay in
17 full. They just pay the difference at the end of
18 every month. So we have a company called Houston
19 General.
20 Q How many are pending right now?
21 A One second, sir. Let me answer your question.
22 Houston General, they have paid us in full. And
23 we certainly have written the Judge in every
24 single instance and advised him that the insurance
25 company has settled in full and we have dropped

1 our allegations. I believe that's all right now.
2 Q But regardless of --
3 The Court: For clarification, how many
4 cases have actually been heard here?
5 Mr. Epley: This is the first one, sir.
6 Q Regardless of what the policy says, you agree
7 Safelite paid Southern Glass something for each of
8 those invoices?
9 A Yes.
10 Q You're not -- you don't have an invoice where
11 Southern Glass didn't pay -- excuse me. Where
12 Safelite paid them, zero?
13 A That happens occasionally and Department of
14 Insurance will get into that matter.
15 Q But in the 67 invoices that you submitted to Judge
16 Womble or the 67 invoices you're basing your
17 damages on, Southern Glass -- I mean, Safelite
18 paid Southern Glass something?
19 A Correct.
20 Q You don't think they -- they didn't pay it in
21 full?
22 A Correct.
23 Q And, in fact, the amount Safelite paid was the
24 same amount in the work orders; was it not?
25 A You know, sir, I'm sure you're right.

1 Q Okay. The amount Safelite paid --
2 Mr. Grantland: Your Honor, this is
3 important.
4 Q The amount Safelite paid is the amount that's
5 listed in the work order?
6 A It is not a work order, though. Not to us.
7 Q We can disagree on that. Southern Glass accepted
8 payment?
9 A If we don't accept payment, we can't pay our
10 bills. And we have to -- we have to accept
11 partially. We can do it under protest. We can do
12 it under a lot of ways. But if we don't collect
13 timely -- and there are timely payment laws, bad
14 faith laws in this state with insurance companies.
15 If we -- in certain states, not in South Carolina,
16 the -- if the bill is submitted higher, Your
17 Honor, they won't pay anything at all. In South
18 Carolina they do pay. So if we don't get paid, we
19 are out of business. So we have to get -- we have
20 to at least process that payment and appeal to the
21 courts or whomever for the amount, difference
22 amount.
23 Q So long story short, Southern Glass accepted the
24 checks from Safelite?
25 A We did cash the checks, yes, sir.

1 Q You did cash the checks. And if you didn't agree
2 to the price that's listed in the fax, why did you
3 cash the checks?
4 A I don't have it with me. I believe that in the
5 Fifth District Court of The United States the
6 Judge has said that, you know, again, they can
7 send you anything they want. There's nothing
8 stopping them from saying I'll send you a dollar.
9 We believe that this is not the correct or the
10 fair and reasonable amount. And once we're
11 allowed to continue with our case and once it's
12 our turn, I'll be glad to explain that to the
13 Court.
14 Q And you agree, Mr. Epley, that -- I mean, we're
15 talking about your Fifth Circuit Case and your
16 Connecticut case. We're not talking about USAA in
17 any of these cases, are we?
18 A I think it -- I'm not sure, but I think that was a
19 Hanover case in Connecticut and I don't know if
20 USAA was involved in the Fifth Circuit or not.
21 Q Different policies, different states, correct?
22 A I'm sure they're slightly different, yes, sir.
23 Q You agree with me, Mr. Epley, we've discussed the
24 language and the facts about performance of work
25 constitutes acceptance of the price. You agree

1 that you accepted their checks. And you argue
2 that you're entitled to more even though you
3 accepted the checks. But you agree your rights
4 are based on the terms of the policy. You do not
5 have a contract with Southern -- with Safelite or
6 USAA?
7 A We do -- we believe that the terms of the policy --
8 --
9 Q The terms of the policy control whether you're
10 entitled to any more money on your invoices?
11 A We believe the policy does not address what we did
12 and it also is ambiguous at the very least.
13 Mr. Grantland: We've already got the
14 policy, Your Honor. I think I've said
15 enough. Thank you, Your Honor.
16 The Court: Any other witnesses?
17 Mr. Epley: Thank you. Judge, I'd like
18 to call Ryan Brown, please, who is patiently
19 waiting.
20 The Court: Come on up and have a seat
21 right there.
22 Mr. Epley: How would you like me to do
23 this, sir? Just talk to Mr. Brown?
24 The Court: Ask him questions.
25 Examination

1 By Mr. Epley:
2 Q Mr. Brown, are you insured by USAA insurance
3 company?
4 A I am.
5 Q And you've been insured for many, many years?
6 A Yes, I have.
7 Q And for the most part, are you happy with the way
8 they've handled your insurance?
9 A With my insurance, I am.
10 Q Yes, sir. Okay. You've had a couple glass claims
11 in the last five years, is that correct, sir?
12 A Yes, I have.
13 Q So the first claim, which was three or four years
14 ago, I think you told me, you called USAA and you
15 got a third party on the phone and you requested
16 services, which is your right in South Carolina,
17 from a specific vendor?
18 A That's correct.
19 Q And what happened?
20 A Well, I wasn't really aware I was talking to a
21 third party. I thought I was talking to USAA.
22 And basically had a glass that was broken in the
23 back of my vehicle, and when I called in I
24 requested actually the company you have to do the
25 repair. And after going back and forth many times

1 with I guess now it's Safelite, I was told that my
2 claim may not be paid in full if it was more than
3 they thought it should be, even though I had the
4 option of going anywhere I wanted. And it was
5 also completely covered and insured for the life
6 of it if it was done through them. And going back
7 and forth a few times I made the decision to let
8 them do the repair.
9 Q Okay. Did you ever see the written guarantee from
10 USAA Insurance Company on the lifetime guarantee?
11 A I think I got something from Safelite.
12 Q From Safelite?
13 A Yeah.
14 Q But not from USAA?
15 A Not that I --
16 Q But they were representing themselves as USAA's
17 third party or maybe not even representing. They
18 just -- you thought they were --
19 A They were handling the administration of whatever
20 was being done.
21 Q Okay. How did it turn out? Were you satisfied?
22 A Initially, yeah, I was satisfied. They were quick
23 to respond. Until I started driving the vehicle
24 and found that they didn't vacuum the glass out of
25 the back hatch and it still rattles around in

1 there and a lot of little just kind of minor
 2 issues with the actual repair itself.
 3 Q Do you believe it was devalued? Was there chips
 4 or anything on the back end of the vehicle?
 5 A No. There was some bumper, I guess, replacement
 6 that they didn't put back in that caused it to
 7 actually wear paint and stuff.
 8 Q Okay, sir. And subsequently you've had another
 9 glass claim which was in 2008. I have the
 10 paperwork here. In 2008. So what happened this
 11 time?
 12 A I called USAA again. This time they did the same
 13 thing, and when I questioned them whether it was
 14 USAA I was told it was Safelite on behalf of USAA.
 15 I expressed that I wanted to speak with USAA and
 16 they told me that's who was handling, you know,
 17 getting the glass repaired.
 18 Q Did they tell you the amount they wanted to pay,
 19 what they thought was the right number to pay or
 20 however Mr. Grantland --
 21 A Not at that time. Because at this time after
 22 being kind of a little irritated the first time
 23 that they got it fixed through Safelite I again
 24 chose Southern Glass. And I got the same spiel
 25 about not paying and everything else. You know,

1 reimbursement to USAA?
 2 A I did.
 3 Q And what happened?
 4 A I sat around for about six weeks wondering where
 5 my money was. And after I decided to call back
 6 in, I got Safelite once again and was told that my
 7 claim had been closed because it didn't meet the
 8 deductible. And that was kind of the argument I
 9 had the first time. In the State of South
 10 Carolina that the breakage was covered and that's
 11 -- you know, that I was supposed to be reimbursed
 12 for it. And at that point it pushed over to
 13 someone that was a supervisor at USAA and I
 14 explained the situation, that I had gotten it
 15 fixed, paid for it and sent in a claim. They had
 16 closed my claim. They hadn't reimbursed me. And
 17 the supervisor at that point asked how much I had
 18 paid, and I don't remember off the top of my head
 19 what the number was. But I told him and asked him
 20 if he wanted to fax it over and he said that that
 21 wouldn't be an issue whatsoever and that they
 22 would be cutting a check and sending it out
 23 immediately.
 24 Q So they sent you the money? They wired you the
 25 money, correct?

1 may not pay in full and, you know, it being
 2 covered. And I just basically expressed that I
 3 didn't care for the service that I received the
 4 first time and that I wanted to continue having it
 5 repaired at my choice.
 6 Q So since we do a little business together -- I'm
 7 paying you what your rates are -- you decided to
 8 pay us what our rates are?
 9 A Absolutely.
 10 Q And so what happened? Did you turn it in for
 11 reimbursement and it was -- I think that the
 12 amount on the fax, if you will, was 260 some
 13 dollars. I can find that for His Honor. But your
 14 bill was about \$103 more.
 15 A Yeah. It was a little bit more than what -- I
 16 think when we were in the conversation they wanted
 17 to discuss a rate and one of the employees
 18 basically said they wouldn't discuss that with the
 19 client. Or, you know, with me. And that was
 20 between y'all.
 21 Q Okay. So you got a bill from us?
 22 A I did.
 23 Q And you made the -- you took care of the bill?
 24 A I paid it. I wrote a check or cash.
 25 Q Okay. And what did you -- did you turn it in for

1 A I think they wired it to my account.
 2 Q They wired you the money. It was \$442.22.
 3 A That's correct.
 4 Q So they paid you our rates?
 5 A They paid you --- paid me whatever I was charged
 6 to pay for getting the thing fixed.
 7 Q So in your opinion, everything was fine, correct?
 8 They agreed to our rates?
 9 A They reimbursed me for what I paid.
 10 Q But they did make an attempt earlier to say we're
 11 not -- we're going to only pay less?
 12 A Yeah. I think they came in with 280 something
 13 when I was on the phone.
 14 Q I think you're correct, sir. I think that's what
 15 you told me. Okay.
 16 Mr. Epley: As Ms. Stratton from this law
 17 office says, Your Honor, we have the
 18 legal right to stand in the shoes of the
 19 67 people by virtue of accepting the
 20 assignment of proceeds. So in 67 pair
 21 of shoes, we want to know why we're
 22 being treated differently than Mr.
 23 Brown. Mr. Brown was told that he would
 24 be paying -- they would only want to pay
 25 us a less amount, but they indeed paid

1 our rates when push came to shove. So
 2 that's --
 3 The Court: Questions for Mr. Brown,
 4 John?
 5 Mr. Grantland: Yes, sir.
 6 Cross-examination
 7 By Mr. Grantland:
 8 Q Mr. Brown, in the first --
 9 Mr. Grantland: Can I stand right here?
 10 The Court: Wherever you want.
 11 Q In the first circumstance -- first time you had
 12 damage to your car, when was that? How long ago?
 13 A It was probably a couple, two years. Maybe three.
 14 I'm not exactly sure.
 15 Q And Safelite did the repair?
 16 A Yes.
 17 Q And you were not -- were you billed anything for
 18 that?
 19 A No, I was not.
 20 Q Okay. And you were not satisfied? You said you
 21 still had problems with the windshield?
 22 A Still with the back window.
 23 Q Okay. Now, did you ever call back to Safelite or
 24 USAA to say hey, this isn't -- this wasn't fixed
 25 correctly?

1 A I did not. My -- and if you know a little bit
 2 about my background, my time is extremely limited
 3 and with the frustration, it would have taken more
 4 time and hassle that I felt that it was worth
 5 having to argue with and dicker with the company
 6 and take away from my job and my business.
 7 Q So even though you had a warranty for the first
 8 repair job that you had, you chose not to call
 9 them back to let them know that you're having
 10 problems?
 11 A I still have a warranty and I could still call.
 12 So that's not an -- I mean, that's still an
 13 option.
 14 Q Okay. Now, you said you and Mr. Epley do business
 15 together?
 16 A Yes, sir.
 17 Q What kind of business do y'all do together?
 18 A I do IT consulting, computer engineering,
 19 networking and administration.
 20 Q And is he one of your customers?
 21 A He is.
 22 Q Now, the second glass claim you had, now, did your
 23 glass claim -- the second time you had a glass
 24 claim, is it a part of this lawsuit for Mr.
 25 Epley's claim?

1 A I don't have a clue.
 2 Q Has he ever asked you to make -- assign any rights
 3 he has under the policy? I mean, rights you have
 4 under the policy?
 5 A I don't understand what you're asking me.
 6 Q He has 67 assignments based on 67 invoices. I'm
 7 trying to figure out are you one of the 67?
 8 A I expect I would be.
 9 Mr. Epley: Can I answer that? No. No.
 10 Mr. Brown did not file a claim through us.
 11 He paid us directly.
 12 Q So the second time you had a -- the second time
 13 you had damage to your car was when? A year or so
 14 ago?
 15 A Not even. It was in '08. It's maybe quite a
 16 year.
 17 Q Okay. And did you go straight to Southern Glass
 18 or did you call USAA yourself?
 19 A I called USAA and then went over -- want to
 20 Southern Glass, I believe.
 21 Q And when you called USAA, Safelite took your call
 22 and took your information about who you are and
 23 the policy and what happened; is that correct?
 24 A As far as I know.
 25 Q And I assume you told Safelite that you were going

1 to go to Southern Glass?
 2 A Actually, they were telling me there were
 3 preferred carriers in the area, and I asked them
 4 to give me a list and they gave me a list and I
 5 had only heard of one out of four maybe. And --
 6 Q They gave you four different carriers who were
 7 preferred?
 8 A Three or -- maybe three or four and I hadn't heard
 9 of any of them but one and I know that the one
 10 that they gave me wasn't very reputable, at least
 11 in the opinions I received. So I asked them about
 12 getting it done at my choice.
 13 Q Which was Southern Glass?
 14 A That's correct.
 15 Q And you know him and do business with him?
 16 A That's correct.
 17 Q So you told him I want to do -- I want to get my
 18 glass repaired with Southern Glass, and what did
 19 Safelite tell you?
 20 A That I had the option of doing that. They
 21 couldn't guarantee that it would be warrantied,
 22 that they did express that, and they wouldn't
 23 necessarily -- that if it was more than the amount
 24 that I may not be covered.
 25 Q They told you that if Southern Glass's price was

1 more than what USAA's approved price was, you
 2 would not -- you would have to pay for that
 3 yourself?
 4 A I may not be covered. They didn't say I may have
 5 to pay for it. They said I may not be covered.
 6 The Court: Let me stop you there. Who
 7 is they? Who were you talking to?
 8 A Safelite.
 9 The Court: Not an adjuster?
 10 A No, sir. I was talking to Safelite.
 11 The Court: Go ahead.
 12 Q Safelite, did they communicate to you that they
 13 are a third-party administrator for USAA?
 14 A Yeah. And I communicated with them that I wasn't
 15 pleased the way things were being handled by them.
 16 Q But they didn't hide who they were? They didn't
 17 hide the fact that they were a third-party
 18 administrator for USAA?
 19 A No. They were speaking on behalf of USAA.
 20 Q And so you told them you wanted to go to Southern
 21 Glass. Did you -- do you know whether a work
 22 order was sent to Southern Glass?
 23 A I have no idea.
 24 Q Did Mr. Epley produce -- show you a fax from
 25 Safelite to Southern Glass?

1 A Not to my knowledge.
 2 Q And do you know what paperwork Mr. Epley submitted
 3 to Safelite?
 4 A I wasn't privy to that.
 5 Q You just paid out-of-pocket -- you paid it
 6 directly to him?
 7 A Here's an invoice. I said here's a check. Or
 8 cash. Like I said, I don't remember if I did check
 9 or cash. I probably did check.
 10 Mr. Epley: I didn't submit any invoice
 11 on his behalf.
 12 Q Okay. So -- well, you didn't -- you paid Mr.
 13 Epley directly. He didn't submit an invoice to
 14 Safelite. Did you submit the bill to USAA?
 15 A I did. That's what I just stated earlier, that
 16 they closed my claim and didn't reimburse me.
 17 Q When did you submit your bill? Was it --
 18 A It was after I got the repair work done and it was
 19 paid for.
 20 Q Okay. And when did you follow up with Safelite?
 21 A Well, I followed up with USAA and got Safelite.
 22 Q When did you follow up with US --
 23 A Like I said, four or six weeks later when I didn't
 24 have my money.
 25 Q Okay. And then they paid you your money?

1 A USAA wired me my money.
 2 Q Okay. You asked for reimbursement on a claim that
 3 you were told is closed?
 4 A Let me go through this again for you. I called in
 5 and asked where my reimbursement was on my claim.
 6 It showed, even on my online status, that the
 7 claim was closed. Being the claim closed, I
 8 wanted to know why I hadn't been reimbursed. At
 9 that point it was a matter of getting some hubbub
 10 about it was under the deductible and I -- at that
 11 point I fired off in the State of South Carolina I
 12 have full coverage. It's not a deductible for
 13 this. I'm owed this money. And I ended up
 14 getting someone from -- at that point, to my
 15 knowledge, from USAA that expedited the situation
 16 and wired me my money.
 17 Q Okay. You spoke to, I guess, a supervisor, a
 18 claims supervisor?
 19 A It's all recorded. I'm sure they can find out who
 20 it is.
 21 Q And they wired you the full amount?
 22 A That's correct.
 23 Mr. Grantland: Just a second, Your
 24 Honor. I have no other questions. Thank
 25 you.

1 The Court: You're excused. Any
 2 objection to him leaving?
 3 Mr. Grantland: No, Your Honor.
 4 The Court: You're excused. Thank you
 5 for coming. Now, before we go any further,
 6 are there any other witnesses here that are
 7 not in your employ?
 8 Mr. Epley: I have no other witnesses,
 9 sir.
 10 The Court: So you're done?
 11 Mr. Epley: I have some more to talk
 12 about, but I'm not --
 13 The Court: Okay. But, I mean, you've
 14 got two employees here. Do you plan at some
 15 point to call them?
 16 Mr. Epley: I do not, sir. They can go,
 17 if they'd like. It's up to them.
 18 The Court: So you're pretty much at the
 19 end of your case?
 20 Mr. Epley: I would like the opportunity
 21 to question Ms. Palmer.
 22 The Court: You're going to get that
 23 opportunity. I'm just telling you there are
 24 two, four, six, seven people left in this
 25 room and 78 more about to descend on us again

at the two o'clock time period.

Mr. Epley: Yes, sir.

The Court: I'm going to make either the seven of y'all mad and have you come back tomorrow or the 78 people. I guess you've already figured out I'm not making 78 of them come back tomorrow. So if we're at a point now that you don't have witnesses that's going to have to come back, that are not in any way involved in this other than a witness. I don't mind telling you you're going to have bring your employees back. I don't mind telling the company they're going to have their people back. But I don't want to tell some citizen who's caught in the middle of this they got to come back.

Mr. Epley: That was my only witness, sir.

The Court: We'll see y'all back here tomorrow at one o'clock. Just so y'all know, it certainly disappoints me more to come back tomorrow than it does you because tomorrow afternoon is supposed to be my day off.

Mr. Epley: I'll be as brief as possible.

The Court: I promise you, y'all coming

back tomorrow at one o'clock breaks my heart.

Mr. Epley: Be as brief as possible, sir.

Mr. Grantland: Your Honor, may I -- at least if he is --

The Court: No need to be. Once I'm here, I'm here.

Mr. Grantland: Your Honor, may I -- if I may -- if at least -- if the Plaintiff has rested his case, if I may make a directed verdict for the record.

The Court: He has not rested his case. He says he has some he wants to submit.

Mr. Epley: I don't know what a directed verdict is, but I'd like to be heard out, please, sir.

The Court: One o'clock tomorrow.

Mr. Grantland: Thank you, Your Honor.

(Whereupon, the hearing was adjourned at 1:14 p.m.)

State of South Carolina)
) Certificate
County of Lexington)

Be it known that I took the foregoing hearing in the matter of Southern Glass and Plastics Company, Inc. vs. USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile; That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

The foregoing transcript of 74 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 30th day of September, 2009.

Cheri B. Williams, CVR

Notary Public for South Carolina
My Commission Expires May 21, 2015.

CONDENSED TRANSCRIPT
WORD INDEX

**HEARING
DAY TWO**

Southern Glass & Plastics Company, Inc.
vs.
USAA Casualty Insurance Company, USAA General Indemnity
Company and USAA United Services Automobile

Docket No: 2009-CV-40-1011259

09/17/09

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State of South Carolina
County of Richland

In the matter of:)
Southern Glass & Plastics) Hearing before
Company, Inc.,)
Plaintiff,) The Honorable
vs.) W.H. Womble, Jr.
DAY TWO
Docket No. 2009-CV-40-1101259
USAA Casualty Insurance)
Company, USAA General)
Indemnity Company and)
USAA United Services)
Automobile,)
Defendants.)

Taken before Cheri B. Williams, Certified Verbatim
Reporter and Notary Public in and for the State of South
Carolina, commencing at the hour of 1:12 p.m., Thursday,
September 17, 2009, at the Waverly Magistrate, 2712
Middleburg Drive, Suite 106, Columbia, South Carolina.
Reported by:
Cheri B. Williams, CVR

Exhibits

Defendant's Exhibit No. 5, CIM vs. Cascade Auto Glass;
five pages.

Defendant's Exhibit No. 6, CD-ROM of Zwart and Miller
audio.

(All Exhibits retained by the Court)

APPEARANCES

Hearing Officer: The Honorable W.H. Womble, Jr.
Waverly Magistrate
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For the Defendant: John M. Grantland, Esq.
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Witnesses: Amy Palmer

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Court Reporter's Note: Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off.

1
2 The Court: All right. When we left
3 yesterday you had called most of your case --
4 your witnesses.

5 Mr. Epley: I have called my witnesses,
6 sir, and I have a little bit more to go and
7 then I will rest my case. And I understand --
8 --

9 The Court: Let me be sure of a couple
10 things right off that I should have done
11 yesterday. I assumed them yesterday. I want
12 to be sure that I'm right. First off, you
13 are not an attorney; is that correct?

14 Mr. Epley: That is correct, sir.

15 The Court: And as such, you are
16 operating pro se. In the Magistrate's Court
17 Rules in this state it says -- and I don't
18 know quite how you do this -- that I'm
19 supposed to assist you in making sure that
20 you have presented all of your evidence
21 properly. Never have quite understood how
22 I'm supposed to be mutual and detached and
23 assist one side, but I do the best I can with
24 it.

25 Mr. Epley: Sir?

1 The Court: Yes, sir.

2 Mr. Epley: I'm pretty comfortable in my
3 business and what the issues are. If I have
4 a procedural issue, --

5 The Court: That's the only thing I can
6 help you with is a procedural issue.

7 Mr. Epley: Okay. I'm fine, sir.

8 The Court: Is there something that you
9 need?

10 Mr. Epley: I thank you for your offer.

11 The Court: Proceed.

12 Mr. Epley: We'd just like to close this
13 and thank you for coming in, Your Honor,
14 today. We'd just like you to understand a
15 few more points before we rest our case. We
16 do send a bill to the insurance company on
17 the customer's behalf. The customer has a
18 lot of different ways they could pay for
19 that. Most of the indemnification for
20 losses, the consumer prefers that they use
21 their insurance proceeds. We would like you
22 to know that we consider ourselves more than
23 fair and reasonable for the services and
24 products we provide. The rates that are
25 contested here are being paid by many other

1 carriers; Safeco, Bristol West, Selective,
2 Metropolitan Life and more. The rates that
3 we are charging, sir -- we're not gouging --
4 are much lower than USAA themselves pays in
5 areas. And I'd like to give counselor this
6 letter right here and a copy to Your Honor.
7 This is a fax sent to Dear Glass Shop Owner
8 from USAA. I'm sure Safelite Solutions,
9 their third party, sent this. It's dated
10 February 23, 2005. In the middle part of the
11 letter are the rates that the insurance
12 company themselves feel that are -- feel that
13 is fair and reasonable. The rates are very
14 easy for us to read, but I'd like to kind of
15 give you a few examples of what this means,
16 sir. Just picking a few out of the contested
17 invoices, a part #1256, which is a common
18 Ford pickup, our bill -- our bill that we
19 passed along for the insured is contested at
20 \$411.85. In using this formula, the payment
21 that USAA is happy to make is \$757.72 plus
22 tax. One more example, common Chevy pickup,
23 a late model pickup. These are not high
24 priced parts, sir. The price that we sent in
25 on behalf of the consumer is 362.46. Using

1 this formula, the total price is almost
2 597.24 plus tax. These are approximately
3 double. Just short of double of what we
4 offered in our invoice. It's very important
5 for us because we have an ethical and moral
6 standard, like Ms. Stratton said, that we
7 could bill anything we want and that's not
8 true, sir. We're billing for the services
9 that we provide and the material we provide.
10 We feel we're billing more than fair and
11 reasonable and by what USAA is paying in
12 maybe other parts of the country. We did not
13 get this. These may have been -- it's
14 somewhere. So in other parts of the country
15 they're certainly indemnifying their insured
16 twice as much as they're indemnifying their
17 insureds in this area. A high-priced one is
18 a -- for some reason, a 2007 Toyota Tundra.
19 Our bill was 915 and the -- by this formula
20 that USAA proposed themselves not too many
21 years ago, 2005 -- and some of our invoices
22 go back to 2007 -- it's \$2,093.95 plus tax.
23 That's over double. Also I have another one
24 to show that they're not alone. This is from
25 Westfield Insurance Company from Safelite

9 1 approximately the same date, sir. And these 2 are even slightly more because the labor rate 3 is higher on this Westfield than the USAA's. 4 So they're even slightly more. A couple of 5 other things that we'd like you to 6 understand. That the rates that we are 7 charging, sir, are certainly at, near or 8 below what they were ten years ago with every 9 one of our costs going up. You imagine what 10 gasoline was ten years ago, energy and 11 everything else. Most of the business in our 12 industry is done on the road. The cost of 13 vehicles, et cetera, et cetera. We also 14 would like you -- there may be some 15 misconception about this fax that Mr. 16 Grantland and I were talking about yesterday 17 that he believes that we have made some sort 18 of promise once we do the job. We need you 19 to understand, Your Honor, that the work -- 20 or the rates were not agreed to before any 21 fax was sent. They were not agreed to before 22 any fax was sent. The State says we have 23 every right to do business in the state. We 24 have been operating for 20 years and I have 25 been in this business for 34 years in this	11 1 other costs is going up has said that we just 2 can't take this anymore. And we have tried 3 to communicate, and every time we communicate 4 or try to communicate to any insurance 5 company we wind up to the third party, who 6 they say handles all their glass issues. And 7 we do have the assignment, the legal 8 assignment. We get this assignment before we 9 do the work. Sometimes during we do -- 10 during when we're doing the work and 11 sometimes after we do the work. But it's 12 always after the loss, so that makes it 13 valid, and I think the counselor here agrees 14 to that. And we wish we didn't have to, but 15 we are -- we have filed against a few 16 insurance companies, and I'll be glad to give 17 you a copy if you so wish. There is 177 18 insurance companies licensed in the State of 19 South Carolina. I'm sorry. To do business 20 in the State of South Carolina. I think 21 there's even more that are licensed in the 22 State of Carolina -- State of South Carolina. 23 Pardon me, sir. So it's not like we're going 24 crazy or anything like that. And the answer 25 to why we're not on the networks is that at
10 1 area. The consumer has the right to go 2 wherever they want to. I'll give you an 3 example of that. If you took a fax -- if you 4 made a phone call to the Publix down here, a 5 local grocery chain, and you said I want to 6 have a good meal tonight. I want ten pounds 7 of the best steak you got and I'm going to 8 pay ten cents a pound and they no, sorry, we 9 can't do it for that. But you fax it in. 10 And you walk into the store a couple days 11 later and you pick up ten pounds of steak for 12 ten cents a pound. You put a dollar on the 13 counter and you walk away. I think you'd be 14 arrested shortly thereafter for not paying 15 the bill that the -- what is proper for that 16 particular purchase. We also want you to 17 understand that we are not suit happy. We 18 have not designed anything. This situation 19 has evolved over many, many, many years. And 20 since I'm on national organization, I do know 21 that there is nobody in this industry that is 22 profitable. Everything that the -- the 23 maneuvering and the directing of the insured 24 to the third party's own business, the 25 constant decreasing in pricing while every	12 1 one point in time when we said that's enough, 2 here is the last network agreement that we've 3 seen. In this network agreement, sir, I 4 believe it's page -- it is a one-sided 5 agreement. It says in the agreement -- and I 6 can find it if you'd like, sir, the records. 7 It's number 4 -- 4.1 at the end. Safelite or 8 any insurance or fleet company -- 9 The Court: Wait a minute. 4.1? 10 Mr. Epley: 4.1, sir. Did I not have 11 that in my -- 12 The Court: That's the records? 13 Mr. Epley: It's their records. At the 14 end of the first paragraph there, it's 15 Safelite. Right in the middle of the 16 first paragraph afterwards. 17 The Court: All right. 18 Mr. Epley: "Safelite or any insurance or 19 fleet company for whose customers or insureds 20 participate has rendered services hereunder 21 shall have the right to audit such 22 transactions, books and records for verifying 23 quality and compliance with the terms of this 24 agreement." We have no problem working with 25 any insurance company, anybody that we're not

13 1 in competition with. But what this says is 2 that our competitor has the right to come in 3 our building and look through our records. 4 And not too many people are going to allow 5 that. At least we're not going to allow 6 that. So that was sort of the last straw. 7 Also this agreement does not allow for a 8 guarantee for any quantity at the largely 9 discounted rates and after a while you -- 10 when I speak to Ms. Palmer I can get into why 11 the costs are going up for companies like 12 ours and going down for the third party who's 13 also in the same business. I think that's 14 it. I appreciate you coming in today, sir, 15 to hear the end of this. And I think the 16 proper thing now is to say I rest my case. 17 The Court: Not just yet. I got to 18 assist him a couple things. What amount are 19 you asking the Court? You have not -- I 20 don't recall any testimony yet telling me how 21 much money you are asking me to award and how 22 you got to that amount. 23 Mr. Epley: I believe on the complaint -- 24 and I may not -- 25 The Court: It does, but you're required	15 1 The Court: I'll let him go ahead and be 2 questioning you and then we'll come back to 3 that. 4 Mr. Grantland: Yes, sir. 5 Mr. Epley: It was -- I'm sorry, sir. It 6 was approximately \$7200 plus change. 7 The Court: You're required to tell us 8 how much and why. In other words, you're 9 required to come in here and tell me I'm 10 asking \$21 on such and such a claim. I'm 11 asking for \$18 on such and such a claim. Or 12 I'm asking for these many claims at this many 13 dollars. You've got to put on record what 14 you're asking for. 15 Mr. Epley: I have it. And I appreciate 16 that, sir. 17 The Court: All right. Go ahead. 18 Mr. Epley: There are 67 claims, I 19 believe that says on this. 67 claims. The 20 amount is \$7,337.07. 21 The Court: And have you supplied to the 22 defense a copy of each one of those claims? 23 Mr. Epley: I have, sir. 24 The Court: They've given you the -- I 25 can't think of the --
14 1 -- once you get to court you're required to 2 state the amount of money and why. Either 3 you've got to produce -- you can't just say I 4 want \$7500 because I'm a nice guy. 5 Mr. Epley: No, sir. 6 The Court: It's got to be more than that 7 and you've got to put it on record. 8 Mr. Epley: Excuse me. I apologize for 9 the delay, sir. 10 The Court: It's okay. 11 Mr. Grantland: Your Honor, when he -- 12 after Mr. Epley submits the -- his damages 13 information, may I question him based on this 14 new testimony? 15 The Court: Oh, absolutely. I just -- 16 Mr. Grantland: I understand. 17 The Court: I'm playing that impossible 18 role. 19 Mr. Grantland: Yes, sir. I just have -- 20 The Court: Which when I retire I'm going 21 to demand an Oscar. 22 Mr. Epley: Sir, I don't have a copy of 23 it. My assistant has gone out to see if we 24 can get that amount. But if it's proper, it 25 was --	16 1 Mr. Grantland: He has. He's produced 2 the claims. 3 The Court: You got all of them? 4 Mr. Grantland: Yes, sir. 5 The Court: I'm sorry. I had a case just 6 a few minute that flustered me so I'm just -- 7 I've got to get over that one. It was 8 criminal court and he'll have a long time to 9 think about it. All right. Go ahead with 10 your questions. 11 Mr. Grantland: Thank you, Your Honor. 12 I'll sit here just like he did, if that's all 13 right with Your Honor. 14 The Court: Yeah. I'm good with it. Go 15 ahead. 16 Cross-examination 17 By Mr. Grantland: 18 Q Mr. Epley, you've brought up a February 2005 19 letter that you've brought up to Judge Womble's... 20 attention. Now, do you know if -- all of your 21 invoices are from 2007 and 2008; are they not? 22 A That's correct, sir. 23 Q So do you know if this -- what is quoted in this 24 2005 letter was even in effect in 2006, 2007? Or 25 excuse me. 2007 or 2008?

