

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

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S.C. SUPREME COURT

Unpublished Opinion No. 2019-UP-419 (S.C. Ct. App. Filed December 31, 2019)

Grange Mutual Casualty and Trustguard Insurance
Company.....Respondents,

v.

20/20 Auto Glass, LLC.....Petitioner.

APPENDIX

March 11, 2020

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-1787

Grange Mutual Casualty and Trustgard Insurance
Company, ... Respondents,

v.

20/20 Auto Glass, LLC, ... Appellant.

RECORD ON APPEAL

October 6, 2017

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2014CP0401787

Grange Mutual Casualty and Trustgard Insurance Co.
PLAINTIFF(S)20/20 Auto Glass, LLC
DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2752

Judge Code

Date

ELECTRONICALLY FILED - 2016 Dec 06 1:41 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401787

000002 RECORD



Anderson Common Pleas

Case Caption: Grange Mutual Casualty VS Twenty Twenty Auto Glass LLC
Case Number: 2014CP0401787
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2016-12-06 13:06:52 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2014-CP-04-1787

Grange Mutual Casualty and Trustgard
Insurance Company,

Plaintiffs,

v.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW
AND
FINAL JUDGMENT

20/20 Auto Glass, LLC,

Defendant.

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

BACKGROUND

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

Appraisal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

AND IT IS SO ORDERED.

[SIGNATURE PAGE TO FOLLOW]

Walhalla, SC



Anderson Common Pleas

Case Caption: Grange Mutual Casualty VS Twenty Twenty Auto Glass LLC
Case Number: 2014CP0401787
Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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ELECTRONICALLY FILED - 2016 Dec 06 1:41 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401787

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Grange Insurance,)
Plaintiff,)
v.)
20/20 Auto Glass, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014CP0401787

ORDER DENYING DEFENDANT'S MOTION TO
ALTER, AMEND OR RECONSIDER

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

AND, IT IS SO ORDERED.

[Judicial signature page to follow]

Walhalla, South Carolina



Anderson Common Pleas

Case Caption: Grange Mutual Casualty VS Twenty Twenty Auto Glass LLC
Case Number: 2014CP0401787
Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2017-01-18 10:00:56 page 2 of 2

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas

3
4 Grange Mutual Casualty and
Trustgard Insurance Company,

5 Plaintiffs,

6 -vs-

7 20/20 Auto Glass, LLC,

8 Defendant.

2014-CP-04-1787

October 26, 2016

Transcript of Record

10

11

12 B E F O R E:

13 The Honorable R. Scott Sprouse, Judge

14

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

15

Jason P. Luther, Esquire
16 Attorney for Plaintiffs

17 Charles J. Lloyd, Esquire
Joshua M. Henderson, Esquire
18 Attorneys for Defendant

19

20

21

22

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

23

24

25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 2:37 p.m.)

4 THE COURT: Let's go on the record. This is the
5 matter of Grange Mutual Casualty and Trustgard
6 Insurance vs. 20/20 Auto Glass, LLC, 2014-CP-04-1787.

7 The matter is before the court for a bench trial
8 in which the parties have stipulated to the facts of
9 the case, and each party has submitted exhibits and the
10 stipulation of facts. Each party has submitted a
11 memorandum of law. So we are here for oral arguments
12 from counsel.

13 We'll begin with the plaintiffs.

14 Mr. Luther.

15 MR. LUTHER: Thank you, Your Honor. May it please
16 the court. Jason Luther here on behalf of the
17 plaintiffs, Grange Mutual Casualty and Trustgard
18 Insurance Company. With the Court's permission, I'll
19 just refer to them as Grange as the shorthand --

20 THE COURT: Yes.

21 MR. LUTHER: -- having been done in the briefs.

22 Your Honor, I'm going to quote the Eighth Circuit,
23 which is the only time today I will probably rely
24 favorably on the Eighth Circuit cases cited in our
25 briefs, but this is, to paraphrase them, the latest in

1 a seemingly endless line of litigation between glass
2 companies and insurance companies related to how glass
3 repair and replacement services are provided,
4 performed, and paid between the insurance companies and
5 glass companies.

6 And as I was preparing for today, I realized my
7 able copart here, Mr. Lloyd, was in the middle of a lot
8 of that. In fact, of the six cases that we cited would
9 be a major part of our discussion, he's been the
10 counsel of record in five of them for the glass
11 company. So he's obviously the veteran here in these
12 wars and I'm the rookie. So I realize I've got my work
13 cut out for me.

14 But, interestingly enough, the one case he was not
15 involved in I think is the most important case for our
16 discussion today, and that is the *Southern Glass vs.*
17 *Kemper* case that we cited in our memos.

18 Your Honor, I'm sure you can attest to this in
19 your years of private practice and also on the bench,
20 but as a lawyer, we're always looking for that one case
21 that's directly on point for the case we're handling
22 now. And if you can find it anywhere in any
23 jurisdiction, that's great. If you can find it in the
24 jurisdiction you're currently in, that's like the Holy
25 Grail.

1 And we have that case in the *Southern Glass vs.*
2 *Kemper* case. It's a 2000 case decided by the South
3 Carolina Court of Appeals, and it is directly on point
4 with the issues that are before the court today. That
5 case controls the issue here.

6 And, frankly, it makes Your Honor's decision a
7 whole lot easier. This is actually a fairly
8 straightforward case. There's going to be a lot of
9 issues that we'll probably discuss that might seem
10 complicated. But at the end of the day, I think the
11 analysis in the *Kemper* court holding is correct and
12 controls the facts that we've got.

13 So what I want to do in order to try to keep this
14 simple, and I know we have submitted both memorandums
15 and then reply memorandums that I'm sure Your Honor is
16 familiar with in the stipulated facts. I don't want to
17 belabor the point, but I do want to point out -- and
18 this is the most important issue from our
19 perspective -- the similarities, in fact, the identical
20 nature of what we have here in the undisputed facts of
21 this case and the facts in what I'll call the *Kemper*
22 case. So let me begin there, if that's okay with you.

23 THE COURT: Yes, sir.

24 MR. LUTHER: In this case, and I'm just
25 summarizing what's contained in our stipulation of

1 facts and without referencing by particular paragraphs
2 or exhibits, but Grange is an insurance company. It
3 issues automobile insurance policies to folks in South
4 Carolina.

5 And under that policy, Grange says, Insured, if
6 you pay your premiums as required under the policy, we
7 agree that if your windshield breaks, we'll pay to have
8 it repaired or replaced. That's our obligation under
9 the insurance policy. And that's important. That's
10 the first contract we are going to talk about today,
11 the insurance policy.

12 After that happens, Grange then goes and enters
13 into a separate contract with what's called, I'm
14 learning in the industry, network providers or network
15 glass shops. These are a group of shops, glass repair
16 companies, who Grange goes to and says, Look, we have
17 an obligation under our policy to repair or replace a
18 windshield of our insured. Here's the price we're
19 going to pay. Let's agree in advance what the prices
20 are and cut out a lot of the paperwork and other
21 procedures when these claims come in. And in exchange,
22 we'll refer these claims to you to do the work. That's
23 the second contractual relationship, Grange and these
24 network providers, these other glass companies.

25 In the glass repair industry, there's essentially

1 two classes. There are network providers, the
2 companies we just talked about, and the non-network
3 providers. Those are glass companies that for whatever
4 reason have not agreed in advance to provide the
5 services under the arrangement that Grange has talked
6 about.

7 In South Carolina, there are 115 -- let me
8 rephrase. There are -- I don't have the exact number
9 in front of me. It's in the facts. It's about 80 or
10 87, I think, companies that are part of that network
11 with Grange. So from Grange's perspective, it has
12 approximately 80 network providers. In addition -- in
13 total it's about 115 companies network and non-network
14 that have agreed to perform services at the rates that
15 Grange has determined are fair and reasonable. So you
16 have those two contractual relationships.

17 Grange, like many insurance companies, uses what's
18 called a third-party administrator to handle those
19 claims. Grange uses Safelite. That's the exact same
20 company that Kemper Insurance used to handle their
21 glass claims in the *Kemper* case.

22 And what happens generally is this. An insured
23 gets damage to their windshield. They report the claim
24 to their insurance company. And in this case and in
25 the *Kemper* case, the insured had chosen a glass company

1 in advance so that glass company was on telephone call
2 with the third-party administrator to report to the
3 glass company.

4 The third-party administrator then communicates
5 both to the insured and the glass company, These are
6 the rates that Grange is willing to pay for your glass
7 repairs. Those rates had been communicated previously
8 to all of the glass companies in the state through the
9 various letters that Grange sends out to network and
10 non-network providers saying, Here is the pricing
11 schedule that we will use for any claims from our
12 insureds.

13 So in this case, 20/20, that letter was sent to
14 20/20 in advance of the claims that are at issue today,
15 and 20/20 received that. So they send out a letter in
16 advance, and then this telephone call happens. And in
17 the phone call, again, the third-party administrator or
18 the claims representative, I'll call them, communicates
19 again what the pricing is and what the exact price will
20 be for this particular job.

21 In this case 20/20 says, We accept the job but we
22 reject the pricing. And at that point that triggers
23 something that the claims administrator has to do to
24 comply with South Carolina law, which is to advise the
25 insured that they may be responsible for any difference

1 between what Grange is willing to pay and what 20/20
2 wants to charge. And it's undisputed in all of these
3 cases that the insured was provided that information
4 and agreed to those terms.

5 The phone call ends, and the third-party
6 administrator, Safelite, then sends a confirmation fax
7 to 20/20 Auto Glass that says, As we just discussed,
8 here is the price we are willing to pay. That same
9 sort of confirmation fax was sent by Safelite on behalf
10 of Kemper in the *Kemper* case. And there's no dispute
11 that that happened in this case and that 20/20, in
12 fact, received that fax. And it's undisputed that they
13 understood what the fax meant.

14 The fax also contains an important phrase. That
15 phrase says this: "Performance of services constitutes
16 acceptance of the communicated billing price and
17 billing instructions." And that phrase is just below
18 the section that says, Grange Insurance has determined
19 the amount of such work is X, Y, Z, depending on which
20 particular claim we're talking about. But that number
21 is included.

22 20/20 receives the fax. They turn around and
23 perform the work. They then submit a bill to Grange
24 Insurance or to Safelite, and that bill in all of these
25 instances is more than what Grange indicated it was

1 willing to pay, in some instances as much as twice the
2 amount.

3 That's the same contest that happened at *Kemper*.
4 The fax was sent, and it contained that exact same
5 language, "Performance of services constitutes
6 acceptance of the communicated billing price and
7 billing instructions." And the glass company, Southern
8 Auto Glass, performed the work and then turned around
9 and billed the insurance company for a rate higher than
10 what the insurance company had said it was willing to
11 pay.

12 Another important fact that's consistent in both
13 cases is in the *Kemper* case, the auto glass company
14 maintained that it had repeatedly rejected the pricing,
15 both before this telephone conversation in writing and
16 after the telephone conversation.

17 20/20 maintains the same position in this case.
18 They have sent letters prior to these phone
19 conversations saying, We don't accept your pricing,
20 Grange, and then afterwards. After the work was
21 completed, they again sent invoices and other letters
22 that contained language to the effect of, We don't
23 accept your pricing. So the facts are identical.

24 The one issue that I'm sure that Mr. Lloyd will
25 address is that in the *Kemper* case, there was some

1 evidence, and this was disputed at the summary judgment
2 level and again on appeal, as to whether the glass
3 company in the *Kemper* case had finally agreed on the
4 phone that they would accept the prices.

5 And what matters to this court is at the end of
6 the day, both the trial court, Judge McIntosh, and then
7 also the court of appeals said regardless of whether
8 that evidence comes in, regardless of whether that
9 evidence is prejudicial as to what was said on the
10 phone call, what matters at the end of the day is this:
11 When the glass company was informed what the prices
12 were, they were given a fax that said performance
13 constitutes acceptance, and they then performed. It's
14 the performance that's key for the court's analysis.

15 And because they performed, they accepted the
16 prices that were communicated to them. And the legal
17 function of that is a unilateral contract is formed
18 between the insurance company and the glass company.
19 And because the unilateral contract is formed and
20 because the glass company then paid the amount they
21 said they were willing to pay, they satisfied their
22 obligations for that unilateral contract. And by
23 operation, that unilateral contract and their
24 satisfaction of that contract also satisfies their
25 obligation under their policy to their insured to

1 repair or replace the insured's windshield.

2 That was the holding in *Kemper*. Those were the
3 facts in *Kemper*. Those are the facts in the case we
4 have got today. There's little material difference
5 between those two, and for that reason we believe that
6 *Kemper* controls the outcome.

7 There are other issues that have been raised.
8 Issues like assignment. Issues like consideration.
9 Issues like appraising. All of those issues were, at a
10 minimum, lurking in the background of both the *Kemper*
11 case and the three cases that I've cited in our brief
12 that the *Kemper* court analyzed and relied on, and they
13 don't really affect the outcome of the case. They are
14 simply an attempt by 20/20 to make an end-run around
15 the holding of *Kemper* which is unilateral contract,
16 you're bound to the pricing when you performed, end of
17 story. So those issues are really nonstarters for the
18 purposes of what the issue in front of the court is
19 today. And I can address those.

20 Just as an aside, I don't know procedurally how
21 you wanted to go. I'm happy to make my opening
22 argument. I know where they're going. They know where
23 I'm going.

24 THE COURT: Let me ask you this, Mr. Luther.

25 MR. LUTHER: Sure.

1 THE COURT: Now, you have addressed this, but
2 Mr. Henderson and Mr. Lloyd have made the point in
3 their memorandum about the Southern Glass case. You
4 alluded to this earlier, but in that case there was
5 alleged express consent to the pricing. So is it your
6 argument that that doesn't matter, that performance is
7 the only thing that matters to form a unilateral
8 contract?

9 MR. LUTHER: That's correct, Your Honor. I think
10 performance is the only thing that matters. If you
11 look at the end of the case, the *Kemper* case -- and
12 just for the record, that's 399 S.C. 483, 732 S.E.2d
13 205.

14 If you look at the very end of the court of
15 appeals' holding, and there is a section that says
16 "Introduction of the transcript," and that's the
17 discussion where the court of appeals says, We got this
18 issue from below about whether these transcripts of the
19 phone calls should ever have come in and whether the
20 transcript had something in there about whether the
21 glass company may have actually orally committed to the
22 pricing.

23 And what the court of appeals said is -- this is
24 on page 498 of the opinion -- "Additionally, a
25 unilateral contract was created by Southern Glass

1 performing" -- and the emphasis is in the court of
2 appeals opinion -- "for work on Kemper's insureds not
3 by Southern Glass' verbal responses."

4 So, in other words, it doesn't really matter what
5 they may have said on the phone. The dispositive
6 conduct is they performed pursuant to the conversation
7 and the fax. So, yes, I would agree that the
8 performance is what matters.

9 THE COURT: How do you -- another issue they have
10 raised, and this was very interesting reading Mr. Lloyd
11 provided for me, this Alpine Glass, Inc., the
12 transcripts. Am I pronouncing your opponent's name
13 right, Kluz? Or it looks like Kluz.

14 MR. LLOYD: That's how it comes up on spell check,
15 but he pronounces it Kluz, and we laugh about that all
16 the time.

17 THE COURT: Okay. Kluz. But Mr. Lloyd had a very
18 involved hearing in front of Judge Schiltz. Granted,
19 this is a Minnesota case, and it appears that the judge
20 is interpreting a specific Minnesota statute in that
21 case.

22 In fact, he references two different Minnesota
23 statutes, so, obviously, that doesn't control South
24 Carolina. But I thought the argument was interesting.

25 I want to hear what you've got to say. They

1 argued that the insurer has no consideration being
2 given in this unilateral contract because they're doing
3 something that they're legally obligated to do. And I
4 think the judge in that case kept making that point,
5 what was the consideration.

6 Now, again, I realize that's different law,
7 different state. But the concept that's being argued,
8 how do you address the legal obligation argument that
9 they're making?

10 MR. LUTHER: Sure. I think, if I understand Your
11 Honor's question, it's really the consideration
12 argument.

13 THE COURT: Right.

14 MR. LUTHER: Their lack of consideration here.

15 THE COURT: Right.

16 MR. LUTHER: I think that's actually pretty
17 simple. The consideration is they were paid a certain
18 amount to do the job. That's why I said at the
19 beginning the importance is to remember there's two
20 contracts. There's the contract between the insurance
21 company and the insured, and there is a separate
22 contract between the insurance company and whoever they
23 hire to do the repairs.

24 And the fact that the money that's transacted in
25 these two transactions -- well, let me say this. This

1 money can serve a dual purpose. So Grange contracts
2 with 20/20 to perform the work. And so that
3 consideration, what they pay them to do the work,
4 that's the consideration for that contract, the
5 unilateral contract.

6 As it so happens, that amount always suffices to
7 serve as the contractual obligation, the payment of the
8 claim that Grange owes to its insured. So, for
9 example, if the insured called Grange and said, "I've
10 got a glass I need repaired," and Grange says, "Okay.
11 We'll pay you \$500 for that. That's the amount we
12 think is necessary for the repair." And the insured
13 says, "That's great. Send me the \$500," and they get
14 the 500 bucks and then turn around and pay that money
15 to 20/20, that money serves as the consideration for
16 having the work performed, but it also serves in
17 fulfilling Grange's obligations under the policy.

18 So I think it confuses matters when you start
19 throwing in the assignment issues because they're
20 still, even though under the assignment, 20/20 now has
21 certain rights that it acquires from the insured, it's
22 also the company that performs the work. And so 20/20
23 couldn't just come in and say, "Hey, we have been
24 assigned all the rights. The insured has to pay us the
25 money." Well, somebody still has to do the work. And

1 so the fact that 20/20 also does the work and gets paid
2 with that money, that's the consideration. So it's a
3 dual function of the money that's changing hands, both
4 of that satisfies the obligation of the unilateral
5 contract for consideration purposes, and then it
6 satisfies the obligation of the insurance company to
7 pay reasonable, I guess, necessary claims or necessary
8 amount for their obligations under the insurance
9 policy.

10 Does that answer your question?

11 THE COURT: Thank you. I understand your
12 argument.

13 All right.

14 MR. LUTHER: Can I add one thing, Your Honor?

15 THE COURT: Yes, sir. Yes, sir.

16 MR. LUTHER: It goes to that question. I think
17 you kind of hinted at it the way you asked the
18 question.

19 Minnesota also has some different statutory
20 provisions that governs glass claims. And one of them
21 is there are provisions in the statute about what the
22 insurance company has to pay. I don't remember the
23 exact language. But to the extent that Mr. Lloyd
24 probably knows it by memory because he's from
25 Minnesota, but they have to pay a reasonable amount

1 within the market or something to that effect. And the
2 insurance company is required to issue payment directly
3 to the glass company. Those are both statutory
4 obligations.

5 So if you look at the transcript from that oral
6 argument, what the judge is focusing on is you're
7 required by statute to do those two things. So what
8 else have you done.

9 THE COURT: I believe that he refers to it as the
10 Unfair Claims Practices Act.

11 MR. LUTHER: Right. And I think that that's a
12 section that applies to their insurance, their
13 insurance section of the code up there. There's also a
14 provision in there for dealing with arbitration of
15 these specific-type claims, something South Carolina
16 doesn't have.

17 But the point of the judge was you're required
18 under the law to do these things. Well, we don't have
19 that situation we alluded to in South Carolina. So
20 another consideration, if you will, is they get payment
21 directly and they don't have to go through a middleman,
22 which is the insured.

23 THE COURT: Thank you, Mr. Luther. Let me let
24 Mr. Lloyd respond, and then I'll let you reply.

25 MR. LUTHER: Okay.

1 MR. LLOYD: Just for my own purposes so I don't go
2 too far afield, do you want me to make my entire
3 presentation or just address the consideration issue?

4 THE COURT: Why don't you go ahead and make your
5 entire presentation and then I can ask you questions,
6 if I have questions, about what you're presenting. And
7 then I'll let Mr. Luther respond to it. And I'll give
8 you -- if there are new matters brought up in his, I'll
9 let you respond to that. I want everyone to have a
10 full opportunity to make any points that you need to
11 make.

12 MR. LLOYD: I appreciate that, Your Honor. And I
13 just didn't know -- like I said, I didn't want to start
14 arguing stuff that you maybe wanted to hear from
15 Mr. Luther first, but let me -- I had planned to start
16 with consideration first. So I am glad that we've got
17 some meat already on those bones, Your Honor.

18 A couple of things about Judge Schiltz and his
19 transcript. First off, I realized I forgot to attach
20 the order. The order that came out of that hearing was
21 simply, For the reasons stated on the record, you know,
22 I dismiss this and do this and do that. So that was
23 actually the reasoning of the court for the order that
24 was ultimately issued that then went up to the Eighth
25 Circuit. So I wanted -- just so we know that.

1 Two things about that. First, the consideration
2 argument that Judge Schiltz was addressing or was
3 focused in on is a common law consideration issue.
4 It's the same consideration issue that is at issue here
5 in South Carolina as everywhere else. It's part of the
6 three elements of a valid contract: Offer, acceptance,
7 and consideration.

8 The consideration that was tried to be put forward
9 is, Oh, but we're paying them directly. That's the
10 consideration, Your Honor. And the judge says, No, you
11 have got to pay them directly because of the statute.
12 There's got to be something more.

13 There is something more as to why the direct
14 payment to them isn't consideration. A, you will look
15 long and hard at that fax, Your Honor, and you will see
16 no promise to make the payment directly to the glass
17 company. There is no promise being made by the
18 insurance company to pay the glass company directly by
19 doing the work. That's not part of the offer that is
20 being made. And they are limited to the four corners
21 of that particular document. No offer to pay them
22 directly. None at all.

23 Second problem with that is the assignment of
24 insurance proceeds that they receive from the customer
25 is what gets them paid directly. That's also a

1 critical element with respect to this.

2 But the issues that Judge Schiltz is talking about
3 were not the things that go central to why he rejected
4 their position. The statute doesn't really control in
5 that setting. He was using that to deal with some of
6 the positions that were asserted by the insurance
7 company.

8 But the consideration, Your Honor, this
9 pre-existing duty rule is applicable in South Carolina.
10 You have to -- in order to form a new contract, and
11 that is what Grange is arguing here, that we have a new
12 contract. Not the insurance policy, not this network
13 agreement that was referenced, but we have a new
14 contract between Grange and 20/20. And that new
15 contract must have all three elements in order to be
16 valid and enforceable. There has to be a valid offer,
17 there has to be an acceptance, and there has to be
18 consideration. And it has to be new consideration.

19 We cited this back in the original summary
20 judgment motion when we were here, I think it was the
21 day that you were actually being sworn in, if I recall
22 correctly, so however long ago at that was. But it's
23 the *Castell vs. Stephenson Finance Company* case from
24 the South Carolina Supreme Court. They stated, "The
25 authorities are clear that an agreement to do that

1 which one is already legally bound to do is not
2 sufficient consideration to support a new contract."
3 That's 244 S.C. 45 at 54, 135 S.E.2d 311 at 315.

4 So this notion that, well, the money can satisfy
5 multiple obligations, not when the insurance company is
6 trying to claim that there is a new contract. And
7 that's what they're arguing here is that they are off
8 the hook for having to pay anything more because they
9 had a new contract, this unilateral contract.

10 Now, the other problem with the consideration,
11 Your Honor, is -- and Mr. Luther just acknowledges
12 it -- they are doing nothing other than fulfilling
13 their policy obligation. If 20/20 never did the work,
14 they still owe the money to the policyholder. And
15 that's where there was a fallacy in the presentation
16 that was just made.

17 In property insurance, the debt that is owed by
18 the insurance company is fixed as soon as the damage
19 occurs whether it ever gets repaired or not. And
20 that's how it can be assigned.

21 THE COURT: Let me ask you this, Mr. Lloyd. Is
22 the debt fixed or the obligation fixed? The amount can
23 be in dispute, can it not?

24 MR. LLOYD: Well, that goes back to then what does
25 the policy provide.

1 THE COURT: Okay.

2 MR. LLOYD: And the policy provides it's the
3 amount necessary to repair or replace. Now, it could
4 say the amount is \$4.35 or whatever it is that they put
5 in the contract. They left it sort of as somewhat
6 open-ended as far as what constitutes the amount
7 necessary. But that is a debt that is owed that can be
8 assigned, and that's what the supreme court said in the
9 *Narruhn* case that came up after the *Kemper* case.

10 So we now have this debt that is owed. It is
11 fixed in time the moment the rock, the deer, the
12 ball-peen hammer hits the windshield. That debt is
13 fixed. And so anything that they do to try to
14 discharge that debt, and only discharge that debt,
15 they've already got a legal obligation with respect to
16 that. And that's why there's no consideration with
17 respect to that.

18 Second thing, you will look long and hard, Your
19 Honor, at the stipulation of facts. What is it that
20 20/20 gets by doing this work that they wouldn't get
21 otherwise? And the answer is absolutely nothing. They
22 are absolutely entitled to perform the work in the
23 state of South Carolina. The same -- the code
24 provisions that both parties referenced, Grange
25 referenced in their opening trial brief and we

1 referenced in our reply brief, note that the policy --
2 the insurance company cannot require a particular
3 vendor be used. And they cannot tell a policyholder
4 that they can't use 20/20.

5 So 20/20 has a right to perform this work. So
6 they're not getting access to the job. It's not like
7 Grange is saying, "Well, we'll refer the job to you if
8 you agree to this specific price." Then they have done
9 something over and above that. But there's no referral
10 here. There's nothing that comes from the insurance
11 company. It's exactly the same thing as if -- they
12 would get the exact same thing even if no fax was ever
13 set. Nothing.

14 And so the consideration issue, Your Honor, that's
15 what Judge Schiltz really drilled down on. And this
16 idea that somehow they're getting -- I mean, what
17 they're doing is they're saying, Grange is saying,
18 "Well, you're getting allowed access to this work."
19 But that's no different than Judge Schiltz saying,
20 "Okay. What if I tell you you've got to pay me \$100 to
21 go out the door?" I mean, is that really a unilateral
22 contract that's created? Of course not. Because, of
23 course, we have the right to do that already.

24 And so for that reason, there is no consideration.
25 And while that issue may have been lurking in the

1 background, I think is what was described, it clearly
2 was not addressed in the *Kemper* case. I don't think
3 anybody raised it as far as -- I mean, it was more an
4 issue of focusing on the acceptance issue of offer,
5 acceptance, and consideration, not on the consideration
6 side.

7 Now, we've got problems with all three areas, and
8 that's another reason why this case is distinguishable
9 from *Kemper* because although they want to say it is
10 exactly the same, it's really not. And I can give you
11 reasons why, Your Honor. We're going to drive right
12 into minutiae of the exhibits. Because it's the
13 minutiae, unfortunately, where the resolution of the
14 offer issue comes from and the resolution of the
15 acceptance comes from.

