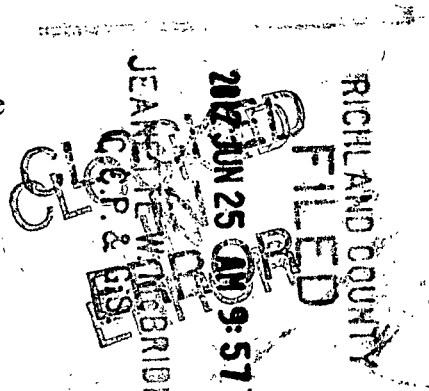
IN THE STATE OF SOUTH CAROLINA

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., ... Respondent,

v.

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

BRIEF OF APPELLANT

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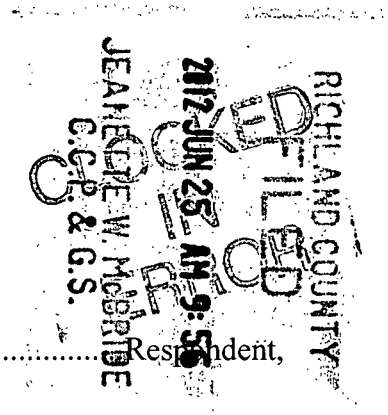

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II) WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN THE MAGISTRATE IGNORED CASE LAW AND FAILED TO FIND SOUTHERN GLASS WAS BOUND BY CONTRACT TO USAA'S QUOTED PRICE.

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STATEMENT OF THE CASE

This appeal arises out of a dispute between Southern Glass & Plastics Company, Inc. ("Southern Glass") and Appellants USAA Casualty Insurance Company, USAA General Indemnity Company and USAA United Services Automobile ("USAA") over the payment of invoices for automobile glass repair and replacement services performed by Southern Glass for 67 insureds of USAA. Southern Glass filed its complaint in Richland County Magistrate's Court alleging USAA breached the terms of the automobile insurance policy issued by USAA to its insureds by failing to pay the full amount of Southern Glass'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 Southern Glass. At trial, Southern Glass appeared *pro se* with its president and owner, Mr. Alan Epley, arguing on its behalf.

The ruling of the Magistrate was appealed by USAA on October 15, 2009, to the Richland County Court of Common Pleas. A hearing was held by The Honorable G. Thomas Cooper, Jr., on March 11, 2011, followed by the issuance of a form order affirming the judgment of the Magistrate. USAA's Motion to Reconsider was denied on October 19, 2011. For all proceedings in Circuit Court, Southern Glass was represented by Attorney Robert L. Jackson. This appeal followed.

STATEMENT OF THE FACTS

Southern Glass provides automobile glass repair and replacement services through its various locations in South Carolina, North Carolina, and Georgia. Typically, when Southern Glass performs glass repair and replacement services for an individual, it receives an assignment from the customer of any insurance proceeds owed to the

customer under his or her automobile insurance policy. Pursuant to these assignments, Southern Glass submits invoices directly to the insurance carrier and, regardless of the language in the contract between the carrier and its insured, expects full payment of its invoice. This case involves the alleged underpayment of invoices submitted by Southern Glass to USAA for glass services performed for 67 USAA insureds. Southern Glass claims these invoices were underpaid by a total of $7,337.07.

USAA pays invoices submitted by Southern Glass based on two contracts. First, the contract of insurance between USAA and its insureds to which Southern Glass is obligated pursuant to its assignment, 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.

(R.p.152.) (emphasis added). Based on this language, USAA complied with the terms of the insurance contract when it paid Southern Glass's invoices based on its estimate or an estimate that it approved.

The second contract USAA relied on in the payment of Southern Glass's invoices was the contract between USAA and Southern Glass. This contract is embodied in a work order faxed to Southern Glass each time Southern Glass undertakes glass work for an USAA insured. The work order details the insured's information and the type of work to be performed by Southern Glass. The work order also specifies exactly what USAA will pay for the glass service. Most importantly, the work order states: "Performance of

services constitutes acceptance of the above price and billing instructions." (R.pp.103, 114.)

Despite being bound to both the insurance contract and the work order contract, Southern Glass billed USAA at higher rates and claimed underpayment of the invoices when USAA paid the amount it was bound to pay pursuant to both contracts. This appeal concerns the interpretation of both contracts, as well as the Magistrate's misapplication of the Rules of Evidence and violation of the Code of Judicial Conduct which deprived USAA of a fair trial.

STANDARD OF REVIEW

On appeal from a Circuit Court's affirmance of a magistrate's order, the Court of Appeals looks to whether the Circuit Court order is controlled by an error of law or is unsupported by the facts. Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001). Where the testimony is insufficient to sustain the magistrate's judgment and there are facts to show the affirmance was influenced by an error of law, the Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was not made upon the merits. Id. (citing Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct.App.2000)).