17

1 A I really don't know either way. The -- from my
 2 knowledge of the business, this appeared --
 3 appears to be folks that were not a "preferred"
 4 provider.

5 Q But this invoice is two -- this letter is two
 6 years older than your invoices that you've
 7 submitted in this court?

8 A That is correct.

9 Q Now, do you -- and whether it's relevant to USAA's
 10 policy in 2007 and 2008, you really don't know?

11 A USAA's policy? No. I was just making the point
 12 that there's a very large price discrepancy that
 13 has been paid in the recent past.

14 Q Okay. Now, you talk about the fax that is
 15 received and we talked about the -- I think one of
 16 the faxes I showed the court yesterday was a Thad
 17 Miller fax.

18 Mr. Grantland: And I think that's
 19 Exhibit One, Your Honor, if you have that. I
 20 believe.

21 The Court: I'm sure that I do.

22 Mr. Grantland: Yes, sir.

23 Q And in that -- you said rates were agreed before
 24 the fax was sent?

25 A Correct.

18

1 Q Rates were quoted before the work was done; is
 2 that correct?

3 A That is correct.

4 Q So rates were discussed before you did work?

5 A That's correct.

6 Q And the fax was sent before work was done; is that
 7 correct?

8 A Not necessarily. Sometimes the fax comes over a
 9 couple days later.

10 Q But it's around the same time frame?

11 A Could be before; could be after.

12 Q Okay. All right.

13 A I will add to that that since we've had so much
 14 trouble and experience in dealing through our
 15 competitor, we generally are starting the work or
 16 the work process by the time we call -- we assist
 17 our customer in making a timely claim. So our
 18 work has started. If nothing else, the paperwork
 19 part of the work or the -- just the paperwork part
 20 of the work.

21 Q Okay. But this -- you agree this fax didn't come
 22 -- I mean, this fax was either before you started
 23 the actual physical work or during -- while you're
 24 doing the physical work, you would have --

25 A Not necessarily, sir.

19

1 Q But are you saying it would have come a month
 2 later or a week later?

3 A Could be two or three days later.

4 Q Okay. Now, you testified to the court about the
 5 profit and decreasing pricing. Now -- and I bring
 6 this up only because you mentioned pricing. Do
 7 you have a different price for a cash -- for a
 8 cash customer versus an insurance company?

9 A We do not, sir. We discount according to the
 10 market. We find that in a lot of cases we have to
 11 try to get close to a cash market price. And
 12 believe it or not, Mr. Grantland, the leader in
 13 the cash market pricing is, again, Safelite Glass
 14 Company.

15 Q So your cash price and insurance price is the
 16 same?

17 A We try to stay somewhere near their cash prices.

18 Q Okay. Now, you mentioned the assignment. You
 19 agree that your assignment is based on the terms
 20 of the policy?

21 A That's what -- that's what we're looking at, yes,
 22 sir.

23 Q And just make sure we're all on the same page.
 24 You mentioned the policy. You relied on page 20
 25 of the policy yesterday. Or excuse me. Page 19

20

1 of the policy yesterday; did you not? You looked
 2 at page 19 of the policy about physical damage
 3 coverage?

4 Mr. Grantland: Your Honor, I'm looking
 5 at, I guess, Exhibit Four, which is -- you
 6 have a certified copy.

7 Q You relied on page 19 of the policy in your
 8 testimony yesterday; did you not?

9 A I'm sure I did somewhere along the line.

10 Q And you relied on page 20 of the -- of 26 as well,
 11 didn't you?

12 A I think I mentioned that page also, yes, sir.

13 Q Yes, sir. And you -- now, does the copy you have
 14 -- I know I've given a certified copy to the
 15 Court. Does the copy you have also include the
 16 amendment of the policy?

17 Mr. Grantland: Your Honor, that's in the
 18 back and it begins at page one of five.

19 Q Does your policy have the amendment? --

20 A If you'll bear with me just a second, sir. Are
 21 you -- what page of the amendment are you
 22 referring to?

23 Q Page One. I just gave you a copy of it.

24 A Is it right here?

25 Q Yes, sir.

1 A Okay.

2 Q Now, did you know that at the top of the amendment

3 it says this amendment replaces Part D in its

4 entirety?

5 A Part D?

6 Q Which is -- begins on page 19.

7 A I see where it say that, yes, sir.

8 Q So you would agree with me if this amendment

9 replaces Part D in its entirety, this is the

10 controlling policy language?

11 A I would read this as if the amendment changes

12 anything in the original policy, then there is --

13 that would be amended.

14 Q Right. So --

15 A So if it's not amended, then the original policy

16 would have to be relied on.

17 Q And your assignment is based on the terms of the

18 policy. That's how you're able to sue USAA

19 because you have an assignment to pursue a claim

20 under the terms.

21 A Go right ahead, sir.

22 Q Is that correct?

23 A Yes, sir.

24 Q So you would agree the terms of this amendment are

25 very important?

1 A The terms of the amendment are certainly

2 important.

3 Q Okay. And just to point out, you see the

4 definition of repair on page one means restoring

5 the damaged property to its pre-loss operational

6 safety, function and appearance. This may include

7 the replacement of component parts. Do you see

8 that?

9 A Yes, sir.

10 Q So you agree that under the terms of the policy,

11 repair and replace-- replacement could also be

12 included in the definition of repair?

13 A Yes.

14 Q The goal is to put the car back in its pre-

15 accident condition?

16 A If you'll give me a second, please. Yes, sir.

17 Q Okay. And then we've talked about page three of

18 five of the amendment, again which is the terms of

19 the policy. And you're familiar with page three

20 of five, paragraph B1 that says the limit of

21 coverage is the amount necessary to repair the

22 loss based on our estimate or an estimate we

23 approve?

24 A I certainly can see that.

25 Q That's what the policy says?

1 A That's what the policy says.

2 Q Okay. Then you gave Judge Womble a Network

3 Agreement from December 2006.

4 A Yes, sir.

5 Q Now, was this in effect when any of your work was

6 done in -- do you know if this was -- if this has

7 anything to do with any of the work you did in

8 2007 or 2008?

9 A I do not believe so. To the best of my

10 recollection, that was the straw that broke the

11 camel's back.

12 Q And whether this -- this is dated before any of

13 your invoices? Before you did any of the work?

14 A Yes, I believe that's correct.

15 Mr. Grantland: I have no further

16 questions, Your Honor.

17 The Court: I need to clarify. Yesterday

18 you mentioned some -- you mentioned a statute

19 that says that you can't charge a deductible

20 in this state for somebody with full coverage

21 glass; is that right? Do y'all agree?

22 Mr. Grantland: Yes, sir.

23 Mr. Epley: Yes, sir.

24 The Court: Do either of you know the

25 statute? I've googled it and everything else

1 up here and I can't find it.

2 Mr. Epley: I've been reading a lot of

3 the law and the statute, sir, and it's

4 certainly in there. I don't have --

5 The Court: The other one, there was a

6 statute mentioned yesterday that says the

7 insurance company can't own a glass company.

8 Mr. Grantland: That's what you said.

9 The Court: I asked yesterday and y'all

10 both agreed yesterday that that was the

11 statute.

12 Mr. Grantland: We haven't been able to

13 find a statute to that effect, Your Honor,

14 but --

15 Mr. Epley: To be just straightforward, I

16 don't know if it's legal or illegal. My

17 point is it's --

18 The Court: I remember from another case

19 that was brought up. I just can't find it.

20 Mr. Grantland: Yes, sir. We --

21 The Court: It's either a Supreme Court

22 decision that it would be inappropriate or a

23 statute. That's what I asked y'all yesterday

24 was it a statute and y'all both said yeah.

25 But I can't find it.

25

1 Mr. Grantland: Your Honor, I certainly
 2 want to agree with you, but --
 3 The Court: I think it may part of the
 4 Fair Trades Act that doesn't allow you to
 5 come in and take a -- just like it doesn't
 6 allow a doctor to own a hospital.
 7 Mr. Grantland: Yes, sir.
 8 The Court: But nobody has it.
 9 Mr. Epley: No, I haven't. I just would
 10 comment it's --
 11 The Court: Both -- yesterday both of you
 12 agreed that that's the rule and both of you
 13 said that existed so nothing to argue about.
 14 I'll trust both of you that you're right.
 15 Mr. Grantland: Again, Your Honor, I'm
 16 not -- it would make sense, but I'm not aware
 17 of a statute.
 18 The Court: Okay. Any other testimony?
 19 Mr. Epley: We will rest, sir.
 20 The Court: They have rested. Counsel?
 21 Mr. Grantland: Your Honor, at this time,
 22 with all due respect to Mr. Epley, I'd ask
 23 for a motion for a directed verdict. Your
 24 Honor, in a light favorable to Mr. Epley --
 25 and you'll have an opportunity to speak. In

26

1 a light favorable to Mr. Epley and Southern
 2 Glass, assume everything Mr. Epley said today
 3 and yesterday is true. He has still not
 4 proven -- or has still not presented evidence
 5 that USAA violated the terms of their policy.
 6 That is the only issue before this court. He
 7 stands in the shoes -- he stands -- he's
 8 wearing two hats. He's wearing the hat of an
 9 insured through his assignment. He's wearing
 10 the hat of Southern Glass. And in this case,
 11 standing in the shoes of the insured, he has
 12 alleged that USAA violated the terms of their
 13 policy by not paying Southern Glass's invoice
 14 one hundred percent. In light -- and, Your
 15 Honor, I submit to you that he has produced
 16 no evidence that that was a -- that by USAA
 17 not paying the invoice a hundred percent,
 18 that that violated USAA's policy. In a light
 19 favorable to him, to Southern Glass, Your
 20 Honor, they did work on 67 cars insured by
 21 USAA. They -- before they did work, they
 22 were -- or while they did work, they received
 23 a fax that had a price. That fax said
 24 performance of work constitutes acceptance of
 25 service. Performance of the work constitutes

27

1 acceptance of the price. They did the work.
 2 They submitted an invoice to USAA for their
 3 price for the work. USAA paid something on
 4 every invoice. Not -- I mean, in every --
 5 all 67 something was paid. It wasn't paid a
 6 hundred percent, but something was paid on
 7 each one. Rather than ask his customer for
 8 the difference in price, he took an
 9 assignment so that he could step in the
 10 customer's shoes and make a claim and --
 11 under the policy. His rights are no
 12 different from the insureds. If an insured
 13 has no rights to money under the policy,
 14 neither will he. And we spent a lot of time,
 15 Your Honor, talking about the policy. You
 16 have -- I blew up some pages up that are very
 17 important to me. You have a certified copy
 18 of that policy hand-delivered from Texas.
 19 From my perspective, that's the most
 20 important evidence in this case because the
 21 policy is a contract. Did we violate this
 22 contract by not paying the glass claim a
 23 hundred percent or did we not? That's the
 24 issue. Mr. Epley talked about page 19 of 26
 25 of the policy, physical damage coverage. We

28

1 wasted your time, Your Honor, and I apologize
 2 for that, debating repair and replace, which
 3 is on page 19 of 26 of the policy. Mr. Epley
 4 -- I asked Mr. Epley what he based his --
 5 what under the policy did he base his belief
 6 that Southern Glass should be paid a hundred
 7 percent. He relied on page 20 of 26, which
 8 says for partial losses limit of liability is
 9 the amount necessary to repair or replace
 10 damaged or stolen property or parts. That's
 11 what he relied on. Well, Your Honor, you
 12 have -- you have a policy. The policy also
 13 includes an amendment. It says this
 14 amendment replaces Part D in its entirety.
 15 So the part of the policy that he relied on
 16 yesterday is not -- isn't applicable. The
 17 part -- the part of the policy where he
 18 relied on that he's entitled to an amount
 19 necessary to repair the loss is not
 20 applicable. This amendment, which you have,
 21 pages one through five, that's the contract
 22 between the insured and USAA because this
 23 amendment replaces part D in its entirety.
 24 Repair is defined. Repair is restoring the
 25 damaged property to its pre-loss condition.

1 This may include the replacement of component
 2 parts. So from USAA's perspective, if it
 3 means repair or if it means replace, it's the
 4 same thing. You know, whatever needs to be
 5 done. You're not going to replace a whole
 6 windshield if you have a small crack, but
 7 repair means -- can also include replace.
 8 What are USAA's duties under the policy?
 9 That's under page three of five of the
 10 amendment. It's very clear, Your Honor. Our
 11 limit of liability under comprehensive
 12 coverage, that's what entitles a person
 13 making a glass claim. And collision coverage
 14 is the amount necessary to repair the loss
 15 based on our estimate or an estimate that we
 16 approve if submitted by you or a third party.
 17 That's the contract. That's it. Did USAA
 18 violate this by paying what they approved?
 19 They gave Southern Glass a number in this
 20 fax, whether it was -- you have the Miller
 21 work order that has the number spelled out.
 22 You have another work order that has the
 23 number broken down. But they gave Southern
 24 Glass USAA's number. USAA's number is our
 25 estimate or an estimate that we approve if

1 submitted by you or a third party. Your
 2 Honor, how did USAA violate the policy if
 3 they paid what they approved? That's all
 4 they're required to do in the policy. Mr.
 5 Epley may say it's unfair. It's not right.
 6 But that's between the insured and -- between
 7 the insured and insurance company. This is
 8 the contract. The contract says USAA only
 9 has to pay either based on their estimate or
 10 an estimate they approve if submitted by
 11 someone like Southern Glass, a third party.
 12 There's no dispute that that's what they did.
 13 They paid what they approved. He contends
 14 that by paying -- by not paying the invoice
 15 in full they violated the policy, but the
 16 policy doesn't require payment in full. It
 17 requires payment based on what they approve,
 18 which is right here in the language. So
 19 that's the issue. And second, Your Honor,
 20 whether Mr. Epley agrees with us or not, with
 21 -- there's no question in my mind the policy
 22 was not violated, but -- in a light favorable
 23 to Mr. Epley. But, second, Your Honor, if
 24 you look at the fax that he presented, a
 25 contract was created, a contract for USAA's

1 price. He received a fax from Safelite with
 2 a number, with an approved number, and every
 3 one of the faxes said performance of work
 4 constitutes acceptance of the price. He
 5 acknowledged --

6 The Court: Even with the ones he's
 7 already began work on?

8 Mr. Grantland: Right. He's -- well, he
 9 says some of them came -- I think his
 10 testimony is some of them came before and
 11 some of them came after. But either way, --

12 The Court: You're telling me if I'm
 13 insured with USAA and my windshield is broken
 14 at two o'clock in the morning and I'm fixing
 15 to go out of town, I can't call you and say
 16 fix my windshield; we'll deal with the
 17 insurance stuff when I get back?

18 Mr. Grantland: Yes, you can.
 19 Absolutely.

20 The Court: Okay. I just want to be sure
 21 what you're telling us.

22 Mr. Grantland: The issue is what -- the
 23 issue is how much will USAA pay of his
 24 invoice.

25 The Court: All right. Then talk to me

1 some more about the statute that stated it
 2 doesn't allow a deductible. Y'all talked
 3 about that yesterday.

4 Mr. Grantland: Yes, sir -- that's not --
 5 that's not --

6 The Court: I think it's very tantamount
 7 to it, John. I don't know that your contract
 8 is going to hold up if it's in violation of
 9 our state law. So what's that statute? Tell
 10 me what it is. Tell me what that statute
 11 says.

12 Mr. Grantland: Your Honor, --

13 The Court: If that statute says you have
 14 to pay a hundred percent, I don't care what
 15 your contract says.

16 Mr. Grantland: I do not believe the
 17 statute says --

18 The Court: I don't know what it says.

19 Y'all brought it up yesterday. I'm asking
 20 you to talk to me.

21 Mr. Grantland: Well, Your Honor, I don't
 22 have a copy of the statute in front of me.

23 The Court: Do you know what it is?

24 Mr. Grantland: No, sir.

25 The Court: I've got to -- I've got it up

1 on the internet. All I have to do is just
2 find it.
3 Mr. Grantland: But -- my point --
4 The Court: Y'all mean to tell me y'all
5 come in here to argue a great big old case
6 like this over insurance and nobody knows
7 what the statute is?
8 Mr. Grantland: Well, the deductible is
9 not -- it's not -- that's not the issue in
10 the case.
11 The Court: Well, I don't know whether it
12 is or not. I'd like to see it. That's
13 what's been brought up, this may be
14 tantamount to a deductible.
15 Mr. Grantland: Yes, sir.
16 Mr. Epley: Deductibles are not applied.
17 It's something to that order.
18 The Court: Where's it at?
19 Mr. Epley: I'm slow on that thing. I'm
20 sure you're --
21 Mr. Grantland: I think we both agree
22 that there are no deductibles -- no
23 deductibles apply. I mean, it is the amount
24 that's in question.
25 The Court: So, in other words, you're

1 saying no deductibles apply, but if I don't
2 want to pay the right amount, the provider's
3 got to eat it and can't call it a deductible.
4 Mr. Grantland: I'm saying that USAA --
5 The Court: I'm asking you. I'm not
6 putting words in your mouth. I'm asking you
7 is that what you say it is.
8 Mr. Grantland: No, sir. No, sir.
9 The Court: Okay. I just want to be sure
10 I know what we're talking about.
11 Mr. Grantland: No, sir. I'm saying that
12 under your contract with USAA, USAA will --
13 and it's right here. USAA will repair the
14 loss based on --
15 The Court: I understand it. I read it.
16 Mr. Grantland: And they will identify at
17 least a facility that's willing and able to
18 complete the repair for the amount of the
19 estimate.
20 The Court: But is it -- is that in -- is
21 that in contrast to our law? Is that
22 contradictory to what South Carolina says
23 concerning deductible? Would that be?
24 Mr. Grantland: I do not think it would
25 be.

1 The Court: Do y'all need to take a
2 recess and find it for me?
3 Mr. Grantland: We can if you want, but,
4 I mean, --
5 The Court: Y'all got the computers.
6 Ms. Stratton: I know right where it is.
7 I can find it very quickly for you.
8 The Court: Will you do that for me,
9 please? If you give me the section number, I
10 can go right to it in a second.
11 Ms. Stratton: Well, I don't know the
12 exact section number, but I can find it.
13 The Court: Find it for me. We'll take a
14 ten minute recess.
15 Mr. Grantland: Thank you, Your Honor.
16 (Off the record from 1:47 p.m. to 2:22 p.m.)
17 The Court: Thank you. They tell me
18 you've found out.
19 Mr. Grantland: Yes, sir. Well, Ashley
20 did.
21 Ms. Stratton: It's highlighted on your
22 screen.
23 Mr. Epley: When it's permissible, sir,
24 I'd like to reply to Mr. Grantland's --
25 The Court: I don't think he was finished

1 yet.
2 Mr. Epley: I'm sure he's not.
3 The Court: Go right ahead, counselor.
4 Mr. Grantland: Thank you, Your Honor.
5 May it please the court?
6 The Court: Yes, sir.
7 Mr. Grantland: I apologize that we were
8 not prepared to discuss deductible because
9 from our --
10 The Court: I'm not -- I just wanted to
11 see what it particularly said.
12 Mr. Grantland: Yes, sir. And the issue
13 is addressed in Section 38-77-280, Subsection
14 B. There's no deductible for glass claims.
15 And, Your Honor, that -- the USAA policy --
16 Mr. Epley: Sir. Excuse me. It that
17 what it says, no deductible for glass claims?
18 The Court: Any automobile physical
19 damage insurance coverage deductible or
20 policy deductible does not apply to
21 automobile safety glass.
22 Mr. Grantland: That's what it says.
23 Mr. Epley: Thank you, sir.
24 Mr. Grantland: And that's 38-77-280.
25 Your Honor, the USAA policy -- nothing

1 printed, Your Honor. You have a jam.

2 The Court: That's a midjet printer. You
3 have to be midjet to get down there.

4 Mr. Grantland: Your Honor, if I can
5 direct your attention to page two of five of
6 the amendment under the insuring agreement.

7 The Court: This is the Safelite Network
8 Participation?

9 Mr. Grantland: No. No, sir. The
10 policy. And you have a certified copy of the
11 policy. I can show it to you right here.
12 This is --

13 The Court: It's Exhibit Four?

14 Mr. Grantland: Yes, sir. Where that
15 yellow tab is, I think that yellow tab is on
16 page three of the amendment, if I can direct
17 you to it. I just wanted to show you --

18 The Court: All right.

19 Mr. Grantland: I gave you page two of
20 five, Your Honor, under the insuring
21 agreement there at A1.

22 The Court: Right.

23 Mr. Grantland: At the very end it says
24 no deductible under comprehensive or
25 collision coverage applies to the cost of

1 repairing or replacing damaged automobile
2 safety glass. So my point in showing you
3 that is just to make very clear that the USAA
4 policy complies with South Carolina law
5 regarding safety glass deductibles. You
6 know, the law doesn't -- the law says there's
7 no deductible. Our policy says there's no
8 deductible. And the policy says on page
9 three, and to paraphrase, USAA will find you
10 a shop that will pay for the repairs so that
11 you're not out-of-pocket anything. And --
12 but if you go to a third party, we'll pay
13 what we approve of the estimate. And that's
14 -- so, I mean, the policy is perfectly
15 consistent with South Carolina law. Second,
16 Your Honor, what I was -- when we got on the
17 subject of deductibles, Your Honor, I believe
18 if Your Honor looks at the case from the
19 perspective of Southern Glass, a contract was
20 created by Southern Glass's conduct. There's
21 no -- they acknowledge that they received a
22 customer who had insurance with USAA. They
23 acknowledge phone calls were made. They
24 acknowledge a fax was received. They
25 acknowledge that -- in a light favorable to

1 Mr. Epley, he admitted that the faxes say
2 that performance of the work constitutes
3 acceptance of the price and terms. Your
4 Honor, and they did the work. An offer of
5 price was made and by doing the work they
6 accepted the price. And, Your Honor, this
7 isn't the first time this issue has been
8 addressed.

9 The Court: Wait a minute. Wait a
10 minute. I thought you said just a few
11 minutes ago you concurred that in many cases
12 work was already either underway or done when
13 the fax got there?

14 Mr. Grantland: That's what -- Your
15 Honor, he said -- I believe he said that the
16 fax either got to him before -- maybe while
17 they were doing paperwork or before they did
18 work on the car. I certainly didn't say --

19 The Court: I just want to be sure what I
20 heard.

21 Mr. Grantland: Yes, sir. But my point
22 is, Your Honor, this issue has been -- I want
23 to at least bring the Court -- to the Court's
24 attention that this issue has been decided
25 before in North Carolina. In North Carolina

1 -- and I give the Court the case of -- I ask
2 that that be an exhibit, Your Honor.
3 Defendant's Exhibit No. 5, CIM vs. Cascade
4 Auto Glass; five pages.

5 Mr. Grantland: The case of CIM Insurance
6 Company versus Cascade Auto Glass, 190 NC
7 App. 808 660 S.E. 2d 907, June 2008. That
8 case --

9 Mr. Epley: I object, sir. There's
10 higher courts that ruled exactly the opposite
11 of that.

12 Mr. Grantland: If you'll allow me to
13 finish.

14 The Court: Let me hear his argument.
15 Then we'll get to that.

16 Mr. Grantland: Your Honor, I mean, this
17 is -- there are no South Carolina cases
18 directly on point, but this was a -- this is
19 -- a North Carolina case from the North Carolina
20 Court of Appeals that is literally the same
21 issue. It involved GMAC and Cascade Auto
22 Glass. GMAC asked the court to determine
23 whether a contract was made when work orders
24 were sent with the words performance of the
25 work constitutes acceptance of the price.

1 That's exactly what -- this case involved a
 2 different glass company, but involved
 3 Safelite and it involved GMAC Insurance
 4 Company. So Safelite was in the case, a
 5 different insurance company, a different
 6 glass company, but the same set of facts.
 7 Safelite sent the glass company a work order,
 8 a fax that said performance of the work
 9 constitutes acceptance of the price. The
 10 glass company did the work, sent an invoice
 11 for a higher amount and said there's no
 12 contract. Said unilateral -- it's unilateral
 13 offer. No contract. North Carolina court
 14 disagreed. And I would argue, Your Honor,
 15 that that's exactly the same situation we
 16 have here. He did -- he received a price
 17 that USAA would pay. He did the work. I
 18 mean, he's a very experienced businessman,
 19 Your Honor. This is not foreign to him. He
 20 did the work. There was an offer of price.
 21 There was acceptance. In North -- under this
 22 case --
 23 The Court: Hold on.
 24 Mr. Grantland: Yes, sir.
 25 The Court: Back up. Let me ask you

1 this.
 2 Mr. Grantland: Yes, sir.
 3 The Court: What you just said to me.
 4 Who offered that money to him?
 5 Mr. Grantland: Safelite on behalf of
 6 USAA. The price was the -- USAA's approved
 7 price.
 8 The Court: But USAA didn't do it.
 9 Safelite did.
 10 Mr. Grantland: Safelite on behalf of
 11 USAA did it. Safelite -- I mean, the
 12 document says this is the maximum --
 13 The Court: Is this the same Safelite
 14 that paid more for the same windshield in
 15 another state?
 16 Mr. Grantland: No --
 17 Mr. Epley: Yes, sir.
 18 Mr. Grantland: No, sir. This is
 19 Safelite Solutions who manages USAA's glass
 20 claim -- who handles glass claims -- the USAA
 21 glass claims program.
 22 The Court: For the whole country?
 23 Mr. Grantland: Yes, sir.
 24 The Court: And his claim is that they
 25 sometimes pay more in other places for the

1 exact same work; is that correct? That's his
 2 claim?
 3 Mr. Grantland: That's his claim. And
 4 from my perspective --
 5 The Court: I just want to be sure.
 6 Mr. Grantland: Yes, sir.
 7 The Court: I just want to be sure that
 8 your argument is that Safelite is the one
 9 that's dealing with him, not USAA?
 10 Mr. Grantland: No. No. My argument is
 11 Safelite is representing USAA in dealing with
 12 him. Safelite is contracted --
 13 The Court: You don't know whether
 14 Safelite offered him what USAA authorized or
 15 not?
 16 Mr. Grantland: No. It's in the -- it's
 17 in the -- he admitted it. It's in the work
 18 orders. They received a fax.
 19 The Court: Yeah. But you don't know
 20 whether they offered him the full amount?
 21 Mr. Grantland: Well, the price is listed
 22 in the order. I mean, --
 23 The Court: So Safelite puts in --
 24 Mr. Grantland: USAA's approved price.
 25 The Court: Safelite puts in 2004

1 Avalanche, like the case you gave me just now
 2 on Mr. Larry something or another. Miller or
 3 something. And if he's going to have it
 4 repaired at Safelite or at his place or in
 5 Oshkosh, Wisconsin, this computer is going to
 6 offer the exact same price to all three
 7 locations to fix it?
 8 Mr. Grantland: Your Honor, I can't speak
 9 to that. I don't know what --
 10 The Court: We're going go into that in a
 11 little bit, I hope, right?
 12 Mr. Grantland: I mean, we can. But from
 13 my perspective, the issue in this case is did
 14 USAA violate their policy.
 15 The Court: Okay. I'm trying to find out
 16 just to be sure that -- I think I know what
 17 his argument is and what the case is based
 18 on, but you're saying it's something
 19 different.
 20 Mr. Grantland: Well, my -- the bottom
 21 line, Your Honor, is he's --
 22 The Court: I understand. Please
 23 understand I'm in that unbelievable role.
 24 Mr. Grantland: Yes, sir.
 25 The Court: All right. Go ahead.