16 Now, the offers, the faxes that you have in front
17 of you that are in the stipulated exhibits are really
18 Exhibits D, J, and N. And they're all -- they're not
19 exactly the same. But I will tell you if you look at
20 any of them, they express no intention to bind 20/20.
21 And I'll tell you why that is the case. Every one of
22 them contains not only the language that says
23 performance of services constitutes acceptance of
24 communicated price and billing instructions -- we'll
25 come back to that in a moment -- but it also says if

1 the cost of the claim is over \$1,000, please call or
2 e-mail pricing approval. In other words, the fax in
3 and of itself contemplates that the price is going to
4 be substantially higher than what is contained in the
5 fax. And if it is, they want you to call. It's not a
6 question of, "We're intending to bind you to these
7 prices." It's just, "These are what we want to pay,"
8 and they throw in that language, but they have no
9 intention of binding anybody.

10 And we know this because the pricing offer is a
11 formula, Your Honor. It's a three-part formula. It's
12 the glass, which is expressed in the fax as sort of
13 minus 41 percent. It's the labor, which is \$30 an hour
14 plus an additional \$30. And it's the cost of the glue
15 or the adhesive, depending on the type of the glue or
16 adhesive that gets used.

17 So we know what all of the variables are in the
18 formula. When Safelite on Grange's behalf sends out
19 these faxes, they know whether the formula is going to
20 exceed \$1,000 or not and, in every one of these cases,
21 their formula clearly didn't. And yet they leave open
22 the prospect that the claim could exceed \$1,000. That
23 is not an offer to bind somebody to a unilateral
24 contract.

25 Now, the acceptance issue is also problematic.

1 Not only did we reject it in writing to Safelite which
2 is Exhibit C in advance, we rejected it during the
3 phone call in which they said, "Will you accept these
4 prices?" And there's no question that it was rejected.
5 And -- and, Your Honor, we ignore all of the
6 instructions that are in the fax because the fax binds
7 us not only to the pricing but also binds us supposedly
8 to the billing instructions. That's what it says, "You
9 agree to our price and our billing instructions."

10 And notwithstanding the fact we ignored both,
11 Grange doesn't reject the invoices. Grange sends out a
12 payment. And, quite honestly, in six out of six cases,
13 Your Honor, it's a payment that isn't what they said
14 they were going to pay. So nobody expected to be bound
15 by this. And we could go through the specifics.

16 Exhibit D, the Iranell Hampton case, or claim, I
17 should say. The offered amount, although you won't
18 find the specific dollar amount on Ms. Hampton's fax,
19 the offered amount is \$279.69. And it's just math,
20 Your Honor. The way you calculate this -- and I'll go
21 through the calculation and tell you how we came up
22 with it. But if you look at the stipulated facts on
23 paragraph 52, it says that basically what you do is you
24 multiply the list price of the glass by .59. Right?
25 It's a 41 percent discount. So what you're really

1 going to be reimbursed at is 59 percent of the list.

2 So you can take the list price. And where you
3 find the list price for each of these windshields is on
4 the invoice that was submitted by 20/20. In this
5 instance, it's Exhibit F. There is a list price for
6 the windshield. And the list price for the windshield
7 was \$255.40. So when you do the math, you come up with
8 a dollar amount for the glass at \$150.69.

9 Now, the labor, like I said, they're going to pay
10 \$30 an hour for labor plus an extra \$30. So you
11 multiply the labor time, which is also on Exhibit F,
12 which for Ms. Hampton was 2.3 hours. It's a published
13 time. Everybody follows the NAGS published time just
14 like the NAGS price list. You multiply it by 30. You
15 come up with 69 and add another 30, and that's \$99.

16 And then you add the kind of glue. And in this
17 instance the kind of glue is the 2.0 Fast Cure, which
18 is \$30. And that comes up with a dollar amount of
19 \$279.69. That was the offer.

20 Now, they paid us, even though -- and the other
21 parts of the offer are you have to get the fax signed
22 by the customer. Have the customer sign the fax, and
23 have the customer sign your invoice. Those are all of
24 the instructions. Bill us this amount, get these two
25 signatures.

1 20/20 did none of those things. There's no
2 signature on the fax. There's no signature on the
3 invoice. The signature's on a different document. It
4 all was then submitted to Safelite and Grange. They
5 did not reject it. Which if there had been a binding
6 agreement, one would have expected they would have
7 rejected the invoice, but they didn't.

8 Even setting aside the rejecting of the invoice,
9 they didn't pay \$279.69. If you look at Exhibit G or
10 the stipulation of facts paragraph 57, the amount that
11 they paid was \$290.53, not the amount that they claim
12 they were going to pay. It's more, I will acknowledge
13 that, but it's not the amount that they promised to
14 pay. It reflects, Your Honor, that there was no
15 binding contract. Grange didn't insist upon, didn't
16 conclude that the contract was binding.

17 THE COURT: What was the difference in the
18 invoice? Was that sales tax?

19 MR. LLOYD: I have no idea what the difference is,
20 Your Honor. That's not in the record.

21 THE COURT: Mr. Luther, do you know what the
22 difference in the 279 and the 290 was?

23 MR. LUTHER: Your Honor, I will just say it's not
24 in the record. I have been told some different
25 explanations, and I think it has to do with minuscule

1 things like clips and also calculations of sales tax.
2 For my purposes, I didn't think it was necessary
3 because everybody admits they paid at least the amount
4 that they said they were going to pay.

5 THE COURT: All right.

6 Go ahead, Mr. Lloyd.

7 MR. LLOYD: Your Honor, I want to address that.
8 The miniscule issues like clips, that's one of the
9 issues in the fax. If you look at the fax, it says if
10 you bill for any part that is not a NAGS-priced part,
11 you have to get approval. And they didn't do that
12 either. They billed for things -- not in this case. I
13 don't believe that there are any in this, but we're
14 coming up to some where they were billed for things
15 like clips and moulding which were not priced by NAGS
16 which the fax told them they had to get approval for
17 which they did not. And again, Grange let it go.
18 Clearly not the situation in which Grange believed that
19 these issues were binding.

20 Exhibit J is the Cinnamon Collins case or claim.
21 And this is one where the fax is truly -- it's not
22 possible to be binding, Your Honor. We start off, if
23 you look at Exhibit J up at the top below the name and
24 vehicle and type of loss, one of the things you're
25 going to notice is a \$500 deductible. \$500 deductible,

1 according to the fax.

2 Of course, the insurance policy that's in the
3 record, Exhibit A, if you look at page D4 paragraph D,
4 there is no deductible that applies to glass. But yet
5 the fax claims there is a \$500 deductible.

6 The offered amount here, Your Honor, is \$248 less
7 any applicable deductible amount. So, in order words,
8 248 less \$500, according to the fax, Grange owes
9 nothing. But we know that's not the case because
10 Grange made a payment on this claim of \$302.21. Now,
11 that's clearly more than just tax over the \$248 that
12 was offered. And the amount of the payment can be
13 found, Your Honor, at Exhibit N and stipulation
14 paragraph 71.

15 Now, how is it possible that Cinnamon Collins' fax
16 is binding on 20/20, that anybody considered it to be
17 binding on 20/20? Again, 20/20 didn't follow the
18 directions. There's no signature on the fax. There's
19 no signature on the invoice, and they billed for
20 non-NAGS prices, non-NAGS parts without any approval.
21 It's Exhibit L is the invoice. It's not binding
22 because nobody is following what the fax said. 20/20
23 didn't follow it. Grange didn't follow it.

24 So, in addition to the problem of there being no
25 consideration, in addition to the problem that there

1 was no intended binding offer because they left wiggle
2 room in there for prices to go above \$1,000, there's
3 also the problem with nobody follows the fax after the
4 fact.

5 You will see that same thing occur in Exhibit N,
6 which is the Kelly Gregg case. That's the only one
7 that's even close. There you had a signed invoice but
8 no signed fax, and you had a payment that was within 32
9 cents of what the offered amount was. But it's still,
10 if it was binding, you would think it would be tied to
11 the penny, not that there would be some variation of
12 even 32 cents. And there's no explanation in the
13 record for why the payments don't match the offers if
14 they're binding. None.

15 Now, there is a second Kelly Gregg claim and
16 invoice, Exhibit Q. Now, we don't have the documents
17 with respect to this, Your Honor, so there is no fax,
18 but I think the way that the stipulation is properly
19 considered is that there was a fax that was sent and it
20 was of the same language as the earlier faxes. We're
21 not saying, "Oh, no fax, no unilateral contract" with
22 respect to this. That's not our defense on this at
23 all. In fact, that would be Exhibit Q, R, and S, the
24 Gregg Mazda claim, the Perkins claim, and the Kellogg
25 claim.

1 I just want to be very clear with Your Honor that
2 that's -- you should assume that the fax was sent just
3 like it was with the others and that it was received
4 before the work was done, et cetera. We're not trying
5 to play that minute of a difference. But what I will
6 say is when the math gets done, assuming those same
7 faxes went, the math that got done or the offer in
8 Exhibit Q, which is the Kelly Gregg case, the amount
9 offered would be \$285.31. \$285.31. And I've got all
10 the calculations that I can provide to both you and
11 counsel if you would like. But like I say, the math is
12 you take the list price and multiply it by .59, take
13 the labor hours by 30 and add an additional 30 and the
14 kind of glue it is and you can come up with the amount.

15 But the amount that was paid, Your Honor, which is
16 also reflected in Exhibit Q and on the stipulation in
17 paragraph 87, was \$313. \$313. Not 285.

18 Now, there's no evidence again here that the
19 invoice was signed or that the fax was signed. And if
20 you look at Exhibit Q, there was no billing for
21 non-NAGS parts even though the fax requires that they
22 obtain approval. And there's no evidence of approval.

23 So with respect to that, Your Honor, the Kelly
24 Gregg case, the second Kelly Gregg claim, again,
25 there's no evidence of any meeting of the mind.

1 Exhibit R, Keith Perkins, the formula with respect
2 to the math or with respect to the claim turns out to
3 be the offer amount would be \$384.16. The amount paid,
4 according to Exhibit R and stipulation paragraph 93,
5 \$436.94. And, again, no signed invoice or faxes in the
6 record, and there's billing for non-NAGS parts. So if
7 you're looking for manifestations of rejection of the
8 offer, they're all over the place.

9 That same thing would be true with Exhibit S, the
10 David Kellogg claim. The amount of the offer would be
11 441.86 less \$100 deductible, so the total would be
12 341.86. The amount paid was 361.69. And again, there
13 was billing for non-NAGS parts.

14 Now, the point with all of that here, Your Honor,
15 is, whether we call it unilateral contract or just a
16 contract, there has to be some sort of meeting of the
17 minds, and clearly there wasn't here. Grange didn't
18 even -- wasn't consistent from offer to performance on
19 their part. So it's not possible for there to be a
20 contract merely by performance in this setting.

21 Now, the cases, Your Honor, that we looked at, I
22 mean, in the Alpine Farmers case, the primary case is
23 the district court case Your Honor referenced, the
24 transcript from Judge Schiltz. This is sort of the
25 critical language. Comes from page 35, lines 5 through

1 13: The insured has the right under the statute to
2 come into Alpine to say to Alpine, "You fix my glass."
3 All right. Now, that's a different statute in
4 Minnesota, but South Carolina has a same principle,
5 different language that allows the customer to have
6 20/20 perform the glass repair work. So may be
7 different language, same underlying public policy.

8 Alpine has a right to fix the glass. You have no
9 right to forbid it. Same in South Carolina. Since you
10 can't forbid it, you can't be faxing in something
11 saying, "You can't do this work unless you are willing
12 to abide by our terms," which is basically what you are
13 trying to do. You are trying to send a fax and saying,
14 "You can't work on our insured's car unless you do it
15 under our terms or they pay you themselves."

16 That's exactly what Grange is trying to do here.
17 It's exactly the same. And Judge Schiltz says that's
18 not -- that doesn't create a factual predicate for a
19 contract. And, again, we're talking first year common
20 law contracts, not anything that's statutorily
21 specific.

22 THE COURT: Let me stop you there, Mr. Lloyd. Let
23 me ask you this: How do you reconcile South Carolina
24 statutory law to what you've just -- now, you're saying
25 there's no meeting of the minds. I understand your

1 argument on that. How do you reconcile, and I'm going
2 to point out Statute 38-57-75 which is vehicle glass
3 repair procedures. And specifically subsection (g)(4)
4 which says, "A vehicle glass repair or replacement
5 facility including the agent, contractor, vendor,
6 representative or anyone acting on its behalf must
7 not," subsection 4, "perform vehicle glass repair or
8 replacement services under an insurance policy without
9 first obtaining insurer approval."

10 Now, how do you reconcile that statute with what
11 you just argued?

12 MR. LLOYD: Well, the notion of approval there,
13 Your Honor, is extraordinarily narrow. A, the
14 statute -- there's three reasons why that doesn't
15 change my analysis. First -- and I have to admit, I've
16 had this sort of bad ability to cite chapter and verse
17 on statutes going back to law school where I could tell
18 you what the concept is, but I couldn't give you the
19 number.

20 But early in the statute, it's about the first
21 section in that same statute, it basically says that an
22 insurer cannot require a policyholder to go to a
23 particular vendor for the work.

24 THE COURT: That's in subsection A. You're right.
25 Very first part.

1 MR. LLOYD: Very first part, right? So they
2 can't -- I mean, presumably they can't then say, We're
3 never going to approve you to go to that shop because
4 we want them to go to this shop. I mean, looking at
5 purely that one section, the section that Your Honor
6 read to me, looking at that alone, an insurance company
7 could say, "We don't want you going to 20/20. We want
8 you going to Bob's House of Glass. We get a better
9 price from them so we're not approving them. We want
10 you to go there." Statute says you can't do that.
11 That's the first part of subsection A.

12 Later on it also says that you can't forbid a
13 policyholder from using a particular shop. So you've
14 got it at both ends. You can't make them go some place
15 and you can't keep them from going to some place.
16 Which means your ability to approve a particular shop
17 is not very broad. You can't base it on price. You
18 can't base it -- I mean, in essence --

19 THE COURT: What are you basing that on? What
20 other than price would they -- I mean, quality of work?
21 What is --

22 MR. LLOYD: Your Honor, I think what it comes down
23 to is the insurance companies, there's a problem in
24 these ongoing fights between glass companies and
25 insurance companies. And the problem is who's guarding

1 the hen house.

2 Safelite, who is the third-party administrator, is
3 also a glass company. And so glass companies don't
4 like calling in to Safelite, their competitor, to say,
5 I need to do -- I want -- you know, Mr. Henderson here
6 has a broken windshield. I need to set up the claim.

7 So what they would do is not call in the claim.
8 They would do the work and then they would submit the
9 claim. And insurance companies, rightfully so, were
10 saying, "Wait a minute. We don't even know about the
11 claim and the work has already been done. That's not
12 right." I don't disagree with that position.

13 So what you have, Your Honor, is the requirement
14 to call in the claim. What they can do to approve it
15 or not is, you know, is there damage to the glass or
16 not. Once it's established that there's damage to the
17 glass, the glass company, under that same statute, has
18 the right to do the repair.

19 THE COURT: So you're arguing that, under this
20 statute, if the insured picks a glass company, the
21 insurer has no right to reject that glass company based
22 on the price being charged?

23 MR. LLOYD: That's correct. And that's why there
24 is that disclaimer that comes in there that says, "Hey,
25 Madam Policyholder, you may be responsible for the

1 difference." Because the glass company may not get an
2 assignment of proceeds. Maybe the glass company just
3 says, "Okay. We're going to submit the bill. You get
4 the money, you pay us for the full amount." That's a
5 business model. And I don't think it's a very
6 successful one. But there have been glass companies
7 around the country that have tried to do that and have
8 gotten themselves in trouble for consumer protection
9 issues. And what that is, is designed to protect the
10 consumer from some unscrupulous glass company that
11 circles back around and tries to charge on the back
12 end. I mean, there's no question, I think, that that
13 is what that's designed to address. Because they can't
14 prohibit. They can't withhold approval based on price.

15 Now, there is a third problem with why that
16 statute doesn't apply besides the book-ending of the
17 prohibition. By its terms, the statute only applies to
18 insurance companies that have a ten percent ownership
19 in a glass company. Why? I have no idea. But there
20 is the legislature in its infinite wisdom about how it
21 is that the statute applies.

22 And so, Your Honor, three reasons why that statute
23 doesn't change that analysis from the Alpine Farmers
24 case. The two are the better ones. I will acknowledge
25 that, if the legislature were to amend the statute and

1 make it applicable to all insurance companies, it still
2 wouldn't matter in this setting, not matter at all.

3 THE COURT: What was Safelite's situation? Are
4 you aware of whether they were a ten percent owner in a
5 glass --

6 MR. LLOYD: Well, Safelite Solutions is a related
7 entity to Safelite Auto Glass. Now, I think it was
8 designed to address Safelite, but it says it applies to
9 third-party administrators so it would apply to
10 Safelite that they couldn't do various things.

11 THE COURT: Subsection K that you're referring to
12 said that, "Provisions of this section do not apply to
13 insureds or third-party administrators who do not have
14 a ten percent or greater ownership interest."

15 MR. LLOYD: Right. My belief, Your Honor, is that
16 it would apply to Safelite but doesn't apply to Grange.

17 Now, there is a fourth problem in all of this,
18 Your Honor. And that is on the phone call where 20/20
19 rejects the pricing, Grange does not say, "Okay. We're
20 not approving you for the work." Grange goes ahead and
21 approves the work, sends out a claim number even though
22 they know the pricing is being rejected. So this idea
23 that somehow the only way we can get approval is by
24 agreeing to the price, that's simply not true. And we
25 know it's not true because we know that it's been

1 rejected and we still get a claim number. And the only
2 time, then, that we ultimately accept the price in
3 theory is when we do the work.

4 Now, there is one last thing I wanted to address
5 with respect to this acceptance issue, Your Honor. And
6 that's the Connecticut Supreme Court case in *Auto Glass*
7 *Express vs. Hanover*.

8 I would agree with Grange that *Kemper*
9 distinguishes the case as it relates to whether an
10 offer was made. We didn't cite the case on the offer
11 side of things. We cited it on the acceptance side of
12 things. And the *Kemper* case didn't address it in that
13 regard. It's footnote 11, Your Honor, of the
14 Connecticut case that says even if we did agree with
15 the defendant that the pricing letters invited
16 acceptance of price merely by the performance of glass
17 repairs, the defendant failed to prove that the
18 plaintiff's conduct objectively manifested acceptance
19 of defendant's offers.

20 And then it goes on to cite to the restatement
21 second of contract, section 53 that says that, "If
22 within a reasonable time the offeree exercises
23 reasonable diligence to notify the offerer of
24 nonacceptance, performance doesn't constitute
25 acceptance."

1 It then went on. And this is the critical part,
2 Your Honor. "In the present case, the plaintiffs
3 performed glass repairs and promptly sent to the
4 defendant invoices requesting payment in amounts
5 greater than the amounts set forth in the pricing
6 letters. Because the defendant received notice of the
7 plaintiff's requested reimbursement at the same time it
8 received notice that the plaintiffs had rendered the
9 requested performance, it was not objectively
10 reasonable for the defendant to conclude that its offer
11 had been accepted."

12 And that's the same situation we have here.
13 There's no -- it's not objectively reasonable for them
14 to say, "Oh, you accepted our offer because you did the
15 work," when the only notice that they have that the
16 work has been done is an invoice that far exceeds and
17 follows none of the requirements that were set forth in
18 the fax, in the offer.

19 So that the problem with Grange's contract
20 position, Your Honor, is simple. There was no binding
21 offer made, there was no acceptance, and there's no
22 consideration. Any one of those things is fatal to
23 their position in this case. All three of them leads
24 to a very clear outcome, that 20/20 is not bound by
25 those faxes.

1 And what ought to happen, Your Honor, and maybe
2 this goes -- maybe this is something we deal with in
3 the next round, but what ought to happen is the court
4 ought to compel appraisal at this point so that the
5 amount can be determined using the language in the
6 insurance policy.

7 THE COURT: Thank you, Mr. Lloyd.

8 Mr. Luther.

9 MR. LUTHER: Thank you, Your Honor. I'll try to
10 address a lot of his points. I don't know if you have
11 specific questions, otherwise I'll just jump in.

12 THE COURT: Start out with the statute.

13 MR. LUTHER: Thank you, Your Honor. That's
14 perfect. Let me just point out this. The statute that
15 Mr. Lloyd was referring to does have the provisions
16 that the insurance company can't direct you to a
17 specific company, and it can't interfere -- it can't
18 prohibit you from choosing a specific glass company.

19 But in that same statutory scheme, in that same
20 section it also anticipates a situation in which the
21 customer and the insured bring in a glass company that
22 won't accept the prices that the insured and the
23 insurance company is willing to pay.

24 So this is the general assembly's understanding
25 that we're not going to allow the insurance company to

1 meddle with who the insurer uses for a glass company.
2 But in that same section it also enables or anticipates
3 the situation just like what we have here. And that's
4 subsection E subsection 1.

5 Let me just stop before I get to that. So
6 Safelite is the third-party administrator that's
7 handling these claims for Grange. So, I think, as
8 Mr. Lloyd has acknowledged, they would satisfy --

9 THE COURT: When you say they would satisfy --

10 MR. LUTHER: Correct. So third-party
11 administrator, Safelite, on behalf of Grange, this
12 section applies to them. And it says when an insured
13 requests to have covered glass repair work performed by
14 a provider who is not a member of the insurer's or
15 third-party administrator's vehicle repair program,
16 i.e., they're not a network provider, then the
17 third-party administrator or the insured has to do
18 this: Must confirm that the provider agrees to perform
19 the repairs at the insurer's fair and reasonable rate
20 of reimbursement. If the provider refuses to accept
21 the rate, the insurer or the third-party administrator
22 may inform the insured that he will be responsible for
23 additional costs.

24 So even assuming, so even recognizing then the
25 insured has the right to choose whatever glass company

1 it wants, the statute also envisions that that doesn't
2 bind the insurance company to a certain price.
3 Mr. Lloyd just said it does, and I respectfully
4 disagree.

5 What the statute says and anticipates is the
6 insurer is the one who determines what the price is.
7 And, frankly, this gets to the nub of what this
8 disagreement is all about is that 20/20 doesn't like
9 the prices that Grange is using. They don't think
10 Grange rates of reimbursement are fair and reasonable.

11 The problem with that is, and as Mr. Lloyd
12 acknowledges in his briefs, there is no private right
13 of action for that on the statute. So they can't sue
14 Grange and say your rates are not fair and reasonable.
15 So they have to create some creative ways to get around
16 what the statute is, which is what they're trying to do
17 in this case. And I simply would say, and this is why
18 I included it in my memo, the statute has a procedure
19 in place for vehicle glass repair, and Grange and
20 Safelite, its third-party administrator, complied with
21 all those things.

22 And that leads me to the second point that I
23 wanted to address which is this: Their whole position
24 rests on this assignment issue. And the key about the
25 assignment is 20/20, as the assignee, doesn't assume

1 any rights greater than the insured has, the assignor.
2 So they don't get more rights than what the insured has
3 in the policy. And the only rights the insured had
4 were to have their glass repaired or replaced and the
5 amount necessary for that.

6 So when they have the assignment of 20/20, at that
7 point -- and, Your Honor, at the very beginning of
8 Mr. Lloyd's discussion kind of hit it, but there is a
9 difference between a fixed obligation and a specific
10 amount. And so I would agree as soon as there's damage
11 to the windshield, Grange now has an obligation to
12 repair or replace the windshield, but the amount
13 necessary for that is not fixed yet. That's still to
14 be determined.

15 And so when the insured assigns whatever rights
16 they have on the policy to 20/20, all they have
17 assigned at this point is whatever amount is necessary
18 for the repair or replacement, not a dollar amount yet.
19 So that's all they decide.

20 So what the court in *Kemper* and other courts that
21 have looked at this *Kemper* cite have said is you have
22 that obligation. That amount becomes determined by the
23 operation of the glass company then performing it. So
24 the obligation is uncertain. It's not defined until
25 you have this unilateral contract that then establishes

1 what that amount is, the dollar figure.

2 So when Grange through Safelite is on the phone
3 with the insured and 20/20 and they get to this section
4 where they say, "20/20, you're not a network provider.
5 I need to confirm that you will agree to perform the
6 repair at Grange's fair and reasonable rate," the
7 insured, in all of these claims, said -- well, first of
8 all, 20/20 said, "We reject the pricing, but we do
9 accept the job." So in compliance with the statute,
10 Safelite then said, "Insured, you're required to know,
11 you're obligated to know, you have a right to know that
12 you may be responsible for any difference between what
13 Grange is going to pay of what they have determined is
14 fair and reasonable and what 20/20 is going to charge
15 you." And in every single one of these claims, and
16 it's in the stipulated facts, the insureds agreed to
17 that.

18 So at that point they have now agreed to whatever
19 pricing Grange has. That's all they can assign to
20 20/20. They can't assign some greater amount that they
21 and 20/20 later determine is the amount. They have
22 agreed to it. So they're a part of this contract and
23 this agreement as well. So they can't then turn around
24 and 20/20 say, "Well, even though the insured agreed
25 that it would accept the amount Grange would pay and be

1 responsible for the difference, we at 20/20 now think
2 that Grange has to pay all of it." It just doesn't
3 work that way.

4 THE COURT: How do you respond to Mr. Lloyd's
5 argument that the amount set forth in the fax is
6 different than the amounts they actually paid?

7 MR. LUTHER: Sure. And there was a reason why I
8 kind of left with this in the stipulated facts. I
9 don't believe the minutiae matters because at the end
10 of the day, what's undisputed is Grange paid at least
11 as much as they said they would pay. And there are
12 some reasons in terms of taxes and otherwise why the
13 amount may have been a little bit more, 20, 30, \$40
14 more. But what matters is in the fax they said here is
15 the rate we're willing to pay. And here is a pricing
16 scenario that Mr. Lloyd walked you through, that's how
17 we're going to get to the rate.

18 THE COURT: So you're saying since it was to the
19 vendor's benefit, it doesn't matter?

20 MR. LUTHER: Right. Frankly, it's hard for me to
21 believe that what they're saying is, "We understood you
22 were going to pay us X amount and we still performed
23 anyway, and when you paid us a little bit more than
24 that, see, we're definitely entitled to a lot more."
25 They want their cake and they want to eat it, too. I

1 don't think it makes a difference in the matter. All
2 that matters is Grange paid at least the amount they
3 said they were going to pay.

4 I think getting into the minutiae really is
5 confusing because all those arguments are intended to
6 say these are different ways that we tried to reject
7 the pricing when we couldn't accept the pricing. But
8 that doesn't matter because that was considered by the
9 *Kemper* court. It says it doesn't matter how many times
10 you reject it before or afterwards by sending in
11 invoices that didn't match the amount that *Kemper* said
12 it would pay. What mattered at the end of the day is
13 you performed after knowledge of what *Kemper* was
14 willing to pay. And in this case 20/20 performed
15 having knowledge of what Grange said they were going to
16 pay.