ARGUMENTS

I) THE CIRCUIT ERRED IN AFFIRMING THE MAGISTRATE'S RULING IN FAVOR OF SOUTHERN GLASS 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 Southern Glass on its claim that USAA breached the policy. Under the plain and unambiguous terms of the policy, Southern Glass is not

entitled to the full payment of its invoices by USAA. The policy of insurance issued by USAA to its insureds and to which Southern Glass is bound pursuant to its 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.

(R.p.152.) (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 terms of the policy provision are clear and unambiguous. USAA is obligated only to pay the amount necessary to repair the loss based on its estimate or an estimate it approves. This amount is not whatever Southern Glass chooses to charge or whatever an insured chooses to pay at, for instance, a high-rate shop as opposed an in-network shop. See, e.g., Gaston v. Founders Ins. Co., 365 Ill. App. 3d 303, 321, 847 N.E.2d 523, 538 (2006) ("The 'amount necessary' refers to the amount the insurer must spend to repair the

vehicle, not the amount the insured decides to spend."). The amount necessary to repair the windshield of a 2007 Honda Accord, for example, is predetermined by USAA based on its estimate or an estimate it approves. Further, USAA will identify a shop willing to make the repair at its estimated price when the insured reports the claim. The insured is bound to this predetermined amount by virtue of the contract of insurance. In turn, Southern Glass is bound to this predetermined amount based on its assignment. Consequently, Southern Glass may charge whatever it wishes for a repair, but it is not automatically entitled to payment of this amount when the insurance contract dictates what USAA will pay.

At trial, the only argument Southern Glass made concerning the policy was that the language was ambiguous. (R.p.45.) Relying on policy provisions that are no longer in effect, Southern Glass mistakenly argued at trial that the policy was ambiguous and should be construed in favor of the insured or, in this case, Southern Glass as the assignee of the insured. Specifically, Southern Glass argued the policy only refers to "repair" and, therefore, is inapplicable to glass "replacement". (R.p.44.) Southern Glass 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." (R.p.53 (citing R.p.143).)

In response, USAA clarified that the provisions relied upon by Southern Glass 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." (R.p.66.) The policy amendment went into effect December 17, 2005, and predates all of Southern Glass's invoices. (R.p.76.) The amendment specifically replaced the provisions relied on by Southern Glass and purposefully resolved any ambiguity in the policy. Therefore Southern Glass's claim that USAA breached its policy is 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 Southern Glass reflects the estimated amount approved of by USAA to repair the insureds' automobile glass. Under the plain terms of the policy, Southern Glass 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 Southern Glass, 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, Southern Glass argued at trial that USAA never gave an "estimate" pursuant to the policy terms because the price was given to Southern Glass by an individual who was not a licensed adjuster. (R.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 failure of Southern Glass to come up with any evidence that USAA breached its policy, the Magistrate essentially held the policy did not control. Ignoring the entire basis of the lawsuit and failing to respond to the one and only claim asserted by Southern Glass, the Magistrate found that Southern Glass was not bound to USAA's pre-approved estimated and ruled that Southern Glass was entitled not only to its unpaid balances but also to a percentage of all 67 invoices submitted to USAA. (R.p.96.) In finding the Southern Glass was owed more than $7,500.00, the Magistrate failed to rely on the insurance policy, the terms of which controlled the transactions between USAA and Southern Glass and formed the entire basis of Southern Glass'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 CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN THE MAGISTRATE IGNORED CASE LAW AND FAILED TO FIND SOUTHERN GLASS WAS BOUND BY CONTRACT TO USAA'S QUOTED PRICE.

Not only is Southern Glass 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 Southern Glass was notified of USAA's quoted price in two ways before the service was performed on the insureds' vehicles. First, Southern Glass, 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 Southern Glass 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 Southern Glass

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." (R.pp.103, 114.)

The fact that Southern Glass's performance of the services bound it to USAA's price, is supported by 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 Southern Glass brought the exact same claim as Southern Glass 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 Southern Glass: "Performance of services constitutes acceptance of the above price ...." Id. at 909. Finally, like Southern Glass, 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 Southern Glass 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).

At trial, Southern Glass attempted to deny that a contract was ever entered into by relying on the case of Auto Glass Express, Inc. v. Hanover Insurance Co., 975 A.2d 1266 (Ct. 2009). Unlike the CIM case, Southern Glass'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 Southern Glass 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.

In ruling in favor of Southern Glass, the Magistrate disregarded the CIM opinion and ordered a judgment in direct contradiction of the very holding of CIM when he ruled that there was no contract between USAA and Southern Glass. The Magistrate failed to base his ruling on any statute or case law, choosing instead to misconstrue testimony elicited from USAA's only witness, Amy Palmer, USAA's Auto Claims Staff Advisor. During cross-examination of Ms. Palmer, Southern Glass 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." (R.p.92.) She testified that USAA does not enter any contracts with glass repair companies to be its third-party administrator in response to Southern Glass's attempt to characterize USAA as engaging in illegal practices. (R.p.92.) The Magistrate then interjected: "Did you just tell him that y'all do not enter into contracts with glass

replacement companies such as himself?" (R.p.93.) 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 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 Southern Glass. The Magistrate essentially misapplied Ms. Palmer's truthful response to an unrelated question and used it as the basis of an erroneous ruling with no foundation in statutory or case law. When ruling in favor of Southern Glass, 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." (R.p.96.) 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. The Magistrate's failure to apply CIM and misapplication of Ms. Palmer's testimony resulting in a failure to find a valid and binding contract between USAA and Southern Glass was an error of law and distortion of the facts and should be reversed.