1 Mr. Grantland: Yes, sir. The bottom
2 line is if Mr. Epley stands in the shoes of
3 an insured making an insurance claim.

4 The Court: I understand. I agree.

5 Mr. Grantland: And his policy -- and the
6 insurance policy says that -- very clearly we
7 pay based on our estimate or an estimate that
8 we approve if submitted by a third party.
9 That's what the policy says. And that's
10 exactly what USAA did in this case.

11 The Court: Well, actually he's standing
12 in his shoes as a -- he's standing in two
13 sets of shoes, I guess you would say. He's
14 wearing two hats today.

15 Mr. Grantland: But he has no -- but at
16 least in this lawsuit, he is -- the only
17 reason he can sue USAA in this lawsuit is by
18 virtue of his assignment and so --

19 The Court: He sued you as Southern
20 Glass, not on each one as individuals.

21 Mr. Grantland: Yes, sir. And there's --

22 The Court: And you didn't object to
23 that.

24 Mr. Grantland: No. I acknowledge that
25 his assignment is valid.

1 The Court: Okay.

2 Mr. Grantland: But the issue is did we
3 breach the policy. The policy says we pay
4 what we approve.

5 The Court: All right. Are you done with
6 the motion?

7 Mr. Grantland: Yes, sir.

8 Mr. Epley: So let me see if I can
9 announce this, sir. The case that
10 counselor has given is in North Carolina. It
11 was a couple of years ago. Obviously feel it
12 was a bad ruling. It's a unilateral
13 decision. What it says if one guy says this
14 is what I'm going to do and the other guy
15 doesn't agree, the Court, in that case, said
16 well, that's just the way it is. That's
17 going to happen. But last month in the State
18 of Connecticut -- and I am not a lawyer so I
19 do not have it and I don't think those folks
20 would object. In the State of Connecticut
21 the same thing was heard with Hanover
22 Insurance Company and some glass people in
23 Connecticut. And it went to the Supreme
24 Court, not a lower court. And the Supreme
25 Court said it had to be remanded back to the

1 lower court to decide if things were fair and
2 reasonable because it is unilateral. It
3 wasn't accepted. It was just a one-sided
4 deal. A contract is two-sided and they said
5 -- it also -- they wrote the same thing that
6 we're claiming for ambiguity. It was
7 ambiguous and therefore it had to go -- the
8 decision had to go to the benefit of the
9 policyholder, the consumer. So we'd like to
10 also, if I can, address the gentleman's
11 statement on this particular policy. In the
12 State of South Carolina there are no
13 deductibles by the Code. And they've showed
14 you the Code. And this indicates that it's a
15 unique component -- this is a unique
16 component of a policy. This is not -- the
17 glass is not addressed in the policy, sir.
18 Therefore it's a question of an insurance
19 interpretation and by its own nature that
20 means it's ambiguous. This is a special
21 portion of comprehensive to replace the
22 glass. It's a state law. They're trying to
23 throw everything in in comprehensive, that
24 glass is the same thing as replacing a car
25 that's been keyed or something. It's been

1 vandalized or an act of God or something
2 else. So it is very much different and it's
3 not addressed. These are two completely
4 different things and it's still very
5 ambiguous. This is like trying to say
6 replacing a broken windshield is repairing
7 the damaged glass, which is just ambiguous
8 and it's not true. So we would like to move
9 forward, sir, and have Ms. Palmer heard. And
10 we'd like to have on the record her testimony
11 and cross-examination.

12 The Court: Motion to dismiss is denied.

13 Mr. Grantland: Thank you, Your Honor.

14 May I -- may we proceed with --

15 The Court: You certainly may.

16 Mr. Grantland: And I'm going to move --

17 The Court: She can remain where she is.

18 Mr. Grantland: I may move around.

19 The Court: That'll be fine.

20 Mr. Grantland: Is it okay if I sit right
21 here?

22 The Court: You're fine.

23 Examination

24 By Mr. Grantland:

25 Q Amy, first I want you to tell the Court who you

49 1 are, where you're from and who do you work for. 2 A My name is Amy Palmer. I'm from Center Point, 3 Texas, about 50 miles northwest of San Antonio. I 4 work for USAA's home office in San Antonio Texas, 5 and I've worked for them for about ten years. 6 Q And what is your position with USAA? 7 A I'm an auto claims staff advisor. 8 Q Now, are you familiar with the terms of the USAA 9 policy as it relates to glass claims? 10 A Yes, I am. 11 Q Are you familiar with how the glass claim process 12 works between a USAA insured, Safelite and another 13 glass company like Southern Glass? 14 A Yes. 15 Q Now, are you familiar with Southern Glass's 16 lawsuit against USAA and the basis for their 17 lawsuit. 18 A Yes, I am. 19 Q Now, I want -- I definitely want you to explain 20 how the glass claim process works for Judge 21 Womble, but first let's go ahead and talk about 22 Safelite. What is USAA's relationship with 23 Safelite Solutions? 24 A Safelite Solutions is USAA's contracted third- 25 party administrator for glass claims.	51 1 Q Now, let's talk about pricing and quality. How 2 does USAA determine how much it will approve as a 3 price for a glass repair? 4 A USAA does a comparison on a quarterly basis to 5 determine what is being accepted by non-Safelite. 6 glass shops, and with that comparison USAA 7 positions its pricing to be above average. 8 Q Okay. Is your pricing -- is the way you do 9 pricing an arbitrary -- you just pick a number out 10 of the sky or pick the lowest? 11 A Absolutely not. 12 Q And how much does USAA pay in comparison with 13 other insurance companies? 14 A They pay above average in each specific local 15 market. So to Mr. Epley's point, it may vary by 16 market. 17 Q Okay. Now, how does USAA insure that quality 18 glass products are used on a USAA insured's 19 vehicle? 20 A We have contractual requirements with Safelite 21 Solutions, in this case, as we do with all of our 22 suppliers. If we get complaints, we dig down in 23 those complaints and we tend to insure that the 24 same type of complaint does not happen on a 25 repetitive basis. We measure Safelite on member
50 1 Q Okay. Now, are they separate companies? 2 A Yes, they are. 3 Q Does USAA own Safelite Solutions? 4 A No. 5 Q Can you explain the difference between Safelite 6 Solutions and Safelite AutoGlass? 7 A Safelite Solutions is a company who administrates 8 glass claims for various insurance companies. 9 They take loss reports. They process invoices. 10 Safelite AutoGlass is an entity not related to 11 Safelite Solutions. They're the glass company. 12 They physically replace and repair glass. They 13 are owned by the same parent company, Belron, and 14 it is for that reason that they're financially 15 affiliated. 16 Q Okay. Now, is Safelite Solutions required to have 17 a South Carolina license to talk to your insureds? 18 A No, they're not. 19 Q Is it illegal or does it violate any statute for 20 USAA to have an agreement with Safelite for 21 Safelite to receive glass claims for USAA? 22 A No. 23 Q Does Safelite Solutions do the same type of work 24 for other insurance companies? 25 A Yes, they do.	52 1 satisfaction just as we measure ourselves on 2 member satisfaction. And our members are like -- 3 they -- they're -- it's a reciprocal company. Our 4 members let us know when there's a problem and we 5 respond to that accordingly. 6 Q Now let's talk about the process. I'm a USAA 7 insured. I have a piece of broken glass -- I have 8 a crack in my windshield. I want Southern Glass 9 to fix my windshield. How does the glass claims 10 process work for me in that case? 11 A That can work a couple of different ways. You 12 personally could contact USAA or the glass shop 13 could contact USAA on your behalf. Either way, 14 when you contact USAA our voice prompt identifies 15 that it's a glass only claim, in which case you're 16 routed directly to Safelite Solutions. Before 17 Safelite Solutions answers the phone, the voice 18 recording says please hold while we transfer your 19 call to our approved third-party administrator, 20 Safelite Solutions. When the Safelite 21 representative answers the phone, they answer as 22 required by USAA, "Thank you for calling USAA's 23 glass program managed by Safelite Solutions. This 24 is rep's name. I must inform you that Safelite 25 Solutions is financially affiliated with Safelite

1 AutoGlass."

2 Q Okay. So what do y'all -- and what is discussed

3 over the phone?

4 A Multiple things that are necessary for a loss

5 report to be filed; one being the primary

6 policyholder's policy number or member number.

7 Then Safelite is required to insure that they are

8 speaking to the policyholder, so you will hear

9 some identifying questions, such as address,

10 telephone number, those kind of things. And then

11 they take some vehicle information, what happened,

12 what caused the loss, and then they'll qualify

13 that windshield to see if it's repairable or

14 replaceable. Now, at any time if Safelite

15 qualifies a windshield to be repairable and the

16 insured wants to replace that, they absolutely

17 have the right to do that.

18 Q Okay. So --

19 Mr. Epley: I'm sorry. I just didn't

20 hear that. I don't want to interrupt. Say

21 that again, please.

22 Ms. Palmer: If at any time an insured would

23 like to replace their windshield instead of

24 get it repaired, even though Safelite says it

25 repairable, they have the right to get it

1 A If Southern Glass accepts the pricing, Safelite

2 allows the insured to talk to Safelite -- to

3 Southern Glass to work out the arrangements of the

4 glass replacement or repair.

5 Q Okay. Now, again, if there is a difference

6 between what USAA/Safelite will pay than what

7 Southern Glass is charging, who pays the

8 difference?

9 A The insured does.

10 Q And is that discussed over the phone?

11 A Yes, it is.

12 Q Is that phone call recorded?

13 A Yes, it is.

14 Q And after the phone call is finished, what happens

15 next?

16 A The referral is faxed to the glass shop who will

17 be doing the work.

18 Q Is that the work order we've been discussing?

19 A Yes, it is. I believe the Miller work order is on

20 exhibit.

21 Q I believe that's Exhibit One. So this Miller work

22 order, I'll give you my copy. Amy, when is this

23 work order sent to Southern Glass?

24 A The work order is sent immediately following the

25 phone conversation.

1 replaced.

2 Mr. Epley: Thank you, ma'am.

3 Q So when do you discuss pricing?

4 A Toward the end of the phone call.

5 Q Okay. Tell us about pricing.

6 A In this example, you've chosen to have Southern

7 Glass do your work. Southern Glass does not have

8 a contract with Safelite and therefore does not up

9 front accept their pricing, so there has to be a

10 pricing discussion to set the expectations with

11 the insured in case there's going to be any out-

12 of-pocket expense because, as the contract says,

13 we'll pay based on estimate that we approve or our

14 estimate. So when the pricing is discussed, the

15 glass shop will either accept that pricing or not

16 accept the pricing. And if the pricing is not

17 accepted, then Safelite will have a conversation

18 with the insured and say let's say Colonel Smith,

19 you've elected for Southern Glass to do your work

20 and I must inform you that Southern Glass has not

21 accepted the pricing that USAA has approved. So

22 if Southern Glass requires you to pay an

23 additional amount, you'll be responsible for that.

24 Q And, likewise, if Southern Glass accepts the

25 pricing, what happens?

1 Q It's faxed to Southern Glass?

2 A Yes, it is.

3 Q The day of the phone call?

4 A Yes, it is.

5 Q And is that work order similar to other work

6 orders for the claims that Mr. Epley is making in

7 this case?

8 A Yes, it is.

9 Mr. Epley: I'm sorry. I didn't hear the

10 last one.

11 Mr. Grantland: I asked if that work

12 order was similar to the other work orders

13 submitted on the claims Mr. Epley is making

14 in this case.

15 Mr. Epley: Thank you. My apologies.

16 Q In every -- in all 67 invoices that Mr. Epley

17 submitted to USAA, was a work order like the

18 Miller work order submitted?

19 A Yes.

20 Mr. Grantland: And that's already

21 admitted, Court Reporter, as Exhibit One; is

22 that correct?

23 Court Reporter: That's correct.

24 Mr. Grantland: Your Honor, do you have a

25 copy of the work order that we're referring

57

1 to?

2 The Court: Which one is that?

3 Mr. Grantland: It's Exhibit One.

4 The Court: I do.

5 Mr. Grantland: Just want to make sure

6 we're all on the same page.

7 Q I'd like for you to explain to the Court this work

8 order, Amy. The part that says USAA has

9 determined a maximum amount, what does that mean?

10 A That means that that's the maximum amount USAA

11 will pay plus any sales tax or parts necessary to

12 complete the job, such as mouldings.

13 Q And what are these numbers above that paragraph

14 with WS List, CT List. It looks like labor per

15 hour. What do those numbers mean?

16 A Those are numbers that represent what USAA's

17 approved pricing is based on the NAGS list price

18 that Mr. Epley spoke about yesterday.

19 The Court: Based on what?

20 Ms. Palmer: The NAGS list price.

21 Q So are these numbers above just a breakdown of

22 that number below?

23 A Yes.

24 Q Now, the paragraph below under notice, there's a

25 phone number. It say please contact Safelite at

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1 1-614. Why is that sentence in there?

2 A That sentence is there in case there's a

3 discrepancy in price. Perhaps the windshield

4 quoted is not the windshield that applies to the

5 insured's vehicle. Sometimes windshields have a

6 different tint color, for example, and one with

7 tint will be more expensive than one without tint.

8 If those things are determined and that discussion

9 is had, then the work order would be adjusted.

10 Q Okay. Then the next sentence, performance of

11 services constitutes acceptance of the above price

12 and billing instructions. What does that sentence

13 means?

14 A That means that if you perform the work then

15 you're accepting the pricing.

16 Q And is that language in every work order?

17 A Yes, sir.

18 Q For all 67 invoices submitted by Mr. Epley?

19 A Yes, sir.

20 Q And this is sent right after the phone call?

21 A Yes, sir.

22 Q Now, did Southern Glass ever send this work order

23 back to Safelite?

24 A Not to my knowledge.

25 Q Once Southern Glass made repairs, did Southern

59

1 Glass send a bill to USAA?

2 A They sent it to Safelite upon the direction of

3 USAA, yes.

4 Q And how much of the bill did Safelite pay for

5 USAA?

6 A The amount on the work order.

7 Q The amount paid is the same amount quoted in the

8 work order?

9 A Yes.

10 Q And is that the same amount that's discussed over

11 the phone?

12 A Yes, it is.

13 Q So in the case of Mr. Miller, what did Safelite

14 pay?

15 A They paid the amount on the work order plus

16 applicable sales taxes and necessary equipment,

17 such as mouldings.

18 Q Now, has Southern Glass ever submitted bills for

19 the same price in the work order?

20 A Yes, sir.

21 Q And in those cases, is the bill paid in full

22 because it's the same price?

23 A Yes.

24 Q And would Safelite send Southern Glass a check

25 based on the maximum amount of the work order?

60

1 A Yes.

2 Q Has Southern Glass ever returned checks back to

3 Safelite or USAA because they were not -- because

4 the amount was not -- the amount paid was not

5 enough?

6 A No.

7 Q Now, let's talk about the USAA policy itself.

8 Mr. Grantland: I believe that is Exhibit

9 Four, Your Honor. I'm going to have Amy

10 address the policy.

11 Q Now, Mr. Epley read from Part D, physical damage

12 coverage, yesterday. He read --

13 A Excuse me, John. I don't have a copy of the

14 policy here.

15 Mr. Epley: Are you talking about the

16 amendment?

17 Mr. Grantland: I'm talking about the

18 policy and the amendment, yes, sir.

19 The Court: Some of it, I'm not for sure

20 what she's saying.

21 Mr. Grantland: Please answer --

22 The Court: It's based on NAGS, N-A-G-S?

23 Ms. Palmer: Yes, sir.

24 The Court: Is that something I can look

25 at?

1 Ms. Palmer: Yes, sir.
 2 The Court: I can go on the internet and
 3 look that up?
 4 Ms. Palmer: National Auto Glass
 5 Specifications. I would assume that it's on
 6 the internet.
 7 The Court: So if I want to put this
 8 particular one in, it'll tell me how much?
 9 Ms. Palmer: It will tell you the list
 10 price, yes, sir. Assuming that their list is
 11 on the internet. Mr. Epley, would you --
 12 The Court: This is the same NAGS that
 13 most every paint and body shop in the country
 14 uses to price things; is that right?
 15 Ms. Palmer: Yes, sir.
 16 The Court: So if I call one of the paint
 17 and body shops here in town and say look this
 18 up, you'd be ready to stand by what they say?
 19 Ms. Palmer: Yes, sir.
 20 The Court: Okay.
 21 Q You have it?
 22 A Got it.
 23 Q You got it?
 24 A Yes.
 25 Q All right.

1 Mr. Grantland: Your Honor, I wanted Amy
 2 to move on --
 3 The Court: I'm sorry. I didn't mean to
 4 get off on something.
 5 Mr. Grantland: No, Your Honor. You're
 6 the -- answer -- please ask her any questions
 7 you want.
 8 The Court: And I'm not nearly as dumb as
 9 I'm sounding.
 10 Ms. Palmer: There are no dumb questions,
 11 sir.
 12 The Court: I just want to be sure I
 13 understand we what we're talking about. I
 14 suspect I'm going to see this again
 15 somewhere.
 16 Mr. Epley: You will, sir.
 17 The Court: So I'd like to go ahead and
 18 learn all of it right now. All right. Go
 19 ahead.
 20 Mr. Grantland: Okay. Your Honor, we're
 21 -- I have asked Amy to review the USAA
 22 policy, which is Exhibit Four that the Court
 23 has a copy of.
 24 Q Just for the record, the testimony yesterday dealt
 25 with pages 19 and 20 of 26, which deals with

1 partial losses and particularly on page 20 the
 2 language says partial losses limit of liability is
 3 the amount necessary to repair or replace the
 4 damaged property. Amy, is that USAA policy
 5 applicable to the glass claims Southern Glass is
 6 bringing in this case?
 7 A You're referring to pages 19 and 20?
 8 Q Right.
 9 A No, sir, it's not applicable to any of the losses
 10 in this case.
 11 Q What policy provisions are applicable?
 12 A The provisions in the amendment.
 13 Q Okay.
 14 A The amendment replaces Part D in its entirety.
 15 Q And the amendment is pages one through five that
 16 says amendment at the top?
 17 A Yes.
 18 Q And it says at the top this amendment replaces
 19 part D in its entirety?
 20 A That's correct.
 21 Q So those are the terms that we need to be
 22 addressing when we look at the USAA policy as it
 23 relates to glass claims?
 24 A That's correct.
 25 Q Okay. What is the date of this amendment?

1 A The date of this amendment is December of 2005. I
 2 believe December 17th is the exact date.
 3 Q So would this amendment be applicable for all of
 4 the invoices submitted by Southern Glass in this
 5 case?
 6 A This amendment would apply, yes, sir.
 7 Q Okay. And the Court has a certified copy that's
 8 already into evidence that you brought from Texas?
 9 A That's correct.
 10 Mr. Epley: I'm sorry, John. What's the
 11 date, please, sir?
 12 Ms. Palmer: December of 2005.
 13 Mr. Epley: Mine says 8/06. Am I looking
 14 at the same thing?
 15 A I apologize. This is a revision of the December
 16 '05 amendment.
 17 Mr. Grantland: It first came out
 18 December '05.
 19 Mr. Epley: Okay.
 20 Q A lot's been said about repair versus replace.
 21 What is the definition of repair under the policy?
 22 A Repair means restoring the damaged property to its
 23 pre-loss operational safety, function and
 24 appearance. This may include the replacement of
 25 component parts.

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1 Q Is there any confusion or ambiguity in this
2 language?

3 A No, sir.

4 Q If the policy says repair, it also could mean
5 replace according to the terms of that policy?

6 A That is correct.

7 Q In fact, you said that if a member wants
8 replacement they can get replacement?

9 A That's correct.

10 Q Okay. Now, what page of the policy, of the
11 amendment, address how USAA will pay glass claims?

12 A Page three of five.

13 Q And direct us to what page -- on page three of
14 five, what part of that page addresses how USAA
15 will pay glass claims?

16 A Under B, Number 1. Our limit of liability under
17 comprehensive coverage and collision coverage is
18 the amount necessary to repair the loss based on
19 our estimate or an estimate that we approve if
20 submitted by you or a third party. Upon request,
21 we will identify at least one facility that is
22 willing and able to complete the repair for the
23 amount of the estimate.

24 Q So what does that mean in lay terms, Any?

25 A That means that we will pay an amount that we

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1 approve and we basically guarantee that there's a
2 shop out there that will do it -- do the work for
3 that amount.

4 Q So if the insured -- if your -- if the -- are you
5 saying that you'll -- the insured will be out-of-
6 pocket any amount of money?

7 A No, sir. I'm saying that they will not be out-of-
8 pocket.

9 Q They will not be out-of-pocket?

10 A When talking of glass claims, comprehensive
11 coverage applies to glass claims, and the statute
12 discussed earlier --

13 Q Right.

14 A -- and it's in the policy that there's no
15 deductible for a glass claim. So what we're
16 saying here is that we'll pay based on an estimate
17 or one that you submit or a third party submits,
18 but we will find at least one shop that will do
19 the work for that amount.

20 Q So that the customer -- so that your insured is
21 not out-of-pocket any amount of money?

22 A That is correct.

23 Q Okay.

24 A And so that I may clarify, if an insured were to
25 specify that they did not want Safelite to do the

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1 work, we would still find a shop that would do the
2 work.

3 Q Okay. So the policy language that says the amount
4 necessary to repair the loss based on our
5 estimate, what does that mean?

6 A I'm sorry. Say again.

7 Q The amount -- the language that says the amount
8 necessary to repair the loss based on our
9 estimate, what is USAA's estimate?

10 A That is the amount that's faxed over.

11 Q In the work order?

12 A In the work order and discussed over the phone.

13 Q Okay. And then the next sentence, or an estimate
14 we approve as submitted by you or a third party,
15 what does that mean?

16 A That means that if you submit an estimate to have
17 a glass repaired, if we approve that estimate we
18 will pay it. Otherwise, we'll pay an amount that
19 we approve.

20 Q And this language is in all the policies Mr. Epley
21 is claiming an assignment?

22 A Yes, sir.

23 Q And under the terms, can an insured chose whatever
24 glass shop he wants?

25 A Yes, sir.

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1 Q Do they have to go to Safelite?

2 A No, sir.

3 Q Okay. And under the terms, who determines or
4 controls the price that is paid to the glass shop?

5 A USAA.

6 Q Do the terms -- does anywhere in the policy
7 require USAA to pay a hundred percent of any
8 estimate or invoice submitted by a glass shop?

9 A No, sir.

10 Q Are there any terms in the policy that give the
11 customer or third party glass company, like
12 Southern Glass, the right to receive a hundred
13 percent?

14 A No, sir.

15 Q Now, make sure we're clear. Once USAA determines
16 a max amount it's going to pay for replacement or
17 repair, how much of that bill or invoice is paid?

18 A They're going to pay based on the amount that they
19 approve.

20 Q Does that price come from Safelite or from USAA?

21 A That prices comes from USAA.

22 Q Now, before work starts, can a glass shop, like
23 Southern Glass, call and question the price in the
24 work order?

25 A Yes, sir.

1 Q And you've given an example like in tinting or
2 something?
3 A Right. So it's possible. And we've brought a
4 couple of examples with us. You'll hear Safelite
5 goes through a process of validating that they've
6 quoted the appropriate part.
7 Q Okay. To your knowledge, did Southern Glass ever
8 question any of the work orders submitted?
9 A Not to my knowledge.
10 Q Okay. Now, let me ask you specifically about your
11 knowledge of Southern Glass's claim in this case.
12 You've had -- have you had an opportunity to
13 review the invoices Southern Glass has submitted?
14 A Yes.
15 Q Did USAA and Safelite follow its claims process in
16 each claim submitted?
17 A In each claim submitted on this 67, yes, sir.
18 Q And the insurance policy is the same?
19 A Yes.
20 Q The language about putting the vehicle in pre-
21 accident condition, whether repair or replace,
22 that's the same?
23 A Yes.
24 Q And price discussed over the phone with the
25 customer and Southern Glass?

1 A Yes, sir.
2 Q And was a work order submitted with a maximum
3 amount -- maximum price USAA would pay?
4 A Yes.
5 Q Just like that Miller work order, either
6 summarized or broken out?
7 A That's correct.
8 Q And did Safelite pay the max price pursuant to the
9 work order?
10 A Yes, they did.
11 Q Now, do you have any examples of how the process
12 worked between USAA and Safelite and Southern
13 Glass?
14 A Yes. We've brought two examples with us today.
15 We will hear a phone call that's an example of
16 when Southern Glass accepts USAA's pricing and we
17 will also hear an example of when they do not
18 discussing pricing and we'll hear Mr. Epley's
19 comments...
20 Q First let's --
21 Mr. Epley: When that comes I will
22 object.
23 Q First, which phone call -- what phone call do you
24 have, Amy, where Southern Glass accepted the
25 pricing?

1 A Zwart.
2 Q Now, is this a phone call that's kept on file?
3 A Yes, sir. We discussed quality --
4 Q Right.
5 A -- a few questions back and this is just another
6 way that we insure the quality and compliance with
7 what USAA requires Safelite to do for us. So
8 there -- the requirement is that they record and
9 retain a hundred percent of the phone calls..
10 Q And as the glass claims advisor for USAA, you
11 would have access to these tape recorded phone
12 calls?
13 A Yes, sir.
14 Mr. Grantland: Your Honor, at this time
15 I would admit the Zwart phone call. This is
16 on CD-ROM that I can pull out for the record.
17 Defendant's Exhibit No. 6, CD-ROM of Zwart
18 and Miller audio.
19 Mr. Epley: Your Honor, I would like to
20 object to this. It's without foundation.
21 Ms. Palmer was not there. The folks that
22 record these things are competitors of ours
23 and every other glass shop in the country,
24 and they are subject to manipulating these
25 type of things in a number of different ways,

1 especially electronic.
2 Mr. Grantland: Your Honor, she's the
3 glass claims advisor for USAA. She's a
4 custodian of -- she has access and is
5 custodian of all USAA and Safelite's records
6 as it relates to glass claims. She --
7 Mr. Epley: Your Honor, she wasn't there.
8 This was --
9 Mr. Grantland: She doesn't have to be
10 there.
11 Mr. Epley: She was given this either by
12 some sort of email or --
13 The Court: We need somebody that's going
14 to testify that this is a recording they
15 made.
16 Mr. Grantland: She certainly can do
17 that, Your Honor. She --
18 The Court: How would she be able to do
19 that?
20 Mr. Grantland: I mean, she was the -- I
21 mean, it is a recording kept on file with
22 USAA. She's the glass claims --
23 The Court: How is she going to testify
24 that it wasn't manipulated?
25 Ms. Stratton: Your Honor, under the

1 rules of evidence, this is a business record
 2 and she's the custodian of the business
 3 records.
 4 The Court: Who are you?
 5 Ms. Stratton: I'm co-counsel. Ashley
 6 Stratton. I apologize.
 7 The Court: Okay. You had me, jumping up
 8 like one of those whack a moles.
 9 Mr. Grantland: It's a business
 10 record, Your Honor. It's like any other
 11 business --
 12 The Court: I'm just asking.
 13 Mr. Grantland: Yes, sir. It's like any
 14 other business record. I mean, -- the courts
 15 allow --
 16 The Court: Do you know who made the
 17 recording?
 18 Mr. Grantland: Yes, sir, it's on the
 19 phone call.
 20 Mr. Epley: Again, it's without
 21 foundation, sir.
 22 Mr. Grantland: I've laid the foundation
 23 by --
 24 The Court: I think it goes to the meat
 25 of your claim. You claim certain things

1 happen and they've got a right to defend it.
 2 I'm going to hear it.
 3 Mr. Epley: Thank you.
 4 Mr. Grantland: Your Honor, if we can --
 5 I want to make sure you can hear it and I
 6 don't want to get in your way.
 7 The Court: Simple way to do this. Sit
 8 it right over there in front of that
 9 microphone. Put the microphone right down on
 10 it and we'll hear it in the next building.
 11 Ms. Stratton: It's fairly loud so I'm
 12 sure it'll be -- all right. I'm ready
 13 whenever you are.
 14 Mr. Grantland: This is the Zwart phone
 15 call and --
 16 The Court: Make sure you point that
 17 microphone down to the speaker. Slide it as
 18 close to it as you can.
 19 Mr. Grantland: Okay. Your Honor, at
 20 this time we'll play portions of this phone
 21 call. And, Amy, I'll tell you to stop if you
 22 want to explain something.
 23 Mr. Epley: Excuse me one second, Your
 24 Honor. Portions of the phone call?
 25 Mr. Grantland: No. I'll play the entire

1 phone call.
 2 Ms. Lown: Is Zwart one of our invoices
 3 that we're claiming?
 4 A Yes.
 5 The Court: Go ahead.
 6 (Time lapse while portion of audio is heard.)
 7 Q Stop there. So what was -- how does the call
 8 begin, Amy?
 9 A Tammy with Safelite solutions says, as I was
 10 explaining earlier, thank you for calling the USAA
 11 glass program managed by Safelite Solutions. And
 12 in a moment you will hear the rest of the
 13 disclosure.
 14 The Court: Wait a minute. I think we're
 15 going to need a little foundation of who
 16 she's talking to. You went into that
 17 yesterday and they absolutely denied they had
 18 anybody named Tony working for them.
 19 Mr. Epley: We want to be very honest and
 20 straightforward with -- our bookkeeper here
 21 said there could have been -- this is years
 22 ago and folks come and go.
 23 The Court: So there could have been?
 24 Mr. Epley: It's a possibility, yes, sir.
 25 The Court: That's what I wanted to make

1 sure before we went any further.
 2 Mr. Epley: Yes, sir.
 3 The Court: Go ahead and hear it.
 4 (Time lapse while portion of audio is
 5 resumed.)
 6 A Okay. Stop. So she's recording who it is that
 7 she's speaking to here just as she will with the
 8 insured.
 9 (Time lapse while portion of audio is
 10 resumed.)
 11 A Stop. Okay. So just as I explained, she is
 12 required to take the information from the
 13 policyholder. She is not allowed to take the
 14 information or file a claim without the
 15 policyholder present.
 16 (Time lapse while portion of audio is
 17 resumed.)
 18 A Okay. Stop. Okay. So there was the full
 19 disclosure that she is required to read to the
 20 insured.
 21 (Time lapse while portion of audio is
 22 resumed.)
 23 A Okay. Stop. So the information that she has
 24 gathered so far will enable her to locate his
 25 policy and validate coverage. The date is going

1 to determine what coverage applies to the loss.
 2 (Time lapse while portion of audio is
 3 resumed.)
 4 A Stop. Okay. So she asks the question is your
 5 damage smaller or larger than a dollar bill.
 6 That's qualifying it basically. If it was smaller
 7 she would advise that it may be able to be
 8 repaired, and he'd have the option at that point
 9 to say repair or replace. And she addressed the
 10 zero dollar deductible.
 11 (Time lapse while portion of audio is
 12 resumed.)
 13 A Okay. Stop. So, again, the insured has -- they
 14 can choose who does their work and at any time --
 15 you know, someone other than a shop that has an
 16 agreement with USAA or Safelite, there's no
 17 warranty that applies so she addressed how to
 18 handle his warranty work with the other shop just
 19 as a --
 20 The Court: Just out of curiosity. What
 21 kind of warranty is there on glass?
 22 Ms. Palmer: If a USAA shop, so someone
 23 who has a contract with USAA or with
 24 Safelite, as of that agreement, there's a
 25 lifetime warranty on the workmanship.