17 I think it's important to note because what I hear
18 Mr. Lloyd trying to argue is let's look at each of
19 these different faxes and say, "Well, we couldn't have
20 understood what the rates were because there is a
21 deductible on one or the pricing is different." It's
22 undisputed that 20/20 did not find the faxes to be
23 ambiguous. They understood what it meant. They
24 understood that that was the amount that Grange was
25 willing to pay and no more. They understood the

1 phrase, "Performance of this job constitutes
2 acceptance." That meant they were accepting it. They
3 don't agree they were accepting it, but they didn't
4 find the language to be ambiguous.

5 THE COURT: How do you respond to his argument --
6 I want to make sure I quote this correctly -- the
7 statement in the faxes, "If the cost of claim is over
8 1,000, please call or e-mail for pricing approval," how
9 do you address that?

10 MR. LUTHER: Let me find that phrase. So if you
11 look at that entire section, what it says is, "Please
12 contact Safelite prior to beginning the work for any
13 part that's not priced," and it lists a whole bunch of
14 them. And it says, "If the cost of the claim is over
15 \$1,000, please call or e-mail pricing approval."

16 I don't think that has any relevance at all
17 because what's clearly stated above it and what's
18 undisputed in the facts is a specific amount is laid
19 out which is Grange has determined the amount of such
20 work is. And, for instance, in the Cinnamon Collins
21 fax referral, which is Exhibit J, Grange Insurance has
22 determined the amount of such work is \$248 less the
23 applicable deductible amount.

24 And as an aside, the fact that it says any
25 applicable deductible amount and has a deductible

1 listed on there, it's really a nonstarter because
2 everybody agrees there is no applicable deductible, so
3 it's kind of a throwaway phrase.

4 THE COURT: Mr. Luther, why is there, and you
5 mentioned -- I'm glad you mentioned that because that's
6 a question I have.

7 On J, it has a clear statement that you just read
8 to us, "Grange has determined the amount of such work
9 is," and it gives the \$248 calculation. And they
10 explain up above how they calculated it.

11 But, for instance, on Exhibit D, they give the
12 explanation of how they calculated it, but there is no
13 final amount set on the fax. Why are the two faxes
14 different?

15 MR. LUTHER: Your Honor, frankly, I can't answer
16 that question. It's not in the stipulated facts. And
17 part of the reason is because Grange was never deposed
18 in this case for us to figure out what the issue is.

19 THE COURT: Mr. Lloyd did elaborate calculations
20 and I have no reason to doubt his math on it, but
21 there's no amount there, and I wondered that.

22 I interrupted you. Go ahead.

23 MR. LUTHER: I would just say if you look at the
24 stipulation of facts paragraph -- yeah, if you look at
25 paragraph 31. I know this is not necessarily in the

1 stipulation of facts, but just by way of explanation, I
2 went through that in the deposition with Mr. Matt
3 Damion, the owner, and also with his office manager who
4 handles a lot of these. I don't understand how the
5 calculations work, quite frankly. Mr. Lloyd does
6 because he does this a lot more than I do. I just know
7 that the calculations make sense to the people that are
8 in the industry.

9 And if you look at paragraph 31, that's sort of a
10 summary of the deposition testimony which is 20/20 Auto
11 Glass does now believe that the claims representative
12 response is vague and ambiguous and understands the
13 response to mean an insurance company does not agree to
14 a payment amount greater than the price or rates stated
15 over the phone by the claims representative. And that
16 includes those calculations.

17 I guess I'll just wrap up with this one point with
18 respect to consideration and also the assignment issue.
19 When the insured is on the phone with Grange with
20 Safelite and 20/20 and Safelite says, "You may be
21 responsible for the difference, but this is the amount
22 that Grange is willing to pay," and the insured says,
23 "I understand these terms and I agree to it," at that
24 point, as I said, they have now agreed to that pricing,
25 whatever that pricing is. And that's the most that

1 they would then be able to turn around and assign to
2 20/20. So you have that element of a contract and
3 pricing being established, and then you have the second
4 unilateral contract which we've been talking about
5 which further confirms that, Hey, we have made an
6 offer, we have told you, you understand what it is,
7 this is what we're willing to pay. There is a dollar
8 amount here on some of these. On others there is the
9 pricing scheme which you all understand what that
10 means, what that amount is, and you go ahead and
11 performed the work anyway.

12 *Kemper*, the cases from North Carolina, Washington,
13 Idaho all say performance is what matters. It doesn't
14 matter how many different ways you manifest rejection
15 whether in writing or over the phone. Doesn't matter
16 how many different ways you say, "We reject your
17 pricing." If you go do the job, you have accepted the
18 pricing.

19 And for that -- I don't know if now would be the
20 time to get into the appraisal issue, but I would
21 simply say this in anticipation of that: When the
22 pricing is set and the contract is completed, 20/20 has
23 done the work, Grange has paid them at least the amount
24 they said they would pay them, all of the obligations
25 under that contract have been satisfied.

1 THE COURT: Let me ask you this. I'm going to ask
2 Mr. Lloyd this in just a second. Under the policy --
3 let me just ask you about the appraisal issue. Under
4 the policy appraisal provision, do you believe that
5 applies to windshields since it says "vehicle"?

6 MR. LUTHER: I don't. That would be the short
7 answer. And I -- we haven't gotten into it too much
8 because I don't think you have to because I think if
9 you understand the unilateral contract theory under
10 *Kemper*, it doesn't matter what happens with the
11 appraisal because that's all afterwards.

12 THE COURT: That's not the ultimate issue of what
13 we're deciding here today.

14 MR. LUTHER: Correct.

15 THE COURT: That's come up and it's been in the
16 pleadings. I want to know exactly what your position
17 on that was.

18 MR. LUTHER: But, Your Honor, I would agree, I
19 think if you look at the plain language, it's not
20 applicable to a glass claim.

21 THE COURT: So Mr. Lloyd has a different opinion
22 about that.

23 MR. LUTHER: He probably does.

24 MR. LLOYD: Hopefully it's not disappointing that
25 I do. But, indeed, I do have a difference of opinion,

1 Your Honor. And I have to admit one thing. I missed
2 something in the stipulation that I shouldn't have. I
3 don't know if Your Honor is looking at the stipulation
4 language of the appraisal provision or the policy
5 language, but they're different. Because we added a
6 word in the stipulation that is not in the policy
7 itself, and I should have caught it and I didn't. And
8 if I have to live with it, I will.

9 THE COURT: Which paragraph are you talking about?

10 MR. LLOYD: In the stipulation, it's on page three
11 paragraph 11. And it says "appraisal." It's in the
12 very first line of that. It says, "If we and you do
13 not agree on the actual" -- it says case. That was my
14 first mistake. We should have called that "cash value
15 of the vehicle." But that's not what the policy says.
16 The policy says the "actual value of the vehicle." All
17 right?

18 So I don't know whether that makes a difference,
19 but it tends to because what it does is -- and I'll
20 tell you that's on page D5 of Exhibit A which is where
21 the -- I mean, I have never seen it where it doesn't
22 use the words "actual cash value." But what it says
23 is, "If you -- if we and you do not agree on the actual
24 value of the vehicle, either party may demand an
25 appraisal of the loss."

1 And that's what we're talking about here is the
2 loss. And we have to go back to the limit of
3 liability. Because what it's talking about is we go to
4 the limit of liability which is the page before the
5 policy, page D4 of Exhibit A. And it says, "Our limit
6 of liability of loss will be the lesser of the actual
7 cash value of the stolen or damaged property reduced by
8 the salvage value if you or the owner retain the
9 salvage or the amount necessary to repair or replace
10 the property using parts from the vehicle's
11 manufacturer," et cetera.

12 So in terms of what we're talking about, actual
13 cash value of the property, under the policy what we're
14 talking about is the damaged property or the
15 windshield. When you then get to the appraisal
16 provision, it introduces a phrase that doesn't have
17 any -- makes no sense, "actual value of the vehicle."
18 That's not clearly what was being talked about.

19 So then you go beyond to say appraisal of the
20 loss. And then it gives the procedure, and it says
21 they will state separately the actual cash value and --

22 THE COURT: I was going to say, they actually use
23 the term "actual cash value" later in the same --

24 MR. LLOYD: Later on.

25 THE COURT: That's where y'all got that.

1 MR. LLOYD: And like I say, I think probably we've
2 both seen these provisions in other policies and it's
3 been in there. But here is the point, Your Honor. It
4 makes reference to actual cash value of the damaged
5 property. And then it's going to pay to repair or
6 replace the damaged property. And we're talking about
7 the damaged windshield there.

8 And so when we're talking about the actual cash
9 value in determining the loss, we're talking about the
10 specific part of the vehicle that was damaged. And
11 that's why the appraisal provision applies because it's
12 the policy throughout in terms of the limited
13 liability, et cetera, is talking about the specific
14 part of the vehicle that has been damaged, the damaged
15 property. We're not talking about replacing a vehicle
16 for a damaged windshield. We're talking about
17 replacing the windshield in terms of that.

18 And that's why, Your Honor, the appraisal
19 provision applies in that setting. Up to this point
20 the only defense that has been asserted has been, Oh,
21 we have got a unilateral contract and, therefore, we
22 don't have to worry about that. But, in fact, that is
23 really the only defense.

24 If I may go beyond what Your Honor's question was
25 and just respond to a couple of things that were --

1 THE COURT: I'll give you last word unless he
2 brings up something completely new.

3 MR. LUTHER: Can I just say one thing about the
4 appraisal thing?

5 THE COURT: Yes. You can make your last point.
6 Then I'm going to give you last word.

7 MR. LUTHER: I would simply point out that I saw
8 the mistake as well in our stipulation of facts, but I
9 think it's actually illustrative because we all
10 understood what the intent of that provision was both
11 because it typically refers to the actual cash value in
12 most policies, and later in that same provision on page
13 D5 under section A, the appraisal will state separately
14 the actual cash value in the amount of the loss.

15 So I think, if anything, maybe it's just a typo or
16 scrivener's error. It may be vague and ambiguous, but
17 I think the ambiguity is resolved within the same
18 provision, and what it's referring to is disagreement
19 over the actual cash value. So I think if you go back,
20 that ties it to the limit of liability section which
21 says our limit of liability is the lesser of the
22 cash and actual cash value of the property or the
23 amount necessary to repair it. Presumably the amount
24 necessary to repair is always going to be less than
25 replacing the entire thing.

1 And so if you look at those two provisions in
2 hand, the appraisal would only apply to situations
3 where you're claiming the lost vehicle or stolen
4 vehicle. And that's typically where this comes up. My
5 car has been stolen. My car has been totaled. You owe
6 me the actual cash value of the vehicle. We pay rubric
7 on one, we pay NAGS on the other. That's where you
8 have an appraisal.

9 This is not a dispute about the value of a
10 vehicle. It's a dispute about how much somebody has to
11 pay to fix the car, and that's a very big difference.

12 THE COURT: Thank you.

13 All right. Mr. Lloyd, last word.

14 MR. LLOYD: Just to close the loop on that, Your
15 Honor. If that was what was intended, that it was only
16 to cover the instance of a totaled vehicle or a stolen
17 vehicle, the policy would clearly say that. And it
18 doesn't. And so I think given the fact that the policy
19 needs to be interpreted in favor of the policyholder,
20 or in this instance us as the assignee of the
21 policyholder, you can't really make that leap.

22 Now, to just circle back to what Mr. Luther
23 argued. The statute, Your Honor -- I forgot. There's
24 one additional issue with respect to the statute, and
25 that is it really has no application in a civil

1 proceeding like this. The *Masterclean* case, not only
2 does it not give us a private right of action, you
3 can't use it as a sword. You really can't use it as a
4 shield because jurisdiction is vested exclusively with
5 the Department of Insurance. And that's the
6 *Masterclean* case that we cited in page two of the
7 reply. So that statute, while interesting and perhaps
8 intellectually entertaining, I'm not sure has anything
9 to do with this case at all.

10 With respect to the price that is paid or owed
11 under the policy, we have cited two cases. One from
12 Connecticut, which is the *Auto Glass Express* case and
13 one from Minnesota, *Glass Service vs. Progressive* case,
14 that has interpreted the amount necessary to repair or
15 replace language. There's no contrary authority
16 presented to Your Honor.

17 And what it says is if it's reasonable in the
18 market, then that's what the amount necessary is. It's
19 not the lowest amount that's available. And we
20 provided Your Honor with evidence of why our prices are
21 reasonable in the market. But that's exactly why there
22 ought to be a proceeding like an appraisal proceeding
23 to resolve that issue. What is reasonable in the
24 market? Only appraisers can determine that.

25 Two final things. Number one, there is nowhere,

1 Your Honor, in the stipulated facts, nowhere where a
2 policyholder has agreed to the prices by saying, "Yes,
3 I accept this price." Nowhere. The only thing that
4 they are accepting is the risk that they may get billed
5 more by 20/20 who, the stipulated facts already shows,
6 says they put in writing they're not going to hold the
7 policyholder accountable for anything beyond what the
8 insurance company pays.

9 So it is wrong -- it oversteps the stipulation to
10 say that they were agreeing to the pricing. That's not
11 what the stipulated facts say. And I think Your Honor
12 will search for a very long time looking for a
13 policyholder that says, "We accept those prices." That
14 simply didn't happen.

15 And, finally, Grange argues that 20/20 understood
16 that the amount contained in the faxes was the
17 amount -- and I wrote this down -- was the amount that
18 Grange was willing to pay and no more. The minutiae
19 that Grange doesn't want to talk about proves that's
20 not true. Grange is willing to pay more. Absolutely
21 willing to pay more as they did in every single example
22 by as small as 36 cents and by as much as, you know,
23 more than \$50. So to say that the fax was understood
24 that they would not pay anything more is belied by the
25 minutiae that Grange doesn't want to talk about. I

1 wouldn't want to talk about it either if that was my
2 side because the facts are nobody found these things to
3 be binding. There is no unilateral contract here, Your
4 Honor, no acceptance, and no consideration.

5 THE COURT: Thank you, Mr. Lloyd.

6 Gentlemen, this has been a well thought out, well
7 prepared nonjury trial. I wish all attorneys in the
8 cases would stipulate to facts and just have legal
9 questions. It would make it much more streamlined.

10 But you have given me a lot to think about, given
11 me a lot of case law. I appreciate counsel being as
12 well prepared as you have been on each side. And I
13 will take this under advisement and I will get you a
14 decision.

15 MR. LUTHER: Your Honor, I would just say I think
16 there would be a lot more stipulated facts if opposing
17 counsel was as easy to work with as Mr. Lloyd has been.
18 I appreciate that.

19 THE COURT: I note how well y'all seem to work
20 together, and that's refreshing in an era where we see
21 a lot of lawyers at each other's throats. Y'all have
22 done a good job of getting this issue before the court
23 in clear terms to where I just have to make a decision.
24 I appreciate that.

25 MR. LLOYD: Thank you, Your Honor.

1 MR. LUTHER: Thank you, Your Honor.
2 (WHEREUPON, proceedings concluded at 4:04 p.m.)
3 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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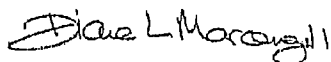
1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Anderson County, South
10 Carolina, on the 26th day of October 2016.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 March 16, 2017

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Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Grange Mutual Casualty and Trustgard
Insurance Company,)

Plaintiff,)

v.)

20/20 Auto Glass, LLC)

Defendant,)

NOTICE OF MOTION AND
MOTION TO ALTER, AMEND
OR RECONSIDER

2014-CP-04-1787

TO: JASON P. LUTHER, ESQ., ATTORNEY FOR PLAINTIFF:

You will please take notice that Defendant 20/20 Auto Glass, LLC, pursuant to Rule 59(e), SCRCP, hereby moves for an Order to alter, amend or reconsider the Court's Order in this matter entered on December 6, 2016. Defendant bases this motion on the grounds that the following arguments, raised by Defendant at the trial and in the pre-trial briefs, were either not addressed or not fully addressed in the Court's Order.

1. DEFENDANT'S CLAIM FOR PAYMENT IS SUBJECT TO APPRAISAL, AS SET FORTH IN PLAINTIFF'S INSURANCE POLICY.

Grange is required by its own insurance policy to participate in an appraisal to determine the amount in dispute in this case; it cannot avoid appraisal by claiming that it fulfilled its policy obligations given the language in the policy. As an assignee, 20/20 stands in the shoes of Grange's insureds and has the right to demand appraisal to collect the proceeds of the insurance policy. 20/20 made a proper demand for appraisal. This Court should follow the South Carolina Supreme Court which has held that an appraisal provision in an insurance policy is valid and enforceable where a party makes a proper demand for appraisal. *Miller v. British America Assur. Co.*, 238 S.C. 94, 100, 119 S.E.2d 527, 530-531 (1961).

A. The parties are required to determine the amount in dispute by appraisal under the insurance policy.

Grange is required to determine the amount in dispute by appraisal under its insurance policy. The appraisal provision under Grange's insurance policy provides either party with the ability to demand appraisal to determine the amount in dispute. The policy provides that "If we and you do not agree on the actual value of the vehicle, either party may demand appraisal of the loss..." Exh. A at p. D-5. The appraisal provision continues: "The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding." *Id.*

Grange and 20/20 unequivocally disagreed as to the amount due under the insurance policy. The Safelite representative offered Grange's rates to an employee from 20/20. Stipulated Facts ¶ 44. The 20/20 employee "stated that he rejected the rates but accepted the job." Stipulated Facts ¶ 45. Grange, through Safelite, then reaffirmed that it disagreed about what amount is due under the policy by sending a faxed referral sheet detailing the rates that Grange was willing to pay. 20/20 clearly notified Grange that it disputed the amounts due by sending a letter to Safelite, prior to the claims at issue, stating that 20/20 rejected the proposed pricing, Exh. C, and 20/20 further manifested its rejection of Grange's pricing by submitting 20/20's invoices for the full amount claimed after completing the work. Both the payment from Grange and the invoice from 20/20 reflect the differing amounts asserted by each party.

The language of the appraisal provision requires the parties to submit to appraisal where there is a dispute and a proper demand for appraisal is made by one party. The language of the policy also provides that if either party demands appraisal, each party will select a competent and impartial appraiser, the appraisers will select an umpire, and the appraisers or appraisers and umpire will reach a decision. The appraisal provision provides that "[a] decision agreed upon by

any two will be binding.” Therefore, Grange is required to participate in appraisal and will be bound by the appraisers’ decision.

B. 20/20 has the right to invoke appraisal under the assignments from Grange’s insureds.

20/20 received valid assignments from Grange’s insureds. As was discussed above, *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (S.C. 2013), unequivocally held that post loss assignments of insurance proceeds are valid and enforceable notwithstanding any policy language to the contrary.

The underlying rationale for this is simple: “after events giving rise to the insurer’s liability have occurred, the insurer’s risk cannot be increased by a change in the insured’s identity.” *Narruhn*, 404 S.C. at 344, 745 S.E.2d at 94 (quoting 3 *Couch on Insurance* 3d §35.8 (2011 Rev. Ed.)). Accordingly, 20/20 has the right to invoke the collection mechanisms in the insurance policy, including appraisal, to collect the proceeds of the policy without there being any prejudice to the insurance company. As an assignee, 20/20 stands in its customers’ shoes. *Singletary v. Aetna Cas. & Sur. Co.*, 447 S.E.2d 869, 316 S.C. 199, 202 (S.C. App. 1994), *Thomasson v. Ocean Point Golf, Inc.*, 386 S.E.2d 282, 300 S.C. 29, 35 (S.C. App. 1989). Because of the assignment, 20/20 has “the same rights and privileges, including the right to sue on the contract, as the assignor.” *Twelfth RMA Partners V. Nat. Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44 (S.C. App. 1999). Therefore, 20/20 has the right to demand appraisal under Grange’s insurance policy.

C. 20/20 made a proper demand for appraisal prior to Grange bringing this declaratory judgment action.

20/20 made a demand for appraisal as required by Grange’s insurance policy. After submitting its invoice to Grange and being short paid on the invoice, 20/20 provided Grange with

written notice of its demand for appraisal under the policy. *See, e.g.*, Exhs. I and S. 20/20 also provided Grange with the name and contact information for its selected appraiser as provided by the policy. Grange refused to submit to appraisal as required by the terms of its insurance policy and South Carolina law.

D. The appraisal provision in the insurance policy is valid and enforceable under South Carolina law.

The South Carolina Supreme Court held that an agreement to determine the amount of the loss by appraisal in an insurance policy is valid and enforceable. *Miller v. British America Assur. Co.*, 238 S.C. 94, 100, 119 S.E.2d 527, 530-531 (1961). This Court should apply the same analysis to the present case.

In *Miller*, the Court held that it was proper for the trial court to refer the amount in dispute to appraisal as long as the demand for appraisal was made in accordance with the policy. 119 S.E.2d at 531. The parties in *Miller* disputed the amount due under a windstorm insurance policy. *Id.* at 529. The plaintiff claimed it was owed \$6,355 under the policy, whereas the insurer asserted that \$2,480.40 was owed. *Id.* In response to the plaintiff's complaint, the insurer invoked its right to appraisal under the insurance policy and moved to compel appraisal. *Id.* The Court enforced the appraisal provision and held that:

Such a stipulation, not ousting the jurisdiction of the Courts, but leaving the general question of liability for loss to be judicially determined, and simply providing a reasonable method of estimating and ascertaining the amount of the loss, is valid. (citation omitted) Since the respondent admits liability [...] and the parties have failed to agree as to the amount of the loss, it was proper for this question to be referred to the appraisers to determine such, provided demand for such appraisal had been made in accordance with the provision of the appraisal clause of the policy.

Id. at 531. The Court held that the demand for appraisal had been made in accordance with the appraisal provision in the insurance policy and referred the parties to appraisal.

The same analysis applies here. Grange has already admitted liability by making payments on each of the claims in dispute. The dispute is exactly the same as the dispute in *Miller*, specifically what amount is due under the insurance policy. Here, the parties dispute whether the amount of the loss is the amount billed by 20/20 or the amount paid by Grange. 20/20 invoked its right to appraisal in accordance with Grange's insurance policy. Grange will be unable to show that 20/20's demand for appraisal was deficient. Therefore, this Court should follow the South Carolina Supreme Court and order the parties to appraisal where the amount of the loss – and the amount of Grange's obligation – will be determined.

2. THERE WAS NO CONSIDERATION PRESENT TO ALLOW THE FORMATION OF A UNILATERAL CONTRACT, BECAUSE, BY MAKING PAYMENT, PLAINTIFF WAS SIMPLY DOING SOMETHING IT WAS ALREADY LEGALLY OBLIGATED TO DO.

In *Alpine Glass, Inc. v. Illinois Farmers Insurance Co.*, the United States District Court for the District of Minnesota decisively rejected an argument identical in every respect to Grange's argument here. Transcript of Summary Judgment Hearing, No. 06-CV-1148 (PJS/RLE)(D. Minn. Mar. 30, 2007)(*aff'd*, *Alpine Glass Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659, 662 (8th Cir. 2011))(previously filed with the Court and attached to the Defendant's pre-trial memorandum). Faced with the insurer's argument that faxes sent to independent glass shops constituted binding unilateral contracts with the glass shops when the shops performed the work, the court denied from the bench the insurer's motion for summary judgment and granted, *sua sponte*, summary judgment in favor of the glass shop.

The court in that case focused on the lack of consideration to form the agreement, specifically stating: "I don't think that the circumstances here come close to presenting a case of unilateral contracts being formed." Transcript at 48. Among other problems, the court noted that in these "contracts," the insurer was not agreeing to do anything for the glass replacement

company that it was not already obligated by law to do, therefore the "contracts" suffered from a fatal lack of consideration. "The way I see it, you send these letters off to people saying we will follow the law. Here, you have to charge our prices. In return what we are going to do is what we are already legally required to do. It doesn't sound like much of a deal from Alpine's perspective." Transcript at 39-40. This analysis is entirely consistent with the law in South Carolina. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 54, 135 S.E.2d 311, 315 (1964) ("The authorities are clear that an agreement to do that which one is already legally bound to do is not sufficient consideration to support a new contract.").

The same failure of consideration analysis applies here. Grange's obligation to the policyholder is fixed as of the time the damage is sustained. The insured is entitled to choose 20/20 to do work under South Carolina law, SC Code 38-57-75 (A), and is free to assign the proceeds of the policy as payment for the work. *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 444, 745 S.E.2d 90, 94 (2013). Under the terms of the referrals that are the basis of the unilateral contracts, at best what is promised is exactly what the insurer is already obligated to do under the law and the terms of the insurance policy. At worst, it is an effort to do less than what is promised in the policy. 20/20 receives nothing in exchange from Grange for doing the work, demonstrating a complete lack of consideration for the alleged contract in this instance. That lack of consideration is fatal to the unilateral contract theory.

3. THE COURSE OF CONDUCT BETWEEN THE PARTIES, COMBINED WITH THE FACT THAT PLAINTIFF NEVER PAID EXACTLY THE SAME AMOUNT IT HAD QUOTED FOR ANY CLAIM, ESTABLISHES THAT THERE WAS NO AGREEMENT BETWEEN THE PARTIES ON PRICING AND THAT NEITHER PARTY DEMONSTRATED AN INTENT TO BE BOUND.

The United States Court of Appeals for the Eighth Circuit affirmed the trial court decision in *Alpine* and held that the glass company had not accepted the proposed

reimbursements by performing the work. "If the purported acceptance changes the terms of the offer, 'it is not positive and unequivocal, and constitutes a rejection of the offer and a counteroffer.'" *Alpine Glass Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659, 666 (8th Cir. 2011)(quoting *Markmann v. H.A. Bruntjen Co.*, 249 Minn. 281, 81 N.W.2d 858, 862 (1957)). The court noted that even if the pricing letters constituted an offer, the glass company failed to follow the terms of the offer. *Alpine Glass*, 643 F.3d at 667.

The faxed referrals are similarly deficient in this case. Here, the referrals assume that the claims could cost more than the amount listed and require that, "[i]f the cost of the claim is over \$1000, please call or email Pricing Approval." Exh. J. If there was an intent that the stated pricing would bind the recipient, there would be no possible way that the claim could exceed \$1000. The lack of intent to bind the recipient is further demonstrated with the referrals where they indicate "Please contact Safelite...prior to beginning the work for any ... OEM, dealer, net priced, premium, *other charges* and any molding parts."(emphasis added). Further, and importantly, for the three claims set forth in the record, Grange never paid the exact amount listed on its referral sheets, showing further evidence of Grange's intent not to be bound by the prices listed on the referral sheets. (See Stipulated Facts paragraphs 49, 57, 66, 71, 77, and 83).