III) THE CIRCUIT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN IT WAS BASED ON INADMISSIBLE AND IRRELEVANT EVIDENCE.

The error of the Magistrate 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 Southern Glass and USAA is compounded by his error 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." The admission of evidence wholly irrelevant to the allegation of the complaint, resulted in prejudice to USAA and deprived USAA of a fair trial.

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 Southern Glass's sole allegation at trial was the breach of the policy terms by USAA, Southern Glass was permitted to exhaust the majority of its 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. Southern Glass's profuse arguments at trial, which spanned two days, made it clear that Southern Glass's agenda was wholly unrelated to its underlying complaint. Southern Glass did not present any evidence to support its claim that USAA breached the policy. Instead, Southern Glass focused almost entirely on USAA's legal relationship with its third-party

administrator, Safelite Solutions. At the beginning of trial, Southern Glass 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." (R.p.44.) It was apparent from the outset that Southern Glass 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 Southern Glass invoices in question were from 2007 and 2008, Southern Glass 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. (R.p.62.) Southern Glass 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. (R.p.63.) In an attempt to attack USAA's glass claims process in general as opposed to focusing on the terms of USAA's policy, Southern Glass was permitted ask USAA's witness, Ms. Palmer, irrelevant questions which were wholly unsupported by any evidence. For example, Southern Glass 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. (R.pp.82, 83.)

The Magistrate failed to exercise any control over Southern Glass'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." (R.pp.82, 83.) 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." (R.p.86.) Southern Glass 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." (R.p.86.) Southern Glass 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." (R.p.93.)

In J.B. Colt Co. v. Robinson, 137 S.C. 224, 135 S.E. 312 (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 Southern Glass and the Southern Glass's breach of contract claim. Therefore, the Magistrate erred in allowing the Southern Glass to go on what the Magistrate admitted was a "large fishing expedition." (R.p.93.) The lack of control exercised by the Magistrate in admitting irrelevant evidence and allowing Southern Glass to "ask [Ms. Palmer] whatever he wants to about glass" cannot be categorized as harmless error. Instead, the error of the Magistrate resulted in prejudice to USAA by essentially portraying its glass claims practices as driving small businesses like Southern Glass out of business and as showing preference to its third-party administrator, Safelite.

By drifting far afield from the actual allegation in the complaint, the Magistrate forced USAA to account for and explain a wide breadth of topics related to glass claims practices. None of these topics had any bearing on Southern Glass's claim and USAA's defense and, consequently, resulted in extreme prejudice to USAA. Such prejudice deprived USAA of a fair trial and requires reversal of the case.

IV) THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN THE MAGISTRATE VIOLATED THE CODE OF JUDICIAL CONDUCT AND DEPRIVED USAA OF A FAIR TRIAL BY CONDUCTING 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.") In addition to admittedly performing a web-based google search of 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. (R.pp.66, 95 ("Yesterday you mentioned some – you mentioned a statute ... I've googled it and everything else up here and I can't find it.")) 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." (R.p.95.) Based on this information and

the focus on USAA's utilization of a third-party administrator (Safelite) for glass claims instead of Southern Glass's actual complaint that USAA breached the policy, the Magistrate ruled in favor of Southern Glass stating:

> [F]rom my viewpoint, what we have here is exactly what I asked about awhile ago and described as an HMO in which there were some people who were not providers who agreed to come in and – their clients came into them to get services and the insurance company didn't want to pay their bill in full. Now, I listened very carefully if there was ever a contract between the two … I asked [Ms. Palmer] three times … Did you ever enter a contract with this company or any other company other than Safelite and her answer was no.

(R.p.96.) The Magistrate's entire discourse during his ruling concerned the third-party administrative practices of USAA through Safelite. This is precisely what he independently investigated during the trial. The Magistrate's violation of the Code of Judicial Conduct resulted in manifest prejudice and bias toward USAA. Such prejudice deprived USAA of a fair trial and, therefore, requires reversal.

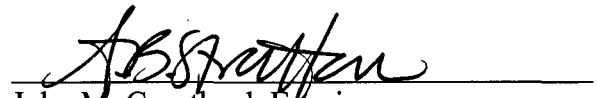
CONCLUSION

USAA did not breach the terms of its policy when it paid Southern Glass's invoices based on USAA's estimate or an estimate it approved. Also, by performing the services and accepting payment from USAA, Southern Glass 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 Circuit Court affirming the Magistrate and find that USAA did not breach the terms of its policy.

[signature on following page]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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CERTIFICATE

I, Ashley B. Stratton, attorney for Appellants, certify that Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

June 25, 2012

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