1 The Court: Of the glass or the repair?
 2 Ms. Palmer: Of the glass. Of the glass.
 3 So if -- you asked or the repair. So if a
 4 repair fails, the repair is refunded and the
 5 replacement is done.
 6 The Court: I'm sorry. I left the repair
 7 completely out of my mind.
 8 (Time lapse while audio is resumed.)
 9 The Court: Stop. What did she say? Did
 10 she say NAGS list pricing less 38 percent?
 11 Ms. Palmer: Yes, sir. And \$40 per labor
 12 and \$15 per kit.
 13 Q Did I just hear Tony say yes?
 14 A Yes.
 15 Q Can you just rewind it back just a little bit?
 16 (Time lapse while audio is resumed.)
 17 Q Stop. Stop. Amy, did I hear Tony agree that --
 18 did I hear Tony say yes when asked if he accepts
 19 USAA's pricing?
 20 A Yes.
 21 Q And did I hear Tony agree that USAA would not be
 22 responsible for any cost above their approved
 23 rate?
 24 A Yes.
 25 Q And is this Zwart job part of Southern Glass's

1 claim in this case?
 2 A Yes. I believe they've asked for \$116 additional.
 3 Q Okay. So even though they agreed to the amount --
 4 agreed to the pricing over the phone, they still
 5 sent an invoice for higher, for \$100 more?
 6 A Yes.
 7 Q Approximately \$100 more.
 8 Mr. Grantland: Your Honor, at this time
 9 I would admit that recording into evidence.
 10 I believe it's already admitted.
 11 Q Amy, do you have any recordings where Southern
 12 Glass did not agree to Safelite and USAA's
 13 pricing?
 14 A Yes. The Miller recording is an example of that.
 15 Q Okay. Is the Miller -- is the same -- is Miller
 16 the same guy we've had his work order? We've
 17 talked about the Miller work order?
 18 A Yes.
 19 Q Okay. Play the Miller tape.
 20 (Time lapse while portion of audio is heard.)
 21 Q Stop.
 22 Mr. Grantland: Your Honor, in the
 23 interest of time we can move forward to where
 24 the pricing discussion is or if Mr. Epley
 25 would like to hear the entire tape we can

1 hear the entire tape.
 2 Mr. Epley: That's okay, sir. Thank you.
 3 Mr. Grantland: I mean, we can move
 4 forward just to where the pricing is. I
 5 don't think the court needs to hear who you
 6 are, where you're from, all that again.
 7 The Court: 32 weeks ago in real life.
 8 Mr. Grantland: So if I can move -- if I
 9 can just fast forward, Your Honor.
 10 (Time lapse while audio is resumed.)
 11 The Court: Labor was how much?
 12 Ms. Palmer: \$40 per hour and \$15 per
 13 kit.
 14 Q Stop there. Does that vary or is that the price
 15 that is -- is that a constant?
 16 A The labor?
 17 Q Yeah.
 18 A It could vary when NAGS adjusts their list price,
 19 but for the time period in these invoices it's
 20 consistent.
 21 (Time lapse while audio is resumed.)
 22 A Stop. Okay. So when Southern Glass did not
 23 discuss the pricing, before the Safelite
 24 representative proceeded she wanted to make sure
 25 that she was quoting the correct piece of glass.

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1 (Time lapse while audio is resumed.)

2 Q Stop there. Do you have any -- what was discussed

3 by Tammy and Southern Glass, the 235? Explain to

4 the Court what that number is.

5 A Tammy is the Safelite representative, I believe,

6 and she's discussing the approved amount by

7 Safelite. I'm sorry. The amount approved By

8 USAA.

9 Q Now, is the amount quoted on the phone call by

10 Tammy the same amount in that work order?

11 A Yes, it is.

12 Q Okay.

13 Mr. Grantland: Your Honor, I'll admit

14 both of these phone calls into evidence.

15 Q Now, regardless of what's said or discussed over

16 the phone, do all the work orders spell out the

17 pricing USAA has approved?

18 A Yes.

19 Q The last thing I want to ask you about -- well,

20 one of the last things I want to ask you about is

21 --

22 Mr. Grantland: And I'll give this to the

23 court reporter to mark as an exhibit.

24 Q You heard from Mr. Brown yesterday. The Court

25 heard from Mr. Brown, a USAA insured, that does IT

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1 work for Southern Glass. And he testified about

2 his glass claim experience.

3 A Yes.

4 Q What did USAA initially approve to pay Mr. Brown's

5 claim?

6 A For Mr. Brown's claim -- excuse me while I look

7 for it. I apologize. For the Brown claim it

8 \$284.69.

9 Q Okay. That's what USAA approved for the claim?

10 A Yes.

11 Q And what did USAA ultimately pay for Mr. Brown's

12 claim?

13 A USAA paid \$440 for that invoice.

14 Q And why did USAA pay more than they approved?

15 A The employee who paid Mr. Brown was an employee in

16 training and it was paid in error.

17 Q Okay. So is that the rule or the exception?

18 A That is the exception.

19 Q Amy, in this case of the 67-insureds that Mr.

20 Epley has an assignment from, did USAA violate the

21 terms of its policy with its insureds?

22 A No, sir.

23 Q How do you know this?

24 A I know this because they -- the invoices were paid

25 based on the terms of the policy.

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1 Q And did USAA or Safelite violate any agreement

2 with their insured by not paying a hundred percent

3 of Southern Glass's bill?

4 A No, sir. We paid what we approved.

5 Mr. Grantland: Please answer any

6 questions Mr. Epley may have.

7 Mr. Epley: Thank you, sir. Okay. Your

8 Honor, this has gone on a long time. I'll

9 try to be as brief as I can. I just want to

10 respond to some of the testimony you just

11 heard and then I have, unfortunately, a bunch

12 of questions.

13 Cross-examination

14 By Mr. Epley:

15 Q You said, ma'am, -- Mr. Grantland said how the

16 glass claims are addressed. Are they addressed in

17 the policy? Are glass claims addressed separate

18 in the policy?

19 A I'm not sure I understand the question.

20 Q Are glass claims addressed separate in your

21 policy?

22 A Glass claims -- excuse me just a moment. Glass

23 claims are addressed in the insuring agreement,

24 yes, they are. No deductible under comprehensive

25 or collision coverage applies to the cost of

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1 repairing or replacing damaged automobile safety

2 glass.

3 Q So -- but you're -- okay. I'll accept your

4 answer. You also said the price comes from USAA.

5 I have a question for you. I've been in this

6 business a long time and I've seen a million of

7 these things. How is it that the faxes that come

8 over from USAA and several other insurance

9 companies are almost identical? Almost identical

10 in price, almost identical? The largest insurance

11 company in the area, State Farm's price is far

12 greater than what you're allowing. They are 25

13 percent of all policyholders, the largest in the

14 state. How can you explain that?

15 Mr. Grantland: Your Honor, I object.

16 He's asking a question based on testimony

17 that's not in evidence.

18 The Court: He can ask it.

19 Mr. Grantland: Just for the record --

20 The Court: This is on cross.

21 Mr. Grantland: Yes, sir.

22 The Court: Go ahead.

23 A Mr. Epley, I can't speak for the faxes that come

24 from other insurance companies and I'm not

25 familiar with how the fax is sent from other

1 insurance companies appear.
 2 Q They're pretty similar. Your recording, the first
 3 recording, says no, there's no out-of-pocket
 4 expenses to you.
 5 A That's right.
 6 Q That was on the ones that we agreed upon.
 7 A That was on the Zwart phone call.
 8 Q Right. So you told the policyholder there's no
 9 out-of-pocket expenses to you?
 10 A The Safelite representative told the member
 11 there's no out-of-pocket expenses because no
 12 deductible applies to the replacement of safety
 13 glass.
 14 Q You also took the gentleman's email address; is
 15 that correct?
 16 A That is correct.
 17 Q And did the gentleman also receive an email follow
 18 up -- an email follow up to the work being done?
 19 A Yes, he would have.
 20 Q He did. Does it say the words Safelite on that
 21 email?
 22 A On the email? I do not have a copy of the email
 23 to display. Excuse me while I think about what
 24 that email looks like. I'm not sure that I can
 25 answer that because I don't know what his specific

1 email looks like.
 2 Q If I told you the word Safelite was said 20 times
 3 between the phone call and the two emails -- the
 4 word Safelite was printed at least 20 times, would
 5 you disagree with me?
 6 A I wouldn't be able to agree or disagree without
 7 seeing that.
 8 Q Do you have a marketing agreement? Does Safelite
 9 pay you anything for marketing or anything similar
 10 to marketing their name in such a vociferous way?
 11 A I am not a procurement or a marketing expert. I
 12 am an expert on the auto glass claims process.
 13 Q So you don't deny that?
 14 A I will tell you that I am not an expert in that.
 15 Q Okay. Thank you.
 16 Mr. Grantland: Objection, Your Honor. I
 17 don't think -- you know, he said you don't
 18 deny it. She did not answer him one way or
 19 the other. Just for the record, I don't --
 20 The Court: Objection to her answer or
 21 his thank you?
 22 Mr. Grantland: Objection to his comment
 23 you don't deny it because I don't think --
 24 The Court: And she said no. Said she
 25 didn't know.

1 Mr. Grantland: Yes, sir.
 2 Q On the one that we accepted the price, did -- it's
 3 based on NAGS. Did your operator -- did refer to
 4 NAGS list, a certain amount?
 5 A Yes, she did.
 6 Q Okay. What is NAGS?
 7 A NAGS is --
 8 Q His Honor really wants to know what NAGS is.
 9 A Okay. Just as you explained yesterday, it's
 10 National Auto Glass Specifications. It's a
 11 suggested list price that is published for glass.
 12 Q And what is that based on, please? What kind of
 13 glass?
 14 A It's based on -- you can find tempered glass, you
 15 can find curved glass, you can find -- it's after-
 16 market.
 17 Q After-market?
 18 A Yes.
 19 Q Does it include parts that may or may not be legal
 20 in the United States of America?
 21 A USAA does not use parts that are not legal in the
 22 United States of America, if that's what you're
 23 asking. I do not -- I can't speak to whether NAGS
 24 includes it or not. USAA would not use those
 25 parts.

1 Q In January of '08, Safelite AutoGlass admitted to
 2 installing and distributing 2600 tempered safety
 3 glass parts that were so dangerous they could have
 4 cut your head off if they broke.
 5 A And I would ask you what they did to follow that.
 6 Q What did they do to follow it?
 7 A Yeah.
 8 Q You would ask me the question?
 9 A Uh-huh. Is that allowed, sir?
 10 Q Well, it's my turn to ask you the questions.
 11 Mr. Grantland: Your Honor, again, he's
 12 asking questions based on evidence not in --
 13 he's basing -- he's pulling facts that may or
 14 may not be --
 15 The Court: I think he's got -- she came
 16 in here. You introduced her as expert from --
 17 --
 18 Mr. Grantland: I understand.
 19 The Court: -- somewhere 50 miles from
 20 San Antonio, Texas.
 21 Mr. Grantland: I just want to renew an
 22 objection to the question involving facts not
 23 in evidence.
 24 The Court: She is the queen of safety
 25 glass from USAA. He's going to get to ask

89 1 her whatever he wants to about glass. 2 A I would like to clarify that just as in many 3 industries there are recalls, and when there's a 4 faulty part identified there is a recall. 5 Q These parts were from what country, ma'am? 6 A I believe they were from China. 7 Q They were from China. Do you understand how many 8 parts from China are installed by Safelite 9 AutoGlass? 10 A There are parts from China installed from Safelite 11 Autoglass. 12 Q Do you understand the number of parts that they 13 install? 14 A I cannot quote you a percentage, but I will tell 15 you that there is a percentage that are. 16 Q Okay. So you are -- you have -- we've discussed 17 that NAGS could include the lowest possible 18 quality material that are not even qualified to 19 meet the words -- 20 A I'm sorry. Could you repeat the question? 21 Q So we have discussed that NAGS could include parts 22 installed by Safelite or other companies that 23 really are of such low quality they do not meet 24 U.S. safety standards? 25 Mr. Grantland: Objection.	91 1 but I don't recall until I've heard about this. 2 It was significant. And you're right. You're 3 right, ma'am, there was a recall. 4 A If I am allowed time I can publish documentation 5 indicating that safety glass was recalled. 6 Q It was. I agree with that. It was recalled. 7 A I'm sorry. I understood you to say that you don't 8 recall the recall. 9 Q I didn't recall anything prior to this. 10 A Okay. 11 Q So there's an awful lot of glass coming from 12 China. Do you know, on all this glass coming from 13 China -- and from my professional knowledge it's 14 somewhere around 50 percent of all the after- 15 market products -- 16 A I'm not prepared to quote a percent to you. 17 Q I'm just -- we're chatting in the den -- 18 The Court: You have to put it in the 19 form of a question. 20 Mr. Epley: Be happy to, sir. 21 Q Do you -- 22 Mr. Epley: I'm not used to this. I'm 23 not an attorney, so I'm taking my time. 24 The Court: I understand. And that's why 25 I'm making sure that you have benefit. Go
90 1 The Court: On what grounds? 2 Mr. Grantland: Again, Your Honor, the 3 same grounds as before. These are facts not 4 in evidence. 5 The Court: She's either an expert or 6 she's not. He's got a right to cross-examine 7 her. Go ahead. 8 Q Yes. We're trying to decide what NAGS is. 9 A NAGS establishes -- they publish a list price, 10 suggested list price, for after-market glass. 11 Q So NAGS is just a list price? NAGS is just a 12 pricing system? 13 A Yes. 14 Q It really doesn't distinguish the quality of the 15 parts installed in your upscale customer's cars; 16 is that correct? 17 A In order for safety glass to be used in the United 18 States it has to meet certain specifications, 19 certain quality standards, and all of those 20 quality standards are tested and met on glass that 21 is installed in USAA vehicles. If there is 22 recall, it is fully administered. 23 Q Ma'am, I've been in the business 34 years, and I 24 don't remember a recall on anything. I do 25 remember a back glass on a Cordova in the '70s,	92 1 ahead. 2 Q Do you -- are you aware that about 50 percent of 3 all after-market glass is coming from China now? 4 A I am aware that there's a large percentage coming 5 from China, yes. 6 Q Okay. And I think we've put that one to bed. Do 7 you have any other examples of this Zwart thing 8 that we certainly didn't use NAGS type materials? 9 Do you have any other examples that we have 10 accepted the pricing? 11 A No, sir, I don't. 12 Q Thank you. 13 A And if I may clarify, you certainly didn't use 14 NAGS type materials? 15 Q NAGS is a numbering system, ma'am. 16 A Okay. So I don't understand your reference. 17 Q I was saying to you and the Court and Judge Womble 18 that you're talking about NAGS, NAGS and NAGS. 19 NAGS is a numbering system and the parts that it 20 references could include the worst and the lowest 21 grade of substandard material available. That's 22 all. Let's go to the next thing. You're talking 23 about \$40 per hour. Is that what you pay body 24 shops? 25 A Yes.

1 Q You pay body shops \$40 --
 2 A If body shops were to perform glass work, that's
 3 what they would be paid.
 4 Q Body work, what do you pay body shops?
 5 A I'm not a body work expert.
 6 Q Isn't it substantially more?
 7 A I'm not a body work expert.
 8 Q Are we or are we not working on the safety systems
 9 of vehicles with customer's lives at stake?
 10 A I would say that the importance of safety and
 11 vehicle glass is very important.
 12 Q Do you know what the two main problems are as far
 13 as incorrect installation and installation with
 14 parts that do not fit?
 15 A I would say that could vary depending on the
 16 resource.
 17 Q Excuse me?
 18 A I would say the two most important -- or the two
 19 biggest problems could vary depending on the
 20 resource of who's identifying the problem.
 21 Q So you don't know?
 22 A Which ones do you believe they are? I believe
 23 they vary.
 24 Q I'm asking -- I know what they are, so --
 25 Mr. Epley: I'll be glad to tell them, if

1 you're interested, Judge.
 2 The Court: Just ask your questions.
 3 Mr. Grantland: Just ask your questions.
 4 Q You have a -- you say that Mr. Brown's claim was
 5 made by an employee who was in training and he
 6 made a mistake?
 7 A That's correct.
 8 Q Okay. Well, we all make mistakes. We're all
 9 human. You can understand that. Did you or did
 10 you not pay that amount?
 11 A We did.
 12 Q Okay. This Tony, that we just decided that was
 13 with us for a couple of weeks, we put in the same
 14 category. He made a mistake. That's not our
 15 policy. So we understand that. Okay. What does
 16 repair mean? When you repair a windshield, what
 17 does that mean?
 18 A Repair means restoring the damaged property to its
 19 pre-loss operational safety, function and
 20 appearance. This may include the replacement of
 21 component parts.
 22 Q So you're saying it makes the windshield -- it
 23 makes the break in the glass go away so it appears
 24 you can't even see it?
 25 A No. I'm not saying that you can't even see it.

1 I'm saying that -- in your question you reference
 2 repair of glass. By repairing the glass we're
 3 restoring it to pre-loss operational safety,
 4 function and appearance.
 5 Q Well, I'm asking you, ma'am. So in looking at it
 6 -- you said appearance. In looking at it --
 7 A It is possible --
 8 Q -- does it look like there's no piece -- nothing
 9 broken?
 10 A It is possible that you might be able to see a
 11 very small -- you can see the resin that's applied
 12 to do the repair. You're familiar with the
 13 product. And I don't have an example of a phone
 14 call today where we discuss repairs, but each and
 15 every time that a repair is scheduled, it is
 16 disclosed to the insured that there may be a small
 17 visibility where the damage is repaired, and if
 18 they're not satisfied then replacement is
 19 warranted.
 20 Q If you had your druthers as a payor, would you
 21 rather pay for a repair or a replacement?
 22 A An insured does not pay for a repair. I would opt
 23 to repair before I replace.
 24 Q No. I'm talking about you as the payor, the
 25 insurance company. Would you opt -- would you

1 rather repair or replace?
 2 A If the windshield qualifies for a repair --
 3 Q I understand. I'm not trying to make you nervous.
 4 I'm the expert.
 5 A If the windshield qualifies for a repair, then we
 6 give the insured the option of repairing it. If
 7 the insured opts to replace the windshield, then
 8 he absolutely has that right. And as far as the
 9 insurance company, we give the insureds the right
 10 because we pay based on what we have in the
 11 contract.
 12 Q So it's two different things, repair and replace?
 13 A Well, in relating to glass, there is a glass
 14 repair and a glass replace.
 15 Q So in related to glass it is two different things?
 16 A Yes.
 17 Q Okay. Do you know the percentage of repairs
 18 versus replacements that are performed for your
 19 company?
 20 A Bear with me a moment while I think about the
 21 report that I looked at recently. I believe we
 22 repair -- when we look at the mix of all shops, we
 23 repair approximately 38 percent.
 24 Q Thirty-eight percent. And I would venture to say
 25 -- I'm sure you would agree with me -- that it's

1 much lower in South Carolina since there are no
2 deductibles in the state?
3 A Typically in states where there are no
4 deductibles, repair ratios are lower.
5 Q Right. Do you pay everybody the same thing for
6 repair, all glass shops? Us, Safelite, anybody,
7 are you going to pay us all the same thing?
8 A For a repair?
9 Q Yes, ma'am.
10 A Currently we do, yes.
11 Q So Safelite is paid --
12 Mr. Epley: I have an example I'll be
13 glad to show John.
14 Q And I'm sure you would agree with me, it's about
15 60 bucks, right?
16 A That's not correct.
17 Q Then what is it, ma'am?
18 A There was a time that it was 60 bucks.
19 Q What is it now?
20 A Seventy-five.
21 Q That's news to me. Thank you for that raise. Is
22 Safelite paid \$75?
23 A Yes, they are.
24 Q Do you know what their retail price is, what they
25 charge the public?

1 A If Safelite were to charge our insured more and
2 our insured reported that --
3 Q That wasn't the question.
4 Mr. Grantland: Let her answer the
5 question.
6 The Court: Let her answer the question
7 and then she can explain.
8 A Safelite would refund the difference of the \$75
9 and whatever they charged.
10 Q So that happens?
11 A You asked me if I know. I don't know what their
12 retail price is, no.
13 Q Significantly more.
14 A I believe we're here to talk about the contract,
15 not about Safelite's price.
16 Q No. It has to do with Safelite. You do work with
17 Safelite under the guaranteed average invoice,
18 correct?
19 A Yes, I do.
20 Q You do? Could you explain to the Judge what the
21 guaranteed average invoice means?
22 A The guaranteed average invoice is basically a
23 pricing structure that is in our contract. And,
24 again, I'd like to remind you that I'm not a
25 procurement expert so there may be details of the

1 guaranteed average invoice that I leave out. But
2 basically it's a risk management pricing
3 structure. So just as any business agreement,
4 when you engage in a business agreement, a
5 contract, you agree on a price and terms of the
6 contract, et cetera. The guaranteed average
7 invoice price is the price that Safelite
8 guarantees regardless of which glass company
9 submits an invoice, regardless of how many repairs
10 or how many replacements over the term of the
11 contract. USAA and Safelite have agreed on a
12 guaranteed average invoice price. And, again,
13 it's a mix of repairs versus replace.
14 Q So it's a guarantee. So let's say at the end of a
15 certain period, whatever your agreement is -- if
16 it's a month, a quarter, a year -- that you have
17 an average invoice price, and we'll just pick a
18 number out of the air just so the Judge can
19 understand this. Let's say it's \$250. If,
20 indeed, you have paid more than the average of
21 \$250 -- let's say \$10 more, \$10 more per, and
22 there's 100,000 claims, so that's a million
23 dollars. Does Safelite refund that money to you
24 if it's shorter?
25 A No, sir.

1 Q They do not?
2 A I'm sorry. I interrupted you. Go ahead.
3 Q No, it's okay. I know it's uncomfortable because
4 I just had to go through the same thing, so I'll
5 try to be as kind as possible. So if there's a
6 discrepancy, does money go back and forth? In
7 other words, if they guarantee you a certain
8 number and it turns out that it's higher than
9 that, are you compensated for the difference?
10 A No, we are not.
11 Q So they guarantee a number but then again --
12 A No. There are terms in the policy to address a
13 monitoring system as we go along. So on a monthly
14 basis the guaranteed average invoice, the average
15 invoice price is monitored. So if we see in the
16 month of September that the guaranteed average
17 invoice price is ranging \$10 higher --
18 Q Yes, ma'am.
19 A -- we compare that and we gauge out what's the end
20 of our policy term. At the end of our policy
21 term, that -- for the sake of argument, that
22 guaranteed average invoice price of \$250 has got
23 to be met. So if we're running at 260 here,
24 adjustments have to be made so that we hit the 250
25 by the end of the policy term.