20/20 manifested its intent to not be bound by the fax offers in two ways: First, although instructed to follow the billing instructions contained in the fax – something 20/20 was supposedly bound to do by performing the work – 20/20 ignored those requirements. For example, 20/20 usually did not have the customer sign its invoices, Exhs. F and L, and did not have the customer sign the fax it received from Safelite. Exhs. D, J and N. Grange clearly acquiesced in 20/20's rejection of the fax offer because it issued payment notwithstanding 20/20's disregard of its supposed obligations. Additionally, 20/20 disregarded the instructions

on the referral sheet and billed for the charges in addition to the prices listed on Grange's letter. 20/20 had notified Safelite it would manifest its rejection of proposed pricing in its invoices. Therefore, 20/20's performance of work it is legally entitled to perform, standing alone, did not and could not constitute acceptance of the proffered pricing.

In another case involving similar facts and similar policy language, the Connecticut Supreme Court held that no unilateral contract was formed between the insurer and the glass shop because performance did not constitute acceptance. The court cited the Restatement (Second) of Contracts for the proposition that an offer inviting acceptance by performance "does not limit the offeree's freedom of action or inaction; he may act or forbear without reference to the offer." *Auto Glass Exp., Inc. v. Hanover Ins. Co.*, 293 Conn. 218, 229, n.11, 975 A.2d 1266, 1274, n.11 (2009)(quoting Restatement (Second) of Contracts § 53, comment (b)). The Restatement also provides that the offeree may rebut the presumption of acceptance "if within a reasonable time the offeree exercises reasonable diligence to notify the offeror of non-acceptance." *Auto Glass Express*, 975 A.2d at 1274, n.11 (quoting Restatement (Second) of Contracts § 53(2)). In *Auto Glass Express*, the court noted that the glass shop promptly sent the insurer invoices for an amount greater than the amount listed in the pricing letters. 975 A.2d at 1274, n.11. These invoices were the first notice the insurer had that the work had been performed. *Id.* Therefore, it was not reasonable for the insurer to conclude that its offer had been accepted. *Id.*¹

¹ Both Minnesota and Connecticut have similar glass replacement laws as South Carolina. Compare Minn. Stat. § 72A.201, subd. 6 (15) (forbidding "requiring that the repair or replacement of motor vehicle glass . . . be made in a particular place or shop . . . [or] limiting the ability of the insured to select the place, shop, or entity to repair or replace [the glass.]") and Conn. Gen. Stat. § 38a-354 (b) ("No insurance company . . . shall require any insured to use a specific person for the provision of . . . automobile glass replacement . . .") with SC Code 38-57-75 (A) ("Both the insurer . . . and the third party administrator that administers glass coverage . . . must not require that repairs be made . . . by a particular provider of glass repair work.").

Here, 20/20 clearly indicated that it did not accept Grange's prices. Not only did 20/20 reject Grange's prices on the phone call with Safelite, but it notified Grange that the work had been done by promptly submitting an invoice for the amount which was higher than the price listed in Grange's letter. In this case, 20/20's rejection of the pricing went further; 20/20 sent letters to Safelite expressly stating that it was rejecting any pricing and future pricing. It also sent emails to Grange directly on October 3 and December 3, 2013, January 2, February 4, March 3 and April 2, 2014, stating:

We have never expressed an intent to accept an amount lower than that set forth in the invoices we remitted for the attached claims. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent.

Stip. Facts ¶¶ 59-60, Ex. H. No unilateral contract was formed between Grange and 20/20 Auto Glass; even if the faxes are considered offers, which they are not, 20/20 Auto Glass rejected these offers.

The facts presented on this record do not support the conclusion that a unilateral contract was formed when 20/20 performed work for its customers. The fax offers were not intended to be binding and were disregarded in nearly every respect by 20/20. Given that they gave 20/20 nothing more than what it was legally entitled to receive, the faxes in no way constituted the predicate for binding contracts in this instance.

CONCLUSION

In light of the foregoing, Defendant respectfully requests that this Court alter or amend its Order entered on December 6, 2016, in order to fully address the arguments raised at trial, in the pre-trial memoranda, and summarized in the foregoing motion, and grant Defendant the relief requested in its pleadings. In advancing this Motion, Defendant will rely on the entire record in this matter.

Dated: December 16, 2016

HENDERSON, BRANDT & VIETH, P.A.

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ATTORNEYS FOR 20/20 AUTO GLASS, LLC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2014-CP-04-1787

Grange Mutual Casualty & Trustgard
Insurance Company,

Plaintiff,

v.

STIPULATION OF FACTS

20/20 Auto Glass, LLC,

Defendant.

This declaratory judgment action was initiated by Grange Mutual Casualty and Trustgard Insurance Company seeking a declaratory judgement that certain policies of insurance were not breached, that 20/20 Auto Glass, LLC is contractually bound to the rates it accepted when it performed the work, and that Grange does not owe 20/20 Auto Glass any further sum of money and are not obligated to participate in the appraisal process with 20/20 Auto Glass.

By Order of the Honorable J. Cordell Maddox, Jr. dated February 14, 2016, this action was assigned to the Honorable R. Scott Sprouse for a date certain bench trial to be conducted on stipulated facts agreed to and submitted by the parties. Accordingly, the parties hereby submit the following stipulated facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

STIPULATION OF FACTS

It is hereby stipulated, by and between the parties, that:

A. The Parties

1. Grange Mutual Casualty and Trustgard Insurance Company, (herein collectively "Grange"), are insurance companies that are authorized to transact business and write insurance policies in the State of South Carolina. At least as it relates to automobile glass claims, the two insurers operate as a single entity.

2. 20/20 Auto Glass, LLC ("20/20 Auto Glass") is a South Carolina limited liability company that performs automobile glass repairs or replacements.

3. The majority of 20/20 Auto Glass's jobs are for insurance-related glass claims.

4. Matthew Bailey ("Bailey") is the owner of 20/20 Auto Glass.

5. Daniel Joseph Anessi ("Anessi") is the Office Manager for 20/20 Auto Glass. He reports directly to Bailey. Anessi's job duties include filing insurance claims on behalf of 20/20 Auto Glass customers.

6. Grange's glass claims are generally handled through a third-party administrator, Safelite Solutions ("Safelite").

B. The Policy

7. A copy of Grange's standard "Personal Auto Policy" for South Carolina insureds is attached hereto as Exhibit A.

8. Grange issued personal auto policies, such as the policy attached hereto as Exhibit A, to Iranell Hampton, Cinnamon Collins, and Kelly Gregg (hereinafter referred to collectively as the "Claimants"). For the sake of ease, each of these three personal auto policies are herein referred to collectively simply as the "Policy".

9. At all times relevant to the subject action, the contractual rights and obligations of Grange and the Claimants were and are governed by the terms and conditions of the above described Policy.

10. The Policy provides the limits of liability for glass related claims as follows:

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

LIMIT OF LIABILITY

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

1. Actual cash value of the stolen or damaged property, reduced by the salvage value if you or the owner retain the salvage; or

2. Amount necessary to repair or replace the property using parts from the vehicle's manufacturers or parts from other manufacturers.

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

Appraisal

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

1. Pay its chosen appraiser; and

2. Bear the expenses of the appraisal and umpire equally.

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

12. At no time that is relevant to this dispute has Grange modified the policy language quoted above or otherwise altered its contractual liability to its policyholders for automobile glass claims.

13. Safelite works with Grange to determine Grange's reimbursement rates for automobile glass repair and replacement work for given areas based on quarterly reviews of National Auto Glass Specifications ("NAGS") and industry data for glass claims.

14. NAGS is the industry standard for providing benchmark prices and standard labor/installation times for automobile glass replacement parts.

15. 20/20 Auto Glass bases its own part pricing off of NAGS benchmark prices and utilizes the published labor times for its labor charges.

16. Grange (through Safelite) informs glass shops what Grange is willing to pay based on its interpretation of the insured's automobile policy and law.

17. When Grange revises its rates, it notifies all network and non-network glass shops in advance of the rates they approve for glass claims.

18. In the auto glass industry, a "network glass shop" or "network provider" means a glass shop with whom an insurance company has an established, pre-existing agreement regarding the prices and rates for glass repair or replacement jobs. A "non-network glass shop" or "non-network provider" means a glass shop with whom an insurance company does not have an established, pre-existing agreement regarding the prices and rates for glass repair or replacement jobs.

19. On or about April 15, 2011, Safelite, on Grange's behalf, sent a letter to all network and non-network glass shops in upstate South Carolina announcing the pricing and rates that had been established for shops in the area, which prices were effective for work performed on or after April 22, 2011. A copy of that letter was faxed to 20/20 Auto Glass and is attached hereto as Exhibit B.

20. The majority of the glass claims that 20/20 Auto Glass handles are with insurance companies for whom 20/20 Auto Glass is a network provider.

21. 20/20 Auto Glass is not a member of the Grange network of glass shops or providers and does not have a pre-established agreement with Grange regarding prices or rates.

22. Since January 2014, there are eighty seven (87) glass shops and companies in Grange's South Carolina network that have performed glass services for Grange and Grange insureds at the rates and pricing established by Grange that are set forth in Exhibit B. In addition, since January 2014, there are twenty eight (28) non-network glass shops that have also performed glass services for Grange and Grange insureds for Grange's established pricing and rates.

C. 20/20 Auto Glass's Standard Procedure for Glass Claims

23. The majority of 20/20 Auto Glass's customer's claims are handled by Anessi or Bailey.

24. 20/20 Auto Glass has dealt with Safelite and Grange before and is familiar with their practices regarding payment to non-network glass shops.

25. 20/20 Auto Glass uses a standard company procedure for handling and filing auto glass insurance claims: When a customer calls 20/20 Auto Glass to report a broken or damaged windshield, the 20/20 representative obtains information from the customer regarding the vehicle and the customer's automobile insurance. 20/20 Auto Glass informs the customer that the claim needs to be filed with the customer's automobile insurance company. 20/20 Auto Glass then places the customer on hold, connects the customer with his or her insurance company's representative or third party administrator (hereinafter the "claims representative") so that the customer can report the claim to the claims representative. At the end of the call, the claims representative dispatches or refers the job to 20/20 Auto Glass and provides a referral or dispatch number for the job. Once this telephone call has ended, 20/20 Auto Glass schedules the job with the customer.

26. If 20/20 Auto Glass is considered a non-network glass shop by the customer's insurance company, 20/20 Auto Glass has a scripted response that it reads to the claims representative when the claims representative provides proposed pricing for the work that is unacceptable to 20/20. The scripted response states: "We are accepting the job because the customer is hiring us to do the work. We do not accept the pricing, but we guarantee our customer we will not charge them any difference in cost."

27. If the pricing offered during the call is considered by 20/20 to be fair and reasonable, it will accept the proposed rates.

28. The pricing that the insurance company is willing to pay is always communicated during the phone call.

29. The customer is always on the phone when 20/20 Auto Glass reads this scripted response to the claims representative.

30. The claims representative typically responds to this scripted response rejecting the proposed pricing by telling the customer and 20/20 Auto Glass that the insurance company agrees only to pay a specific rate for the job, and that the customer may be responsible for any difference in price between what 20/20 charges and the insurer reimburses.

31. 20/20 Auto Glass does not believe the claims representative's response is vague or ambiguous. It understands this response to mean that the insurance company does not agree to pay any amount greater than the prices or rates stated over the phone by the claims representative.

32. When submitting claims to non-network insurance companies, 20/20 Auto Glass does not give a counter-proposal for the job, but simply states that 20/20 Auto Glass rejects the insurance company's price. 20/20 has a policy of not negotiating pricing with Safelite Solutions, which is affiliated with Safelite Auto Glass, a competitor of 20/20. 20/20 has informed Safelite in writing that it does not negotiate prices with claims administrators. A copy of the letter that has been sent to Safelite is attached as Exhibit C.

33. Shortly after the telephone call ends, the claims representative sends a document to 20/20 Auto Glass that contains the dispatch number or referral number and information related

to the job. This document is often referred to interchangeably as a "dispatch", "referral", or "fax referral sheet."

34. Once the claim has been reported to the insurance company or third party administrator, 20/20 Auto Glass prepares a Work Order for the job. The Work Order usually contains a "claim number," which is identical to the referral or dispatch number that had been assigned by the claims representative.

35. The Work Order generally contains the following statement at the bottom of the page (hereinafter the "Assignment Provision"):

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS AND AUTHORIZATION TO PAY: I have selected 20/20 Auto Glass for the replacement or repair of the glass in my automobile. I assign any and all insurance claims and all policy proceeds owed by my insurance company in connection with my damaged glass to 20/20 Auto Glass, to be paid directly to them. I authorize and direct my insurance company to release policy, coverage and all other information related to my damaged automobile glass to 20/20 Auto Glass LLC. If my glass has been replaced rather than repaired, I have insisted that, where possible, 20/20 Auto Glass LLC use original equipment parts and materials in the replacement of my automobile glass. I agree to pay my deductible, if any, myself. If I do not have insurance coverage, I agree to pay the invoice myself. As long as I have a \$0 glass deductible, 20/20 Auto Glass guarantees they will not charge me anything in relation to this claim, but will bill my insurance directly. However, if the insurance company sends me a check directly, I agree to sign the check over to 20/20 Auto Glass immediately.

36. The customer typically signs the Work Order only after the job has been completed.

37. 20/20 Auto Glass follows the ANSI approved Auto Glass Replacement Safety Standard when it replaces a broken windshield. In so doing, 20/20 Auto Glass returns the customer's vehicle to its pre-loss condition.

38. The prices charged to Grange by 20/20 Auto Glass are paid in full by forty-five different insurance companies. 20/20 Auto Glass has negotiated pricing with certain other

insurance companies that is lower than what 20/20 Auto Glass charges Grange but higher than what Grange is paying to 20/20 Auto Glass. For customers who do not have insurance and who pay cash, 20/20 Auto Glass charges those customers prices similar to what it charges to Grange.

D. The Subject Claims

39. 20/20 Auto Glass performed automobile glass services for the Claimants between March 2013 and July 2014.

40. During each of these phone calls, the claims representative advised each Claimant that Safelite is the third party administrator acting on behalf of Grange.

41. The claims representative obtained information from the Claimants regarding the claim and damage to their respective windshields.

42. The claims representative asked each Claimant whether they had chosen a glass shop to perform the repairs.

43. In each instance, the Claimant had chosen 20/20 Auto Glass.

44. The claims representative advised each Claimant and 20/20 Auto Glass of the pricing or rates that Grange was willing to pay for each job.

45. Anessi informed the claims representative during each of these phone calls that 20/20 Auto Glass does not accept the stated rates or pricing, but they do accept the job because the Claimant had asked 20/20 Auto Glass to perform the work. Anessi further stated that 20/20 Auto Glass guarantees the Claimant that there will be no out-of-pocket expense to the Claimant.

46. During each phone call, the claims representative also informed each Claimant that he or she has a right to use a glass company of their choice; that Grange has established pricing and standards with other glass shops in the area, which prices and rates are considered by Grange to be reasonable and necessary to perform the requested services; that the glass shop the

Claimant had selected (20/20 Auto Glass) charges more than what Grange considers reasonable and necessary to perform these services; that Grange cannot guarantee the prices or guarantee the work of 20/20 Auto Glass; and that the Claimant may be responsible to pay for any additional amounts charged by 20/20 Auto Glass in excess of what Grange was willing to pay. The claims representative further offered to connect each Claimant with a glass shop that has already agreed to the reasonable and necessary pricing.

47. Each Claimant indicated their understanding of these terms. Each Claimant also indicated that they wished to proceed using 20/20 Auto Glass.

48. At the end of each phone call, the claims representative provided a referral number for each claim.

Claimant Iranell Hampton

49. For example, on August 13, 2013, at 11:46 a.m., a Safelite claims representative received a call from Anessi reporting a claim for a windshield replacement for a 2000 Honda Odyssey for Hampton. The claims representative received information regarding Hampton, the damage to her vehicle, and 20/20 Auto Glass. The claims representative then offered rates to Anessi of NAGS list -41%, labor at \$30.00 flat plus an additional \$30.00 per hour and \$15.00 per kit. Anessi stated that 20/20 Auto Glass rejected the rates but accepted the job. Anessi also stated that 20/20 Auto Glass guarantees Hampton in writing that there will be no out of pocket expense to her. The claims representative then stated that Grange was willing to pay no more than \$279.68, not including sales tax or cost of molding, to have the work completed, and informed Hampton that if the shop charged more than this quoted rate Hampton may be responsible for the difference in price. Hampton stated that she wanted to proceed with using 20/20 Auto Glass.

50. Safelite sent a referral sheet for the Hampton claim to 20/20 Auto Glass dated August 13, 2013. A copy of the referral sheet is attached hereto as Exhibit D ("Hampton Referral Sheet").

51. 20/20 Auto Glass received the Hampton Referral Sheet before performing the work on Hampton's vehicle.

52. The Hampton Referral Sheet stated the following pricing: "W/S list -41%; labor \$30.00 flat plus \$30.00 per hour; and W/S 1.0 \$15.00." 20/20 Auto Glass understood this to mean that Grange was willing to pay 59% of the NAGS list price for the windshield; a flat fee of \$30.00 for labor plus \$30.00 per additional hour; and \$15.00 for the kit."

53. The Hampton Referral Sheet contained the following statement: "Performance of services constitutes acceptance of the communicated price and billing instructions."

54. Anessi prepared a Work Order for Hampton dated August 13, 2013. A copy of the Work Order is attached hereto as Exhibit E. The Work Order contained the Assignment Provision.

55. After the job was completed, the Work Order for Hampton was signed by Barbara Dunlap, who was a coworker of Hampton's husband.

56. On or about August 15, 2013, 20/20 Auto Glass submitted an Invoice to Grange for the Hampton job in the amount of \$462.72. A copy of the Hampton Invoice is attached hereto as Exhibit F.

57. On or about August 15, 2013, Grange issued payment to 20/20 Auto Glass in the amount of \$290.53. 20/20 Auto Glass accepted and deposited this payment.

58. On or about August 15, 2013, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Hampton job, a copy of which is attached hereto as Exhibit G. The Short Pay

Invoice shows a total amount due of \$462.72, Payments/Credits of \$290.53, and a Balance Due of \$172.19.

59. On or about October 3, 2013, 20/20 Auto Glass sent an email communication to Grange stating, among other things, "We never expressed an intent to accept an amount lower than that set forth in the invoices we remitted for the attached claims. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent." A copy of the email is attached hereto as Exhibit H.

60. The same or substantially the same emails were sent to Grange by 20/20 Auto Glass on or about December 3, 2013, January 2, 2014, February 4, 2014, March 3, 2014 and April 2, 2014.

61. On April 2, 2014, 20/20 Auto Glass demanded in writing that Grange appraise the Hampton loss. A copy of the demand for appraisal is attached as Exhibit I.

Claimant Cinnamon Collins

62. On or about March 18, 2014, Anessi and Cinnamon Collins ("Collins") contacted Safelite to report a broken windshield on her 2007 Honda Element in order to make a glass claim under the Policy issued to Collins.

63. Safelite sent a referral sheet for the Collins claim to 20/20 Auto Glass dated March 18, 2014. A copy of the referral sheet is attached hereto as Exhibit J ("Collins Referral Sheet").

64. 20/20 Auto Glass received the Collins Referral Sheet before performing the work on Collins' vehicle.

65. The Collins Referral Sheet stated the following pricing: "W/S list -41%; labor \$30.00 flat plus \$30.00 per hour; and W/S 1.0 \$15.00." 20/20 Auto Glass understood this to mean that Grange was willing to pay 59% of the NAGS list price for the windshield; a flat fee of \$30.00 for labor plus \$30.00 per additional hour; and \$15.00 for the kit."

66. The Collins Referral Sheet also stated: "Grange Insurance has determined the amount of such work is \$248.00 less any applicable deductible amount."

67. The Collins Referral Sheet further stated that "Performance of services constitutes acceptance of the communicated price and billing instructions."

68. Anessi prepared a Work Order for Collins with claim # 471948 dated March 18, 2014. A copy of the Work Order is attached hereto as Exhibit K. The Work Order contained the Assignment Provision.

69. After the job was completed, the Work Order was signed by Cinnamon Collins.

70. On or about March 31, 2014, 20/20 Auto Glass submitted an Invoice to Grange for the Collins job in the amount of \$527.50. A copy of the Collins Invoice is attached hereto as Exhibit L.

71. On or about March 31, 2014, Grange issued payment to 20/20 Auto Glass in the amount of \$302.21. 20/20 Auto Glass accepted and deposited this payment.

72. On or about March 31, 2014, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Collins job, a copy of which is attached hereto as Exhibit M. The Short Pay Invoice shows a total amount due of \$527.50, Payments/Credits of \$302.21, and a Balance Due of \$225.29.

Claimant Kelly Gregg

73. On or about May 1, 2014, Anessi and Kelly Gregg ("Gregg") contacted Grange to report a broken windshield to Kelly's 2000 Chevrolet Impala in order to make a glass claim under the Policy issued to Kelly.

74. Safelite sent a referral sheet for the Gregg claim to 20/20 Auto Glass dated May 1, 2014. A copy of the referral sheet is attached hereto as Exhibit N ("Gregg Impala Referral Sheet").

75. 20/20 Auto Glass received the Gregg Impala Referral Sheet before performing the work on Gregg's vehicle.

76. The Gregg Impala Referral Sheet stated the following pricing: "W/S list -41%; labor \$30.00 flat plus \$30.00 per hour; and W/S 1.0 \$15.00." 20/20 Auto Glass understood this to mean that Grange was willing to pay 59% of the NAGS list price for the windshield; a flat fee of \$30.00 for labor plus \$30.00 per additional hour; and \$15.00 for the kit."

77. The Gregg Impala Referral Sheet also stated: "Grange Insurance has determined the amount of such work is \$254.16 less any applicable deductible amount."

78. The Gregg Impala Referral Sheet further stated that "Performance of services constitutes acceptance of the communicated price and billing instructions."

79. 20/20 Auto Glass prepared a Work Order for Kelly Gregg, but the Work Order was converted electronically to an Invoice because it was signed electronically by Kelly Gregg. Therefore, 20/20 Auto Glass no longer has a copy of the Work Order for Kelly Gregg.

80. On or about May 7, 2014, 20/20 Auto Glass submitted an Invoice to Grange for the Gregg Impala job in the amount of \$471.26. A copy of the Gregg Impala Invoice is attached hereto as Exhibit O.

81. The Gregg Invoice contained the following provision:

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS, BENEFITS, AND AUTHORIZATION TO PAY: I have selected and hired 20/20 Auto Glass for the repair or replacement of the glass in my automobile. I hereby assign all insurance rights, benefits, and proceeds under any applicable insurance policies to 20/20 Auto Glass LLC. I hereby direct my insurance carrier to release any and all information requested by 20/20 Auto Glass LLC, and to accept notice of claim from 20/20 Auto Glass LLC. If payment is made directly to owner/agent by insurer, it shall be endorsed over to 20/20 Auto Glass LLC within three business days. 20/20 Auto Glass LLC agrees not to charge the undersigned any amount, excluding any applicable deductible, when insurance proceeds are the chose method of payment.

82. After the job was completed, the Gregg Invoice was signed by Kelly Gregg.

83. After receiving the May 7, 2014, invoice, Grange issued payment to 20/20 Auto Glass for the Gregg Impala job in the amount of \$254.48. 20/20 Auto Glass accepted and deposited this payment.

84. Sometime after May 7, 2014, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Gregg job, a copy of which is attached hereto as Exhibit P. The Short Pay Invoice, which reflects the original May 7, 2014 invoice date, shows a total amount due of \$471.26, Payments/Credits of \$254.48, and a Balance Due of \$216.78.

85. The Short Pay Invoice contained the following provision:

We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

86. Claimant Kelly Gregg also had a windshield replaced on a 2005 Mazda MPV minivan on May 6, 2014. On or about May 7, 2014, 20/20 Auto Glass submitted an Invoice to Grange for the Gregg Mazda job in the amount of \$571.13.

87. For the second Gregg claim, on or about May 20, 2014, Grange issued a payment directly to 20/20 in the amount of \$313.81 leaving a balance due of \$257.32.

88. Sometime after May 7, 2014, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Gregg Mazda job, a copy of which is attached hereto as Exhibit Q. The Short Pay Invoice, which reflects the original May 7, 2014 invoice date, shows a total amount due of \$571.13, Payments/Credits of \$313.81, and a Balance Due of \$257.32.

Claimant Keith Perkins

89. 20/20 Auto Glass replaced the windshield for claimant Keith Perkins on or before May 22, 2014.

90. 20/20 Auto Glass obtained a claim number for the Perkins replacement. The claim number assigned was 452260.

91. 2020 Auto Glass received from Perkins an assignment of the insurance proceeds owed by Grange for the damaged glass.

92. For its work on the Perkins vehicle, 20/20 Auto Glass billed Grange on or about May 22, 2014, the amount of \$768.67.

93. On or about June 5, 2014, Grange paid \$436.94 directly to 20/20 Auto Glass for the Perkins windshield replacement.

94. Sometime after May 22, 2014, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Perkins job, a copy of which is attached hereto as Exhibit R. The Short Pay Invoice, which reflects the original May 22, 2014 invoice date, shows a total amount due of \$768.67, Payments/Credits of \$436.94, and a Balance Due of \$331.73.

Claimant David Kellogg

95. 20/20 Auto Glass replaced the windshield for claimant David Kellogg on or before July 21, 2014.

96. 20/20 Auto Glass obtained a claim number for the Kellogg replacement. The claim number assigned was 487866.

97. For its work on the Kellogg vehicle, 20/20 Auto Glass billed Grange on or about July 21, 2014, the amount of \$745.58.

98. On or about August 1, 2014, Grange paid \$361.69 directly to 20/20 Auto Glass for the Kellogg windshield replacement.

99. Sometime after July 21, 2014, 20/20 Auto Glass sent a Short Pay Invoice to Grange for the Kellogg job, a copy of which is attached hereto as Exhibit S. The Short Pay Invoice, which reflects the original July 21, 2014 invoice date, shows a total amount due of \$745.68, Payments/Credits of \$361.69, and a Balance Due of \$383.89.

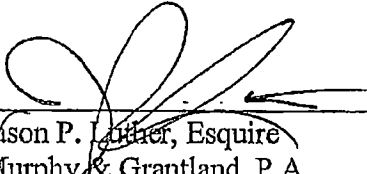
100. The Short Pay Invoice contains the following language: "At this time we would respectfully invoke our 'Right of Appraisal' as specified in your policy and begin proceeding through the process."

101. With respect to the Gregg Mazda claim, the Keith Perkins claim, and the David Kellogg claim, the process followed was the same or substantially the same as with the other claims: there was a phone call during which Safelite stated a proposed price and 20/20 Auto Glass rejected the price but accepted the job. After 20/20 Auto Glass accepted each job and before it did the work, it received a Referral Sheet from Grange that contained the same or substantially similar language as contained in the Referral Sheets discussed above, including a description of the pricing and the amount that Grange Insurance was willing to pay, as well as the statement that "Performance of services constitutes acceptance of the communicated prices

and billing instructions." 20/20 Auto Glass then performed the work and billed Grange at rates different than contained in the Referral Sheets.