1 Q I don't understand adjustments. What does that
2 mean?
3 A So if guaranteed average invoice is \$260 here,
4 Safelite is responsible for adjusting, for
5 example, their repair price. You mentioned that
6 before they got \$60 per repair. They did. We
7 used to pay them \$60 for repair. Today we pay
8 them \$75 for repair. Safelite Solutions performs
9 administration tasks for us. If you, as Southern
10 Glass, submits an invoice to Safelite Solutions,
11 there's a fee that they charge USAA, --
12 Q I see.
13 A -- to process that invoice.
14 Q I see.
15 A So if today, in September, just for the sake of
16 argument -- I'm not saying these are the terms of
17 the contract. September our guaranteed average
18 invoice price -- our average invoice price actual
19 is \$260. Say for the sake of argument, the end of
20 our contract term is December 31st.
21 Q Yes, ma'am.
22 A Then by December 31st, Safelite has to meet their
23 guarantee. So they have to adjust, say, their
24 administration fees or they have to adjust their
25 repair price, not your repair price. They have to

1 adjust their repair price to insure that the
2 guaranteed average invoice price is met. If at
3 the end of that policy term, even after
4 monitoring, that guaranteed average invoice is not
5 met, then there's a penalty in the contract.
6 Q And the penalty, it's a monetary penalty?
7 A I'm not an expert to discuss that. That's a
8 procurement function.
9 Q So you wouldn't deny that there's a monetary
10 penalty if they don't perform a certain price
11 function?
12 A In many contracts there are monetary penalties.
13 Q And that's paid back to your company, ma'am?
14 A I'm not saying that there's a monetary
15 compensation for this, but I'm saying that in some
16 contracts there are monetary penalties.
17 Q Thanks. Are there other contracts that there's
18 monetary penalties that involve Safelite or a
19 competitor of ours that's controlling a lot of the
20 glass functions?
21 Mr. Grantland: Your Honor --
22 Mr. Epley: Your Honor, this is really --
23 Mr. Grantland: If I can just object on
24 the basis of relevance. This has nothing to
25 do with this case or the 67 invoices that he

1 represents that he's had assignments from. I
2 mean, I'm happy for him to discuss with her,
3 but we're way afield of what his case is
4 about against USAA.
5 Mr. Epley: I disagree with that, sir.
6 This all has to do how a third-party
7 competitor of ours is controlling things in
8 this industry and has for many years. It
9 also has to do with state laws that may be
10 violated on certain functions that are
11 transpiring between these fine folks and a
12 competitor of ours.
13 The Court: Objection is overruled. Go
14 ahead.
15 A I'm sorry. You'll have to repeat the question.
16 Q You know what. I don't remember it. Can the
17 reporter -- no? Okay. Do you --
18 The Court: What was the question? What
19 did you just ask?
20 Mr. Epley: I don't recall the before
21 this thing. I think -- I think she's been
22 kind enough to answer most of the questions I
23 have.
24 The Court: Do you normally do that, have
25 the reporter --

1 Mr. Epley: I'd like to, yes, sir.
2 The Court: Can you go back and repeat it
3 for us, please?
4 (Court Reporter replays question.)
5 The Court: I'm sorry. Go ahead.
6 A The answer is yes, under some circumstances.
7 Q Okay. Thank you very much, ma'am. What
8 percentage of the auto glass work in the state of
9 South Carolina is performed by one company,
10 Safelite AutoGlass, under your preferred provider
11 system?
12 A Mr. Epley, I don't monitor that state specific on
13 a monthly basis.
14 Q Would you be interested to know that --
15 The Court: That's not a question.
16 Questions.
17 Mr. Epley: Okay, sir. I've got to
18 figure out how to put this in a question.
19 Q Would you agree with me that in February 15th of
20 '07, Safelite and Nationwide Auto Glass in the
21 State of South Carolina Senate Banking and
22 Insurance testified that they perform over 80
23 percent of all the auto glass functions, the
24 installations and repairs, for Nationwide Auto
25 Glass? I'm trying to make a point --

105 1 Mr. Grantland: Objection. Relevance. 2 The Court: Nationwide is a whole 3 different company. She can only testify to 4 USAA. 5 Q Do you know if your preferred provider company, 6 Safelite, is performing anywhere near 80 percent 7 of the work in the State of South Carolina? 8 A As I mentioned, I don't monitor on a state-by- 9 state basis. 10 Q Okay. Do you know how many preferred provider 11 participants there are in South Carolina under 12 Safelite's program? 13 A No, sir. I do not monitor Safelite's network. As 14 part of our agreement, Safelite Solutions is our 15 third party administrator. Safelite solutions 16 manages the network. 17 Q So you don't select the providers -- do you select 18 the providers or have anything to do with the 19 providers that go on the preferred provider 20 program? 21 A No. 22 Q That's strictly up to Safelite Solutions? 23 A That is administered by Safelite Solutions. 24 Q So they decide if my company can be on, if her 25 company can be on? They're the ones who decide	107 1 Q But you do have preferred providers? 2 A We explain the benefits of using preferred 3 providers. 4 Q Benefits of using preferred providers? Okay. Do 5 your preferred providers use brands that the auto 6 manufacturers use to put in cars in the United 7 States? 8 A Yes, they do. 9 Q They do? 10 A Yes. 11 Q What are the brands? 12 A They use original equipment manufactured products. 13 Q What are the brands? 14 A They use -- you're speaking of glass brands? 15 Q Yes, ma'am. 16 A They use the same glass that the manufacturers 17 use. So Ford, for example, has a little Mustang 18 on Mustang glass. That's an original 19 manufacturer, equipment manufactured glass. 20 Q Did you know that your answer's incorrect? 21 A My answer is not incorrect. 22 Q How many years have you been in the auto glass 23 business? 24 A Two. 25 Q Two years? Did you know that I've been in the
106 1 that? 2 A I would say that any glass shop who would like to 3 be on the network has the opportunity to be on the 4 network. 5 Q Did you know that whether you're on the preferred 6 provider network or not that the contract does not 7 allow -- does not guarantee any volume such as in 8 the preferred provider arrangements that we're 9 used to in a medical policy? 10 A Would I heard -- 11 Mr. Grantland: Objection. Relevance. 12 A -- I'm not sure is what you meant to ask. 13 Mr. Epley: Oh no, it's not irrelevant. 14 Q Are you selling, ma'am, a preferred provider 15 policy or an indemnity policy? 16 A I'm not selling -- am I selling a policy -- we 17 sell a policy to our insured. 18 Q Is your company -- in an auto policy in South 19 Carolina, is your company selling an... 20 indemnification policy or a preferred provider 21 policy? 22 A It's an indemnity policy. 23 Q Does it say preferred providers anywhere in the 24 policy? 25 A No, it does not.	108 1 auto glass business 34? 2 Mr. Grantland: Objection. 3 The Court: That's argumentative. 4 Mr. Epley: That's not permissible, sir? 5 The Court: No. You can't argue with 6 her. You can ask her questions. 7 Mr. Epley: I thought it was a question. 8 Did you know. 9 Mr. Grantland: It's an argumentative 10 question. 11 The Court: Well, I don't think it's 12 relevant how long have you've been in the 13 auto glass business. (To Ms. Palmer) Did you 14 say ten or two? 15 Ms. Palmer: I have worked for USAA for 16 ten years. I've been in the auto glass 17 business for two. 18 The Court: Oh, okay. 19 Q Do you know what percentage of the time your 20 preferred providers put in brands that are used by 21 auto manufacturers and what percentage of the time 22 that they use Chinese parts? 23 A That percentage is going to vary. Our book of 24 business varies. I can tell you that based on the 25 vehicle year model, if it's the current year minus

1 24 months original equipment manufactured glass is
 2 available to the insured.
 3 Q Within the first 24 months?
 4 A If the vehicle is within -- manufactured within 24
 5 months of the day of the loss, the insured has the
 6 option of using original equipment manufactured
 7 glass.
 8 Q Does Safelite disclose that to your insured?
 9 The Court: Wait a minute. I'm not quite
 10 sure what I heard her say.
 11 Mr. Epley: What she said -- I'll be glad
 12 to --
 13 The Court: No, no. (To Ms. Palmer) Your
 14 answer was that if it's --
 15 Ms. Palmer: If it's the current year --
 16 The Court: Current Year.
 17 Ms. Palmer: Less 24 months.
 18 Mr. Grantland: Less two years.
 19 Ms. Palmer: Less two years. So if the
 20 car was manufactured within two years.
 21 The Court: Let's use the one we -- that
 22 you admitted into evidence, Thad Miller. The
 23 day of the claim was June 4th, '08, and it
 24 was a 2004 Chevy Avalanche. So he's outside
 25 of that window; is that correct?

1 Ms. Palmer: That's correct.
 2 The Court: So he has to use after-market
 3 parts?
 4 Ms. Palmer: He doesn't have to use
 5 after-market parts, but he --
 6 The Court: But he's not entitled to
 7 them.
 8 Ms. Palmer: The amount that USAA will
 9 pay is based on after-market parts and he may
 10 pay the difference.
 11 The Court: Okay. That's all I wanted to
 12 know.
 13 Q The question is does Safelite, who talks to your
 14 policyholders, do they disclose that to the
 15 policyholder who has a newer car?
 16 A I don't believe it's in the script, no.
 17 Q Okay. Do you know if it's more profitable for
 18 Safelite to put a Chinese piece of glass in than
 19 the original equipment manufactured piece of
 20 glass?
 21 A I would say that that depends on the parts. I
 22 have seen prices where the original equipment
 23 manufactured parts are actually less than after-
 24 market.
 25 Q That's the list price, you should know. Did you

1 ever tell your insureds when these claims were
 2 paid that were not paid in full, did you ever
 3 advise your insureds of this afterward that you
 4 just paid a certain amount?
 5 A If our insureds ever question what's paid, we
 6 disclose to them what's paid, yes, and they have
 7 visibility.
 8 Q Did you advise your insureds that other companies
 9 pay in full for the same thing?
 10 A We answer our insured's questions. I'm -- no. We
 11 answer based on what our policy language states.
 12 Q Do you know what it says on the bottom of the
 13 Safelite invoice, the disclaimer on the bottom of
 14 the Safelite invoice?
 15 A The Safelite invoice says a lot of things, so if
 16 you can give me an example of one I'll be happy to
 17 read it.
 18 Q Yes. The invoice, one of their invoices.
 19 A Safelite doesn't give you an invoice.
 20 Q They give the customer an invoice. They give the
 21 customer a copy of something.
 22 A Are you referring to Safelite AutoGlass or --
 23 Q Yeah.
 24 A -- Safelite Solutions?
 25 Q Yes. Safelite AutoGlass.

1 A I do not have a copy of a Safelite AutoGlass
 2 invoice, and no, I cannot testify to what it says.
 3 Q You guys -- we've heard this before. You're
 4 testifying that Safelite Solutions and Safelite
 5 AutoGlass are two different companies?
 6 A That is correct.
 7 Q Are they located in the same building, in the same
 8 city?
 9 A There are Safelite AutoGlass shops in --
 10 Q No, ma'am. The headquarters, the administrative
 11 offices of Safelite Solutions?
 12 A Columbus, Ohio.
 13 Q Safelite AutoGlass?
 14 A Columbus, Ohio. They are financially affiliated.
 15 Q They're in the same building?
 16 A They're financially affiliated. I have visited
 17 Safelite Solutions. I have not visited Safelite
 18 AutoGlass in the same home office. So if you're
 19 saying they're in the home office, then I can't.....
 20 say that I agree or disagree. I've not visited
 21 Safelite AutoGlass headquarters.
 22 Q But they're two different companies?
 23 Mr. Epley: Judge, on page seven of the
 24 Safelite agreement, Safelite Network
 25 Agreement --

1 The Court: Questions at this time. I
2 can go over that with you later. Do you want
3 to ask her about it?

4 Mr. Epley: Oh, okay.

5 Q Ma'am, this -- a copy of this.

6 Mr. Grantland: Your Honor, again, I
7 would again renew my objection.

8 The Court: He hasn't asked the question
9 yet.

10 Mr. Grantland: No, sir. But we're
11 talking about this document that's not -- has
12 nothing to do with the actual insurance
13 policy between the 67. And I'm not trying to
14 be rude, but a lot of this, in my opinion,
15 Your Honor, is irrelevant and if I can just
16 make a standing objection to the relevance of
17 it, Your Honor.

18 The Court: So noted.

19 Mr. Grantland: Thank you.

20 Mr. Epley: And I apologize for the time
21 this takes.

22 The Court: No need to apologize. I do
23 this full-time.

24 Q 7.3. I'll put this in a form of a question. In
25 paragraph 7.3, does it say Safelite may refer the

1 work to another participant or perform the work
2 itself and shall be entitled to the reimbursement?
3 Or perform the work itself. Doesn't itself
4 signify it's the same thing?

5 The Court: (To Mr. Grantland) You can't
6 talk to her.

7 Mr. Grantland: Oh, I'm not, Your Honor.
8 I'm just reading.

9 The Court: Okay. I just wanted to be
10 sure she didn't look up and ask you anything.

11 A Excuse me while I read it.

12 Mr. Grantland: No, sir. I'm just
13 reading.

14 Q Ms. Palmer, in 7.3 it's the last sentence.

15 A That is what it says, and I would agree with you.

16 Q Thank you, ma'am. Did the same -- since you
17 visited the call center, do the same operators,
18 CSRs, that handle your insurance claims, do they
19 field calls for the retail section of the business
20 and cash calls?

21 A There are separate departments within Safelite.
22 We have what's called a virtually dedicated team.
23 So hopefully I'm answering your question. The
24 virtually dedicated team handles primarily USAA
25 calls. If it is a cash call, meaning that -- in

1 this case there is no deductible in the State of
2 South Carolina, but if an insured called and
3 needed a replacement glass and they did not have
4 comprehensive coverage, then it's possible that
5 they may refer the insured to a shop for cash
6 business.

7 Q Which is -- which should -- which isn't that
8 almost always their own Safelite AutoGlass shop?

9 A If the member wants to go to another shop, then
10 they're more than happy to go --

11 Q No. I'm talking about a cash sale. They make a
12 pitch, don't they?

13 A They advise the member. The member calls in.
14 They call USAA. They want a recommendation for
15 who can repair the glass and yes, some of the work
16 goes to Safelite.

17 Q Isn't it true in areas where there's higher
18 deductibles that the consumer, your customer, is
19 not told this information until after they get
20 through most of the claim?

21 A The information about the deductible?

22 Q Yes. Or not any comprehensive coverage.

23 A As you heard in the phone call, certain questions
24 have to be asked in order for Safelite to identify
25 the policy based on the connectivity between

1 Safelite and USAA. So, yes, some information is
2 gathered before the deductible information is
3 collected.

4 Q Do you pay Safelite for each claim processed?

5 A In some --

6 Q Is the payment per claim, ma'am?

7 A We don't pay for cash claims, no. We --

8 Q But for every insurance claim, isn't it so that
9 you're paying them for each claim processed?

10 A Yes. We pay them to administrate our glass claims
11 process.

12 Q But it's per claim; is that correct?

13 A We -- if you wonder why I'm staring, I'm trying to
14 visualize our policy.

15 Q That's fine. Like the Judge says, I'm good to go,
16 too.

17 A We do pay per claim.

18 Q Okay. Thank you. So isn't it in the best
19 interest of Safelite Glass, since they have a
20 tremendous conflict of interest from being in the
21 auto glass -- or if you want to, one of their
22 divisions that's in the same building in the auto
23 glass business -- not to disclose to a consumer
24 the actual price of something because the
25 deductible -- it may be -- it may be more

1 beneficial for them not to make the claim?
 2 A I would say that's subjective.
 3 Q Okay.
 4 A And I will tell you that the order in which things
 5 occur occur that way because of the connectivity
 6 between the two systems.
 7 Q Okay. Is the amount of the claim -- when you have
 8 a claim and you have a number there -- but let's
 9 say that we're looking at one of those faxes and
 10 it says \$250 since that's what we already used.
 11 It says \$250. Is that the amount -- is the claim
 12 -- is the loss, the total loss, the total amount
 13 of the claim? Is there anything else that goes
 14 into the claim other than the loss amount?
 15 A Then the amount quoted on the work order?
 16 Q Yes, ma'am.
 17 A Yes. The sales tax is not included in the work
 18 order.
 19 Q Sales tax.
 20 A And as you know, as someone being 34 years
 21 experience, sometimes mouldings are necessary and
 22 sometimes mouldings are not. So moldings are not
 23 quoted.
 24 Q Thank you. Is there anything else that should be
 25 included in the claim, the amount of the claim,

1 other than what you've just said?
 2 A No, sir.
 3 Q Okay. Would you -- do you know what a CLUE report
 4 is?
 5 A I do.
 6 Q Okay.
 7 A Comprehensive Loss Underwriting Exchange.
 8 Q That's correct. And isn't it true that this is
 9 the legal exchange of loss information between
 10 insurance companies that's legal in the United
 11 States?
 12 A That's true.
 13 Q That's correct. Do you know if -- did you know
 14 that through the Freedom of Information Act you
 15 can get your CLUE report to show the amount of
 16 loss?
 17 A Absolutely.
 18 Q Okay. So it's really public information? I mean,
 19 it's private. It's hard to get to it, but it's
 20 private information; did you know that?
 21 A We have a direct 1-800 number that we give
 22 insureds and a website if they want to access
 23 their CLUE report.
 24 Q What would you say if the amount of the loss
 25 reported on the CLUE, including all the taxes and

1 the mouldings and everything you just said, is
 2 greater than the actual amount?
 3 A I would say that they may -- they may find -- so
 4 the amount of the loss is the amount that we pay
 5 for the work to be done.
 6 Q Correct, ma'am.
 7 A Okay. And then there's administrative costs.
 8 Q Administrative costs?
 9 A Yeah.
 10 Q So isn't it true that you're asking your insureds
 11 to pay for that amount by adding that
 12 administrative cost?
 13 A That's a loss adjustment expense.
 14 Q A loss adjustment expense. Aren't you paying
 15 Safelite for each time that they do this? Aren't
 16 you paying them any -- aren't you paying them
 17 again?
 18 A We pay them per invoice that they process an
 19 administrative fee.
 20 Q Right.
 21 A So we pay for the work to be completed. We pay an
 22 administrative fee. The administrative fee will
 23 appear on the CLUE report.
 24 Q So the amount -- and I've seen a lot of these. So
 25 the amount is approximately \$20?

1 A Depending on your rounding.
 2 Q Okay. Approximately \$20. So if it's a \$250 loss,
 3 including taxes and mouldings and the whole thing,
 4 it's reported at about \$270?
 5 A It's \$17 to be exact. Today. And like I said,
 6 that can vary.
 7 Q So that particular number, is it true that that's
 8 the loss information reported to the state for
 9 rating information?
 10 A That is true.
 11 Q So wouldn't you agree that the loss has been
 12 overstated by, in this case, about eight percent?
 13 A I would say that the loss is not overstated
 14 because there's a certain amount, a certain
 15 expense, that's required to handle that loss and
 16 that administrative expense is an expense
 17 associated with handling the loss.
 18 Q Do you pay the glass shops for their
 19 administrative expense?
 20 A We pay glass shops based on the NAGS list price
 21 plus labor plus sales tax.
 22 Q So you're answering no; is that right, to not
 23 paying glass shops?
 24 A We don't pay a specific administrative expense to
 25 a glass shop.

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1 Q Okay. What would you say of other insurance
2 companies that do not use Safelite as a TPA do not
3 show that amount on the CLUE report that's
4 reported to the state?

5 A I would say that they may have a different
6 reporting structure.

7 Q Okay. Thank you. Does Safelite have any
8 agreement with you for discounts on what they
9 charge based on volume?

10 A No, they do not.

11 Q What is the rates that Safelite charges you,
12 ma'am?

13 A That's proprietary.

14 Q Proprietary? Do you know my rates?

15 A I know the rates that USAA approves.

16 Q Do you know my -- do you know other glass
17 company's rates?

18 A I know the rates that USAA approves.

19 Q Does Safelite know my rates?

20 A Safelite Solutions knows the rates that USAA
21 approves.

22 Q Okay. I got you. Thanks. I think I proved my
23 point. When you figure, as you call it, above
24 average, is this weighted? Is this a weighted
25 amount? The pricing you pay, is this a --

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1 A No.

2 Q It's not a weighted amount?

3 A No, it's not.

4 Q So if Safelite were to do 80 percent of the work --
5 --

6 A It's non-Safelite shops.

7 Q Non-Safelite shops?

8 A Yeah.

9 Q Does Safelite offer you a lower price than the
10 ones stated?

11 A Safelite has a contractual agreement with USAA,
12 and you spoke to the guaranteed average invoice
13 price.

14 Q So that's what it is?

15 A Their price is -- is their guaranteed average
16 invoice price. And included in the guarantee
17 average invoice price is all invoices.

18 Q It's all invoices?

19 A It's all invoices.

20 Q Okay. Is Safelite AutoGlass paying for any
21 professional services from these two fine lawyers?

22 A Sir, I'm not --

23 Mr. Grantland: Objection.

24 A -- a legal expert, and I don't handle our legal
25 bill.

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1 The Court: Sustained.

2 Mr. Epley: Okay. Thank you. I
3 understand.

4 Q And I think I've asked this before, but does
5 Safelite pay your company anything for anything
6 else, such as marketing fees or anything else,
7 monies coming to you?

8 A And I told you before that I'm not a procurement
9 expert, but I can tell you that I am very familiar
10 with our contract with USAA and, no, they do not
11 pay us any marketing fees.

12 Q Let's go to advertising a little bit.

13 Mr. Epley: I'm not too far from being
14 over, Your Honor.

15 Mr. Grantland: Your Honor, again, if
16 we're going to talk advertising --

17 The Court: I would agree because that
18 doesn't have anything to do with this case.

19 Mr. Grantland: I'm not trying to be
20 rude, but --

21 The Court: I think we've ridden this
22 horse about as far as we can get it to go.

23 Mr. Grantland: Yes, sir.

24 The Court: We've got to get back to the
25 details of your 67 claims.

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1 Mr. Epley: Okay. The next point -- I'll
2 ask you, sir. The next point has to do with
3 the differences in the cost of doing business
4 as this company --

5 The Court: You ask her, he's going to
6 object and then I'll tell you.

7 Mr. Epley: Okay.

8 Q Do you realize that the cost of non-Safelite shops
9 doing business is a good deal higher than the
10 Safelite shops due to the ability to be the
11 gatekeeper?

12 Mr. Grantland: Objection.

13 The Court: I think that's a relevant
14 question. Go ahead.

15 A Can you explain ability to be the gatekeeper?

16 Q They're in the middle of the claim. We have our
17 competitor all -- everybody. Not just us, but
18 everybody in the country has our competitor in the
19 middle of the claim.

20 A Okay. You asked me if I realized that your costs
21 were higher. I would say that anyone who is in
22 business -- you could have the same glass shop
23 sitting on the same corner and depending on how
24 you run your business, how efficient you are, your
25 expenses may be higher than the next man. So do I

1 realize that? I would say that, you know, if you
2 told me it's higher, then I would have to take
3 your word for it. But I would say that there are
4 efficiency opportunities in every business.

5 Q Okay. Since Safelite -- Safelite is taking your
6 calls, all your calls -- I'm sure hundreds of
7 thousands a year -- wouldn't you agree that it
8 costs them almost nothing to secure a claim?

9 A I would not agree with that.

10 Q Okay. Would you rather pay our fees that we have
11 shown that are at issue or the double and triple
12 that your -- have recently or are paying
13 elsewhere?

14 A Sir, the price that you -- the fact that you
15 distributed earlier is not relevant to this case
16 and it is no longer applicable even in the
17 location described. And what USAA pays is based
18 on current --

19 Q This is applicable. So in four years you have --
20 lowering your agreed upon fair and reasonable
21 price by two-thirds or a half in some market
22 place?

23 A The price that we pay is based upon the comparison
24 that's done in the local market place, and there -
25 - not relevant to this case, there are reasons

1 behind the decision that was made before that was
2 what it was and as it is currently. If it were
3 relevant to the case, I could quote those.

4 Q Do you know, does Safelite give their CSRs
5 incentives for changing people's mind when
6 consumers are allowed right of choice by law?

7 A I will tell you that just as we heard these
8 recorded phone calls that there has been one
9 instance in my two years on auto claim staff that
10 I heard a Safelite representative vary from USAA's
11 approved script. That Safelite employee does not
12 work for Safelite or for USAA.

13 Q That wasn't my question, ma'am. Do you know if
14 these employees of Safelite are given incentives
15 of any kind?

16 A I do not.

17 Q Okay. Your company has a wonderful reputation.
18 I'm just wondering why do you think it's good
19 business practice to hire a third party that has
20 this huge conflict of interest?

21 A I will tell you that that's a procurement
22 decision.

23 Q Do you know the cost of a retail business like
24 ours to collect an unsatisfied invoice?

25 A I do not.

1 Q Would you believe it's around \$100 each?

2 A Okay.

3 Q Do you deny -- well, I think we've covered that
4 one. Oh, this is a good one. Do you actually
5 contract with shops to repair or replace auto
6 glass? Does USAA contract with any shop to repair
7 or replace auto glass?

8 A USAA contracts with Safelite Solutions to be our
9 third-party administrator for auto glass. For
10 auto glass only claims. There are situations
11 where auto glass is replaced in claims that are
12 not glass only, and that would be -- you know,
13 that work may be completed at some other collision
14 repair shop that we do contract with.

15 Q So are you telling me that USAA actually doesn't
16 contract or take any liability in advising a
17 consumer where to go?

18 A I'm thinking of how you're using the term
19 liability.

20 Mr. Grantland: And I'm confused by the
21 question, Your Honor.

22 The Court: I am, too.

23 Mr. Epley: I'll explain myself. The
24 insurance companies are very carefully --
25 Mr. Grantland: Your Honor, I asked him

1 to ask a question, not give a speech.

2 Mr. Epley: I'm explaining it to you.

3 The Court: He's explaining the question.
4 That's what we asked him to do. Go ahead..

5 Mr. Epley: The insurance companies are
6 very careful. They're risk-adverse. That's
7 their business. They don't want to assume
8 risk. By this process, they don't really
9 have any risk. They don't have any skin in
10 the game. If something is wrong, the
11 consumer usually go to the big pocket, which
12 is the insurance company. But the one
13 that's really liable is the installer. Okay.

14 Q So I'm asking you are you contracting -- are you
15 contracting any glass company, including us, to
16 repair or replace auto glass?

17 A We contract with Safelite Solutions to repair and
18 replace auto glass.

19 Q So the answer is no; is that correct? ..

20 A The answer is no because Safelite Autoglass is a
21 separate entity.

22 Q Are you contracting with Safelite AutoGlass?

23 A No, we are not.

24 Q You are not? Okay. That's very important. Why
25 are you -- so since you're really not buying

1 anything, why are you exercising this buying
2 power? Aren't you just the payor?
3 A Mr. Epley, that's a procurement function. I am
4 not a procurement expert.
5 Q Safelite has also admitted that they have work for
6 the insured --
7 The Court: Wait a minute. Go back. Did
8 you just tell him that y'all do not enter
9 into contracts with glass replacement
10 companies such as himself?
11 Ms. Palmer: Yes, sir, I did say that.
12 We do not.
13 The Court: Okay. Thank you.
14 Q Including Safelite?
15 A Including Safelite AutoGlass.
16 Q That would also kind of rub against state law of
17 giving the consumer a choice, too; wouldn't it
18 not, ma'am?
19 A What would?
20 Q By contracting with specific shops, saying that
21 these are the only two approved shops in town?
22 A I don't think it's relevant because we don't do
23 it.
24 Q Thank you. That's a good answer. Safelite has
25 also publicly admitted they work with insureds

1 using a spread method. You know what? I'm going
2 to skip that since you've explained the general --
3 Has the amount that you're officially willing to
4 pay steadily decreased over the last five, ten, 15
5 years? The amount per -- the average amount for
6 replacing a piece of auto glass?
7 A No, it has not.
8 Q It has not?
9 A No. In fact, the last adjustment that we made in
10 our discounts was a decrease in the discount,
11 meaning an increase in payment. And I believe
12 with the work orders that we have I can show
13 example of that. NAGS list 38 percent. And the
14 one you submitted, NAGS list 40 percent. This one
15 is more recent. We decreased our discount two
16 percent.
17 Q So you went from 40 to 38?
18 A That's correct.
19 Q Which is more money?
20 A That's correct.
21 Q What happened with the NAGS list price? Did it no
22 go up?
23 A NAGS list price went up. We decreased our
24 discounts to insure that glass companies were not
25 paid less.

1 Q But how does that relate to something five or ten
2 years ago? So if your average price --
3 Mr. Grantland: Five or tens years ago --
4 A Sir, I was not on the glass program five or ten
5 years ago.
6 The Court: He asked. She said she
7 didn't know.
8 Mr. Epley: Okay. Fine.
9 Q The preferred provider list may have -- as a
10 matter of fact, did you know that Safelite
11 testified that their preferred provider list in
12 the State of South Carolina was about a hundred
13 shops. Did you know that?
14 A As I mentioned, I don't monitor on a state-by-
15 state basis. No, I did not know that.
16 Q Okay. Did you know that the information that's
17 been testified in South Carolina courts show that
18 80 percent of all work is still done by only one
19 company?
20 A No, I did not know that.
21 Q Okay.
22 Mr. Grantland: Objection, Your Honor.
23 These are allegations not even in evidence.
24 We don't know whether what he's asking is
25 true or not.

1 Mr. Epley: No. I'm trying to prove the
2 point that being in the middle is just a
3 guarantee of owning the market place.
4 Ms. Palmer: Is that what we're here to
5 discuss today? And I'm sorry. That may have
6 been out of turn.
7 The Court: No, it's not. I think we're
8 going to need to get back to your 67 claims.
9 I've let you go on a large fishing
10 expedition. We can't go any further.
11 Mr. Epley: I've discussed the 67 claims,
12 Your Honor, and our position with the 67
13 claims. And I apologize to Ms. Palmer to
14 make her uncomfortable, but we just wanted a
15 lot of information to come out on here on how
16 this whole shebang works.
17 A Mr. Epley, if I may --
18 Mr. Grantland: Go ahead.
19 A We are here to talk about the 67 claims. What
20 you've said is on record. We're here to talk
21 about the policy language as it applies to these
22 67 claims.
23 Mr. Epley: You've been very kind to
24 answer my questions. Your Honor, --
25 Re-examination

1 By Mr. Grantland:
 2 Q Any, you've seen a copy and the court has a copy
 3 of the factual allegations in the complaint. In
 4 the complaint Mr. Epley has sued USAA for, is
 5 there anything in this complaint about unfair
 6 prices or issues with Safelite or after-market
 7 parts or Chinese parts or the issues that we've
 8 been discussing for 30 minutes? Is anything in
 9 this complaint about that?
 10 A There is nothing in this complaint about that.
 11 Q Okay. This agreement, the Safelite agreement of
 12 2006, does that have anything to do with Mr.
 13 Epley's claims on the 67 policies that he's raised
 14 in this complaint? He questioned you about the
 15 Safelite Network Agreement.
 16 Mr. Epley: Your Honor --
 17 A No.
 18 The Court: He can do that on cross. You
 19 brought it up. He can go into.
 20 Q Did Southern Glass ever ask not to be contacted by
 21 USAA or Safelite regarding pricing?
 22 A Yes, they did.
 23 Q Explain that.
 24 A In our process of reviewing these 67 cases,
 25 looking at the phone calls, we went through a

1 series of questions to insure that Safelite did
 2 what they're supposed to do for USAA. And in the
 3 midst of that discussion, we were advised that --
 4 and I apologize. I don't have the specific date.
 5 But we were advised that Southern Glass and
 6 Plastics requested specifically not to be included
 7 on the fax that goes out from Safelite advising
 8 non-network shops of what the approved pricing is.
 9 Q So they did not want to hear -- they were asked if
 10 they wanted to know what the pricing, approved
 11 pricing, was?
 12 A Well, I'm not sure that they were asked, but so
 13 that I can explain, any glass shop that ever
 14 submits an invoice to Safelite Solutions is
 15 included in any communication about adjustment
 16 changes to the discounts, just as in our example
 17 of earlier. When NAGS made an adjustment and USAA
 18 made the decision to reduced its discounts to 38
 19 percent from its prior 40, Safelite Solutions is
 20 required to send a fax -- they call it a blast fax
 21 -- to every glass shop that has ever submitted an
 22 invoice within the prior window of time, six or
 23 eight months. I believe it's 12 months,
 24 actually. And Southern Glass and Plastics
 25 requested specifically not to be included on that

1 blast fax.
 2 Q And a final question. You were asked a lot about
 3 repairing versus replacing.
 4 A Yes.
 5 Q And I could show you the policy, but you know the
 6 policy. Does the USAA policy distinguish whether
 7 something's -- in the definition of repair,
 8 whether it's replaced in full or repaired, does
 9 the policy distinguish?
 10 A Repair could mean replace.
 11 Q And you give that -- your insured the option?
 12 A Yes.
 13 Mr. Grantland: I have no further
 14 questions, Your Honor.
 15 Examination
 16 By Judge Womble:
 17 Q Just to clarify some things in my mind, preferred
 18 vendors, shops, whatever, Safelite, whatever they
 19 are, those that agree, is that something that's
 20 similar to a hospital agreeing to be a part of an
 21 HMO? Says I'm willing to take this percentage off
 22 to get your business. Is that what this amounts
 23 to?
 24 A If there were any comparison out there that were
 25 similar, I would say the medical industry is

1 probably the closest.
 2 Mr. Epley: I would agree, Your Honor.
 3 Q And he would be one of those hospitals that says
 4 we're not going to participate?
 5 A Yes, sir.
 6 Q Let me ask you another question. There have been
 7 several -- there's been a bunch of discussion
 8 about NAGS. Why NAGS? Why that particular
 9 company instead of some other? And I know you
 10 told me some of this yesterday, but tell me again
 11 why NAGS.
 12 A NAGS is -- and forgive the vague answer, Judge.
 13 NAGS is the list price that's accepted in the
 14 glass industry. And when I joined claims staff
 15 two years ago, I had to learn about NAGS, too, and
 16 I'll be honest with you. For the first six months
 17 it wasn't really clear. But NAGS is -- this is my
 18 knowledge of it. It's the most accepted list
 19 price in the glass industry. And when Safelite or
 20 any other administrator discusses discounts off of
 21 NAGS with any non-network shop, you know, NAGS is
 22 clearly understood.
 23 Q Why 38 percent?
 24 A I can speak to that.
 25 Q You're saying y'all are taking NAGS recommendation

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1 minus 38 percent. Why 38 percent?

2 A 38 percent, in this case, positions USAA to be

3 paying more than the average that is paid in this

4 market to non-Safelite shops. So USAA, as Mr.

5 Epley mentioned, has a very -- you know, we value

6 our brand. We have a strong member base. And we

7 don't have businesses practices to undercut the

8 market.

9 Q Okay. I just want to be sure I understood because

10 there's been a lot said. I want to sure that I've

11 got all the facts. NAGS, is Safelite in any way

12 affiliated with NAGS?

13 A No, sir..

14 Q Do they have members of the board?

15 A Not to my -- I should say not to my --

16 Q Member of the board of NAGS? Does Safelite have

17 any of their corporate people on the board at

18 NAGS?

19 A Not to my knowledge. I'm not sure I'm prepared to

20 answer that.

21 Q Okay. Let me ask you this. Who's the Chairman of

22 the Board of Safelite?

23 A The Chairman and CEO, to my knowledge, is Tom

24 Feeney.

25 Q Is he also the Chairman of the Board of Safelite

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1 Solutions?

2 A I'm sorry. Safelite Solutions' CEO is Tom Feeney.

3 He is who we deal with directly. I am not

4 familiar --

5 Q Is he not the same Chairman of the Board of

6 Safelite Glass?

7 A I can't answer that, Judge.

8 Mr. Epley: I can, sir.

9 A I apologize. We deal with Safelite Solutions. My

10 expertise is with Safelite Solutions

11 Q It just so happens that I know the answer. I just

12 wanted to know if you did.

13 A Okay.

14 The Court: All right. Anything in

15 closing?

16 Mr. Grantland: Your Honor, the defense

17 rests.

18 The Court: I can't imagine if you have

19 anything else to say, either one of you.

20 Mr. Grantland: No, sir. At the risk of

21 --

22 The Court: I do need one thing from you.

23 Mr. Epley: Yes, sir.

24 The Court: I need the total amount paid

25 to you on these 67 claims.

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1 Mr. Epley: I'll have to get it to you

2 shortly.

3 The Court: How shortly is shortly?

4 Don't y'all have all 67 of them here?

5 Mr. Epley: You know, we have it here.

6 If we had an adding machine.

7 Ms. Lown: That's the total that we're

8 due, but that's not the total that we were

9 paid.

10 The Court: I need to know what Safelite

11 paid you or USAA.

12 Mr. Grantland: Your Honor, I can give

13 you a spreadsheet.

14 Mr. Epley: I can give you an idea.

15 The Court: Sir?

16 Mr. Epley: I can give you an idea.

17 The Court: I need to know. One last --

18 why no sales tax? Why do y'all say you're

19 not going to pay sales tax?

20 Ms. Palmer: Sales tax varies from even

21 county to county.

22 The Court: In a state where you're

23 required to pay sales tax, why do you say no

24 sales tax?

25 Ms. Palmer: It doesn't include sales

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1 tax. So we'll pay sales tax. We'll pay this

2 amount plus the sales tax or any other

3 applicable --

4 The Court: And for the record, I

5 apologize for eating up here. I'm diabetic

6 and my blood sugar is beginning to drop.

7 Mr. Epley: If I can get -- this lady is

8 very fast on an adding machine. If I can get

9 her to do that, I think we've got there here,

10 sir.

11 Mr. Grantland: Your Honor, we -- yeah.

12 I guess we're off the record.

13 The Court: Let's take a five minute

14 recess while y'all get me that figure.

15 (Off the record from 4:24 p.m. to 4:39 p.m.)

16 The Court: Did y'all come up with a

17 figure?

18 Mr. Epley: Your Honor, based on the

19 information that Mr. Grantland had, we have

20 come up with a figure that's subject to --

21 Ms. Lown, here, added it up, but she had not

22 double-checked it and we don't know if

23 everything has been included. But it appears

24 to be -- I hope Mr. Grantland --

25 The Court: What do y'all believe it to

1 be?

2 Mr. Grantland: 7337; is that right?

3 Mr. Epley: The amount that we are
4 suggesting that's short paid is 7337.07. The
5 total amount that was paid -- I think that's
6 what you asked, sir?

7 Mr. Grantland: Total amount paid was 21
8 -- yeah, I'm sorry. Here it is.

9 The Court: The total amount that you
10 were paid.

11 Mr. Epley: We were paid, sir,
12 \$21,983.07.

13 The Court: \$21,983.

14 Mr. Epley: Yeah. This is a quick add
15 up.

16 The Court: And seven cents.

17 Mr. Epley: We did a quick add up.

18 Mr. Grantland: You can have this as an
19 exhibit, Your Honor.

20 The Court: That's good. I'm good. All
21 right, folks. As we all know -- or if you
22 don't you certainly missed something the last
23 couple days -- that I'm not going to be able
24 to resolve this issue for y'all. I can
25 resolve the 67 claims you've got here today

1 and tomorrow y'all can start counting again
2 because y'all are at -- y'all are at such
3 odds here it's unbelievable. And I'm not
4 saying one's right over the other. I'm just
5 saying there's certainly different viewpoints
6 at to this issue. I wish I could make you
7 happy. I wish I could resolve the issues.
8 Can't do either one. All I can do is rule on
9 what's legal, what I believe to be is legal.
10 My -- from my viewpoint, what we have here is
11 exactly what I asked her about awhile ago and
12 described as an HMO in which there were some
13 people who were not providers who agreed to
14 come in and -- their clients came into them
15 to get services and the insurance company
16 didn't want to pay their bill in full. Now,
17 I listened very carefully and I looked very
18 carefully if there was ever a contract
19 between the two. And there was some. . . .
20 testimony that there probably was, and for a
21 long time through this trial we sent over --
22 we, being Safelite, a representative of USAA.
23 We sent over to you and said this is the
24 amount we'll pay. Do the job and this is
25 what you accept. And if they said yes, as in

1 one telephone call said that they did, then I
2 guess you would probably have a contract and
3 I would enforce it. However, the defense's
4 expert told me in the very last of her
5 testimony -- and I asked her three times. I
6 think it was three. Did you ever enter a
7 contract with this company or any other
8 company other than Safelite and her answer
9 was no. So even if you have an offer, you
10 never had an acceptance. And your own
11 witness says we never had a contract. They
12 did authorize the repairs. I just don't
13 think they ever agreed on a price. And the
14 authorization of those repairs requires
15 payment. Now, I'm figuring at the 38 percent
16 and the five percent sales tax on the
17 \$21,983.07, the total would come to
18 \$9,452.71. However, I don't have
19 jurisdiction beyond \$7,500. For that reason,
20 I'm awarding the defense -- again, because
21 there was never an acceptance of their offer
22 and they agreed that there never was. It was
23 never a contract. There was simply an
24 authorization to do the repair. Never was a
25 dispute that Safelite didn't say do the

1 repair and then faxed over an offer and they
2 didn't accept it. It's not a contract until
3 there's an offer and acceptance. Both of you
4 agree that didn't happen. You said it didn't
5 happen. She said it didn't happen. There
6 was no contract. For that reason, I'm ruling
7 in favor of the defendant on this claim in
8 the amount of \$7,500 plus \$80 in court costs.

9 Mr. Epley: For the plaintiff?

10 The Court: Plaintiff. I'm sorry. I
11 usually have them in the opposite chair. I'm
12 ruling in favor of Safelite -- I mean,
13 Southern Glass and Plastics in the amount of
14 \$7,500 plus \$80 in court costs.

15 Mr. Epley: Thanks for all your time,
16 sir.

17 The Court: I want to thank you for
18 coming down from Texas and being with us. I
19 hope we didn't mistreat you while you were
20 here.

21 Mr. Grantland: Your Honor, if I may
22 renew the previous motions for directed
23 verdict.

24 The Court: They're so noted and denied.
25 (Whereupon, the hearing matter was concluded

at 4:45 p.m.)

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State of South Carolina)
) Certificate
County of Lexington)

Be it known that I took the foregoing hearing in the matter of Southern Glass and Plastics Company, Inc. vs. USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

The foregoing transcript of 145 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 30th day of September, 2009.

Cherif B. Williams, CVR

Notary Public for South Carolina
My Commission Expires May 21, 2015.



MURPHY & GRANTLAND, P.A.

Ashley B. Stratton
Direct dial 803-454-1241
astratton@murphygrantland.com

March 11, 2011

VIA FAX

576-1741

The Honorable G. Thomas Cooper, Jr.
P.O. Box 192
1701 Main Street, Room 323
Columbia, SC 29202-0192

Re: Southern Glass & Plastics Company, Inc. vs. USAA Casualty Insurance Company,
USAA General Indemnity Company and USAA United Services Automobile
Civil Action No.: 2009-CP-40-07413
Claim No.: 007824562/ALIS # 2009-14406
Our File No.: 3250-0398

Dear Judge Cooper:

Upon reviewing our Notice of Appeal and attached Exhibits after the hearing this morning, I realized your file was missing a copy of an Order Granting Summary Judgment issued by Judge McIntosh in August 2010 in a similar case. This Order was issued after we filed our Notice of Appeal in October 2009 and, therefore, was not included as an exhibit. Also, because we did not reach the unilateral contract issue during arguments this morning, I was unable to address the Order. Please consider this Order as further support for our grounds for appeal and specifically for the unilateral contract issue which was extensively argued at the trial before Judge Womble.

With warm regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'A. B. Stratton'.

Ashley B. Stratton

ABS/kbd

Attachment

cc: Robert L. Jackson, Esquire (via fax 779-2173)

Telephone 803-782-4100 • Facsimile 803-782-4140 / 803-454-1258
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Jeffrey C. Kull Alice P. Adams William H. Frye Timothy J. Newton Peter E. Farr Chris A. Majure Ashley B. Stratton J. Ryan Oates
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2009-CP-40-7516

Southern Glass & Plastics Company, Inc.,

Plaintiff,

vs.

Kemper, A Unitrin Business.

Defendant.

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANT**RICHLAND COUNTY
FILED
2010 AUG 24 PM 2:32
JEANETTE W. MCCOY
CLERK OF COURT

This matter came before me on July 1, 2010, by motion of Defendant Kemper, A Unitrin Business (hereinafter "Defendant"). Present at the hearing were Robert L. Jackson Esquire, counsel for Plaintiff, Southern Glass & Plastics Company, Inc. (hereinafter "Plaintiff"), as well as Ashley B. Stratton, Esquire, representing Defendant. Defendant contends in its motion that Plaintiff entered into a contract with Defendant's third party administrator as an assignee of its customers' insurance claims to perform glass work for the customer at Defendant's stated rates. After hearing able arguments of counsel, reviewing the pleadings and submissions of the parties, the Court has concluded that Defendant's Motion for Summary Judgment should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

In the course of its automobile glass repair and replacement business, Plaintiff performed automobile glass replacement services for twelve insureds of Defendant. For each replacement performed, Plaintiff received from the insured an assignment of any insurance proceeds owed to the insured under his or her automobile insurance policy with Defendant. Pursuant to these assignments, Plaintiff submitted invoices to Defendant which purportedly were not paid in full.

Plaintiff alleges the policy issued by Defendant to its insureds obligates Defendant to pay the full amount of Plaintiff's invoice and Defendant's failure to do so is a breach of the policy terms.

Plaintiff's breach of contract claim was originally filed in magistrate's court. However, Defendant's answer and counterclaim seeking a declaratory judgment brought the claim within the jurisdiction of this Court. Specifically, Defendant seeks a declaration that it did not breach the terms of the insurance policy which required it to pay the "[a]mount necessary to repair or replace the property with other property of like kind and quality." Defendant also seeks a declaration that Plaintiff is bound to the rates it accepted when it entered binding contracts with Defendant's third-party administrator upon performance of glass repair or replacement services for Defendant's insureds.

ANALYSIS

Plaintiff entered into a contract with Defendant's third party administrator as an assignee of its customers' insurance claims to perform glass work for the customers at Defendant's stated rates. The necessary elements of a contract are an offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). A valid offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." Id. (citing Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App. 1993)). A contract can occur when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance. Id. (citing International Shoe Co. v. Herndon, 135 S.C. 138, 133 S.E. 202 (1926)).

The existence of a binding enforceable contract is evidenced by transcripts of telephone conversations between Plaintiff's representative (a shop employee), Plaintiff's customer (Defendant's insureds), and Defendant's third party administrator (Safelite Solutions) wherein

the glass claim was reported and express offer was made by Safelite on behalf of Defendant. For instance, one transcript reads:

Defendant's third party administrator: ... I just need to know if you accept the job at the following pricing ... NAGS list minus thirty-seven percent, labor is \$41.00 hourly and \$15.00 per kit.

Plaintiff's representative: We accept the job.

Defendant's third party administrator: Thank you. Your acceptance of the job also indicates that you have accepted these rates and these prices do not include tax or the cost of molding....

Plaintiff's representative: Yes, ma'am.

Thus, the telephone transcript evidences not only an express offer on behalf of Defendant, but also an express acceptance on behalf of Plaintiff.

The offer was further confirmed in a fax sent by Defendant's third party administrator to Plaintiff prior to the work being performed on the customer's vehicle. This fax, characterized by Defendant as a "work order", confirmed the rates agreed to during the telephone conversation and contained a maximum price the Defendant would pay for the glass work:

W/S LIST:	- 37.0%	LABR:	\$41.00 PER HOUR
C/T LIST:	- 37.0%	LABR:	\$41.00 PER HOUR
KIT:	\$15.00	2KIT:	\$30.00
H/M KIT:	\$25.00	H/M 2KIT:	\$45.00

KEMPER has determined the maximum amount of such work is: \$453.81 less any applicable deductible amount

The work order also stated: "Performance of services constitutes acceptance of the above price and billing instructions." After Plaintiff verbally agreed to Defendant's rates over the telephone and received the work order confirming the rates, it performed the glass work without objection or further communication with Defendant's third party administrator. Thereafter, Plaintiff further confirmed its acceptance of Defendant's rates when it accepted and negotiated checks in the amount specified by the work order.

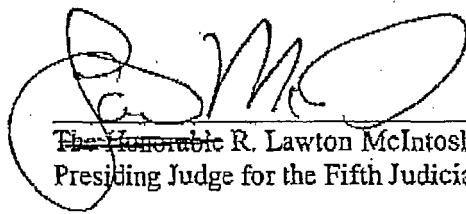
In reaching this conclusion, I have reviewed and found persuasive the case of CIM Insurance Corporation v. Cascade Auto Glass, Inc., 660 S.E.2d 907 (N.C. App. 2008), to the extent it binds an auto glass repair shop to the contract it enters to perform the glass work at the rates provided by Safelite. Based on virtually identical facts and claims, the North Carolina Court of Appeals held: "Because [the glass shop] performed the requested repairs or replacements, it accepted the terms of [the insurance company's] offers, forming valid unilateral contracts at [the insurance company's] stated prices." CIM, 660 S.E.2d at 910.

As in CIM, Plaintiff accepted Defendant's rates and entered into binding contracts when it performed services for Defendant's insureds. Plaintiff verbally agreed to Defendant's rates before it performed the work and accepted Defendant's rates by performance and acceptance of payment. Under the undisputed facts of the case, the parties' representatives discussed and agreed to pricing and otherwise entered a valid enforceable contract. It should also be noted that the authority of the parties' respective representatives to bind their "employers" was not an issue before the Court.

For the reasons stated above, it is therefore **ORDERED** the Defendant's motion for summary judgment is **GRANTED**.

AND IT IS SO ORDERED.

August 13
July 2010
Columbia, South Carolina
Anderson


The Honorable R. Lawton McIntosh
Presiding Judge for the Fifth Judicial Circuit

Bobcat F9 | SAFELITE SOLUTIONS | Date: 06/04/08
Time: 15:33:54

To: SOUTHERN GLASS & PLA Shop#: 013789
1819 TAYLOR ST Fax: 803-771-0148 Referral#
COLUMBIA SC 29201 Tel: 803 771 7878 218433

Customer: MILLER, THAD L Home: 803-957-7277
121 GREYCOAT CT Bus: 803-513-3948 Date of loss:
LEXINGTON SC 29073 06/02/2008

Vehicle: 2004 CHEV AVALANC 1500

Type of Loss: REPLACE WINDSHIELD

Deductible: \$.00

W/S LIST: -38.0% LABR: \$40.00 PER HOUR

C/T LIST: -38.0% LABR: \$40.00 PER HOUR

KIT: \$15.00 2KIT: \$30.00 H/M KIT: \$25.00 H/M 2KIT: \$50.00

USAA has determined the maximum amount of

such work is : \$ 235.86 less any applicable deductible amount

If the work is performed by a location other than the shop listed above,
the rates are subject to change.

Notice:

Pricing is outlined above per current NAGS. If dealer, RV, "P", or net
priced parts are to be used or additional parts, labor, or any other charges
differ from the rates outlined above you are required to contact Safelite at
1-614-602-2120 prior to beginning any work on the vehicle. Performance of
services constitutes acceptance of the above price and billing instructions.

INSHOP SERVICE

COMPANY: USAA

ID#: 09005 EDI MAILBOX: SAFL SAFL107

Billing Instructions

Sold To: MILLER, THAD L

Please Show On Your Invoice

Bill To: USAA

1) Referral#: 218433

Address: P.O. BOX 182190

2) Full Vehicle Vin Number

COLUMBUS, OH 43218-2190

3) Valid NAGS Part Numbers

or, Invoice Online at SGCNetwork.com

4) Customer's Signature

- You must include sales tax on your invoice if applicable.

- Payment will be rendered upon receipt of funds from the client.

- USAA will not reimburse for deductibles not collected.

Authorization To Pay:

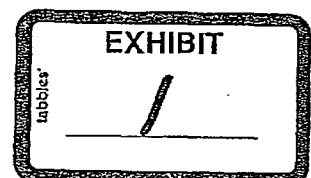
I acknowledge receipt of goods and services requested and that all services
were performed in a workmanlike manner to my complete satisfaction. I
authorize my insurance, fleet, or leasing company to pay SOUTHERN GLASS & PLA
directly for this claim. I understand I am personally responsible for
payment of all or any portion of this invoice not covered by my insurance,
fleet, or leasing company.

Please return your invoice signed by the customer, along with this signed fax

Customer Signature _____ Date _____

Please return your invoice signed by the customer, along with this signed fax.

Shop Owner/Mgr Signature _____ Installer Signature _____



SGP / COLUMBIA
1819 TAYLOR STREET
BOX 587 (29202)
COLUMBIA, SC 29201

Phone: 803 771 7878 Toll Free: 800 272 7201

Fax #: 803 771 0148 Federal Tax ID #: 57-0912939 WORKORDER: 249980

INVOICE#: 01-145162

06/06/06

*** INVOICE ***

01128
USAA (S)
C/O SGC NETWORK
PO BOX 182190
COLUMBUS, OH 43218-2190
PO#: 218433

THAD MILLER
121 GREY COAT CT
COLUMBIA, SC 29073
513 3948

Schedule Info: MOBILE 06-05-08 AROUND 12:30 *** Charge ***

QTY	PART	DESCRIPTION	LIST	PRICE	EXT-PRICE
1	DW01549GBYN*LOF	WINDSHEILD		231.18	231.18
2.2	NAGSLABOR	NAGS LABOR (DW01549GBYN)		40.00	88.00
1	HAH000004	(2) ADHESIVE, URETHANE		30.00	30.00

Bel 117.56

INSURANCE INFORMATION

INS COMP:USAA (S)
POLICY #:4156430
CLAIM # :218433
AGENT :UNKNOWN
AGENT # :
LOSS DTE:05/02/08
CAUSE :ROCK
VER BY :FAX
HOME # : 513 3948
WORK # :

AUTOMOBILE INFORMATION

YEAR :2004
MAKE :CHEVROLET
MODEL :AVALANCHE
STYLE :4 DOOR CREW CAB
VEH ID :3GNEC12T546342868
LIC # :56SHND
STATE :SC
Mileage :
Acct Phone: 800 890 1276

Subtotal: 349.1
Taxable : 261.1
Salestax: 18.2

Total: 367.4

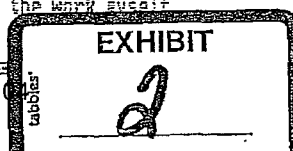
Total: 367.4

TIMBELAND PLACE PAS BARYARD AND RANKS CAR WASH TAKE 1ST LEFT PAST POOL
THEN ON LEFT WILL BE HOME AROUND 12:30 NEED TO LEAVE AROUND 2:00
GOING OUT OF TOWN

The work noted above has been completed to my satisfaction. I authorize my insurance company to release policy, coverage and other information related to this glass claim to Southern Glass & Plastics (SGP). I assign this claim and all policy proceeds due me under terms of my insurance policy to SGP and I direct my insurance company to pay those amounts directly to SGP. If my insurer should ignore this assignment and issue payment directly to me, I agree that I will immediately forward payment to SGP by either endorsing the check that I received over to SGP or paying SGP an amount equal to what I receive. I agree to pay my deductible, if any, myself. I also agree that if I do not have insurance coverage, I will pay for the work myself.

Signature: _____

Date: _____



Order Taken By: TRENA

ORIGINAL CD ROM RETAINED BY MAGISTRATE COURT

Re: Southern Glass & Plastics Company, Inc. vs. USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile
Civil Action No.: 2009-CV-40-1101259
Claim No.: Unknown at this time
Our File No.: 3250-0398

RECORDING REGARDING THAD MILLER

Q: Tammy Houston-USAA Glass Program
A: Trina-Southern Glass and Plastics
B: Thad Miller
C: Alan Epley-Southern Glass and Plastics

Q: Thank you for calling the USAA Glass Program managed by Safelite Solutions. My name is Tammy Houston. How may I help you?

A: Yes, ma'am. Uh, my name is Trina with Southern Glass and Plastics.

Q: Yes, ma'am.

A: And Mr. Thad Miller has contracted us to do his glass and I need to file a claim for him.

Q: Alright, Trina, I'll be glad to help you with that.

A: Okay.

Q: Let me get in here. And, Trina, what is the first initial of your last name, please?

Q: C as in cat.

Q: Okay. And this is glass only damage?

A: That is correct.

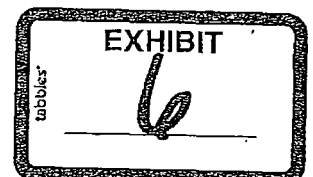
Q: Alright. And what is the phone number to your shop?

A: It is area code 8-0-3

Q: Uh-huh.

A: 7-7-1

Q: Uh-huh.



A: 7-8-7-8.

Q: Thank you. And you said the policy holder was Thad...

A: Miller.

Q: Miller. Okay. Do you want to go ahead and bring the policyholder on?

A: Sure. Hold on.

Q: Thank you.

A: Okay. Mr. Miller, I have Tammy on the line from Safelite Solutions.

B: Okay.

Q: Good afternoon, Mr. Miller, how are you?

B: Doing fine.

Q: Good. Uh, I'm with, like she said, I'm Tammy with the USAA Glass Program and I'm going to be assisting you with your glass claim today.

B: Okay.

Q: Now, before I proceed, I have to let you know that the call is being handled and recorded by Safelite Solutions. Safelite...

B: (inaudible)

Q: Solutions is financially affiliated with Safelite Auto Glass.

B: Okay.

Q: Is this the first time that you have reported the damage, sir?

B: Yes.

Q: Alright. Now in order to better assist you, I have a few additional questions.

B: Sure.

Q: To file the loss report, I need your primary member number. Do you have that available?

B: Yes.

Q: May I have it, please?

B: (inaudible) my policy number for ya'll?

Q: Yes, uh-huh.

B: Oh, okay. 4-1-5-6. Hold on a second. 4-1-5-6-4-3-0.

Q: Thank you. I have 4-1-5-6-4-3-0.

B: Correct.

Q: May I have your home phone number beginning with area code?

B: 8-0-3-9-5-7-7-2-7-7.

Q: Thank you. That's 8-0-3-9-5-7-7-2-7-7?

B: Correct.

Q: Okay. And if we have any additional questions regarding your claim, what number should we call?

B: 8-0-3-5-1-3-3-9-4-8.

Q: Thank you. That's 8-0-3-5-1-3-3-9-4-8. And is there any other phone numbers you would like to add to the claim?

B: Uh, no thank you.

Q: Okay. Now when did this damage happen, Mr. Miller?

B: Two days ago.

Q: Alright. And in what state did the damage occur?

B: South Carolina. Columbia, South Carolina.

Q: Okay. How did the damage happen?

B: Uh, on the interstate, a truck... rock....

Q: Alright.

B: was coming off the back of the bed of their truck.

Q: Alright. Did you...

B: (inaudible)

Q: Did you get any license plates numbers or anything?

B: Uh, no ma'am.

Q: No. Okay.

B: Didn't really think about. Didn't really think about because the rocks were bouncing so I didn't think about it until...

Q: Right.

B: You know sometimes a rock will hit your windshield and won't do anything.

Q: Right. Exactly. Alright. Then may I have the year, make and model of your vehicle?

B: 2004 Chevy Avalanche.

Q: 2004 Chevy Avalanche.

B: Yes.

Q: Alright. Now it's going to take me just a moment to pull up your policy information. There we go. And may I just have you confirm the street address on your policy?

B: 1-2-1 Gray Coat Court, Lexington, South Carolina. 2-9-0-7-3.

Q: Thank you. So now, just to reconfirm, we have mentioned that your windshield is damaged and there were no other pieces of glass that were damaged in the... in the process.

B: No, no, just the front windshield.

Q: Okay. Is the damage to your windshield smaller than the size of a dollar bill?

B: No.

Q: Okay. Well, Mr. Miller....

B: Actually...

Q: (inaudible)

B: it's actually the length of, uh, of my arm.

Q: Oh, wow. Okay.

B: The rock...as soon as the rock hit it, the line (inaudible)

Q: The line just started. Oh.

B: Yep.

Q: I'm sorry to hear that.

B: It's the length of my arm. Yep.

Q: Ahh. Okay. Well, I do show that you have a zero deductible, Mr. Miller, so you're not responsible to pay anything out of pocket to have it replaced.

B: Okay.

Q: Okay. And you are at Southern Glass and Plastics. And, Trina....

B: What?

Q: Are you still there, Trina?

A: Yes, ma'am.

Q: Okay. Um. For the replacement, do you accept the following pricing at NAGS list minus thirty eight percent, labor is \$40.00 hourly and \$15.00 per kit?

A: No, ma'am. We do not discuss pricing.

Q: Okay.

A: We do accept the job. We are your competitor and we do, uh, bill at a fair market value.

Q: Okay.

A: So we already have accepted the job. We have been contracted by Mr. Miller.

Q: Okay, Mr. Miller?

B: Uh-huh.

Q: Alright, let's see here. Along the top of your windshield, um, I know you have a group of dots that form a visor shape as well as the black paint band that goes around the edge of the glass.

B: Correct.

Q: Besides that, does your windshield have a sun shade that is blue across the top?

B: Uh, no, it does not.

Q: Okay. Okay. Now, I must inform you USAA will not pay anymore

B: (inaudible)

Q: than \$200.00.

C: Mr. Miller, we'll take care...we offer full lifetime warranty. We are the oldest most experienced company there. We must warn you, sir that you are not speaking with USAA. You are speaking with an out-of-state glass company.

Q: Okay. Mr...

B: (inaudible)

C: And may we have...

Q: Listen.

C: May we have the...

Q: No, sir, you cannot till I'm done. Mr. Miller, and..

B: Yes.

Q: he is right. We are a third-party affiliate.

B: Yes.

Q: We do work with USAA.

B: Right.

Q: This is an amount that comes from USAA. They are willing to pay no more than \$235.86 to have the work completed. Zero of that of which is your deductible. This price does not include the sales tax or cost of molding if it's required. So, if you continue with the shop, um, U... and if they charge more, USAA will require you to pay the difference in the price.

C: Southern Glass never has and does not have...

B: (inaudible)

C: and does not ask Mr. Miller to pay any additional amount. That's all.

Q: Mr. Miller

B: That's why I called Southern Glass. I'm very aware of it.