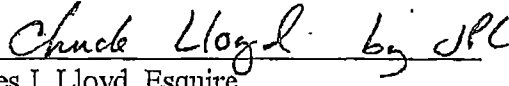
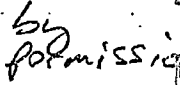
Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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October 7, 2016

EXHIBIT A

Personal Auto Policy

South Carolina



Trustgard Insurance Company
671 South High Street • Columbus, OH 43206-1066

PPASC (09-2013)

000108 RECORD



Trustgard Insurance Company -- Personal Auto

IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

- 1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND**
- 2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;**
- 3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.**

Trustgard Insurance Company -- Personal Auto

PERSONAL AUTO POLICY COVER SHEET

This Personal Auto Policy Cover Sheet identifies the important forms that make up **your** Personal Automobile insurance policy. **Your** Personal Automobile insurance policy is a legal contract between **you** and Trustgard Insurance Company and consists of the following forms:

Declarations Page

This is the form which shows **your** coverages, amounts of insurance, premium charges, risk characteristics, and any endorsements that modify **your** policy or provide **you** with additional coverages.

Policy Form/Section	Page Numbers	Form Number	Edition Date
Personal Auto Policy - SOUTH CAROLINA			
Policy Jacket		PPASC	(09-2013)
Cover Sheet	Cover - 1	PPASCK	(09-2013)
Index	Index - 1 and 2	PPASCI	(09-2013)
Definitions	Definitions - 1 and 2	PPASCJ	(09-2013)
Part A - Liability Coverage	A-1 through A-4	PPASCA	(09-2013)
Part B - Medical Payments Coverage	B-1 through B-4	PPASCB	(09-2013)
Part C - Uninsured/Underinsured Motorists Coverage	C-1 through C-6	PPASCC	(09-2013)
Part D - Coverage For Damage To Your Auto	D-1 through D-6	PPASCD	(09-2013)
Part E - Duties After An Accident Or Loss	E-1 and E-2	PPASCE	(09-2013)
Part F - General Provisions	F-1 through F-4	PPASCF	(09-2013)

Endorsements

Endorsements that modify **your** coverage may be included with **your** Personal Auto Policy - South Carolina. If so, they will be listed on **your** Declarations Page.

Please read **your** Declarations Page, Personal Auto Policy - South Carolina form, and any endorsements included with **your** policy carefully.

Trustgard Insurance Company -- Personal Auto

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Trustgard Insurance Company -- Personal Auto

Your Personal Auto insurance policy is a legal contract between you and your insurance company. **READ YOUR POLICY CAREFULLY.**

The following is an Index of the major provisions of your policy. Page numbers refer to the location of these provisions in the policy. Amendatory endorsements may be attached to your policy to modify these provisions or provide you with additional coverage(s).

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Trustgard Insurance Company -- Personal Auto

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Trustgard Insurance Company -- Personal Auto

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, **we** agree with **you** as follows:

DEFINITIONS

The terms defined below have the following meaning when they appear in bold type throughout this policy, whether in the singular, plural or possessive:

A. **"You"** and **"Your"** refer to the named insured (the person or persons named on the Declarations page) and that person's spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered **"you"** and **"your"** under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. **"We"**, **"us"** and **"our"** refer to Trustgard Insurance Company.

C. **"Bodily injury"** means bodily harm, sickness or disease, including death resulting therefrom.

D. **"Business"** includes trade, profession, or occupation.

E. **"Family member"** means a person related to **you** by blood, marriage or adoption and whose principal residence is at the location shown in the Declarations.

F. **"Occupying"** means in, upon, getting in, on, out or off.

G. **"Owned"** and **"own"** mean the person:

1. Has legal title;

2. Has possession under a written lease agreement for a continuous period of at least 6 months; or

3. Has possession subject to a lien or security agreement.

H. **"Trailer"** means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

I. **"Your covered auto"** means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles, acquired during the policy period, on the date **you** become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van for which no other insurance policy provides coverage and that has a Gross Vehicle Weight of less than 10,000 lbs. (according to the manufacturer's specifications).

If the vehicle **you** acquire replaces one shown in the Declarations, **you** must ask **us** to insure that replacement vehicle within 30 days after **you** become the owner. Until **you** notify **us**, within that 30 day period, the replacement vehicle will have the same coverage as the vehicle it replaced.

If the vehicle **you** acquire is in addition to any shown in the Declarations, **you** must ask **us** to insure that additional vehicle within 30 days after **you** become the owner. Until **you** notify **us**, within that 30 day period, the additional vehicle will have the broadest coverage limits we now provide for any vehicle shown in the Declarations.

Changes to the policy resulting from additional or replacement vehicles, which **you** ask **us** to insure within 30 days of becoming the owner,

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will be made effective on the date **you** became the owner.

Changes to the policy resulting from additional or replacement vehicles, which **you** ask **us** to insure on or after 30 days of becoming the owner, will be effective on the date **you** first notify **us**.

3. Any trailer **you** own.
4. Any auto or trailer **you** do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

This provision (1.4.) does not apply to Coverage for Damage to Your Auto.

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PART A - LIABILITY COVERAGE

Insuring Agreement

A. Subject to the limit of liability, if **you** pay the premium when due, **we** will pay compensatory damages for **bodily injury** or **property damage** for which any **insured** becomes legally responsible because of an auto accident. Damages include pre-judgment interest awarded against the **insured**. **We** will settle or defend, as **we** consider appropriate, any claim or suit asking for these damages. In addition to **our** limit of liability, **we** will pay all defense costs **we** incur. **Our** duty to settle or defend ends when **our** limit of liability for this coverage has been exhausted by payment of judgment or settlements. **We** have no duty to defend any suit or settle any claim for **bodily injury** or **property damage** not covered under this policy.

B. "**Insured**" 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. For use of **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of other persons for whom coverage is afforded under this Part.
4. For any auto or **trailer**, other than **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of **you** or any **family member** for whom coverage is afforded under this Part. This provision (B.4) applies only if the person or organization does not own or hire the auto or **trailer**.

However, "**insured**" as used in this Part does not include the following:

1. The United States of America or any of its agencies.
2. Any person with respect to **bodily injury** or **property damage** resulting from the operation of an auto by that person while acting within the scope of their office or employment 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 **bodily injury** or **property damage**.

C. "**Property damage**" means physical injury to, destruction of, or loss of use of tangible property.

Supplementary Payments

In addition to **our** limit of liability, at **our insured's** request, **we** will pay on behalf of an **insured**:

1. Up to \$500 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in **bodily injury** or **property damage** covered under this policy. **We** are not required to apply for or furnish these bonds.
2. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend, provided such bonds shall not exceed **our** limit of liability. **We** are not required to apply for or furnish these bonds.
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. All reasonable expenses incurred by the **insured** at **our** request to assist **us** in the investigation or defense of a lawsuit, including actual loss of earnings up to \$200 a day because of time off from work for attendance at hearings or trials.

Exclusions

When an exclusion applies, coverage will not be provided under Part A of this policy. However, if a court with proper jurisdiction determines an exclusion is invalid or unenforceable because it does not satisfy the minimum requirements of the South Carolina Motor Vehicle Financial Responsibility Act, such exclusion shall apply only to that portion of the damages that is in excess of the minimum limits of liability required by that law.

A. **We** do not provide Liability Coverage for any person:

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1. Who intentionally causes or directs another to cause the **bodily injury** or **property damage**. This exclusion will not apply to that portion of the damages that is within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of **your covered auto**.

2. For **property damage** to property owned or being transported by that person.

3. For **property damage** to property:

- a. rented to;
- b. used by; or
- c. in the care of that person.

This exclusion (A.3) does not apply to **property damage** to a residence or private garage.

4. For **bodily injury** to an employee of that person during the course of employment. This exclusion (A.4) does not apply to **bodily injury** 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 or property for compensation or a fee, or otherwise available for hire. This exclusion (A.5) does not apply to:

- a. a share-the-expense car pool; or
- b. that portion of the damages that is within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of **your covered auto**.

6. While employed or otherwise engaged in the **business of**:

- a. selling;
- b. repairing;
- c. servicing;

d. storing;

e. parking; or

f. washing;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (A.6) does not apply to:

a. the ownership, maintenance or use of **your covered auto** by;

i. you;

ii. any family member; or

iii. any partner, agent or employee of you or any family member; or

b. that portion of the damages that is within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of **your covered auto**.

7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business (other than farming or ranching) not described in Exclusion A.6. This exclusion (A.7) does not apply to the maintenance or use of a:

- a. private passenger auto, pickup or van; or
- b. trailer used with a vehicle described in (a.)

8. Using a motor vehicle other than **your covered auto** without permission of the owner;

9. Using **your covered auto** without permission from you or a family member;

10. For **bodily injury** or **property damage** for which that person:

- a. is an insured under a nuclear energy liability policy; or

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- b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

11. For **bodily injury to you or any family member**. This exclusion will not apply to that portion of the damages that is within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of **your covered auto**.

12. For **bodily injury or property damage** caused by **your covered auto** when it is driven, operated or used with **your permission** by a person other than a **family member** whom **you** know:

- a. is under the minimum age to obtain a driver's license;
- b. does not have a valid driver's license;
- c. has a suspended driver's license;
- d. has a revoked driver's license; or
- e. has a restricted driver's license and is operating a vehicle beyond the scope of such restriction.

This exclusion (A.12.) does not apply when it is not required by applicable state law for a person to obtain a driver's license to drive or operate the motor vehicle.

B. We do not provide Liability Coverage for the ownership, maintenance, or use of:

- 1. Any motorized vehicle having fewer than four wheels or designed mainly for use off public

roads. However, this exclusion (B.1) does not apply to any **insured** using:

- a. any **trailer**; or
- b. any non-owned golf cart.

2. Any vehicle, other than **your covered auto**, which is:

- a. **owned by you**; or
- b. furnished or available for **your regular use**.

3. Any vehicle, other than **your covered auto**, which is:

- a. **owned by any family member**; or
- b. furnished or available for the regular use of any **family member**.

However, this exclusion (B.3) does not apply to **you** while **you** are maintaining or **occupying** any vehicle which is:

- a. **owned by a family member**; or
- b. furnished or available for the regular use of a **family member**.

4. Any vehicle, for the purpose of:

- a. participating in; or
- b. practicing or preparing for;

any race or speed contest.

5. Any vehicle on any vehicle track or in any facility designed for racing.

Limit of Liability

A. The limit of liability shown in the Declarations for "each person" for Bodily Injury Liability is our maximum limit of liability for all damages due to a **bodily injury**, including damages for care, loss of services, loss of consortium, loss of services, loss of companionship or death, arising out of **bodily injury** sustained by any one person in any one auto accident. Subject to this limit for "each person", the limit of liability shown in the Declara-

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tions for "each accident" for Bodily Injury Liability is **our** maximum limit of liability under this coverage for all damages for **bodily injury** resulting from any one accident. The limit of liability shown in the Declarations for "each accident" for Property Damage Liability is **our** maximum limit of liability under this coverage for all **property damage** resulting from any one auto accident.

These limits are the most we will pay regardless of the number of:

1. Insureds;
 2. Claimants or injured persons;
 3. Claims made;
 4. Vehicles or premiums shown in the Declarations; or
 5. Vehicles involved in the auto accident.
- B. We will apply the limit of liability to provide any separate limits required by law for bodily injury and property damage liability. However, this provision (B.) will not change **our** total limit of liability.
- C. No one will be entitled to receive duplicate payments under this policy for the same elements of damages.

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, we will interpret the bodily injury liability and property damage liability coverage of **your** policy for that accident as follows:

- A. If the state or province has:
1. A financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the Liability Coverage limits shown in the Declarations, **your** policy will provide the higher specified limit.
 2. A compulsory bodily injury liability or property damage liability insurance or similar law requiring a nonresident to maintain liability insurance whenever the nonresident uses a vehicle in that state or province, **your** policy will provide

at least the required minimum amounts of bodily injury and property damage liability coverage.

Financial Responsibility

When this policy is certified as future proof of financial responsibility, this policy is subject to the South Carolina Motor Vehicle Financial Responsibility Act and shall comply with the law to the extent required.

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. Any insurance we provide for a vehicle other than **your covered auto** shall be excess over any other collectible insurance.

Arbitration of Property Damage Liability Claims

Any party to a disputed property damage liability claim may submit the claim for determination by arbitration. The disputed claim must be filed in triplicate with the clerk of court, on forms to be provided by the clerk, in the county in which the cause of action arose or where the plaintiff or defendant resides.

The parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator. Otherwise, the court shall appoint three arbitrators to hear and determine the disputed claim within 60 days after the date of filing, or as soon thereafter as is feasible. The three arbitrators shall:

- A. Hear and determine the disputed claim; and
- B. Award damages, subject to the limitations, exclusions, and other terms set forth in this policy.

A decision agreed to by two of the three arbitrators shall determine the issue.

If any party is dissatisfied with the decision of the arbitrator(s), the party may appeal, within 20 days of the decision, to the court in which the claim was filed by service upon the other parties of a notice to appeal.

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PART B - MEDICAL PAYMENTS COVERAGE

Insuring Agreement

- A. Subject to the limit of liability, if you pay the premium when due, we will pay **reasonable** expenses incurred by the **insured** for **necessary** medical and funeral services because of **bodily injury**:

1. Caused by an auto accident; and
2. Sustained by an **insured**.

We will pay only those expenses incurred within 1 year from the date of the accident.

- B. We have the right to review the medical expenses to determine if they are **reasonable** and **necessary**. We may use independent sources of information selected by us to determine if any expense is **reasonable** and **necessary**. These sources may include, but are not limited to:

1. Physical exams at our expense by physicians we select.
2. Review of medical files;
3. Computer databases; or
4. Published sources of medical expense information.

- C. "Insured", as used in this Part, means:

1. You or any family member:

- a. while **occupying**; or
- b. as a pedestrian when struck by;

a motor vehicle designed for use mainly on public roads or a trailer of any type.

2. Any other person while **occupying your covered auto**.

- D. "Reasonable", as used in this Part, means expenses that are consistent with the usual charges of the majority of similar medical providers in the geographic area in which the expenses were incurred for the specific medical service.

- E. "Necessary", as used in this Part, means services that are rendered by a medical provider within the legally authorized scope of the provider's practice and are recognized within that practice as being appropriate treatment in achieving maximum medical improvement for the **bodily injury** sustained in the accident.

Exclusions

We do not provide Medical Payments Coverage for any person for **bodily injury**:

1. Sustained while **occupying** any motorized vehicle having fewer than four wheels.
2. Sustained while **occupying your covered auto** when it is being used as to carry persons or property for compensation or a fee, or otherwise available for hire. This exclusion (2.) does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle being used as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the **bodily injury**.
5. Sustained while **occupying**, or when struck by, any vehicle (other than **your covered auto**) which is:
 - a. owned by you; or
 - b. furnished or available for **your** regular use.
6. Sustained while **occupying**, or when struck by, any vehicle other than **your covered auto** which is:
 - a. owned by any family member; or
 - b. furnished or available for the regular use of any family member.However, this exclusion (6.) does not apply to you.
7. Sustained while **occupying** a vehicle other than **your covered auto** without permission of the owner;

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8. Sustained while **occupying your covered auto** without permission from you or a family member;
9. Sustained while **occupying** a vehicle when it is being used in the **business** of an **insured**. This exclusion (9.) does not apply to **bodily injury** sustained while **occupying** a:
- private passenger auto;
 - pickup or van; or
 - trailer used with a vehicle described in a. or b. above.
10. Caused by or as a consequence of:
- discharge of a nuclear device (even if accidental);
 - war (declared or undeclared);
 - civil war;
 - insurrection; or
 - rebellion or revolution.
11. From or as a consequence of the following, whether controlled or uncontrolled, or however caused:
- nuclear reaction;
 - radiation; or
 - radioactive contamination.
12. From or as a consequence of fungus, mold, mildew or spores, regardless of the factors causing or contributing to its growth.
13. Caused directly or indirectly by any:
- accidental or intentional discharge, dispersal or release of pathogenic or poisonous biological material; or
 - intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose.
14. Sustained while **occupying** any vehicle, for the purpose of:
- participating in; or
 - practicing or preparing for; any race or speed contest.
15. Sustained while **occupying** any vehicle being operated on a driving track in a facility designed for racing vehicles.
- ### Limit of Liability
- A. The limit of liability shown in the Declarations for this coverage is **our** maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
- Insureds;**
 - Claims made;
 - Vehicles or premiums shown in the Declarations; or
 - Vehicles involved in the accident.
- B. We will pay under Part B - Medical Payments Coverage, the lesser of:
- reasonable expenses incurred by the **insured** for **necessary** medical and funeral services because of **bodily injury**; or
 - any negotiated reduced rate accepted by a medical provider.
- C. We do not owe payment to the **insured** or medical provider for any balance bill received by the **insured** if the medical provider has agreed to reduce the charge for services after a review by us. We may make payment under this coverage to the **insured** or to the medical provider or on behalf of the **insured**.
- D. Any amounts otherwise payable for expenses under this coverage shall be reduced by any

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amounts paid or payable for the same expenses under Part A or Part C.

E. No payment will be made unless the injured person or that person's legal representative agrees in writing that any payment shall be applied toward any settlement or judgment that person receives under Part A or Part C.

F. In no event will an insured be entitled to receive duplicate payments for the same element of loss.

We may make payment under this coverage to the insured or to the medical provider on behalf of the insured.

Other Insurance

If there is other applicable auto medical payments insurance we will pay only our share of the expenses incurred by the insured for medical and funeral services. 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.

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PART C - UNINSURED/UNDERINSURED MOTORISTS COVERAGE

Insuring Agreements

A. Uninsured Motorists Coverage

Subject to the limit of liability, if you pay the premium when due, we will pay damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

1. **Bodily Injury** sustained by the insured and caused by an accident; and
2. **Property damage** caused by an accident if the Declarations indicates that Property Damage Uninsured Motorists Coverage applies.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance, or use of the uninsured motor vehicle.

B. Underinsured Motorists Coverage

Subject to the limit of liability, if you pay the premium when due, we will pay damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of:

1. **Bodily Injury** sustained by the insured and caused by an accident; and
2. **Property damage** caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance, or use of the underinsured motor vehicle.

- C. Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

- D. "Insured" as used in this Part means:

1. You or any family member.

2. Any other person while occupying your covered auto with permission from you or a family member.

- E. "Property Damage" as used in this Part means injury to, destruction of, or loss of use of:

1. Your covered auto.
2. Any property owned by an insured while the property is in your covered auto.

- F. "Underinsured Motor Vehicle" means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident with limits equal to or greater than the minimum limit for liability specified by the South Carolina Motor Vehicle Financial Responsibility law but its limits for bodily injury liability are less than the damages sustained by the insured in the accident.

- G. "Uninsured Motor Vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond, policy, cash deposit or security providing liability protection applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but the limit of liability is less than the minimum limit for liability specified by the financial responsibility law of the state where this policy is issued.
3. Whose owner or operator cannot be identified and which causes an accident resulting in bodily injury or property damage. However, physical contact with this uninsured motor vehicle is required unless an independent witness to the accident, other than the owner or operator of the auto operated by the insured, executes a signed affidavit that corroborates all of the material facts of the accident.
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company;
 - a. denies coverage;
 - b. is or becomes insolvent;

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- c. is in delinquency proceedings, suspension or receivership; or
- d. is financially unable to fully satisfy a judgment rendered in favor of an insured.

Excluded Motor Vehicles

However:

A. "Uninsured motor vehicle" and "underinsured motor vehicle" do not include any vehicle or equipment:

1. Owned by any government unit or agency while being used in an authorized manner, unless a cause of action against that governmental unit or agency arising out of a motor vehicle accident is barred by the Tort Claims Act of South Carolina, as amended, or by any other applicable law.
2. Operated on rails or crawler treads.
3. Designed mainly for use off public roads while not on public roads.
4. While located for use as a residence or premises.
5. That is not required to be registered as a motor vehicle.
6. Insured under the liability coverage of this policy.

B. "Uninsured motor vehicle" also does not include:

1. Any vehicle or equipment owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent or fails to qualify as a self-insurer under South Carolina law.
2. Owned by or furnished or available for the regular use of you or any family member.
3. An underinsured motor vehicle.

C. "Underinsured motor vehicle" also does not include an uninsured motor vehicle.

Exclusions

If a court with proper jurisdiction determines any exclusion is invalid or unenforceable because it does not satisfy the minimum requirements of the South Carolina Motor Vehicle Financial Responsibility Act, such exclusion shall apply only to that portion of the damages that is in excess of the minimum limits of liability required by that law.

A. We do not provide Uninsured Motorists Coverage or Underinsured Motorists Coverage for **property damage** or **bodily injury** sustained by any person:

1. Caused by a hit-and-run driver if the insured was negligent in the effort to determine the identity of the other motor vehicle or its driver at the time of the accident.
2. If that person or the legal representative settles the **bodily injury** or **property damage** claim without our consent.

This exclusion (A.2) does not apply to a settlement made with the insurer of an **underinsured motor vehicle** if we have not provided payment to the insured in an amount equal to the tentative settlement within 30 days after receipt of notification.

3. While **occupying your covered auto** when it is being used to carry persons or property for compensation or a fee, or otherwise available for hire. This exclusion (A.3.) does not apply to:

- a. a share-the-expense car pool; or
- b. you or a family member for the portion of damages recoverable under Part C that falls within the minimum coverage limit required by the Motor Vehicle Financial Responsibility Act.

4. Using a motor vehicle other than **your covered auto** without permission of the owner;
5. Using **your covered auto** without permission from you or a family member;

B. This coverage shall not apply directly or indirectly to benefit:

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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.

Limit of Liability

A. The limit of Bodily Injury Liability shown in the Declarations for "each person" for Uninsured Motorists Coverage is **our** maximum limit of liability for all damages due to a **bodily injury**, including damages for loss of care, loss of services, loss of consortium, loss of services or death, arising out of **bodily injury** sustained by any one **insured** in any one auto accident. Subject to this limit for "each person", the limit of bodily injury liability shown in the Declarations for "each accident" for Uninsured Motorists Coverage is the most **we** will pay under this coverage for all damages for all **bodily injury** resulting from any one accident. The limit of liability for Property Damage shown in the Declarations for each accident for Uninsured Motorists Coverage is **our** maximum limit of liability under this coverage for all **property damage** resulting from any one accident.

These limits are the most **we** will pay regardless of the number of:

- 1. **Insureds**;
- 2. Claimants or injured persons;
- 3. Claims made; or
- 4. Vehicles involved in the accident.

B. The limit of liability shown in the Declarations for coverage under Part C for **your covered auto** when it is involved in an accident that causes **bodily injury** to an **insured** other than **you** or a **family member**, is the most **we** will pay regardless of the number of vehicles or premiums shown in the Declarations.

C. The maximum **we** will pay under this coverage for **bodily injury** to an **insured** is the lowest of:

- 1. the difference between:

- a. the amount paid in damages to the **insured** by or for any person or organization who may be liable for the **insured's bodily injury**; and

- b. the per person limit of coverage provided in this policy;

2. the difference between:

- a. the total amount of damages incurred by the **insured**; and

- b. the amount paid by or for any person or organization for the **insured's bodily injury**; or

3. the difference between:

- a. any amount of liability coverage not exhausted in settlement added to the amount paid by or for any person or organization for the **insured's bodily injury**; and

- b. the per person limit of coverage provided in this policy.

D. Any amounts payable for **bodily injury** shall be reduced by all sums paid or payable under any workers' compensation law, disability benefits law, or other similar law.

E. Any amounts otherwise payable for **bodily injury** or **property damage** under this coverage shall be reduced by all sums paid by or on behalf of persons or organizations who may legally responsible. This includes all sums paid under Part A of this policy.

F. No payment will be made for loss paid to the **insured** under Part D of this policy.

G. Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A of this policy.

H. No one will be entitled to receive duplicate payments from Part A or Part D of this policy or from any source other than this policy for the same elements of **bodily injury**, **property damage**, or loss.

I. **We** will not make a duplicate payment under Part C of this policy for any element of loss for which payment has been made by or on behalf of per-

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sons or organizations who may be legally responsible for the loss.

J. Any amounts payable for **property damage** shall be reduced by the deductible of \$200.00.

K. When **you** or a family member sustain **bodily injury** or **property damage** while occupying your **covered auto**, the limit of liability for coverage under Part C for **your covered auto** that is not involved in the accident shall not exceed the lower of:

1. The limit of liability shown in the Declarations for one auto that is not involved in the accident; or
2. The limit of liability on **your covered auto** that is involved in the accident.

L. When **you** or a family member are occupying a motor vehicle other than **your covered auto** and sustain **bodily injury** or **property damage** covered under Part C, our coverage shall be excess to the coverage applicable to the motor vehicle that **you** or the family member are occupying, and our total limit of liability under this policy shall not exceed the lower of:

1. Our limit of liability for one auto under Part C; or
2. The coverage limit applicable to the vehicle involved in the accident.

Coverage for more than one auto under this policy may not be stacked or combined together for **bodily injury** or **property damage** sustained by **you** or a family member while occupying a motor vehicle other than **your covered auto**.

M. When **you** or a family member are not occupying a motor vehicle and sustain **bodily injury** or **property damage** caused by the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, our limit of liability shall not exceed the limit of liability shown in the Declarations for any one of **your covered autos**.

N. The amount of damages used to determine the amount that may be recovered under Part C shall be reduced by all sums:

1. Paid by any owner, operator or other person liable for the damages, or their insurer; and

2. Any other liability insurance coverage not exhausted in any settlement with the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle**, or any other person liable.

O. The amount shown in the Declarations for **property damage** is the most we will pay under Part C for the aggregate of all **property damage** caused by any one accident.

P. The limits of liability under Part C for **property damage** shall be reduced by any amounts paid under Part A or Part D for the same **property damage**.

Q. Our limit of liability under Part C for **property damage** arising out of one accident is the lowest of:

1. The actual cash value of the property at the time of the accident, reduced by the applicable deductible shown in the Declarations, and reduced by its salvage value if **you** or the owner retain the salvage;
2. The amount necessary to repair or replace the property using parts from the vehicle's manufacturer or parts from other manufacturers, reduced by the deductible;
3. The limit of liability shown in the Declarations for **property damage** under the Uninsured/Underinsured Motorists Coverage, reduced by its salvage value if **you** or the owner retain the salvage.

R. Payments for **property damage** under Part C are also subject to the following:

1. No more than one deductible shall apply to **property damage** sustained in any one accident.
2. This policy does not cover a claim for diminished market value of **your covered auto** or non-owned auto.
3. An adjustment for depreciation and physical condition will be made in determining the actual cash value of **your covered auto** or non-owned auto at the time of loss.