Q: Okay. Mr. Miller, for the purpose of assuring a quality experience. USAA would like to send you a confirmation of your claim as well as the confirmation of the shop that is correcting the damage for you. May I have your e-mail address, please.

C: Mr. Miller, if you decide to give them that, understand that it is in the hands of a party that you did not seek to engage.

B: (inaudible)

Q: Mr. Miller, we do not sell your e-mail address. We do not do anything with that. This is just for your information.

B: Can you just mail it to me in the mail?

Q: No, I can't mail it to you. I can give you the information manually.

B: What do you mean? Over the phone?

Q: Uh-huh.

B: Alright. I'll take that.

Q: Okay. Your reference number is 2-1-8.

B: Hold on one second. Give me a second. 2-1-8.

Q: Uh-huh. 4-3

B: 2-1-8

Q: Uh-huh 4-3.

B: Okay. Go ahead.

Q: 2-1-8-4-3-

B: Alright.

Q: 3

B: Correct.

Q: Our number here if you have any questions about your claim is 1-800-

C: That's not necessary, Mr. Miller.

Q: 5-2-5-

B: (inaudible)

Q: 1-7-9-0.

C: We thank you very much, Miss Tammy.

Q: And you do have a zero deductible. And, um, your fax number there, sir, is 8-0-3-7-7-1-0-1-4-8?

C: Correct.

Q: And what is your name, sir?

C: My name is Alan. A-L-A-N. Epley.

Q: Al...

C: E-P-L-E-Y.

Q: E-P-L-E-Y.

C: Yes, ma'am.

Q: Thank you, sir. I'm going tell someone about how you continue to interrupt when we were trying to take a claim, sir. Thank you.

C: That's fine.

END OF TRANSCRIPTION

Transcribed: 9-10-09

Time: 7:44

Transcribed by: jkl

Bobcat |-----|
U6 | S A F E L I T E S O L U T I O N S |

Date: 06/12/08

Time: 09:52:39

To:	SOUTHERN GLASS & PLA 1819 TAYLOR ST COLUMBIA SC 29201	Shop#: 013789 Fax: 803-771-0148 Tel: 803 771 7878	Referral/ Authorization# 295417
Customer:	ZWART, WENDY K 215 WOODRIDGE CT LEESVILLE SC 29070	Home: 803-532-0065 Bus: 803-315-0785	Date of loss: 05/07/2008

Vehicle: 2000 CHEV TAHO/LS/LT

Type of Loss: REPLACE WINDSHIELD

Deductible: \$.00

W/S LIST: -38.0% LABR: \$40.00 PER HOUR

C/T LIST: -38.0% LABR: \$40.00 PER HOUR

KIT: \$15.00 2KIT: \$30.00 H/M KIT: \$25.00 H/M 2KIT: \$50.00

INSHOP SERVICE

COMPANY: USAA

ID#: 09005 EDI MAILBOX: SAFL SAFL107

----- Billing Instructions -----

Sold To: ZWART, WENDY K

Please Show On Your Invoice

Bill To: USAA

1) Full Vehicle Vin Number

Address: P.O. BOX 182190

2) Valid NAGS Part Numbers

COLUMBUS, OH 43218-2190

3) Customer's Signature

or, Invoice Online at SGCNetwork.com

- You must include sales tax on your invoice if applicable. Invoices should be submitted within 10 days of installation. Payment will be rendered upon receipt of funds from the client. For payment inquiries please contact Safelite Solutions at 1-614-602-2120.

- USAA will not reimburse for deductibles not collected.

----- Notice: Pricing Authorization -----

Pricing is outlined above per current NAGS. If "P" parts or dealer parts are to be used or any additional parts, labor, or any other charges differ from the prices outlined above, you are required to contact Safelite at 1-614-602-2120 prior to beginning any work on the vehicle. Performance of services constitutes acceptance of the above price and billing instructions.

----- Authorization To Pay: -----

I acknowledge receipt of goods and services requested and that all services were performed in a professional manner to my complete satisfaction. I authorize my insurance, fleet, or leasing company to pay SOUTHERN GLASS & PLA directly for this claim. I understand I am personally responsible for payment of all or any portion of this invoice not covered by my insurance, fleet, or leasing company.

Customer Signature _____ Date _____

Please return your invoice signed by the customer, along with this signed fax.

Shop Owner/Mgr Signature _____ Installer Signature _____

SGP / COLUMBIA
1819 TAYLOR STREET
BOX 587 (29202)
COLUMBIA, SC 29201

Phone: 803 771 7878 Toll Free: 800 272 7201

Fax #: 803 771 0148 Federal Tax ID #: 57-0912939 WORKORDER: 250848

INVOICE#: 01-145448

06/12/08

01128
USAA (S)
C/O SGC NETWORK
PO BOX 182190
COLUMBUS, OH 43218-2190
PO#: 295417

*** INVOICE ***
STEPHEN ZWART
215 WOODRIDGE CT
LEESVILLE, SC 2907
803 315 0785

Schedule Info: INSHOP 06-12-08 *** Charge ***

QTY	PART	DESCRIPTION	LIST	PRICE	EXT-PRICE
1	DW01341GBYN	DW01217GBYN*LOF		225.36	225.36
2.2	NAGSLABOR	NAGS LABOR (DW01341GBYN)		40.00	88.00
1	HAH000004	(2) ADHESIVE, URETHANE		30.00	30.00

Bef 116.55

INSURANCE INFORMATION
INS COMP:USAA (S)
POLICY #:008720213C7101
CLAIM # :295417
AGENT :UNKNOWN
AGENT # :
LOSS DTE:05/07/08
CAUSE :ROCK
VER BY :TAMMY
HOME # :803 315 0785
WORK # :

AUTOMOBILE INFORMATION
YEAR :2000
MAKE :CHEVROLET
MODEL :TAHOE LT
STYLE :4 DOOR UTILITY
VEH ID :1GNEK13R3YR140753
LIC # :305 CMF
STATE :SC
Mileage :
Acct Phone: 800 890 1276

Subtotal: 343.36
Taxable : 255.42
Salestax: 17.80
Total: 361.24
Total: 361.24

The work noted above has been completed to my satisfaction. I authorize my insurance company to release policy, coverage and other information related to this glass claim to Southern Glass & Plastics (SGP). I assign this claim and all policy proceeds due me under the terms of my insurance policy to SGP and I direct my insurance company to pay those amounts directly to SGP. If my insurer should ignore this assignment and issue payment directly to me, I agree that I will immediately forward payment to SGP by either endorsing the check that I received over to SGP or paying SGP an amount equal to what I receive. I agree to pay my deductible, if any, myself. I also agree that if I do not have insurance coverage, I will pay for the work myself.

Signature: _____ Date: _____ Order Taken By: TONY

ORIGINAL CD ROM RETAINED BY MAGISTRATE COURT

Re: Southern Glass & Plastics Company, Inc. vs. USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile
Civil Action No.: 2009-CV-40-1101259
Claim No.: Unknown at this time
Our File No.: 3250-0398

RECORDING REGARDING STEPHEN ZWART

Q: Tammy Houston-USAA Glass Program
A: Tony-Southern Glass and Plastics
B: Stephen Zwart

Q: Thank you for calling the USAA Glass Program managed by Safelite Solutions. My name is Tammy Houston. How may I help you?

A: Hey, Tammy, this is Tony with Southern Glass in Columbia.

Q: How are you, Tony?

A: I'm good. How are you?

Q: Good.

A: I need to call on a glass claim and get a dispatch number from you, please.

Q: Sure, I'll be glad to help you with that.

A: Thank you.

Q: Tony, what's the....oh, you're welcome. What's the first initial of your last name?

A: Uh, T. I'm sorry, it's C.

Q: C. And is this a glass only claim?

A: Yes, glass only.

Q: Okay. And may I have the phone number to your shop?

A: 8-0-3-7-7-1-7-8-7-8.

Q: Okay. May I have the insured's name?

A: Yes, it's Stephen Zwart. Z-W-A-R-T.

Q: I'm sorry. Spell that for me again.

A: Z-W-A-R-T.

Q: V as in Victor, W-A-R-T?

A: Z as in zebra.

Q: Oh, Z as in zebra.

A: Um-hmm.

Q: Okay. There we go. And you can go ahead and put the policyholder on.

A: Okay. Hold on one second.

Q: Thank you.

B: Good morning.

Q: Hi, Mr. Zwart. How are you?

B: Well, I'm okay. How are you?

Q: Good. Thank you.

B: Good.

Q: My name is Tammy Houston and I am with the USAA Glass Program. I am really sorry to hear about your glass damage today. Um, now what I'm actually going to be doing is assist you with...assisting you in opening up a glass claim and verifying your coverage. Um, so that way, um, we give that referral information to Tony for billing purposes. Now, before I proceed, I have to inform you that your call is being handled and recorded by Safelite Solutions. Safelite Solutions is a financially affiliated with Safelite Auto Glass. Is the first time that you reported the damage?

B: Uh, yes, this ...it is, yes.

Q: Okay. Now, it...to better for me...for me to better assist you, I do have a few additional questions. Uh, to file a loss report, I would need your primary member number. Do

you have that available?

B: Uh, is it on the....

Q: Might say policy number.

B: Yes. Let me open that up for ya.

Q: Okay.

B: Alright. Let's see. Policy number. 0-0-8-7-2-0-2-1-3-C as in Charlie

Q: Okay. And I apologize, my screen (inaudible) and all I have is 0-0-8 and then

was it 2?

B: No.

Q: Okay.

B: We'll start over, okay?

Q: Thank you.

B: 0-0

Q: Uh-huh.

B: 8-7

Q: 8-7

B: 2-0

Q: 2-0

B: 2-1

Q: 2-1

B: 3-C as in Charlie

Q: 3-C

B: 7-1

Q: I don't need the information after that. Thank you.

B: Okay.

Q: May I have your home phone number beginning with area code?

B: Yes, it is area code 8-0-3.

Q: Um-hmm.

B: 5-3-2

Q: Um-hmm.

B: 0-0-6-5.

Q: So, I have 8-0-3-5-3-2-0-0-6-5.

B: That's correct.

Q: And if we have any additional questions regarding your claim, what number should we call?

B: I'll give you my cell phone number, please. Area code 8-0-3

Q: Um-hmm.

B: 3-1-5

Q: Um-hmm.

B: 0-7

Q: Um-hmm.

B: 8-5.

Q: Thank you. That's 8-0-3-3-1-5-0-7-8-5.

B: That's correct.

Q: Okay. And are there any other phone numbers you'd like to add to the claim?

B: No, that's all.

Q: Okay. When did this damage happen, Mr. Zwart?

B: About six weeks ago.

Q: Okay. Now, I'm legally not allowed to pick a date for you. So if you could just estimate me a date, please.

B: Okay. What would be a date six weeks from today?

Q: From today. Today is the twelfth, so let's see, one, two, three, four,

B: May 7th. Let's use May 7th.

Q: You want May 7th?

B: Yes.

Q: Okay. And what state did the damage occur in?

B: South Carolina.

Q: Alright. And how did the damage occur?

B: I was interstate driving and had some debris come off the road and hit the windshield.

Q: Okay. May I have the year, make and model of your vehicle?

B: This is a 2000 model Tahoe.

Q: 2000 Chevy Tahoe?

B: That's correct.

Q: And...

B: And it's a D-71 if that matters.

Q: Okay. And it'll be a moment while I pull up your policy information.

B: Alright.

Q: 2000 Tahoe. There we go. May I just have you confirm the street address on your policy?

B: Sure. It's 2-15 Woodridge Court. That's in Leesville, South Carolina. Zip code is 2-9-0-7-0.

Q: Thank you. Now, um, just to reconfirm, you've mentioned that this is your windshield that's damaged.

B: Correct.

Q: There's no other pieces of glass that were damaged or broken?

B: Not at all.

Q: And is the damage to your windshield smaller than the size of a dollar bill?

B: No.

Q: I am showing that you have a zero deductible so there's no out of pocket expenses to you.

B: Alrighty.

Q: I am showing that you are at Southern Glass and Plastics. Now Southern Glass and Plastics is not an affiliate shop so USAA does not have a pricing agreement with them or cannot warranty their work. Um, what I would like to do is send you a confirmation of your claim and a confirmation of the shop that is doing the work for you. Uh, may I have your e-mail address, Mr. Zwart:

B: Yes, you can send that to Boykin, B-O-Y-K-I-N, W at A-O-L dot com.

Q: So, that's B-O-Y-K-I-N-W at A-O-L dot com?

B: Correct.

Q: Alright. Do you have any questions for me at this point?

B: Uh, not at all.

Q: Okay. What I am gonna have you do is put Tony back on. I am going to go over and negotiate the pricing with him so we can make sure you're not gonna be responsible for any difference in costs and he will provide you or you may want to ask him for the warranty in

writing. And, um, we'll get you all finished up, okay?

B: Thank you very much.

Q: You're welcome. You have a wonderful day, sir.

B: Thank you.

Q: Uh-huh.

A: Hey, Tammy.

Q: Hi, Tony. Okay. For the job, do you accept the following pricing at NAGS list minus thirty eight percent, labor is \$40.00 hourly and \$15.00 per kit?

A: Yes.

Q: Alright. And the acceptance of the job indicates that you have accepted these rates. USAA will not be responsible for any costs in excess of these rates and these prices do not include the sales tax or cost of molding.

A: Okay.

Q: Okay. He does have a zero deductible for his glass.

A: Um-hmm.

Q: And his reference number is 2-9-5

A: Um-hmm.

Q: 4-1-7.

A: 2-9-5-4-1-7.

Q: Yes, sir. Is there anything else I can help you with?

A: I think that's it. Thank you, Tammy.

Q: You're welcome, Tony. Thank you for using the USAA Glass Program and we really appreciate your business.

A: Thank you.

Q: You're welcome. Bye.

END OF TRANSCRIPTION

Transcribed: 9-10-09

Time: 6:23

Transcribed by: jkl



USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained in the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown in the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the company's Board of Directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

By purchasing this policy you are a member of USAA and are subject to its bylaws.

This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.

The USAA Board of Directors may annually allocate a portion of USAA's surplus to Subscriber's Savings Accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

DECLARATIONS PAGE	
	Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page 3	Agreement and Definitions
Part A 4	Liability Coverage
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 6	Personal Injury Protection Coverage
	Definitions Insuring Agreement Personal Injury Protection Coverage Air Bag and Seat Belt Benefits Limit of Liability Exclusions Other Insurance Conditions Arbitration
Part B 10	Medical Payments Coverage
	Definitions Insuring Agreement Medical Payments Coverage Limit of Liability Exclusions Other Insurance Special Provisions Arbitration
Part C 12	Uninsured Motorists Coverage Underinsured Motorists Coverage
	Definitions Insuring Agreement Uninsured Motorists Coverage Underinsured Motorists Coverage Limit of Liability Exclusions Other Insurance Conformity To Statute Non-Duplication Arbitration
(Quick Reference continued on Page 2)	

Part D 19	Physical Damage Coverage	Part E 22	General Provisions
	- Definitions - Insuring Agreement - Comprehensive Coverage - Collision Coverage - Full Safety Glass - Rental Reimbursement Coverage - Towing and Labor Costs Coverage - Limit of Liability - Payment of Loss - Loss Payable Clause - Waiver of Collision Deductible - Exclusions - No Benefit to Bailee - Other Sources of Recovery - Appraisal		- Air Bag - Bankruptcy - Changes - Duties After an Accident or Loss - Legal Action Against Us - Misrepresentation - Non-duplication of Payment - Our Right to Recover Payment - Ownership - Policy Period and Territory - Termination - Transfer of Your Interest in this Policy - Two or More Auto Policies

SOUTH CAROLINA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown in the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

- A. **You and your** refer to the "named insured" shown in the Declarations and spouse if a resident of the same household.
- B. **We, us, and our** refer to the Company providing this insurance.
- C. **Auto business** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, or storing vehicles.
- D. **Bodily injury** (referred to as BI) means bodily harm, sickness, disease or death.
- E. **Family member** means a person related to you by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child.
- F. **Miscellaneous vehicle** means the following motorized vehicles: a motorcycle, moped or similar type vehicle; motor home; golf cart; snowmobile; all-terrain vehicle; or dune buggy.
- G. **Occupying** means in, on, getting into or out of.
- H. **Property damage** (referred to as PD) means physical injury to, destruction of, or loss of use of tangible property.
- I. **Temporary substitute vehicle** means a private passenger auto, pickup, van, miscellaneous vehicle or trailer not owned by you or a family member while it is used as a temporary replacement for **your covered auto** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.
- J. **Trailer** means a vehicle designed to be pulled by a private passenger auto, pickup, van, or miscellaneous vehicle. It also means a farm wagon or implement while towed by such vehicles.

- K. **Van** means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.

- L. **Your covered auto** means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles acquired by you or a family member during the policy period, beginning on the date you or a family member becomes the owner, but only if no other insurance policy provides coverage for such vehicle:
 - a. A private passenger auto;
 - b. A pickup or van; or
 - c. A miscellaneous vehicle not used in any business or occupation.

For such newly acquired vehicles, we will automatically provide the broadest coverages as are provided for any vehicle shown in the Declarations. If your policy does not provide Comprehensive and Collision coverages, we will provide each with a \$250 deductible. However, we will not provide any coverage for more than 30 days after the date you or a family member becomes the owner of the vehicle. If you wish to continue any coverage beyond the 30-day period, you must request it prior to the end of the 30-day period.

3. Any trailer you own.
4. Any temporary substitute vehicle. Only those coverages provided for the vehicle withdrawn from normal use will be extended to its temporary substitute vehicle.

PART A - LIABILITY COVERAGE

DEFINITIONS

Covered person as used in this Part means:

1. You or any family member for the ownership, maintenance, or use of any auto or trailer.
2. Any person using your covered auto.
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or trailer other than your covered auto, this provision only applies if the other person or organization does not own or hire the auto or trailer.

The following are not covered persons under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to BI or PD resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the BI or PD.

INSURING AGREEMENT

We will pay damages for BI or PD for which any covered person becomes legally liable because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. Our duty to settle or defend ends when our limit of liability for these coverages has been paid or tendered. We have no duty to defend any suit or settle any claim for BI or PD not covered under this policy.

LIMIT OF LIABILITY

For BI sustained by any one person in any one auto accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for BI

Liability. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for BI Liability is our maximum limit of liability for all damages for BI resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for PD Liability is our maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the state's Financial Responsibility law, our limit of liability will be the minimum required by the state's Financial Responsibility law.

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of a covered person:

1. Premiums on appeal bonds and bonds to release attachments in any suit we defend. But we will not pay the premium for bonds with a face value over our limit of liability shown in the Declarations.
2. Prejudgment interest awarded against the covered person on that part of the judgment we pay. If we make an offer to pay the applicable limit of liability, we will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to \$100 a day for loss of wages because of attendance at hearings or trials at our request.

(PART A Cont'd.)

5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or van which occurs while the vehicle is in the care, custody, or control of a **covered person**. The most we will pay is an amount equal to one month of the basic salary of the **covered person** at the time of loss. Only Exclusions A.1. and A.8. apply.
6. Other reasonable expenses incurred at our request.
7. All defense costs we incur.

EXCLUSIONS

A. We do not provide Liability Coverage for any covered person:

1. Who intentionally acts or directs to cause **BI** or **PD**, or who acts or directs to cause with reasonable expectation of causing, **BI** or **PD**. This exclusion applies only to the extent that the limit of liability for this coverage exceeds **BI** limit of \$15,000 for each person and \$30,000 for each accident and **PD** limit of \$10,000.
2. For **PD** to property owned or being transported by a **covered person**.
3. For **PD** to property rented to, used by, or in the care of any **covered person**. This does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.

6. While employed or otherwise engaged in the **auto business**. This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by you, any family member, or any partner, agent, or employee of you or any family member.

7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business**, farming, or ranching. This exclusion (A.7.) does not apply to the maintenance or use of a private passenger auto; a pickup or van that you own; or a trailer used with these vehicles.

8. Using a vehicle without expressed or implied permission.

9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limit of liability.

10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others.

B. We do not provide Liability Coverage for the ownership, maintenance, or use of:

1. Any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
 - b. A moving van for personal use;
 - c. A miscellaneous vehicle having at least four wheels; or
 - d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto**, that is owned by you, or furnished or available for **your regular use**.
3. Any vehicle, other than **your covered auto**, that is owned by, or furnished or available for the regular use of, any family member.

(PART A Cont'd.)

This exclusion (B.3.) does not apply to your maintenance or use of such vehicle.

4. Any vehicle while being operated in, or in practice for, any speed contest.
- C. There is no coverage for **BI** or **PD** for which a covered person becomes legally responsible to pay a member of that covered person's family residing in that covered person's household. This exclusion applies only to the extent that the limit of liability for this coverage exceed **BI** limit of \$15,000 for each person and \$30,000 for each accident and **PD** limit of \$10,000.
- D. There is no coverage for liability assumed by any covered person under any contract or agreement.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one

in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law. However, no one will be entitled to duplicate payments for the same elements of loss.

OTHER INSURANCE

If there is other applicable liability insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide to a covered person with respect to the following vehicles shall be excess over (1) any other applicable liability insurance or (2) any self-insurance in compliance with a state's financial responsibility law:

- a. A vehicle you do not own; or
- b. Your covered auto while in the possession of an auto business.

PART B - PERSONAL INJURY PROTECTION COVERAGE

DEFINITIONS

- A. **Air Bag** means a supplemental passive restraint system commonly referred to as an air bag which is originally installed by the vehicle manufacturer and which, at the time of the accident, had not been made inoperable through modification, deactivation, disconnection, switching off or prior deployment.
- B. **Auto** means a motor vehicle of the kind required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.
- C. **Beneficiary** means (in order of priority of payment):
 1. The surviving spouse if a resident in the same household as the deceased at the time of the accident; or
 2. If the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident; or
 3. The estate of the deceased.

D. Covered person as used in this Part means:

1. For Personal Injury Protection Coverage:
 - a. You or any family member; or
 - b. Anyone else who sustains **BI** while:
 1. occupying your covered auto; or
 2. a pedestrian;as a result of an accident involving your covered auto.
2. For Air Bag and Seat Belt Benefits:
 - a. You or any family member while occupying any auto;
 - b. Any other person while occupying your covered auto.

- E. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by us or someone on our behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a covered person and that are:

(PART B Cont'd.)

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person**, his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person**; and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person**, when these could safely have been provided to the **covered person** as an outpatient.

F. **Reasonable fee** is the amount, as determined by us or someone on our behalf, which we will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. We will pay the lesser of:

1. The actual charge;

2. The charge negotiated with a provider; or
3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

G. **Seat Belt** means manual or automatic safety belts or seat and shoulder restraints or a child restraint device. Both the lap and shoulder restraints must be worn at the time of the accident for coverage to apply. If the **covered person** is a child, the child restraint device must meet federal motor vehicle safety standards and must be one recommended by its manufacturer as appropriate for use by children of like age and weight. The child must be properly seated and restrained within the device and the device must be attached to the interior of the vehicle in accordance with the manufacturer's instructions.

INSURING AGREEMENT

A. **Personal Injury Protection Coverage.** We will pay personal injury protection benefits to or for a **covered person** who sustains BI. The BI must be caused by an accident and result from the ownership, maintenance or use of an **auto** as an **auto**.

We, or someone on our behalf, will review and audit claims for personal injury protection benefits under this coverage. We are only obligated to pay expenses for benefits described below:

1. **Medical Expenses.** The **reasonable fee** for **medically necessary and appropriate medical services** incurred within 3 years from the date of the accident for a **covered person's** care or recovery.

(PART B Cont'd.)

This includes remedial care and treatment rendered in accordance with a recognized religious or licensed method of healing.

Only semi-private hospital room charges will be paid unless special or intensive care is required.

2. Funeral Expense. Reasonable funeral and burial expense incurred.
3. Work Loss Benefits. Benefits for loss of income during the:
 - a. Three years from the date of the accident; and
 - b. Lifetime of the covered person.

Work loss applies only if the covered person was an income or wage producer at the time of the accident.

4. Essential Services Expenses. Necessary and reasonable expenses incurred during the:
 - a. Three years from the date of the accident and
 - b. Lifetime of the covered person;for services which are ordinarily performed by the covered person for the care and maintenance of his or her family. Essential services apply only if the covered person was not an income or wage producer at the time of the accident.

- B. Air Bag and Seat Belt Benefits. We will provide the benefits described only if at the time of the accident, Personal Injury Protection Coverage was provided by the policy and the covered person for whom benefits are sought was:

1. Wearing a seat belt; or
2. Wearing a seat belt and occupying a seat in an automobile in which he was protected by an air bag; and
3. Entitled to collect benefits for medical expenses incurred as a result of the accident under the terms of the policy's Personal Injury Protection Coverage.

We will pay a Death Benefit of \$15,000 to the beneficiary of a covered person who dies as the direct result of BI sustained in an automobile accident while wearing a seat belt. We will pay an Additional Death Benefit of \$10,000 to the beneficiary of a covered person who dies as a direct result of BI sustained in an automobile accident while wearing a seat belt and occupying a seat protected by an air bag. In either case, death must occur within three years of the date of the accident.

LIMIT OF LIABILITY

- A. Personal Injury Protection Coverage. One thousand dollars (\$1,000) is our maximum limit of liability for each covered person injured in any one auto accident. This is the most we will pay regardless of the number of:
 1. Covered persons;
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations;
 4. Vehicles involved in the accident; or
 5. Insurers providing no-fault benefits.
- B. The maximum Death Benefit we will pay under Air Bag and Seat Belt Benefits is \$15,000 for death of any one covered person. The maximum Additional Death Benefit we will pay for death of any one covered person is \$10,000. These amounts are the most we will pay regardless of the number of vehicles to which this coverage applies, the number of coverages or premiums shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of loss.

EXCLUSIONS

We do not provide any coverage or benefits under this Part for BI:

1. Sustained by any covered person who:
 - a. Intentionally causes the accident resulting in the injury; or
 - b. Operates or voluntarily rides in a vehicle known by that person to be stolen; or

(PART B Cont'd.)

- c. Is committing a felony; or
- d. Fails to stop an auto he or she is operating when signaled by any law enforcement vehicle by means of a siren or flashing light.
- 2. To any **covered person** while **occupying**, or while a pedestrian as a result of an accident involving an **auto** (other than **your covered auto**) insured for personal injury protection.
- 3. Sustained by a pedestrian, if the accident occurs outside South Carolina. This exclusion does not apply to:
 - a. **You**; or
 - b. Any **family member**.
- 4. Sustained by any **covered person** resulting from the maintenance or use of an **auto** while located for use as a residence or premises.
- 5. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
- 6. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
- 7. Sustained by any **covered person** arising out of the ownership, maintenance or use of a motorcycle by such person.
- 8. Sustained by **you** or any **family member** while **occupying** any auto owned by **you** which is not **your covered auto**.
- 9. Sustained by any **family member** while **occupying** any auto owned by that **family member**.

OTHER INSURANCE

No person shall recover benefits from more than one policy or one insurer on either a duplicate or supplemental basis, regardless of the number of motor vehicles covered or insurers (including self-insurers).

The Death Benefit and Additional Death Benefit provided by Air Bag and Seat Belt Benefits will be paid in addition to any death benefit payable under the policy's Personal Injury Protection Coverage.

If there is other applicable air bag and seat belt benefits, the maximum limit of **our** liability for the death of any one **covered person** under all such policies shall not exceed \$15,000 for the Death Benefit and \$10,000 for the Additional Death Benefit.

CONDITIONS

The Air Bag and Seat Belt Benefits coverage provided is subject to all provisions and conditions of the policy's Personal Injury Protection Coverage and to the policy's general conditions, except as specifically modified herein.

ARBITRATION

If we and a **covered person** do not agree:

- 1. On the **reasonable fee**;
- 2. That expenses are reasonable;
- 3. Whether services or supplies are **medically necessary and appropriate medical services**; or
- 4. Whether there is coverage under the terms of the Insuring Agreement for Part B.

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

(PART B Cont'd.)

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by us, does not exceed the limit of liability for this coverage.

PART B - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

A. **Covered person** as used in this Part means:

1. You or any family member while occupying any auto.
2. Any other person while occupying your covered auto.
3. You or any family member while not occupying a motor vehicle if injured by:
 - a. A motor vehicle designed for use mainly on public roads;
 - b. A miscellaneous vehicle;
 - c. A trailer.

B. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by us or someone on our behalf, are required to identify or treat BI caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;

4. Not primarily for the convenience of the **covered person**, his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person**; and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
 2. Experimental services or supplies, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
 3. Inpatient services or supplies provided to the **covered person**, when these could safely have been provided to the **covered person** as an outpatient.
- C. **Reasonable fee** is the amount, as determined by us or someone on our behalf, which we will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. We will pay the lesser of:
1. The actual charge;
 2. The charge negotiated with a provider; or

(PART B Cont'd.)

3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

INSURING AGREEMENT

Medical Payments Coverage. We will pay only the reasonable fee for medically necessary and appropriate medical services and the reasonable expense for funeral services because of BI caused by an auto accident, sustained by a covered person and incurred for services rendered within three years of the date of the accident.

A provider of medical services may charge more than the limits established by this policy's defined terms, but such additional charges are not covered. We or someone on our behalf will review, by audit or otherwise, claims for benefits under this coverage to determine whether fees and expenses were reasonable and whether treatment was medically necessary and appropriate.

LIMIT OF LIABILITY

The following provisions represent the most we will pay regardless of the number of covered persons, claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident.

- A. The limit of liability shown in the Declarations for Medical Payments Coverage is the maximum limit of liability for each covered person injured in any one accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A or Part C of this policy.