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4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment. Betterment for which you will be responsible includes the value relating to the increase in useful life of replaced parts that have a limited useful life and the increase in value from the repair of prior damage.
5. Any amount paid or payable to a person under Part C for **property damage** to an auto shall be reduced by any amount paid for that loss under Part D.

Other Insurance

If there is other applicable similar insurance under one or more policy or provision of coverage, 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 limits applicable on the same level priority. Any insurance we provide for an **insured occupying** a vehicle that is not your covered auto shall be excess over any other collectible insurance or bond.

Arbitration of Bodily Injury Claims

A. If we and an insured do not agree:

1. Whether that person is legally entitled to recover damages from the owner or operator of an **uninsured motor vehicle**; or
2. As to the amount of damages;

Then upon the mutual agreement of us and the **insured**, these two questions shall be determined by arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

The arbitrators have no authority to:

1. Award an amount in excess of the policy limit.
2. Award any amount as interest.
3. Make a determination as to coverage or policy interpretation.
4. Award costs or expenses.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the **insured** lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:

1. Whether the **insured** is legally entitled to recover damages; and
2. The amount of damages.

However, the award will be binding only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state shown in the named insured's address in the Declarations. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made in writing within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

Additional Duty After an Accident or Loss

No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

Arbitration of Property Damage Claims

An **insured** may submit any disputed **property damage** claim for determination by arbitration. The disputed claim must be filed in triplicate with the clerk of court, on forms to be provided by the clerk, in the county in which the cause of action arose or where the plaintiff or defendant resides.

The parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator. Otherwise, the court shall appoint three arbi-

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trators to hear and determine the disputed claim within 60 days after the date of filing, or as soon thereafter as is feasible. The three arbitrators shall:

1. Hear and determine the liability for the disputed claim; and
2. Determine and award damages, subject to the limitations, exclusions, and other terms set forth in this policy.

A decision agreed to by two of the three arbitrators shall determine the issue.

If any party is dissatisfied with the decision of the arbitrator(s), the party may appeal, within 20 days of the decision, to the court in which the claim was filed by service upon the other parties of a notice to appeal.

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**PART D - COVERAGE FOR DAMAGE TO
YOUR AUTO**

Insuring Agreement

A. Subject to the limit of liability, if **you** pay the premium when due, **we** will pay for sudden, direct and accidental loss to **your covered auto** or any **non-owned auto**, including its **permanently installed** equipment, reduced by the applicable deductible shown in the Declarations. **We** will pay for loss to **your covered auto** caused by:

1. Other than **collision** if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. **Collision** if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a **non-owned auto**, **we** will provide the broadest coverage applicable to any of **your covered autos** shown in the Declarations.

We will not subtract the deductible amount if:

1. **your covered auto** collides with another motor vehicle insured by **us** or an insurer that is a subsidiary or affiliate of **ours**.
2. for breakage of automobile safety glass.

B. "**Collision**" means the upset of **your covered auto** or a **non-owned auto** or their impact with another vehicle or object.

Loss caused by the following is considered other than **collision**:

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;

8. Riot or civil commotion;

9. Contact with bird or animal; or

10. Breakage of glass. If breakage of glass is caused by a **collision**, **you** may elect to have it considered a loss by **collision**.

C. "**Non-owned auto**" means:

1. Any private passenger auto, pickup, van or trailer not owned by or furnished to, or available for the regular use of, **you** or any family member while in the custody of or being operated by **you** or any family member with the permission of its owner; or

2. Any auto or trailer while used as a temporary substitute for **your covered auto** which is out of normal use because of:

- a. breakdown;
- b. repair;
- c. servicing;
- d. loss; or
- e. destruction;

other than an auto or trailer owned by or furnished to, or available for the regular use of, **you** or any family member.

D. "**Custom equipment**" means any type of equipment, accessories or changes other than those offered either by the manufacturer specifically for **your covered auto** or **non-owned auto**, or that are installed by the dealership as part of the original sale, that:

1. are permanently installed on **your covered auto** or **non-owned auto**; and
2. alter the appearance or performance of **your covered auto** or **non-owned auto**.

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Custom equipment includes, but is not limited to:

- a. any electronic equipment designed for the reproduction of sound, to receive or transmit audio, visual or data signals;
- b. caps, bedliners, tool compartments or winches;
- c. custom murals, paintings or other similar decals or graphics;
- d. facilities for cooking or cleaning;
- e. height extending roofs;
- f. custom wheels, light bars, exhaust systems or suspensions; or
- g. special carpeting or insulation, furniture or bars.

Electronic equipment and its accessories that are necessary for the normal operation of the auto or the monitoring of the auto's operating systems and **permanently installed** in or on **your covered auto** or any **non-owned auto**, is considered part of that vehicle and not considered **custom equipment**.

E. "**Permanently installed**" means installed using bolts, brackets or welding. A device attached only by wires, Velcro, tape or other similar methods is not considered **permanently installed**.

Transportation Expenses

If the Declarations indicate that Other Than Collision Coverage is provided for **your covered auto**, we will also pay, without application of a deductible, the lesser of \$30 per day, or \$900, for:

1. Transportation expenses incurred by **you** in the event of the total theft of **your covered auto** if Other Than Collision Coverage is provided for that auto.
2. Loss of use expenses for which **you** become legally responsible in the event of the total theft of a **non-owned auto**.

We will pay only expenses incurred during the period:

1. Beginning 24 hours after the theft; and

2. Ending when **your covered auto** or the **non-owned auto** is returned to use or we pay for its loss.

Exclusions

We will not pay for:

1. Loss to **your covered auto** or any **non-owned auto** which occurs while it is being used to carry persons or property for compensation or a fee, or otherwise available for hire. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion (2.) does not apply if the damage results from the total theft of **your covered auto** or **non-owned auto**.

3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. discharge of any nuclear weapon (even if accidental);
 - c. war (declared or undeclared);
 - d. civil war;
 - e. insurrection; or
 - f. rebellion or revolution.
4. Loss caused by fungus, mold, mildew or spores, regardless of the factors causing or contributing to its growth, including hail, water, moisture or flood damage.
5. Loss caused directly or indirectly by any:

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- a. accidental or intentional discharge, dispersal or release of pathogenic or poisonous biological material; or
- b. intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose. However, this exclusion does not apply to any loss resulting from an act of vandalism that is directed solely at **your covered auto**.

6. Loss to **your covered auto** or any **non-owned auto** due to destruction or confiscation by governmental or civil authorities because **you** or any **family member**:

- a. engaged in illegal activities; or
- b. failed to comply with Environmental Protection Agency or Department of Transportation standards.

This exclusion (6.) does not apply to the interests of Loss Payees in **your covered auto**.

7. Loss to a camper body or trailer **you** own which is not shown in the Declarations. This exclusion (7.) does not apply to a camper body or trailer **you**:

- a. acquire during the policy period; and
- b. ask **us** to insure within 30 days after **you** become the **owner**.

8. Loss to any **non-owned auto** or any vehicle used as a temporary substitute for a vehicle **you** own, when used by **you** or any **family member** without permission of the owner.

9. Loss to:

- a. awnings or cabanas; or
- b. equipment designed to create additional living facilities.

10. Loss to equipment designed or used for the detection or location of radar.

11. Loss to any **non-owned auto** being maintained or used by any person while employed or otherwise engaged in the business of:

- a. selling;
- b. repairing;
- c. servicing;
- d. storing;
- e. parking; or
- f. washing;

vehicles designed for use on public highways. This includes road testing and delivery.

12. Loss to any **non-owned auto** being maintained or used by any person while employed or otherwise engaged in any **business** not described in exclusion 11. This exclusion (12.) does not apply to the maintenance or use by **you** or any **family member** of a **non-owned auto** which is a private passenger auto or trailer.

13. Loss to **your covered auto** or any **non-owned auto** that occurs while:

- a. participating in; or
 - b. practicing or preparing for;
- any race, speed or demolition contest.

14. Loss to **your covered auto** or any **non-owned auto** that occurs while being operated on a driving track in a facility designed for racing vehicles.

15. Loss to **your covered auto** or any **non-owned auto** caused intentionally by or at the direction of **you**, a **family member**, or the owner of the auto. However, this exclusion does not apply to a loss to **your covered auto** to the extent of the legal interest of **you** or a **family member** who:

- 1. Sustains the loss as the result of family violence by:
 - a. **You**;
 - b. A **family member**;
 - c. A former spouse; or

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- d. Any person who resides in or has resided in **your** household;
- 2. Did not direct, participate in, or consent to the intentional act causing the loss; and
- 3. Filed a family violence complaint against the person who caused the violence resulting in the loss.

Limit of Liability

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

- 1. Actual cash value of the stolen or damaged property, reduced by the salvage value if you or the owner retain the salvage; or
- 2. Amount necessary to repair or replace the property using parts from the vehicle's manufacturers or parts from other manufacturers;
- 3. If loss is to **custom equipment** the greater of:
 - a. The limit applicable to that **custom equipment**; or
 - b. The cost of the original manufacturer's equipment, or equipment that is like kind and quality but not **custom equipment**.

reduced by any applicable deductible.

The most we will pay for loss to **custom equipment** is \$1,000 unless you purchased additional Custom Equipment Coverage and it is shown on the Declarations Page. If you purchased additional Custom Equipment Coverage, the most we will pay is the amount listed on the Declarations Page.

Custom Equipment Coverage applies only if either Other Than Collision Coverage or Collision Coverage has been purchased for **your covered auto** and the loss is covered under the purchased coverage.

This policy does not cover a claim for diminished market value of **your covered auto** or **non-owned auto**.

The most we will pay for loss to any **non-owned auto** that is a trailer is \$500.

- B. An adjustment for depreciation and physical condition will be made in determining the actual cash value of **your covered auto** or **non-owned auto** at the time of loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the increase in value. The amount for which you will be responsible includes the value relating to the increase in useful life of replaced parts that have a limited useful life and the increase in value from the repair of prior damage.
- D. No deductible applies to a loss to automobile safety glass.
- E. Any amount paid or payable to a person under Part D for property damage to an auto shall be reduced by any amount paid for that property damage under Part C.

Payment of Loss

We may, at our option, pay to repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

- 1. You; or
- 2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

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:

- 1. For **your covered auto** shall be excess to that of a person engaged in the business of:

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- a. storing;
- b. parking;
- c. servicing; or
- d. repairing;

motor vehicles, if the loss occurs while the vehicle is in that person's control or the control of that person's employee or agent.

2. With respect to a **non-owned auto** shall be excess over any other collectible source of recovery including, but not limited to:
- a. any coverage provided by the owner of the **non-owned auto**;
 - b. any other applicable physical damage insurance;
 - c. any other source of recovery applicable to the loss.

Appraisal

- A. If we and you do not agree on the actual value of the vehicle, either party may demand an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
- 1. Pay its chosen appraiser; and
 - 2. Bear the expenses of the appraisal and umpire equally.
- B. We do not waive any of our rights under this policy by agreeing to an appraisal.

Loss Payable Clause

If a loss payee is shown in the Declarations:

Loss or damage shall be paid, as interests may appear, to you and the loss payee shown in the Declarations. Payment may be made separately to each interested party.

The Loss Payee has no right to payment for any claim that is not payable to the **insured**. The Loss Payee's interest will not be protected where you, a family member, or your representative commits or directs a fraudulent act or material omission, misrepresentation, intentional damage, conversion, secretion and or embezzlement pertaining to this policy, any auto or trailer to which coverage applies, or any accident or loss.

We reserve the right to cancel the policy as permitted by policy terms and the cancellation or any other termination of the policy shall 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 shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

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PART E - DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless you have paid the required premium when due and there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the 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 the accident or loss.
3. Submit, as often as we reasonably require:
 - a. to physical exams at our expense by physicians we chose; and
 - b. to examination under oath and sign the transcribed statements.
4. Authorize us to obtain directly from the custodian of records:
 - a. medical reports and records; and
 - b. other pertinent records.

5. Submit a proof of loss within 60 days after a request by us.

6. Authorize us to obtain any information on any device installed in your covered auto or any non-owned auto that records information that we determine to be relevant to the facts of the accident or loss.

7. Authorize us to move any damaged auto covered by this policy to a storage facility of our choice at our expense.

C. A person seeking Uninsured Motorists 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.

D. A person seeking Coverage for Damage To Your Auto must also:

1. Take reasonable steps after loss to protect your covered auto or any non-owned auto and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if your covered auto or any non-owned auto is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

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PART F - GENERAL PROVISIONS

Bankruptcy

Bankruptcy or insolvency of the **insured** shall not relieve **us** of any obligations under this policy.

Changes

- A. This policy, the Application, the Declarations and any endorsements issued by **us** contain all of the agreements between **you** and **us**. These terms may not be changed or waived except by endorsement issued by **us**.
- B. If there is a change to the information used to develop the policy premium, **we** may adjust **your** premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
1. The number, type, or use classification of insured vehicles;
 2. Operators using insured vehicles;
 3. The place of principal garaging of insured vehicles; and
 4. Coverage, deductible, or limits.

If a change resulting from **A.** or **B.** requires a premium adjustment, **we** will make the premium adjustment in accordance with **our** manual rules.

- C. If **we** make a change which broadens coverage under this edition of **your** policy without additional premium charge, that change will automatically apply to **your** policy as of the date **we** implement the change in **your** state. This paragraph (C.) does not apply to changes implemented with a general program revision that includes broadening and/or restriction in coverage, whether that general program revision is implemented through introduction of:
1. A subsequent edition of **your** policy; or
 2. An Amendatory Endorsement.

Fraud

We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for

which coverage is sought under this policy. If **you** have engaged in fraudulent conduct affecting any accident or loss, and **we** are required by financial responsibility law or other law to pay any associated claims, **you** must reimburse **us** if **we** make a payment.

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:
1. **We** agree in writing that the **insured** has an obligation to pay; or
 2. 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 an **insured**.

Payment of Premium

If **you** fail to make **your** initial payment or if **you** make **your** initial premium payment by check, draft, electronic funds transfer, or any remittance other than cash, and it is nonnegotiable or not honored on presentment to the bank or other financial institution, **we** may void this policy from inception. Coverage under this policy is conditioned upon the initial payment and/or the initial check, draft, electronic funds transfer, or remittance being honored upon presentment to the bank or other financial institution. This means **we** will not be liable under this policy for any claims or damages that would otherwise be covered if the initial payment had been received or if the initial check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. This includes any claims reported to **us** prior to receiving notice of the non-sufficient funds payment.

If **you** make a premium payment for a renewal of **your** policy using a nonnegotiable instrument or one that is not honored upon presentment to the bank or other financial institution, **our** offer of policy renewal is deemed rejected by **you** and the policy terminated without renewal.

Examples of nonnegotiable instruments include, but are not limited to:

- A. Checks dishonored due to insufficient funds;

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B. Checks drawn from closed accounts; and

C. Invalid credit cards.

Misrepresentation

To determine eligibility for coverage under this policy and to determine the premium, we relied upon the statements made to us and warranties provided to us in the application, including, but not limited to information regarding licensing and driving history of you, family members, all persons of driving age residing in your household, registered owners of the vehicles to be insured, the description of the vehicles to be insured, the use of the vehicles to be insured, the location of the principal place of garaging, and your place of residence.

We may void this policy from inception or deny coverage if at the time of application or any time you or an insured:

- A. Made incorrect statements or warranties to us with regard to any material fact or circumstance;
- B. Concealed or misrepresented any material fact or circumstance; or
- C. Engaged in fraudulent conduct.

If we void your policy, the premium you have paid will be refunded.

Following an accident or loss, we may still void this policy for incorrect, concealed or misrepresented material facts, provided to us at any time, or fraud. If this occurs we will not be liable for any claim that would otherwise be covered. If we void this policy from inception, you must reimburse us if we make a payment.

However, this shall not affect the coverage under Part A - Liability Coverages of this policy up to the minimum limits required by the financial responsibility law of the State of South Carolina if we certify your policy as proof of financial responsibility to the Registrar of Motor Vehicles of the State of South Carolina, and if the accident occurs before we notify the named insured that this policy is void. If we void this policy, you must indemnify us for all payments made.

To the extent that we make any payment to any party under this policy and our subsequent investigation reveals your or any insured's involvement in fraud or misrepresentation in the application or in the

presentation of a claim, you must indemnify us for all payments made,

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 shall be subrogated to that right. That person shall do:

- 1. Whatever is necessary to enable us to exercise our rights; and
- 2. Nothing after loss to prejudice them.

We shall be subrogated to that right with respect to:

- 1. Coverage other than Uninsured Motorists Coverage, even if the person has not been fully compensated for damages.
- 2. Uninsured Motorists Coverage, only after the person has been fully compensated for damages.

However, our rights in this paragraph (A.) do not apply with respect to amounts paid:

- 1. Under Part B, Medical Payments Coverage;
- 2. Under Part C as Underinsured Motorists Coverage; or
- 3. Part D against any person using your covered auto with permission from you or a family member.

B. If we make a payment under this policy of an amount we are entitled to recover, and the person to or for whom payment is made recovers damages from another, that person shall:

- 1. Hold in trust for us the proceeds of the recovery; and
- 2. Reimburse us to the extent of our payment.

This paragraph (B.) applies with respect to:

- 1. Coverage other than Uninsured/Underinsured Motorists Coverage, even if the person to or

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for whom payment is made has not been fully compensated for damages.

2. Uninsured/Underinsured Motorists Coverage, only after the person has been fully compensated.
- C. If we make a payment under this policy because the insurer of the **uninsured motor vehicle** or **underinsured motor vehicle** is or becomes insolvent, **our** rights under paragraph A. or B. with respect to Uninsured/Underinsured Motorists Coverage apply against the insured of the insolvent insurer only for amounts paid by **us** in excess of the limits of liability of the insolvent insurer's policy.

Policy Period, Territory, and Interpretation

- A. This policy applies only to accidents and losses which occur:
 1. During the policy period as shown in the Declarations; and
 2. Within the policy territory.
- B. The policy territory is:
 1. The United States of America, its territories or possessions;
 2. Puerto Rico; or
 3. Canada.

This policy also applies to loss to, or accidents involving, **your covered auto** while being transported between their ports.

- C. This agreement shall be governed by, and interpreted in accordance with the laws of the state in which the named insured resides as shown in the policy Declarations.

Termination

- A. **Cancellation.** This policy may be cancelled during the policy period as follows:
 1. The named insured shown in the Declarations may cancel by:

- a. returning this policy to **us**; or
- b. giving **us** advance written notice of the date cancellation is to take effect.

2. **We** may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy, at least 15 days notice stating the specific reason or reasons for cancellation.

3. During the first 60 days this policy is in effect, **we** may cancel only for one or more of the following reasons:

- a. A premium payment by check, draft or other remittance is not honored upon presentment to a financial institution.
- b. **You** produce proof that **you** have sold or otherwise disposed of **your covered auto**, or surrendered its license plates and registration to the State.
- c. **You** have secured another policy that satisfies the financial responsibility laws of the State of South Carolina.
- d. The **insured** fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least **thirty** days.

4. After this policy has been in effect for 60 days, but before it has been in effect for more than 90 days, **we** may cancel this policy for any reason.

5. After this policy is in effect for more than 90 days, or if this is a renewal or continuation policy, **we** will cancel only:

- a. for nonpayment of premium; or
- b. if **your** driver's license or that of:
 - (1) any driver who lives with **you**; or
 - (2) any driver who customarily uses **your covered auto**;

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has been suspended or revoked. This must have occurred:

- (1) during the policy period; or
- (2) during the last 90 days preceding the last anniversary of the effective date if the policy is a renewal; or

c. Any other reason permitted by law.

B. Nonrenewal. The period of this policy is for 6 months unless otherwise provided by law or by agreement between **you** and **us**. If **we** decide not to renew or continue this policy, **we** will mail notice, stating the reasons for nonrenewal, 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 this policy period.

C. Automatic Termination. If **we** offer to renew and **you** or **your** representative do not accept, this policy will terminate at the end of the current policy period. Failure to pay the required renewal premium when due shall mean that **you** have not accepted **our** offer and the policy ends without renewal or notice.

D. Other Termination Provisions.

1. If the law in effect in **your** state at the time this policy is issued, renewed or continued:

- a. requires a longer notice period;
- b. requires a special form of or procedure for giving notice; or
- c. modifies any of the stated termination reasons;

we will comply with those requirements.

2. **We** may deliver any notice instead of mailing it. The mailing of any notice shall be sufficient proof of notice.

3. If this policy is cancelled, **you** may be entitled to a premium 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.

4. The effective date of cancellation stated in the notice shall become the end of the policy period.

E. Notice. Your notice to **our** authorized agent shall be deemed to be notice to **us**.

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, coverage will be provided for:

A. 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

B. 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**.

Coverage will only be provided until the end of the policy period.

Two Or More Auto Policies

If this policy and any other auto insurance issued to **you** by **us** apply to the same accident, the maximum limit of **our** liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

Fees

In addition to premium, fees may be charged on **your** policy. **We** may charge fees for installment payments, late payments and other transactions. Payments made on **your** policy will be applied to fees first, then to the premium due.

Our Right to Use Other Resources

You and any insured seeking coverage under this policy agree that **we** have the right to utilize outside sources, vendors, experts, consultants and software tools of **our** choosing to assist **us** in underwriting, pricing and issuing **our** insurance policies and to assist **us** in adjusting claims.

EXHIBIT B

Friday, April 15, 2011

Dear Participant,

Grange Mutual Casualty Group* has announced revised pricing for the participation program. Grange has established the following rates for shops in your area effective for work performed on or after April 22, 2011:

NAGS Windshield:	41.0%	Off (-) NAGS List
NAGS Tempered:	41.0%	Off (-) NAGS List
Labor:	\$30.00	Flat
Plus:	\$30.00	Per NAGS Hour
High Modulus/ Non-Conductive Urethane	\$35.00	1.0 Kit
	\$50.00	1.5 Kit
	\$65.00	2.0 Kit
All other urethanes:	\$15.00	per NAGS kit quantity
Windshield Repairs:	\$70.00	Flat (Per Windshield)

The prices above supersede any prior pricing for Grange. All invoices should be billed to Grange at the following address:

Grange Mutual Casualty Group
P.O. Box 182277
Columbus, OH 43218-2277

If you send your invoice via EDI, please use mailbox SAFL107 and program ID 09009. If you do not have EDI capability, you may use SGCNetwork.com to send invoices electronically free of charge, which will help facilitate the timely payment of your invoice.

Sincerely,
Contract Management
Fax: 614-210-9504
www.sgcnetwork.com

**Grange Mutual Casualty Company, Grange Insurance Company of Michigan, Grange Property & Casualty Insurance Company, Trustgard Insurance Company, and Grange Indemnity Insurance Company*

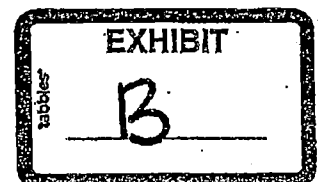


EXHIBIT C

**FAXED &
EMAILED**



PO Box 171862 • Spartanburg, SC 29301
864.641.3190 • 888.781.7967

Dear Safelite:

20/20 Auto Glass has received your communication purporting to assign a glass replacement job to our company. Every aspect of the communication is rejected in its entirety. First, our agreement to replace the glass is with our customer, not with Safelite. The customer agreed to have 20/20 perform the replacement before we received had any contact with Safelite. As a result, you have no legal ability to interfere with any aspect of that relationship.

Second, our customer has a contract with his insurance company which specifies the amount that is owed by the insurer for glass replacement. Because the customer is free to have the work done at any shop he chooses, you have no ability to limit that choice or to reduce the insurer's obligation to the policyholder, our customer.

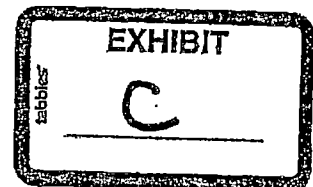
Third, we reject the pricing that is set forth in your communication. Given the totality of the circumstances, including the fact that you are a stranger to this transaction, you have no ability to bind either 20/20 Auto Glass or our customer to any pricing absent our express agreement. We have already verbally rejected the pricing when the claim was reported. We are further manifesting our rejection of that pricing in both this letter and in our invoice for this job. Absent a written agreement signed by an authorized representative of 20/20 Auto Glass, all future offers of pricing that are faxed to us are also rejected.

Finally, you are on notice that 20/20 Auto Glass does not negotiate prices with claims administrators. If an insurance company wishes to discuss pricing with us, they may do so by contacting us directly.

I trust our position on these issues is clear.

Sincerely,

Matthew Bailey
20/20 Auto Glass LLC, CEO
Independent Glass Association, President
SC Glass Association, Vice President
www.2020glass.com • www.facebook.com/2020autoglass



2020-GRANGE000057
CONFIDENTIAL



Phone 614-602-2120
Fax 614-210-9502

Bobcat
F7

SAFELITE SOLUTIONS

Date: 08/13/13
Time: 11:58:47

To: 20/20 AUTO GLASS
101 BRIXTON CT
SPARTANBURG SC 29301

Shop#: 057524
Fax: 888-781-7967
Tel: 864 641 3190

Referral#
418228

Customer: HAMPTON, IRANELL
37 LOWNDES HILL ROAD
GREENVILLE SC 29607

Home: 864-252-7798
Bus: 864-517-9187

Date of loss:
08/13/2013

Vehicle: 2000 HOND ODYSSEY
Type of Loss: REPLACE FW02109 GGY
Deductible: \$500.00

W/S LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR
C/T LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR

KITS: W/S 1.0 \$15.00; 2.0 \$30.00 H/M 1.0 \$35.00; 2.0 \$65.00 F/C 2.0 \$30.00

- If the cost of claim is over \$1000, please call or email Pricing Approval.

Notice:

Please contact Safelite at 1-614-602-2120 prior to beginning the work for any part not priced by NAGS, including but not limited to RV, sunroofs, OEM, dealer, net priced, premium, other charges and any molding parts. Performance of services constitutes acceptance of the communicated price and billing instructions.

Please contact Shop Care to update and approve the part, if the part used does not match the order.

COMPANY: GRANGE C/O SGC NETWORK ID#: 09009 EDI MAILBOX: SAFL SAFL107

Billing Instructions

Sold To: HAMPTON, IRANELL
Bill To: GRANGE C/O SGC NETWORK
Address: PO BOX 182277
COLUMBUS, OH 43218-2277

Please Show On Your Invoice
1) Referral#: 418228
2) Full Vehicle Vin Number
3) Valid NAGS Part Numbers
4) Customer's Signature

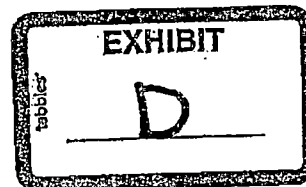
or, Invoice Online at SGCNetwork.com

- You must include sales tax on your invoice if applicable.
- Please complete and submit a W9 with your first invoice.
- Payment will be rendered upon receipt of funds from the client.
- Invoices should be submitted within 10 days of installation.
- GRANGE MUTUAL INSURANCE will not reimburse for deductibles not collected.