EXCLUSIONS

We do not provide benefits under this Part for any covered person for BI:

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
 - b. A moving van for personal use;
 - c. A **miscellaneous vehicle** having at least four wheels; or
 - d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available.
5. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by **you** or furnished or available for **your regular use**.
6. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by or furnished or available for the regular use of any **family member**. This does not apply to **you**.
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person**. This does not apply to BI sustained while **occupying** a private passenger auto; a pickup or **van you own**; or a **trailer** used with these vehicles.

(PART B Cont'd.)

9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while occupying your covered auto while it is rented or leased to others.
11. Sustained while a participant in, or in practice for, any speed contest.

OTHER INSURANCE

If there is other applicable auto medical payments insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

SPECIAL PROVISIONS

If your covered auto and every other motor vehicle you own are within the policy territory referred to in Part E, General Provisions, then coverage under Part B will apply to you and any family member anywhere in the world.

ARBITRATION

If we and a covered person do not agree:

1. On the reasonable fee;
2. That expenses are reasonable;

3. Whether services or supplies are medically necessary and appropriate medical services; or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B.

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by us or the covered person involved in the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the covered person lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by us, does not exceed the limit of liability for this coverage.

PART C - UNINSURED MOTORISTS COVERAGE (referred to as UM) and \ **UNDERINSURED MOTORISTS COVERAGE** (referred to as UIM) \

DEFINITIONS

A. Covered person as used in this Part means:

1. You or any family member.
2. Any other person occupying your covered auto.
3. Any person for damages that person is entitled to recover because of BI to which this coverage applies sustained by a person described in 1. or 2. above.

However, the definition of a covered person does not include the Government of the United States of America.

B. Uninsured motor vehicle means a land motor vehicle or trailer of any type:

1. To which neither a liability bond or policy, nor cash or securities deposited with the State Treasurer, applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.

(PART C Cont'd.)

3. That is a hit-and-run motor vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in BI or PD without hitting:
 - a. You or any family member;
 - b. A vehicle which you or any family member are occupying;
 - c. Your covered auto; or
 - d. Any of your property.

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which you or any family member were occupying at the time of the accident.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Successfully denies coverage;
 - b. Is or becomes insolvent;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.
5. For which the owner has not qualified as a self-insurer.

However, **uninsured motor vehicle** does not include any vehicle or equipment:

1. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Sub-section 15-78-60, or by other applicable statute.
2. Operated on rails or crawler treads, except for a snowmobile.
3. Designed mainly for use off public roads while not on public roads.

- C. **Underinsured motor vehicle** means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy are not enough to pay the full amount the covered person is legally entitled to recover as damages.

However, **underinsured motor vehicle** does not include any vehicle or equipment:

1. Operated on rails or crawler treads, except for a snowmobile.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

INSURING AGREEMENT

A. UNINSURED MOTORISTS COVERAGE

We will pay the following damages which a covered person is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of an auto accident:

1. BI sustained by a covered person; and
2. Injury to or destruction of the property of a covered person.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. This provision applies only to Definition B.2. under this Part.

(PART C Cont'd.)

B. UNDERINSURED MOTORISTS COVERAGE

We will pay the following damages which a covered person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of an auto accident:

1. BI sustained by a covered person; and
2. Injury to or destruction of your covered auto. However, this does not include damage to property owned by the covered person while contained in your covered auto.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the underinsured motor vehicle.

LIMIT OF LIABILITY

UNINSURED MOTORISTS COVERAGE

A. If BI or PD is sustained in an accident by you or any family member while occupying your covered auto:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the sum of the limits of liability shown in the Declarations for "each person" for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all PD resulting from that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Property Damage Liability Uninsured Motorists Coverage.

4. Subject to the maximum limit of liability set forth in paragraphs 1., 2. or 3. above:

- a. The most we will pay for BI or PD sustained in that accident by a covered person other than you or any family member is that covered person's pro-rata share of the "each person" or "each accident" limit shown in the Declarations for this coverage applicable to the vehicle that covered person was occupying at the time of the accident; and
- b. You or any family member who sustains BI or PD in that accident will also be entitled to a pro-rata share of the "each person" or "each accident" limit described in paragraph a. above.

A person's pro-rata share shall be the proportion that that person's damages bears to the total damages sustained by all covered persons.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons; <
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

B. If BI or PD is sustained in an accident by you or any family member while not occupying any auto:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of your covered autos.

(PART C Cont'd.)

2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of your covered autos; and

3. Our maximum limit of liability for all PD resulting from that accident is the highest "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of your covered autos.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

- C. If BI or PD is sustained in an accident by you or any family member while occupying a vehicle not owned by you or any family member:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of your covered autos.
2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of your covered autos; and

3. Our maximum limit of liability for all PD resulting from that accident is the highest "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of your covered autos.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

- D. If BI or PD is sustained by a covered person other than you or any family member in an accident in which neither you nor any family member sustained BI or PD:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, will be the "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of that accident.
2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of the accident; and
3. Our maximum limit of liability for all PD resulting from that accident is the "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of the accident.

(PART C Cont'd.)

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations;
 4. Premiums paid; or
 5. Vehicles involved in the accident.
- E. Any amounts otherwise payable for damages under UM Coverage shall be reduced by all sums paid because of the BI or PD by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

UNDERINSURED MOTORISTS COVERAGE

- A. If BI is sustained in an accident by you or any family member while occupying your covered auto, or if your covered auto sustains PD in an accident:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the sum of the limits of liability shown in the Declarations for "each person" for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Bodily Injury Liability Underinsured Motorists Coverage; and
3. Our maximum limit of liability for all PD resulting from that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Property Damage Liability Underinsured Motorists Coverage.
4. Subject to the maximum limit of liability set forth in paragraphs 1., 2. or 3. above:

- a. The most we will pay for BI sustained in that accident by a covered person other than you or any family member is that covered person's pro-rata share of the "each person" or "each accident" limit shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of the accident; and

- b. You or any family member who sustains BI in that accident will also be entitled to a pro-rata share of the "each person" or "each accident" limit described in paragraph a. above.

A person's pro-rata share shall be the proportion that that person's BI damages bears to the total of all BI damages sustained by all covered persons.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

- B. If BI is sustained in an accident by you or any family member while not occupying any auto:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of your covered autos.
2. Subject to this limit for "each person", our maximum limits of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of your covered autos.

(PART C Cont'd.)

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

C. If BI is sustained in an accident by you or any family member while occupying a vehicle not owned by you or any family member:

1. Our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of your covered autos.
2. Subject to this limit for "each person", our maximum limit of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of your covered autos.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

D. If BI is sustained by a covered person other than you or any family member in an accident in which neither you nor any family member sustained BI:

1. Our maximum limit of liability for all damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, will be the "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of that accident.

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of BI sustained in that accident is the "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that covered person was occupying at the time of the accident.

The maximum limit of liability is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

- E. Any amounts otherwise payable for damages under UIM Coverage shall be reduced by all sums paid because of the BI or PD by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

EXCLUSIONS

- A. We do not provide UM or UIM Coverage for PD or BI sustained by any covered person:

1. If that person or the legal representative settles the BI or PD claim without our consent. This exclusion (A.1.) does not apply to UIM.

(PART C Cont'd.)

2. When **your covered auto** is being used to carry persons for a fee. This exclusion (A.2.) does not apply to a share-the-expense car pool.
 3. Using a vehicle without expressed or implied permission.
 4. While **your covered auto** is rented or leased to others.
 5. While **occupying** any vehicle when it is being operated in, or in practice for, any speed contest.
- B. We do not provide UM Coverage for the first \$200 of the amount of PD to the property of each **covered person** as the result of any one accident.
- C. UM Coverage or UIM Coverage shall not apply directly or indirectly to benefit:
1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
 2. Any insurer of property.
- B. If there is applicable insurance available under the first priority:
- a. The limit of liability applicable to the vehicle. the **covered person** was **occupying** under the policy in the first priority, shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. We will pay only **our** share of the loss, not to exceed **our** share of the maximum recovery. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits in the same level of priority.
- B. With respect to PD, this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

OTHER INSURANCE

- A. If a **covered person** sustains BI while **occupying** a vehicle not owned by that person or while not **occupying** any vehicle, the following priorities of recovery apply:

FIRST PRIORITY The policy affording UM or UIM Coverage to the vehicle the **covered person** was **occupying** at the time of the accident.

SECOND PRIORITY Any policy affording UM or UIM Coverage to the **covered person** as a named insured or **family member**.

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.

CONFORMITY TO STATUTE

This Part is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this Part conflicts with that law, it is changed to comply with the law.

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

- A. Paid because of the BI or PD by or on behalf of persons or organizations who may be legally responsible.
- B. Paid or payable under any workers' compensation law or similar disability benefits law. (This does not apply to UM Coverage.)
- C. Paid under Part A in this policy.
- D. Paid because of PD under Part D of this policy or any similar coverage under any other policy.

(PART C Cont'd.)

ARBITRATION

A. If we and a covered person disagree as to:

1. Whether the covered person is legally entitled to recover damages from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle**; or
2. The amount of damages that the **covered person** is legally entitled to collect from that owner;

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues, including but not limited to, coverage questions. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by us or a **covered person**.

- B. If both parties agree to arbitration, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.
- C. Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding up to the coverage limit of liability.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. **Actual cash value** means the amount that it would cost, at the time of loss, to buy a vehicle of the same make, model, body type, model year, and equipment, with substantially similar mileage and physical condition.
- B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision** you may elect to have it considered a **loss** caused by **collision**.
- C. **Loss** means direct and accidental damage to the operational safety, function, or appearance of **your covered auto**, including its equipment. **Loss** does not include any diminution in value that remains after the damaged or stolen property or parts thereof have been repaired or replaced.

- D. **Nonowned vehicle** means any private passenger auto, trailer, pickup, van, or miscellaneous vehicle not owned by, or furnished or available for the regular use of, you or any family member. This applies only when such vehicle is in the custody of or being operated by you or a family member. A **nonowned vehicle** does not include a **temporary substitute vehicle** or any of the following vehicles used in any business or occupation other than farming or ranching - pickup, van or miscellaneous vehicle.
- E. **Repair or replace** means restoring the damaged property or parts thereof to their pre-accident operational safety, function, and appearance. However, we may at our option **repair or replace** with parts of like kind and quality, including used or non-OEM parts (non-OEM parts are those produced by someone other than the original equipment manufacturer). **Repair or replace** does not require:
 1. A return to the pre-accident market value of the property or parts thereof; or
 2. Restoration, alteration, or replacement of undamaged property or parts thereof, unless such is needed for the operational safety of the vehicle.

(PART D Cont'd.)

F. **Your covered auto**, as used in this Part, includes:

1. A **nonowned vehicle**. If there is a loss to a **nonowned vehicle**, we will provide the broadest coverages shown in the Declarations.
2. Equipment and accessories of your **covered auto**.
3. Any device or instrument for the transmitting, recording, receiving or reproduction of data, sound or pictures that is operated by power from the electrical system of your **covered auto**, including:
 - a. Accessories or antennas; or
 - b. Tapes, wires, records, discs or other media for use with any such device or instrument;

while in or upon your **covered auto**.

INSURING AGREEMENT

A. **Comprehensive Coverage (excluding collision)**. We will pay for loss caused by other than collision to your **covered auto**, minus any applicable deductible shown in the Declarations. The deductible will be waived for loss to glass that can be repaired rather than replaced. In cases where the repair proves unsuccessful and the glass must be replaced, the full amount of the deductible, if any, must be paid.

In addition, we will pay up to \$15 a day, to a maximum of \$450, for transportation expenses incurred by you. This applies only in the event of a total theft of your **covered auto**. We will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when your **covered auto** is returned to use or, if not recovered or not repairable, three days after we have made a settlement offer.

If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to \$30 per day to a maximum of \$900.

B. **Collision Coverage**. We will pay for loss caused by collision to your **covered auto** minus any applicable deductible shown in the Declarations.

C. **Full Safety Glass**. Any deductible under Comprehensive Coverage or Collision Coverage does not apply to the cost of repairing or replacing damaged automobile safety glass.

D. **Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage** (for loss other than total theft). We will reimburse you for expenses you incur to rent a substitute for your **covered auto**. These coverages apply only if your **covered auto** is withdrawn from use for more than 24 hours due to a loss, other than a total theft, to that auto. Our payment will be limited to that period of time reasonably required to repair or replace your **covered auto**. If we determine your **covered auto** is not repairable the rental period will end three days after we have made a settlement offer.

Under Rental Reimbursement Coverage, we will pay up to \$15 a day, to a maximum of \$450. Under Increased Rental Reimbursement Coverage, we will pay up to \$30 a day, to a maximum of \$900.

E. **Towing and Labor Costs Coverage**. We will pay the reasonable costs you incur for one of the following each time your **covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas, oil, a battery or a change of tire. However, we do not pay for the cost of these items.

LIMIT OF LIABILITY

A. For total losses, the limit of liability for Comprehensive and Collision Coverage, is the actual cash value of your **covered auto**.

B. For partial losses, the limit of liability for Comprehensive and Collision Coverages is the amount necessary to repair or replace the damaged or stolen property or parts thereof without deduction for depreciation.

(PART D Cont'd.)

PAYMENT OF LOSS

We may pay for loss in money, or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to you or to the address shown in the Declarations. If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay you an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with you or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown in the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion, or embezzlement of your covered auto. We may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to loss caused by collision with another vehicle if all of these conditions are met:

1. The loss to your covered auto is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the loss; and
4. The driver of your covered auto is not legally responsible, in any way, for causing or contributing to the loss.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto which occurs while it is used to carry persons for a fee. This does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of your covered auto. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of your covered auto or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

This exclusion does not apply if the damage results from the total theft of your covered auto, and it does not apply to Towing and Labor Costs Coverage.
4. Loss due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. Loss to a camper body or trailer you own which is not shown in the Declarations. This does not apply to one you acquire during the policy period and ask us to insure within 30 days after you become the owner.
6. Loss to any nonowned vehicle or temporary substitute vehicle when used by any person without reasonable belief that that person is entitled to do so.
7. Loss to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. Loss to any nonowned vehicle arising out of its use by you or a family member while employed or otherwise engaged in auto business operations.

(PART D Cont'd.)

9. Loss to your covered auto while it is rented or leased to others.
10. Loss to any vehicle while it is being operated in, or in practice for, any speed contest.
11. Loss resulting from:
 - a. The acquisition of a stolen vehicle;
 - b. Any legal or governmental action to return a vehicle to its legal owner; or
 - c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.
12. Loss resulting from use in any illicit or prohibited trade or transportation.
13. Any loss arising out of any act committed:
 - a. By or at the direction of you or any family member; and
 - b. With the intent to cause a loss.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also covers the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a nonowned vehicle or temporary substitute vehicle will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the nonowned vehicle or temporary substitute vehicle.
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the loss.

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If we and you do not agree on the amount of loss, either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither we nor you waive any of our rights under this policy by agreeing to an appraisal.

PART E - GENERAL PROVISIONS

AIR BAG

If an air bag in your covered auto deploys for any reason, we will pay without deductible to replace it.

BANKRUPTCY

Bankruptcy or insolvency of the covered person, as defined in this policy, shall not relieve us of any obligations under this policy.

CHANGES

- A. The premium is based on information we have received from you and other sources. You agree to cooperate with us in determining if

this information is correct and complete. You agree that if this information changes, or is incorrect or incomplete, we may adjust your premiums accordingly during the policy period.

- B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. You agree to give us notice of such exposure changes as soon as is reasonably possible:
 1. Change in location where any vehicle is garaged.

(PART E Cont'd.)

2. Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
 3. Replacement, deletion, or addition of any vehicle. **You** must request coverage for a newly acquired vehicle within 30 days from the date the vehicle is acquired if **you** wish to continue any coverage. See DEFINITIONS - **your covered auto**.
 4. Change, addition, or deletion relating to the date of birth, marital status, or driving record of any operator.
 5. Addition or deletion of an operator.
 6. Change, addition, or deletion of any coverage or limits.
- C. **We** will make any calculations or adjustments of **your** premium using the applicable rules, rates, and forms as of the effective date of the change.
- D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us**. Its terms may not be changed or waived except by endorsement issued by **us**.

DUTIES AFTER AN ACCIDENT OR LOSS

- A. **We** must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B. A person seeking any coverage must:
1. Cooperate with **us** in the investigation, settlement, or defense of any claim or suit.
 2. Promptly send **us** copies of any notices or legal papers received in connection with a suit, accident or loss.
3. Submit, as often as **we** reasonably require:
- a. To physical exams by physicians **we** select. **We** will pay for these exams.
 - b. To examination under oath. The examination must be signed.
4. Authorize **us** to obtain medical reports and other pertinent records.
5. Submit a proof of loss when required by **us**.
6. Promptly notify the police if a hit-and-run driver is involved.
- C. A person seeking coverage under Part B - Personal Injury Protection must also:
1. Submit a written proof of claim when required by **us**.
 2. Promptly send **us** copies of the legal papers if a suit is brought.
- D. A person seeking coverage under Part C - Uninsured Motorist Coverage must also:
1. Promptly notify the police if a hit-and-run driver is involved.
 2. Promptly send **us** copies of the legal papers if a suit is brought.
- E. A person seeking coverage under Part C - Underinsured Motorist Coverage must also promptly send **us** copies of the legal papers if a suit is brought.
- F. A person seeking coverage under Part D - Physical Damage must also:
1. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. **We** will pay reasonable expenses incurred to do this.
 2. Promptly notify the police if **your covered auto** is stolen.
 3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

(PART E Cont'd.)

LEGAL ACTION AGAINST US

- A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until we agree in writing that the **covered person**, as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.
- B. No person or organization has any right under this policy to bring us into any action to determine the liability of a **covered person**, as defined in this policy.

MISREPRESENTATION

We do not provide coverage for any **covered person**, as defined in this policy, who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

- 1. At the time application was made; or
- 2. At any time during the policy period; or
- 3. In connection with the presentation or settlement of a claim.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, we will pay the claim only once under this policy.

OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we will be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights, and shall do nothing after loss to prejudice them. However, our rights in this paragraph do not apply under Part D, against any person using your **covered auto** with a reasonable belief that that person is entitled to do so.
- B. If we make a payment under this policy and the person to or for whom payment was made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and reimburse us to the extent of our payment.

- C. The following provisions apply to payments made under Part C - Uninsured Motorists Coverage.

- 1. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:

- a. Whatever is necessary to enable us to exercise our rights; and
- b. Nothing after loss to prejudice them.

- 2. If a **covered person** has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

- 3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.

- 4. If a **covered person** making a claim for PD under this insurance is also entitled to insurance or other compensation for the PD, we will not be obligated to pay a claim until the **covered person** has assigned us the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

- D. Paragraphs A. and B. do not apply to Part B - Personal Injury Protection Coverage, Part B - Medical Payments Coverage, or Part C - Underinsured Motorists Coverage.

(PART E Cont'd.)

E. If the covered person, as defined in this policy, recovers from the party at fault and we share in the recovery, we will pay our share of the legal expenses. Our share is that percent of the legal expenses that the amount we recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by us from any other insurer under any inter-insurer arbitration agreement.

F. If we make payment for a claim under Part A, and the covered person, as defined in Part A:

1. Failed or refused to comply with the duties specified in this provision; and
2. Prejudiced our defense of the liability claim by such failure or refusal;

then, the covered person shall reimburse us to the extent of our payment and cost of defense.

OWNERSHIP

For purposes of this policy, a private passenger type auto, pickup or van is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur during the policy period as shown in the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of your covered auto between any ports of these locations.

B. The policy territory also includes Mexico, subject to the following conditions:

1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accident that occurs within 75 miles of the USA border.

2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if you have valid and collectible liability coverages from a licensed Mexican insurance company at the time of loss. Also, for this Part to be effective, the original liability suit for BI or PD must be brought in the USA.

This coverage does not extend:

- a. To any covered person, as defined in this policy, who does not live in the USA.
- b. To any covered person, as defined in this policy, occupying an auto which is not principally garaged and used in the USA.
- c. To any auto which is not principally garaged and used in the USA.

The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.

Losses payable under Part D of the policy will be paid in the USA. If the auto must be repaired in Mexico, our limit of liability will be determined at the nearest point in the USA where repairs can be made.

Any insurance we provide will be excess over any other similar valid and collectible insurance.

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request.
2. We may cancel by mailing a notice to the named insured shown in the Declarations at the address shown in this policy by giving at least 15 days notice.

(PART E Cont'd.)

3. During the first 90 days this policy is in effect, the policy may be cancelled for any reason.
 4. After this policy is in effect for 90 days, or if this is a renewal policy, we will cancel only:
 - a. For nonpayment of premium; or
 - b. If your driver's license or that of any driver who either resides in the same household or customarily operates your covered auto has been suspended or revoked. This must have occurred:
 - (1) During the policy period; or
 - (2) During the 90 days immediately preceding the last anniversary of the effective date.
 5. We may cancel for any other reason permitted by law.
- B. Nonrenewal. If we decide not to renew this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 15 days before the end of the policy period.
- C. Automatic Termination. If we offer to renew and you do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due will mean that you have not accepted our offer.
- If you obtain other insurance on your covered auto, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance. This does not apply to liability coverage purchased for travel in Mexico.
- D. Other Termination Provisions.
1. We may deliver any notice instead of mailing it. Proof of mailing of any notice will be sufficient proof of notice.

2. If this policy is cancelled, the named insured shown in the Declarations may be entitled to a premium refund. If so, we will send the named insured shown in the Declarations the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, we will provide coverage until the end of the policy period for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use your covered auto.

TWO OR MORE AUTO POLICIES

- A. If this policy and any other auto insurance policy we issued to you apply to the same accident, the maximum limit of our liability under all the policies will not exceed the highest applicable limit of liability under any one policy.
- B. This provision does not apply to Part C - Uninsured Motorists Coverage or Underinsured Motorists Coverage.
- C. No one will be entitled to receive duplicate payments for the same elements of loss under Part C - Uninsured Motorists Coverage and Underinsured Motorists Coverage.

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AMENDMENT OF POLICY PROVISIONS

This Amendment forms a part of the auto policy to which it is attached, and it modifies that policy as follows:

This Amendment replaces Part D in its entirety.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. **Actual cash value** means the amount that it would cost, at the time of loss, to buy a comparable vehicle. As applied to **your covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.
- B. **Collision** means the impact with an object and includes upset of a vehicle. Loss caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision** you may elect to have it considered a loss caused by **collision**.
- C. **Equipment and accessories** means personal property while in or upon **your covered auto**.
- D. **Loss** means direct and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto** or **equipment and accessories** that are not permanently installed in **your covered auto**. Loss includes a total loss, but does not include any damage other than the cost to **repair** or replace. Loss does not include any loss of use, or diminution in value that would remain after **repair** or replacement of the damaged or stolen property.

E. Nonowned vehicle.

- 1. **Nonowned vehicle** means any private passenger auto, pickup, van, miscellaneous vehicle, or trailer not owned by, or furnished or available for the regular use of, you or a family member. This applies only when the vehicle is in the custody of or being operated by you or a family member.
- 2. A **nonowned vehicle** does not include any of the following vehicles used in any business or occupation other than farming or ranching:
 - a. A pickup;
 - b. A van; or
 - c. A miscellaneous vehicle.

F. Repair.

- 1. **Repair** means restoring the damaged property to its pre-loss operational safety, function, and appearance. This may include the replacement of component parts.
- 2. **Repair** does not require:
 - a. A return to the pre-loss market value of the property;
 - b. Restoration, alteration, or replacement of undamaged property, unless such is needed for the operational safety of the vehicle; or
 - c. Rekeying of locks following theft or misplacement of keys.

G. Your covered auto, as used in this Part, includes:

1. Equipment and accessories permanently installed in your covered auto.
2. A nonowned vehicle. If there is a loss to a nonowned vehicle, we will provide the broadest coverage shown on the Declarations.

INSURING AGREEMENT

A. Comprehensive Coverage (excluding collision).

1. Physical damage. We will pay for loss caused by other than collision to your covered auto, and equipment and accessories that are not permanently installed in your covered auto, minus any applicable deductible shown on the Declarations. No deductible under Comprehensive Coverage or Collision Coverage applies to the cost of repairing or replacing damaged automobile safety glass.
2. Transportation expenses. We will also pay:
 - a. Up to \$15 a day, to a maximum of \$450, for transportation expenses incurred by you. This applies only in the event of a total theft of your covered auto. We will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when your covered auto is returned to use or, if not recovered or not repairable, up to seven days after we have made a settlement offer.
 - b. If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to \$30 per day to a maximum of \$900.

B. Collision Coverage. We will pay for loss caused by collision to your covered auto and equipment and accessories that are not permanently installed in your covered auto, minus any applicable deductible shown on the Declarations.

C. Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage (for loss other than total theft).

1. We will reimburse you for expenses you incur to rent a substitute for your covered auto. These coverages apply only if:

- a. Your covered auto is withdrawn from use for more than 24 hours due to a loss, other than a total theft, to that auto; and
- b. The loss is covered under Comprehensive Coverage or caused by collision, and the cause of loss is not otherwise excluded under Part D of this policy.

2. We will reimburse you only for that period of time reasonably required to repair or replace your covered auto. If we determine your covered auto is a total loss, the rental period will end no later than seven days after we have made a settlement offer.

D. Towing and Labor Costs Coverage. We will pay the reasonable costs you incur for one of the following each time your covered auto is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas to, or a change of tire on a disabled vehicle. However, we do not pay for the cost of these items.

LIMIT OF LIABILITY

A. Total loss to your covered auto. Our limit of liability under Comprehensive Coverage and Collision Coverage is the actual cash value of the vehicle. We will declare your covered auto to be a total loss if, in our judgment, the cost to repair it would be greater than its actual cash value minus its salvage value after the loss.

B. Other than a total loss to your covered auto.

1. Our limit of liability under Comprehensive Coverage and Collision Coverage is the amount necessary to repair the loss based on our estimate or an estimate that we approve, if submitted by you or a third-party. Upon request, we will identify at least one facility that is willing and able to complete the repair for the amount of the estimate.

2. Our estimate may specify used, rebuilt, remanufactured, or non-Original Equipment Manufacturer (non-OEM) parts.

3. You may request that damaged parts be replaced with new Original Equipment Manufacturer (OEM). You will be responsible, however, for any cost difference between the parts included in our estimate and the new OEM parts used in the repair.

4. We will not take a deduction for depreciation. We will take a deduction if prior damage has not been repaired. Prior damage does not include wear and tear.

C. Equipment and accessories that are not permanently installed in your covered auto. The limits of liability described below are separate from the limits available for a loss to your covered auto:

1. Our limit of liability is the lesser of:

a. The amount necessary to replace the damaged or stolen property; or

b. \$250.

2. We will not take a deduction depreciation.

D. Under Rental Reimbursement Coverage, our limit of liability is \$15 a day, to a maximum of \$450. Under Increased Rental Reimbursement Coverage, our limit of liability is \$30 a day, to a maximum of \$900.

E. Under Towing and Labor Costs Coverage, our limit of liability is the reasonable price for the covered service.

PAYMENT OF LOSS

We may pay for loss in money, or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to you or to the address shown on the Declarations. If we return stolen property, we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay you an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with you or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown on the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion, or embezzlement of your covered auto. We may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown on the Declarations. We may send notices to the loss payee either by mail or by electronic means. However, if the loss payee requests in writing that we not send notices, including a notice of cancellation, we will abide by that request. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

Page 3 of 5

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to loss caused by collision with another vehicle if all of these conditions are met:

1. The loss to your covered auto is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the loss; and
4. The driver of your covered auto is not legally responsible, in any way, for causing or contributing to the loss.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto which occurs while it is used to carry persons for a fee. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of your covered auto. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of your covered auto or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

This exclusion (3.) does not apply if the damage results from the total theft of your covered auto, and it does not apply to Towing and Labor Costs Coverage.

4. Loss due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. Loss to a camper body or trailer you own which is not shown on the Declarations. This exclusion (5.) does not apply to one you acquire during the policy period and ask us to insure within 30 days after you become the owner.
6. Loss to any nonowned vehicle when used by any person without a reasonable belief that that person is entitled to do so.
7. Loss to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. Loss to any nonowned vehicle arising out of its use by you or a family member while employed or otherwise engaged in auto business operations.
9. Loss to your covered auto while it is rented or leased to others.
10. Loss to any vehicle while it is being operated in, or in practice for, any driving contest or challenge.
11. Loss resulting from:
 - a. The acquisition of a stolen vehicle;
 - b. Any legal or governmental action to return a vehicle to its legal owner; or
 - c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion (11.) does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

12. Loss resulting from use in any illicit or prohibited trade or transportation.

13. Any loss arising out of any act committed:

- a. By or at the direction of **you** or any family member; and
- b. With the intent to cause a loss.

14. Loss caused by fungi, wet or dry rot, or bacteria. This means the presence, growth, proliferation, spread, or any activity of fungi, wet or dry rot, or bacteria. This exclusion (14.) does not apply to damage directly resulting from a loss covered under Comprehensive Coverage or Collision Coverage.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a **nonowned vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle**.
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the loss.

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If we and **you** do not agree on the amount of loss, either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2009-CP-40-07413

Southern Glass & Plastics Company, Inc., ... Respondents,

v.

USAA Casualty Insurance Company, USAA General Indemnity Company and USAA
United Services Automobile, ... Appellants.

CERTIFICATE

I, Ashley B. Stratton, attorney for Appellants, certify that Appellant's Record on Appeal complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

June 20, 2012



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