Customer Signature

Date

Please return your invoice signed by the customer, along with this signed fax



www.SGCNetwork.com

PricingApproval@Safelite.com

ShopCare@Safelite.com

2020-GRANGE000001
CONFIDENTIAL

EXHIBIT E

**20/20
AUTO
GLASS**



See clearly now

Phone: (864) 641-3190
Fax: (888) 781-7967

Work Order

20/20 Auto Glass
PO Box-171852

Spartanburg, SC 29301
TAX ID#: 263554573

Date: 08/13/2013
Work Order #: 3380156

Store: 20/4116

Written By: Dan Anessi
Sales Rep: Dan Anessi
Technician: Tyler Parker

Scheduled Date: 8/14/13 8:14 am

Customer: Iranell Hampton 37 Lowndes Hill Rd BATESVILLE, SC 29607 Phone: (864) 252-7798 Fax: Phone2: Mobile:		Insurance/Fleet/Broker Policy # PA2961228 GRANGE MUT INS CO - MARS SAFELITE Phone: 6146022120	
Automobile Information VIN # Year: 2000 Color: Make: Honda Mileage: Model: Odyssey License: Style: Mini Van State:		Claim # 418228 Authorization #: 09009 Loss Date: 08/13/2013 Cause:	
Service Address Southeast Transportation LLC 304 S. 106 Greer GREER, SC 29651 Phone: Phone 2: Mobile:		Fleet Information Unit # Fleet PO#: Driver Name: Driver Lic.: Card # Exp Date:	
Service Address Notes		Work Order Notes Wed Aug 14 07:34:39 2013 by Dan Anessi: Pilkington; 8959610	

MFG Part	Description	Qty	Unit	List	O&A	Discount	Net
FW02109GGYN	Windshield	1	Each				
FW02109GGYN	Windshield	2.3	Hrs				
HAH000448	Adhesive	1	Each				



Location: Type:
Location: Type:
Location: Type:

Glass DOT # 177
Adhesive: LOT 2
Adhesive: EXPRESS EZ KIT
Adhesive: 280201E0ME
DOT #: 08E BY 3000713

Owner		Insurance	
Sub Total			
Tax			
Gross Total			
Deductible			
Net Total			

AMOUNT TO COLLECT \$0.00

Technician Notes

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS AND AUTHORIZATION TO PAY : I have selected 20/20 Auto Glass for the replacement or repair of the glass in my automobile. I assign any and all insurance claims and all policy proceeds owed by my insurance company in connection with my damaged glass to 20/20 Auto Glass, to be paid directly to them. I authorize and direct my insurance company to release policy, coverage and all other information related to my damaged automobile glass to 20/20 Auto Glass LLC. If my glass has been replaced rather than repaired, I have insisted that, where possible, 20/20 Auto Glass LLC use original equipment parts and materials in the replacement of my automobile glass. I agree to pay my deductible, if any, myself. If I do not have insurance coverage, I agree to pay the invoice myself. As long as I have a \$0 glass deductible, 20/20 Auto Glass guarantees they will not charge me anything in relation to this claim, but will bill my insurance directly. However, if the insurance company sends me a check directly, I agree to sign this check over to 20/20 Auto Glass immediately.



Signature: Barbara Dunlap Date: 08/13/2013

2020-GRANGE000100
CONFIDENTIAL

EXHIBIT F



Invoice

Date: 08/15/2013
Invoice #: 7525-O
Work Order #: 3380156
Ticket #:

20/20 Auto Glass
PO Box 171852

Phone: (864) 641-3190
Fax: (888) 781-7967

Spartanburg, SC 29301
TAX ID# 263554573

Bill To:
GRANGE MUT INS CO - MARS SAFELITE

Phone(614) 602-2120 Fax(614) 210-9504

Customer:

Iranell Hampton
37 Lowndes Hill Rd

BATESVILLE, SC 29607

Phone: (864) 252-7798
Fax:

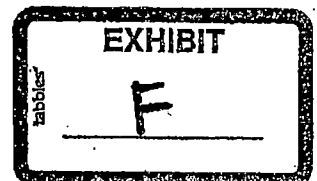
Job Scheduled For: August 14, 2013 8:18 am		Sales Rep: Dan Anessi	
Written By: Dan Anessi		Invoiced By: Matthew Bailey	
Technician: Tyler Parker			
Automobile Information		Fleet Information	
Year: 2000		Unit #:	
Make: Honda		Card #:	
Model: Odyssey		Exp Date:	
Style: Mini Van		Driver Name:	
VIN #: 2HKRL1850YH619720		Driver Lic.:	
Color:		Fleet PO#:	
Mileage:			
License:		State:	
		Insurance Information	
		Policy #: PA2961226	
		Claim #: 418228	
		Loss Date: 08/13/2013	
		Cause:	
		Authorization #: 09009	

MFG Part	Description	Qty	Unit	List	O&A	Discount	Net
FW02109GGYN	Windshield	1	Eac	\$255.40	Y	15%	\$217.09
FW02109GGYN	Windshield	2.3	Hrs	\$85.00	Y		\$195.50
HAH000448	Adhesive	1	Eac	\$48.00	Y	flat	\$35.00

Sub Total	\$447.59
Tax	\$15.13
Gross Total	\$462.72
Deductible	\$0.00
Net Total	\$462.72

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS, BENEFITS, AND AUTHORIZATION TO PAY: I have elected and hired 20/20 Auto Glass for the repair or replacement of the glass in my automobile. I hereby assign all insurance rights, benefits and proceeds under any applicable insurance policies to 20/20 Auto Glass LLC. I hereby direct my insurance carrier to release any and all information requested by 20/20 Auto Glass LLC, and to accept notice of claim from 20/20 Auto Glass LLC. If payment is made directly to owner/agent by an insurer, it shall be endorsed over to 20/20 Auto Glass LLC within three business days. 20/20 Auto Glass LLC agrees not to charge the undersigned any amount, excluding any applicable deductible, when insurance proceeds are the chosen method of payment.

Signature _____



2020-GRANGE000047
CONFIDENTIAL

EXHIBIT G



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 28-3554573

Short Pay Invoice

Invoice #: 7525
Invoice Date: 8/15/2013

Bill To:
Grange Insurance

Item	Description	Hours/Qty	Rate	Amount
FW02109GGYN	Windshield	1	217.09	217.09T
Labor	Labor ()	2.3	85.00	195.50
HAH000448	2.0 Fast-Cure Urethane/Dam/Primer	1	35.00	35.00T
Customer Info	Customer: Iranell Hampton			0.00
	Dispatch/Referral/Claim #: 418228			
	Policy #: PA2961226			
	DOL: 8/13/2013			
	VIN: 2HKRL1850YH619720			
	Sales Tax		6.00%	15.13

We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Total \$462.72

Payments/Credits -\$290.53

Balance Due \$172.19



2020-GRANGE000056
CONFIDENTIAL

EXHIBIT H

From: 2020autoglass@gmail.com
Sent: Thursday, October 03, 2013 12:36 PM
To: 16144452337@rcfax.com
Subject: Statement from 20/20 Auto Glass LLC
Attachments: Statement10_from_2020_Auto_Glass10256.pdf

Dear Grange Mutual :

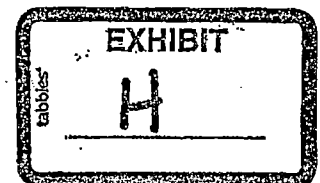
If this statement was sent to the incorrect fax number, please call us with the fax number for your claims department. We do not need your TPAs fax number because this letter is intended for the insurer, not the TPA.

We never expressed an intent to accept an amount lower than that set forth in the invoices we remitted for the attached claims. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent.

The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

We are sending this letter to demand all overdue balances on our invoices be paid immediately. All past due invoices (over 30 days) will continue to incur the state allowed interest rate of 8.75% (SC Section 34-31-20).

Matt Bailey
20/20 Auto Glass, CEO
(864) 641.3190



2020-GRANGE000002
CONFIDENTIAL



PO Box 171852
Spartanburg SC 29301

864.641.3190 | 888.781.7967
mail@2020glass.com

Statement

Date

9/12/2013

To:

ATTN: Claims
Grange Mutual Insurance
PO Box 1218
Columbus OH 43216-1218

Date	Transaction	Amount	Balance		
08/15/2013	INV #7525. Due 08/15/2013. Orig. Amount \$462.72. 3380156 Iranell Hampton Referral 418228 --- FW02109GGYN, 1 @ \$217.09 = 217.09 --- Labor, 2.3 @ \$85.00 = 195.50 --- HAH000448, 1 @ \$35 = 35.00 --- Tax: Standard @ 6.0% = 15.13	172.19	172.19		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	172.19	0.00	0.00	0.00	\$172.19

If this statement was sent to the incorrect fax or email, please email us with the correct information for your claims department. We do not need your TPAs contact information because this letter is intended for the insurer, not the TPA. We never expressed an intent to accept an amount lower than that set forth in the invoices we remitted for the attached claims. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

We are sending this letter to demand all overdue balances on our invoices be paid immediately. All past due invoices (over 30 days) will continue to incur the state allowed interest rate of 8.75% (SC Section 34-31-20).

2020-GRANGE000003
CONFIDENTIAL

EXHIBIT I



PO Box 171852 • Spartanburg, SC 29301
864.641.3190 • 888.781.7967
matt@2020glass.com

April 2, 2014

Grange Mutual Insurance

RE: Request for appraisal/umpire for completed auto glass installations

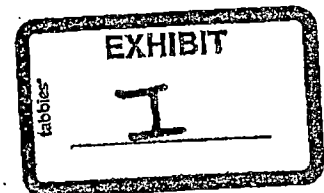
We have completed the attached list of jobs for Grange Mutual Insurance policy holders. We have signed, completed work orders archived online, wherein the policy holder has provided us with an "Assignment of Proceeds and Authorization to Pay."

At this time we would respectfully invoke our "Right of Appraisal" as specified in the Grange Mutual Insurance policy and begin proceeding through the process. The appraiser we have chosen is Express Auto Glass at (727) 488-7247. Please have your appraiser contact them regarding this matter.

Please let me know if I can be of further assistance.

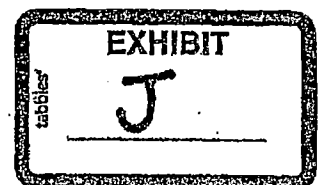
Sincerely,

Matthew Bailey
20/20 Auto Glass LLC, CEO
Independent Glass Association, President
SC Glass Association, Vice President
www.2020glass.com • www.facebook.com/2020autoglass



2020-GRANGE000020
CONFIDENTIAL

EXHIBIT J





Phone 614-602-2120
Fax 614-210-9502

Bobcat F9 | SAFELITE SOLUTIONS | Date: 03/18/14
Time: 17:15:22

To: 20/20 AUTO GLASS Shop#: 057524
101 BRIXTON CT Fax: 888-781-7967 Referral#
SPARTANBURG SC 29301 Tel: 864 641 3190 471948

Customer: COLLINS, CINNAMON Home: 864-986-2255
201 CAPE NEDDICK LN Bus: 0- 0- 0 Date of loss:
SIMPSONVILLE SC 29681 03/05/2014

Vehicle: 2007 HOND ELEMENT
Type of Loss: REPLACE FW02380 GTN
Deductible: \$500.00

W/S LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR
C/T LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR

KITS: W/S 1.0 \$15.00; 2.0 \$30.00 H/M 1.0 \$35.00; 2.0 \$65.00 F/C 2.0 \$30.00

GRANGE INSURANCE has determined the amount of such work
is: \$ 248.00 less any applicable deductible amount.

Please contact Shop Care to update and approve the part, if the part used
does not match the order.

If the work is performed by a location other than the shop listed above,
the rates are subject to change.

----- Notice:-----
Please contact Safelite at 1-614-602-2120 prior to beginning the work for any
part not priced by NAGS, including but not limited to RV, sunroofs, OEM,
dealer, net priced, premium, other charges and any molding parts. Performance
of services constitutes acceptance of the communicated price and billing
instructions.

- If the cost of claim is over \$1000, please call or email Pricing Approval.

INSHOP SERVICE

COMPANY: GRANGE INSURANCE GLASS SE ID#: 09009 EDI MAILBOX: SAFL SAFL107
----- Billing Instructions -----

Sold To: COLLINS, CINNAMON Please Show On Your Invoice
Bill To: GRANGE INSURANCE GLASS SERVIC 1) Referral#: 471948
Address: PO BOX 182277 2) Full Vehicle Vin Number
COLUMBUS, OH 43218-2277 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.
- Please complete and submit a W9 with your first invoice.
- Payment will be rendered upon receipt of funds from the client.
- Invoices should be submitted within 10 days of installation.
- GRANGE INSURANCE will not reimburse for deductibles not collected.

----- Customer Authorization-----
Customer Signature _____ Date _____
Please return your invoice signed by the customer, along with this signed fax

www.SGCNetwork.com

PricingApproval@Safelite.com

ShopCare@Safelite.com

2020-GRANGE000014
CONFIDENTIAL

EXHIBIT K



Phone: (864) 641-3190
Fax: (888) 781-7967

Work Order

20/20 Auto Glass
PO Box 171852

Spartanburg, SC 29301
TAX ID#: 263554573

Date: 03/18/2014
Work Order #: 3612938

Store: 20/-4116
Written By: CCG
Sales Rep: Sean McMillan
Technician: Jason Lee

Scheduled Date: 3/24/2014 AM JOB

Customer: Cinnamon Collins 201 Cape Neddick Ln SIMPSONVILLE, SC 29681 Phone: (864) 986-2255 Fax: (864) 986-2255 Phone2: Mobile:		Insurance/Fleet/: Policy # PA1279983 GRANGE MUT INS CO - MARS SAFELITE Phone: (614) 602-2120 Fax: (614) 210-9504 Claim # 471948 Authorization #: 09009 Loss Date: 03/05/2014 Cause:	
Automobile Information VIN # 5J6YH28777L000895 Year: 2007 Color: Mileage: License: State: Make: Honda Model: Element Style: 4 Door Utility		Fleet Information Unit # Fleet PO#: Driver Name: Driver Lic.: Card # Exp Date:	
Service Address Cinnamon Collins 201 Cape Neddick Ln SIMPSONVILLE, SC 29681 Phone: (864) 986-2255 Phone 2: Mobile:		Work Order Notes Fri Mar 21 12:36:34 2014 by Dan Anness; Pilkington: 623256	
Service Address Notes 34.793365, -82.271468			

MFG Part	Description	Qty	Unit	List	Q&A	Discount	Net
FW02380GBNN	Windshield	1	Each				
FW02380GBNN	Windshield	2.3	Hrs				
HAH000448	Adhesive	1	Each				
MW02380 BLT	Moulding	1	Each				



Location: Type:
Location: Type:
Location: Type:

Glass DOT # _____
Adhesive LOT# _____
Adhesive Exp. Date: _____
Adhesive Brand: _____

	Owner	Insurance
Sub Total		
Tax		
Gross Total		
Deductible		
Net Total		

AMOUNT TO COLLECT \$0.00

Technician Notes

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS AND AUTHORIZATION TO PAY : I have selected 20/20 Auto Glass for the replacement or repair of the glass in my automobile. I assign any and all insurance claims and all policy proceeds owed by my insurance company in connection with my damaged glass to 20/20 Auto Glass, to be paid directly to them. I authorize and direct my insurance company to release policy, coverage and all other information related to my damaged automobile glass to 20/20 Auto Glass LLC. If my glass has been replaced rather than repaired, I have insisted that, where possible, 20/20 Auto Glass LLC use original equipment parts and materials in the replacement of my automobile glass. I agree to pay my deductible, if any, myself. If I do not have insurance coverage, I agree to pay the invoice myself. As long as I have a \$0 glass deductible, 20/20 Auto Glass guarantees they will not charge me anything in relation to this claim, but will bill my insurance directly. However, if the insurance company sends me a check directly, I agree to sign the check over to 20/20 Auto Glass immediately.



Signature: *[Handwritten Signature]* Date: _____

2020-GRANGE000045
CONFIDENTIAL

EXHIBIT L



Invoice

Date: 03/31/2014
Invoice #: 8974-O
Work Order #: 3612938
Ticket #:

20/20 Auto Glass
PO Box 171852

Phone: (864) 641-3190
Fax: (888) 781-7967

Spartanburg, SC 29301
TAX ID# 263554573

Bill To:
GRANGE MUT INS CO - MARS SAFELITE

Phone(614) 602-2120 Fax(614) 210-9504

Customer:

Cinnamon Collins
201 Cape Neddick Ln

SIMPSONVILLE, SC 29681

Phone: (864) 986-2255
Fax:

Job Scheduled For: March 24, 2014 8:42 am
Written By: CCG
Technician: Jason Lee

Sales Rep: Sean McMillan
Invoiced By: Matthew Bailey

Automobile Information

Year: 2007
Make: Honda
Model: Element
Style: 4 Door Utility
VIN #: 5J6YH28777L000895
Color:
Mileage:
License: State:

Fleet Information

Unit #:
Card #:
Exp Date:
Driver Name:
Driver Lic.:
Fleet PO#:

Insurance Information

Policy #: PA1279983
Claim #: 471948
Loss Date: 03/05/2014
Cause:
Authorization #: 09009

MFG Part	Description	Qty	Unit	List O&A	Discount	Net
FW02380GBNN	Windshield	1	Eac	\$252.45	Y	\$252.45
FW02380GBNN	Windshield	23	Hrs	\$85.00	Y	\$195.50
HAH0000448	Adhesive	1	Eac	\$48.00	Y	\$48.00
MW02380 BLI	Moulding	1	Eac	\$12.76	Y	\$12.76

Sub Total	\$508.71
Tax	\$18.79
Gross Total	\$527.50
Deductible	\$0.00
Net Total	\$527.50

Fri Mar 21 12:36:34 2014 by Dan Anessi: Pilkington: 023256

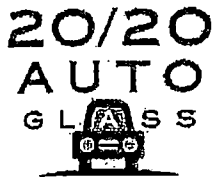
CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS, BENEFITS, AND AUTHORIZATION TO PAY: I have selected and hired 20/20 Auto Glass for the repair or replacement of the glass in my automobile. I hereby assign all insurance rights, benefits and proceeds under any applicable insurance policies to 20/20 Auto Glass LLC. I hereby direct my insurance carrier to release any and all information requested by 20/20 Auto Glass LLC, and to accept notice of claim from 20/20 Auto Glass LLC. If payment is made directly to owner/agent by an insurer, it shall be endorsed over to 20/20 Auto Glass LLC within three business days. 20/20 Auto Glass LLC agrees not to charge the undersigned any amount, excluding any applicable deductible, when insurance proceeds are the chosen method of payment.

Signature _____



2020-GRANGE000044
CONFIDENTIAL

EXHIBIT M



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 26-3554573

Short Pay Invoice

Invoice #: 8974
Invoice Date: 3/31/2014

Bill To:
Grange Insurance

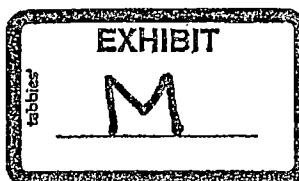
Item	Description	Hours/Qty	Rate	Amount
FW02380GBNN	Windshield	1	252.45	252.45T
Labor	Labor ()	2.3	85.00	195.50
HAH000448	2.0 Fast-Cure Urethane/Dam/Primer	1	48.00	48.00T
MW02380BLT	Reveal	1	12.76	12.76T
Customer Info	Customer: Cinnamon Collins Dispatch/Referral/Claim #: 471948 Policy #: PA1279983 DOL: 3/5/2014 VIN: 5J6YH28777L000895 Sales Tax			0.00
			6.00%	18.79

We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Total \$527.50

Payments/Credits -\$302.21

Balance Due \$225.29



2020-GRANGE000055
CONFIDENTIAL

Bobcat |-----| Date: 05/01/14
F9 | S A F E L I T E S O L U T I O N S | Time: 11:46:56

To: 20/20 AUTO GLASS Shop#: 057524
1120 W BUTLER RD STE Fax: 864-590-5734 Referral#
GREENVILLE SC 29607 Tel: 864 641 3190 232326

Customer: GREGG, KELLY A Home: 864-437-3226
3662 B CENTERVILLE RD Bus: 0- 0- 0 Date of loss:
ANDERSON SC 29625 04/29/2014

Vehicle: 2000 CHEV IMPALA 4 DOOR SED
Type of Loss: REPLACE DW01377 GBY
Deductible: \$.00

W/S LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR
C/T LIST: -41.0% LABR: \$30.00 FLAT PLUS \$30.00 PER HOUR
KITS: W/S 1.0 \$15.00; 2.0 \$30.00 H/M 1.0 \$35.00; 2.0 \$65.00 F/C 2.0 \$30.00

GRANGE INSURANCE has determined the amount of such work
is: \$ 254.16 less any applicable deductible amount.
Please contact Shop Care to update and approve the part, if the part used
does not match the order.
If the work is performed by a location other than the shop listed above,
the rates are subject to change.

----- Notice:-----
Please contact Safelite at 1-614-602-2120 prior to beginning the work for any
part not priced by NAGS, including but not limited to RV, sunroofs, OEM,
dealer, net priced, premium, other charges and any molding parts. Performance
of services constitutes acceptance of the communicated price and billing
instructions.
- If the cost of claim is over \$1000, please call or email Pricing Approval.

INSHOP SERVICE

COMPANY: GRANGE INSURANCE GLASS SE ID#: 09009 EDI MAILBOX: SAFL SAFL107

----- Billing Instructions -----

Sold To: GREGG, KELLY A Please Show On Your Invoice
Bill To: GRANGE INSURANCE GLASS SERVIC 1) Referral#: 232326
Address: PO BOX 182277 2) Full Vehicle Vin Number
COLUMBUS, OH 43218-2277 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.
- Please complete and submit a W9 with your first invoice.
- Payment will be rendered upon receipt of funds from the client.
- Invoices should be submitted within 10 days of installation.
- GRANGE INSURANCE will not reimburse for deductibles not collected.

----- Customer Authorization -----

Customer Signature _____ Date _____
Please return your invoice signed by the customer, along with this signed fax

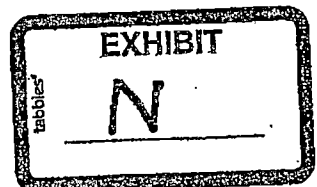


EXHIBIT O



Invoice

Date: 05/07/2014
Invoice #: 9353-0
Work Order #: 3669762
Ticket #:

Phone: (864) 641-3190
Fax: (888) 781-7967

20/20 Auto Glass
PO Box 171852

Spartanburg, SC 29301
TAX ID# 263554573

Bill To:
GRANGE MUT INS CO - MARS SAFELITE

Phone(614) 602-2120 Fax(614) 210-9504

Customer:

Kelly Gregg
3662B Centerville Rd

AND, SC 29625

Phone: (864) 437-3226
Fax:

Job Scheduled For: May 6, 2014 8:32 am
Written By: Matthew Bailey
Technician: Jason Lee

Sales Rep: Matthew Bailey
Invoiced By: Matthew Bailey

Automobile Information

Year: 2000
Make: Chevrolet
Model: Impala
Style: 4 Door Sedan
VIN #: 2G1WH55K4Y9167143
Color:
Mileage:
License: State:

Fleet Information

Unit #:
Card #:
Exp Date:
Driver Name:
Driver Lic.:
Fleet PO#:

Insurance Information

Policy #: PPT 6850381-08
Claim #: 232326
Loss Date: 04/29/2014
Cause:
Authorization #: 09009

MFG Part	Description	Qty	Unit	List	O&A	Discount	Net
DW01377GBYN	Windshield	1	Eac	\$212.15	Y		\$212.15
DW01377GBYN	Windshield	2.3	Hrs	\$85.00	Y		\$195.50
HAH000448	Adhesive	1	Eac	\$48.00	Y	flat	\$48.00

Sub Total	\$455.65
Tax	\$15.61
Gross Total	\$471.26
Deductible	\$0.00
Net Total	\$471.26

CONTRACT FOR SERVICE, ASSIGNMENT OF PROCEEDS, BENEFITS, AND AUTHORIZATION TO PAY: I have selected and hired 20/20 Auto Glass for the repair or replacement of the glass in my automobile. I hereby assign all insurance rights, benefits and proceeds under any applicable insurance policies to 20/20 Auto Glass LLC. I hereby direct my insurance carrier to release any and all information requested by 20/20 Auto Glass LLC, and to accept notice of claim from 20/20 Auto Glass LLC. If payment is made directly to insurer/agent by an insurer, it shall be endorsed over to 20/20 Auto Glass LLC within three business days. 20/20 Auto Glass LLC agrees not to charge the undersigned any amount, excluding any applicable deductible, when insurance proceeds are the chosen method of payment.

Signature

Kelly Gregg

EXHIBIT

0

2020-GRANGE000095
CONFIDENTIAL

EXHIBIT P



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 26-3554573

Short Pay Invoice

Invoice #: 9353

Invoice Date: 5/7/2014

Bill To:

Grange Insurance

This is a courtesy invoice because your company has paid our invoices in full in the past. If the overdue balance is not resolved in a timely fashion, we will invoke the appraisal clause as outlined in the policy when there is a dispute over the amount of loss.

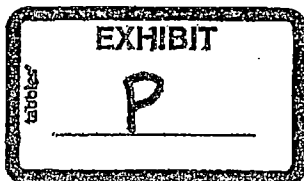
Item	Description	Hours/Qty	Rate	Amount
DW01377GBYN	Windshield	1	212.15	212.15T
Labor	Labor ()	2.3	85.00	195.50
HAH000448	2.0 Fast-Cure Urethane/Dam/Primer	1	48.00	48.00T
Customer Info	Customer: Kelly Gregg			0.00
	Dispatch/Referral/Claim #: 232326			
	Policy #: PPT 6850381-08			
	DOL: 4/29/2014			
	VIN: 2G1WH55K4Y9167143			
	Sales Tax		6.00%	15.61

We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Total \$471.26

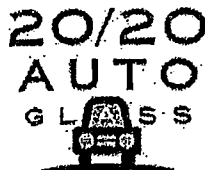
Payments/Credits -\$254.48

Balance Due \$216.78



2020-GRANGE000054
CONFIDENTIAL

EXHIBIT Q



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 26-3554573

Short Pay Invoice

Invoice #: 9371
Invoice Date: 5/7/2014

Bill To:
Grange Insurance

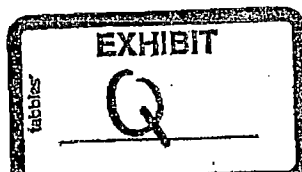
This is a courtesy invoice because your company has paid our invoices in full in the past. If the overdue balance is not resolved in a timely fashion, we will invoke the appraisal clause as outlined in the policy when there is a dispute over the amount of loss.

Item	Description	Hours/Qty	Rate	Amount
FW02505GBNN	Windshield	1	239.50	239.50T
Labor	Labor ()	2.8	85.00	238.00
HAH000448	2.0 Fast-Cure Urethane/Dam/Primer	1	48.00	48.00T
MW02149BLZ	Windshield	1	26.77	26.77T
Customer Info.	Customer: Kelly Gregg Dispatch/Referral/Claim #: 269421 Policy #: PPT 6850381-08 DOL: 5/1/2014 VIN: JM3LW28A150536880 Sales Tax			0.00
			6.00%	18.86

Assignment of proceeds, as well as inspection pictures, can be viewed online at www.claimharbor.com.

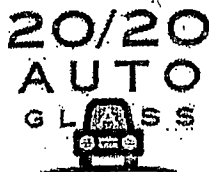
We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Total	\$571.13
Payments/Credits	-\$313.81
Balance Due	\$257.32



2020-GRANGE000090
CONFIDENTIAL

EXHIBIT R



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 26-3554573

Short Pay Invoice

Invoice #: 9474
Invoice Date: 5/22/2014

Bill To:
Grange Insurance

Item	Description	Hours/Qty	Rate	Amount
FW02195GGYN	Windshield	1	322.30	322.30T
Labor	Labor ()	3.3	85.00	280.50
HAH000456	2.0 Urethane, Dam, Primer, Non-Conductive	1	90.00	90.00T
MW02007BLZ	Reveal	1	48.24	48.24T
Customer Info	Customer: Keith Perkins Dispatch/Referral/Claim #: 452260 Policy #: PA994587105 DOL: 4/23/2014 VIN: WBADM6344YGU17645 Sales Tax			0.00
			6.00%	27.63

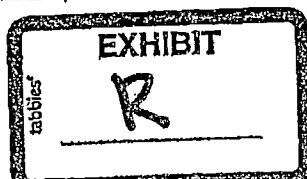
Assignment of proceeds, as well as inspection pictures, can be viewed online at www.claimharbor.com.

We never expressed an intent to accept an amount lower than that set forth in the invoice above. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Total \$768.67

Payments/Credits -\$436.94

Balance Due \$331.73



2020-GRANGE000076
CONFIDENTIAL

EXHIBIT S



PO Box 171852
Spartanburg SC 29301
864.641.3190 | www.2020glass.com
email: matt@2020glass.com
EIN: 26-3554573

Invoice

Invoice #: 9962
Invoice Date: 7/21/2014

***Demand for appraisal/umpire for completed auto glass installation.

Grange Insurance

We never expressed an intent to accept an amount lower than that set forth in the invoice below. We do not have a contract with your company and have not agreed to any predetermined pricing and object to the use of a pricing system without our express written consent. The customer is entitled to the full amount of his or her insurance benefit. Just because the insurer or TPA states an amount in a phone call or fax does not make that amount what is owed under the policy.

Item	Description	Hours/Qty	Rate	Amount
DW01529GBYN	Windshield	1	504.85	504.85T
Labor	Labor ()	2.8	85.00	238.00
HAH000448	2.0 Fast-Cure Urethane/Dam/Primer	1	48.00	48.00T
OETCK1529	Kit, 8pcs	1	20.34	20.34T
Deductible	Deductible		-100.00	-100.00
Customer Info	Customer: David Kellogg			0.00
	Dispatch/Referral/Claim #: 487866			
	Policy #: PA991089305			
	DOL: 7/14/2014			
	VIN: 1FTPW12584KC16989			
	Sales Tax		6.00%	34.39

We have a signed, completed work order archived online, wherein the above policy holder has provided us with an "Assignment of Benefits and Authorization to Pay." This, as well as inspection pictures, can be viewed online at www.claimharbor.com.

At this time we would respectfully invoke our "Right of Appraisal" as specified in your policy and begin proceeding through the process. The appraiser we have chosen is Auto Glass Appraisal Services at (727) 488-7247. Please have your appraiser contact them regarding this matter.

Total	\$745.58
Payments/Credits	-\$361.69
Balance Due	\$383.89

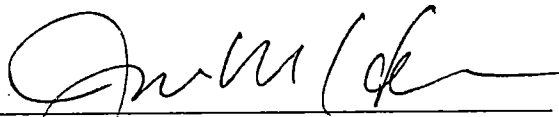


2020-GRANGE000071
CONFIDENTIAL

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 26, 2017



Joshua M. Henderson
360 East Henry Street, Suite 101
Spartanburg, SC 29302
(864) 582-2962
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-1787

Grange Mutual Casualty and Trustgard Insurance
Company,.....Respondents,

v.

20/20 Auto Glass, LLC,.....Appellant.

BRIEF OF APPELLANT

Joshua M. Henderson
ENDERSON, BRANDT & VIETH, P.A.
360 East Henry Street, Suite 101
Spartanburg, South Carolina 29302
(864) 582-2962

Charles J. Lloyd
Livgard & Lloyd PLLP
2520 University Ave SE, Suite 202
Minneapolis, MN 55414
(612) 825-7777
Attorneys for Appellant 20/20 Auto Glass,
LLC

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STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court err in concluding that a unilateral contract was formed when the stipulated facts show no intention of the parties to be bound by the terms of the stated offer?
- II. Did the trial court err in concluding that a unilateral contract was formed when there was no consideration for the alleged contract?
- III. Did the trial court err in relying on *Southern Glass & Plastics v. Kemper*, because it is distinguishable and because *Narrhun v. Alea London Ltd.* has changed the legal landscape?

STATEMENT OF THE CASE

The case comes to this Court on appeal from a judgment of the Anderson County Court of Common Pleas, Hon. R. Scott Sprouse presiding. The declaratory judgment action below was commenced on August 21, 2014 by Grange Mutual Casualty and Trustgard Insurance Company against 20/20 Auto Glass, LLC, after 20/20 invoked an appraisal remedy to resolve disputes over reimbursements of a handful of claims for replacement of broken automobile glass. The matter was tried to the court below, without a jury, on October 26, 2016 on stipulated facts submitted by the parties. On December 6, 2016, the trial court entered its order for judgment in favor of the insurers and against 20/20, declaring that 20/20 was contractually bound to the insurers' reimbursement rates because it accepted those

rates when it performed the work and created a unilateral contract with the insurers, that 20/20 was not underpaid and the insurers owed 20/20 nothing further on the glass claims at issue, that the insurers did not breach the terms of their insurance policies and that the insurers were not obligated to participate in the appraisal process as demanded by 20/20. On December 16, 2016, 20/20 timely moved the trial court to alter, amend or reconsider its order. The court denied that motion on January 18, 2017. 20/20 timely served its notice of appeal on February 10, 2017.

FACTS

This is a dispute over how Grange Mutual and Trustgard Insurance reimburse 20/20 Auto Glass for claims arising out of the replacement of broken automobile glass. Although there is a contract which specifies both the insurers' reimbursement obligation and the mechanism by which disputes are to be resolved, the insurers in this instance sought to bind 20/20 to a process not contemplated by the insurance contract.

The facts underlying the appeal were stipulated to by the parties and are not in dispute. 20/20 Auto Glass is a small South Carolina limited liability company in the business of repairing and replacing damaged automobile glass. (R. p. 91; Stipulated Facts ¶ 2). For customers who have insurance coverage for damaged glass, 20/20 receives an assignment of the insurance proceeds owed by the

insurance company as payment by the customer for the work performed. (R. p. 96; Stipulated Facts ¶ 35). 20/20 then bills and collects from the insurance company directly. (*See, e.g.*, R. p. 99; Stipulated Facts ¶¶56-57). That is exactly what occurred in each instance at issue in this action. (R. pp. 98-105; Stipulated Facts ¶¶ 49-100.

As part of the process, 20/20 and its customer, the Grange policyholder, notify Grange of the claim by contacting Safelite Solutions, Grange's third-party administrator. (R. pp. 94, 91; Stipulated Facts ¶¶ 25, 6). During the telephone call where the report is made, Safelite, on Grange's behalf, proposes pricing for the glass replacement work. (R. p. 97; Stipulated Facts ¶ 44). 20/20 expressly rejects pricing it finds to be unreasonable. (R. pp. 94, 95; Stipulated Facts ¶¶ 26, 32). 20/20 also sent a letter to Safelite prior to any of the claims at issue here, stating specifically that 20/20 rejects any effort by Safelite to set prices and that all future offers of pricing are rejected absent a written agreement signed by someone acting for 20/20. (R. pp. 95, 145; Stipulated Facts ¶ 32, Exh. C). The letter further notes that the rejection of the rates will be manifested by the invoice submitted by 20/20 for the work performed.

Notwithstanding the fact that 20/20 has rejected the pricing in writing and verbally over the telephone when the claim is reported, Grange, through Safelite, sends by fax a claim confirmation/referral sheet which again sets forth the pricing

Grange seeks to pay for the work. (R. pp. 95-96, 147, 160, 168; Stipulated Facts ¶ 33, Exhibits D, J and N). The referral sheets contain contradictory information about pricing. On the one hand, they state that “Performance of the services constitutes acceptance of the communicated price and billing instructions.” On the other, they indicate that if the cost of the claim is going to exceed \$1000 – the quoted price in the notification form in this case is always less than \$1000 – then approval needs to be obtained from Safelite. The referral sheets also indicate that the glass shop should contact Safelite, Grange’s third-party administrator for, among other things, “other charges.” That language is curious because if the price had been intended to be binding, there would be no “other charges” and it would not be possible for the claim to exceed \$1000.

20/20 then performs the replacement work for its customer. Instead of accepting Grange’s pricing offer, 20/20 is paid by its customer through the customer executing an assignment of the insurance proceeds owed. (R. p. 7; Stipulated Facts ¶ 35). Significantly, the insurance coverage is property damage insurance, it is not a reimbursement insurance. The insurance company owes a debt to the policyholder immediately upon the damage being sustained, whether or not the damage is ever repaired. The policyholder, 20/20’s customer, transfers that debt to 20/20 via the assignment in payment of the work performed. 20/20 then submits its invoice for the work to Grange. In each instance at issue here, 20/20

did not comply with either the billing instructions or the pricing provided by Grange in the confirmation documents. The submission of the invoice was the one and only way 20/20 notified Grange that the work had been performed.

The existence and validity of the assignments is not in dispute. Grange paid 20/20 directly in accordance with the assignment of proceeds. (R. pp. 99, 101, 103, 104, 105; Stipulated Facts ¶¶ 57, 71, 83, 87, 93, 98). The dispute arises because Grange paid less than the amount invoiced.¹ Subsequent to trying to resolve the dispute by sending follow up invoices (*see, e.g.*, R. pp. 100, 155-56; Stipulated Facts ¶¶ 59-60 and Exh. H), 20/20 sent a demand to appraise the loss to resolve the dispute. (*See, e.g.*, R. pp. 100, 158; Stipulated Facts ¶ 61, Exh. I). Grange responded to the demands for appraisal by commencing this action.

ARGUMENTS

Although there were multiple issues associated with the underlying action, the trial court resolved all of those issues by its determination that a unilateral contract was formed when 20/20 performed glass replacement services for its customers. (*See* R. pp. 11-12; Order, Conclusions of Law at ¶¶ 8-11). In essence, once it was determined that there was a unilateral contract in place, that conclusion resolved whether Grange fulfilled its contractual obligations to its policyholders and whether 20/20 had any ability to demand an appraisal. As a result, 20/20

¹ The dispute between the parties on the claims presented here involves only the appropriate amount to be paid for the glass replacement, not whether replacement was necessary.

addresses only the unilateral contract issue in this appeal. Should the Court agree with 20/20 that no unilateral contract was created, the case would need to be remanded to the trial court to address the merits of the remaining issues presented by the declaratory judgment action and the counterclaim.

With respect to the issue presented, because the case was decided on stipulated facts, the Court reviews the issue *de novo* and gives no deference to the trial court's legal conclusions. *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000) ("When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts."); *J.K. Constr. Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999) (where an appeal arises on stipulated facts, "the appellate court owes no particular deference to the trial court's legal conclusions.").

I. The trial court erred in finding a unilateral contract because there was no acceptance and no intent to be bound.

The trial court erred in concluding that there was an acceptance of Grange's offer by 20/20 such that a contract was formed binding 20/20 to the amounts proffered by Grange. As a matter of law, there was no acceptance and no intention to be bound.

The concept that an offer can be accepted by performance is well recognized in South Carolina and elsewhere. That acceptance, however, can be limited in two circumstances, both of which are present here. In addressing what the trial court

referred to as a unilateral contract – a contract that invites acceptance by performance – the Restatement (Second) of Contracts provides that “Except as stated in § 69, the rendering of performance does not constitute an acceptance if within a reasonable time the offeree exercises reasonable diligence to notify the offeror of non-acceptance.” Restatement (Second) of Contracts § 53(2). Similarly, the next subsection of the Restatement states: “Where an offer of a promise invites acceptance by performance and does not invite a promissory acceptance, the rendering of the invited performance does not constitute an acceptance if before the offeror performs his promise the offeree manifests an intention not to accept.” *Id.* 53(3). In the present case, the facts show that 20/20 notified Grange, both directly and through Grange’s third-party administrator, that it was not accepting the proposed pricing and it did so (a) within a reasonable time and upon the exercise of reasonable diligence and (b) prior to the time Grange performed on its promise, the issuance of payment. In other words, the facts show conclusively that, in this case, performance did not constitute acceptance of the proposed pricing terms.

First, 20/20 expressly rejected the pricing it was offered on the telephone when the claim was reported by 20/20 and its customer to Grange through the third-party administrator. (R. pp. 94, 95, 97, 98; Stipulation of Facts ¶¶ 26, 32, 45,

49). Even before the work was done, before the confirmation fax was sent, Grange was on notice that 20/20 was not accepting the proposed pricing.

Second, 20/20 notified Grange's third-party administrator in writing that 20/20 was not accepting the pricing laid out in the fax confirmations and would not negotiate pricing with claims administrators. (R. pp. 95, 145; Stipulation of Facts ¶ 32, Exhibit C). In that letter, 20/20 is explicit in its rejection of any effort to bind the company to pricing:

20/20 Auto Glass has received your communication purporting to assign a glass replacement job to our company. Every aspect of the communication is rejected in its entirety. ...

...

Third, we reject the pricing that is set forth in your communication. Given the totality of the circumstances, including the fact that you are a stranger to this transaction, you have no ability to bind either 20/20 Auto Glass or our customer to any pricing absent our express agreement. We have already verbally rejected the pricing when the claim was reported. We are further manifesting our rejection of the pricing in both this letter and in our invoice for this job. Absent a written agreement signed by an authorized representative of 20/20 Auto Glass, all future offers of pricing that are faxed to us are also rejected.

(R. p. 145; Exhibit C).

Third, at the time that 20/20 notified Grange that 20/20 had completed the work on its customer's vehicle, 20/20 indicated that it did not accept the offer. The fax setting forth the "offer" specifies that "Performance of services constitutes acceptance of the communicated price and billing instructions." (*See, e.g.*, R. pp.

147, 99; Exhibit D and Stipulation of Facts ¶ 53). The notification that the work was performed – 20/20’s submission of its invoice – complied with neither the communicated price nor the billing instructions. (See R. p. 151; Exhibit F). 20/20 did not have the customer sign its invoice as it was instructed to do so by the fax confirmation. Similarly, 20/20 did not have the customer sign the fax confirmation as it was instructed to do.

Any change in the terms of the offer by the offeree constitutes a rejection of the offer and amounts to a counteroffer. *Alpine Glass Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659, 666 (8th Cir. 2011), quoting *Markmann v. H.A. Bruntjen Co.*, 249 Minn. 281, 81 N.W.2d 858, 862 (1957)(“If the purported acceptance changes the terms of the offer, ‘it is not positive and unequivocal, and constitutes a rejection of the offer and a counteroffer.’”). In that case, the court determined that a glass company that did not follow the terms of the unilateral contract offer did not accept the offer by performance.

20/20 acknowledges that this Court previously distinguished the Eighth Circuit decision in *Southern Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 732 S.E.2d 205 (S.C. App. 2012). In that case, the Court wrote:

In those cases, the courts noted that the company had merely stated that billing at those rates would result in timely payment. The present case is more in line with the North Carolina, Idaho, and Washington cases. In this case, Kemper notified Southern Glass of the rates and stated “performance of services irrevocable constitutes acceptance of the above price and billing instructions.” Additionally, Southern Glass

accepted the prices in the phone conversation. By proceeding with the work after receiving notice of the prices via phone conversation and fax, Southern Glass accepted the prices.

Southern Glass, 399 S.C. at 497, 732 S.E.2d at 212 (distinguishing both the Eighth Circuit opinion in *Alpine Glass* and a Connecticut Supreme Court decision in *Auto Glass Express v. Hanover Ins. Co.*, 293 Conn. 218, 975 A.2d 1266 (2009)). The problem, at least with respect to the Court's attempt to distinguish *Alpine*, is that the Court was flatly wrong about the offer made by Farmers to Alpine; the facts in that case are essentially identical to the facts here. In its brief to the Eighth Circuit, Farmers wrote the following with citations to the record before the United States District Court:

Alpine received confirmation of the prices offered by Farmers in a variety of ways. In addition to the blast faxes, when a claim was called in to Safelite, Safelite confirmed by telephone Farmers' price terms with an Alpine representative, if available. (A.110 at ¶14; A.140 at ¶13.) During this call, Safelite would tell the policyholder and the Alpine representative the prices that had been offered by Farmers in the blast fax. (A.110 at ¶14; A.140 at ¶13.)

Alpine also received confirmation of the price offers via facsimile, which itemized price for the specific claim. (A.110-11 at ¶¶15, 17; A.140-41 at ¶¶14, 15; A.145-48). When notified of a claim, Farmers confirmed its price to the glass shop by facsimile before the work started. (A.110-11 at ¶ 15; A.141 at ¶ 17.) In some cases, Alpine would verify coverage with Farmers or Safelite before beginning work. (A.111 at ¶17.) During the relevant time for this litigation (2003-2006), every Farmers' facsimile to Alpine included a confirmation of price terms and, under the price language, stated: "Performance of services constitutes acceptance of the above price." (A.111 At ¶16; A.141 at ¶16; A.145-48.)

Brief of appellant Illinois Farmers Insurance Company at pp. 1-15, *Alpine Glass, Inc. v. Illinois Farmers Ins. Co.*, case number 10-1689 (filed May 27, 2010) (available at <https://pacer.gov>). This case is not merely similar to the case decided by the Eighth Circuit, it is identical.

Consistent with those sections of the Restatement, in South Carolina, in order for there to be a binding and enforceable contract, “there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989), *citing Hughes v. Edwards*, 265 S.C. 109, 220 S.E.2d 231 (1975). In the present case, the evidence is quite clear that 20/20 stated clearly and repeatedly that it did not accept the pricing proposed by Grange. 20/20 did so before it performed the work and it did so after, prior to when Grange tendered its payment to 20/20. There was no acceptance and there was no meeting of the minds. Therefore, there was no contract.

That there was no meeting of the minds is further evidenced by additional facts in the record. For example, the fax confirmation sheets, the identified basis for the unilateral contract offer, while stating the maximum price that Grange is supposedly willing to pay also states that “if the cost of the claim is over \$1000, please call or email Pricing Approval.” (R. pp. 147, 160; Exhibits D and J). The lack of intent to bind the recipient is further demonstrated with the referrals where

they indicate "Please contact Safelite...prior to beginning the work for any ... OEM, dealer, net priced, premium, *other charges* and any molding parts."(emphasis added).

Grange, when it issued payments to 20/20, paid amounts different than the offered amount. For example, for the Hampton claim (R. pp. 98-100; Stipulated Facts ¶¶ 49-61), the referral sheet laid out the formula that Grange stated it was willing to pay. (R. pp. 99, 147; Stipulated Facts ¶¶50-53, Exhibit D). That formula works as follows:

NAGS Benchmark (\$217.09, from Exhibit F) times 59% =	\$128.08
Labor \$30 flat plus \$30/NAGS Hour (2.3 hours, Exhibit F) =	\$ 99.00
Urethane kit \$15 flat =	\$ 15.00
Sales tax on materials 6% =	<u>\$ 8.58</u>
Total =	\$250.66

Grange paid 20/20 on this claim \$290.53. (R. p. 99; Stipulated Facts ¶ 57). Had there been a unilateral contract created by 20/20's performance, the amount paid would have been \$250.66. That the amount paid was different shows there was no meeting of the minds. The fact that Grange paid more than the alleged contract amount demonstrates that Grange understood the proposed pricing was not accepted by 20/20's performance of the replacement services.

Similarly, the Collins claim resulted in a payment different than the amount stated in the referral sheet that forms the basis for the unilateral contract claim. There, the referral sheet states a specific price to be paid, \$248.00. (R. p. 160; Exhibit J). Notwithstanding the fact that Grange claims there was a contract formed when 20/20 performed the replacement of the Collins windshield, Grange paid a different amount, \$302.21. (R. p. 101; Stipulated Facts ¶ 71). Again, the amount was more than the “contract” amount, demonstrating that Grange understood that its proposed pricing was not accepted by 20/20 when it replaced the damaged glass.²

A further problem with the trial court concluding that a valid unilateral contract was formed in this instance involves the fact that Grange is improperly attempting to modify its prior existing insurance contract obligation to its policyholder with its unilateral contract offer. In 2013, the South Carolina Supreme Court reaffirmed its view that an anti-assignment clause in an insurance policy does not preclude post-loss assignments. The Court held that when the loss has occurred – in the present case, after the vehicle has been damaged – the claim against the insurance company is vested and can be assigned:

² The third and final claim for which there is a copy of the referral sheet in the record, the Gregg Impala claim (as opposed to the Gregg Mazda claim), also resulted in a payment different than what was supposedly agreed upon, although the difference on this claim is only \$ 0.32. *Compare* Stipulated Facts ¶ 77 (R. p. 102) with ¶ 83 (R. p. 103).

As a general principle, a clause restricting assignment [in an insurance policy] does not in any way limit the policyholder's power to make an assignment of the rights under the policy ... after a loss has occurred.... It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property.

Narruhn v. Alea London Ltd., 404 S.C. 337, 344, 745 S.E.2d 90, 94 (2013)(quoting *Williston on Contracts* § 49:126 (4th ed. 2000)).

In this case, the damage to the windshield occurred prior to the insured contacting 20/20 or Grange. The claim under the policy was vested at the time the windshield was damaged; the amount due under the insurance policy and the debt owed by Grange was fixed at that point in time. Grange's entire unilateral contract argument focuses on events that happen after the loss occurred. Consequently, Grange is attempting to reduce its debt owed under the insurance policy that has already vested. The attempt to restrict its payment is an effort to prevent the assignment of the debt, the chose in action, which is plainly not permitted in South Carolina subsequent to *Narruhn*.

At its core, the scenario presented by this case is that 20/20 has two competing offers available to it relative to payment for its replacement services. On one side is the offer from the insurer to be paid at a particular price – an offer 20/20 expressly rejected. On the other side is the offer from the customer, Grange's policyholder, who will pay 20/20 by assigning the full amount of the policy proceeds owed by Grange. 20/20 is absolutely entitled to reject Grange's

offer and accept the offer from the customer without Grange being able to interfere in that bargain in any way. 20/20 could have agreed to Grange's pricing but it did not. The ability of the customer to assign her vested claim against Grange cannot be restricted by the insurer according to the Supreme Court in *Narruhn*. That is exactly what Grange is attempting in this instance.

There can be little question that if Grange made an offer to its policyholder to resolve the glass claim for \$200, the policyholder could reject that offer. Grange could not then bind the policyholder by sending her a fax restating the \$200 offer and stating that having the work completed constituted acceptance of the pricing offer. Instead, the policyholder would be entitled to the full amount owed under the terms of her insurance policy notwithstanding any effort by Grange to avoid that obligation. Yet, that is precisely what Grange is attempting to do here, only directing the offer to 20/20, who is standing in the shoes of the policyholder as a result of the assignment of insurance proceeds.

The specific facts of this case show that there was no proper acceptance of Grange's unilateral contract "offer," that 20/20 timely notified Grange that it was not accepting the pricing proposal demonstrating that both aspects of the Restatement's limitations on acceptance by performance have been satisfied, and that Grange acknowledged that 20/20 was not bound by the terms set forth in the referral documents, both by what was stated in the documents themselves and by

Grange's payments after the work was completed. The facts are fatal to Grange's claim that a contract was formed. When combined with the Restatement provisions, it is very clear that the trial court erred in finding the existence of a unilateral contract.

II. The trial court erred in finding a unilateral contract because there was no consideration for the agreement.

Moving beyond the offer and acceptance/meeting of the minds/intention to be bound issue, the fact that there is no consideration at all for this supposed agreement constitutes a second basis for reversal of the judgment below. Even assuming for the moment that there was a proper offer and that performance of the work constituted acceptance of that offer, Grange provided no consideration for the agreement. Consideration is an essential element of any contract, including unilateral contracts. *International Shoe Co. v. Herndon*, 135 S.C. 138, 133 S.E. 202, 203 (1926) ("It is very true that mutuality of obligation is not an essential element in unilateral contracts....The nonrequirement of mutuality in such contracts, however, does not dispense with the necessity of a valuable consideration."). Accordingly, if there was no consideration, there was no contract.

The trial court's order for judgment in this case states that the unilateral contracts at issue were "supported by adequate consideration." (R. p. 13; Order, Conclusion of Law ¶13). It then concluded "Moreover, the unilateral contracts did

not lack consideration because 20/20 Auto Glass was ultimately paid the amount that Grange offered to pay.” (R. p. 13, Order, Conclusion of Law ¶ 14). The problem with the trial court’s conclusions with respect to consideration is that Grange merely offered *what it was already legally obligated to pay* by operation of its insurance contract with its policyholders.

In *Alpine Glass, Inc. v. Illinois Farmers Insurance Co.*, the United States District Court for the District of Minnesota decisively rejected the conclusion that is identical in every respect to trial court’s conclusions here with respect to the issue of consideration. Transcript of Summary Judgment Hearing, No. 06-CV-1148 (PJS/RLE)(D. Minn. Mar. 30, 2007) *aff’d*, *Alpine Glass Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659, 662 (8th Cir. 2011). Faced with the insurer’s argument that faxes sent to independent glass shops constituted binding unilateral contracts with the glass shops when the shops performed the work, the court denied from the bench the insurer’s motion for summary judgment and granted, *sua sponte*, summary judgment in favor of the glass shop.

The court in that case focused on the lack of consideration to form the agreement, specifically stating: “I don’t think that the circumstances here come close to presenting a case of unilateral contracts being formed.” Transcript at 48. Among other problems, the court noted that in these “contracts,” the insurer was not agreeing to do anything for the glass replacement company that it was not

already obligated by law to do, therefore the “contracts” suffered from a fatal lack of consideration. “The way I see it, you send these letters off to people saying we will follow the law. Here, you have to charge our prices. In return what we are going to do is what we are already legally required to do. It doesn’t sound like much of a deal from Alpine’s perspective.” (Transcript at 39-40).

The conclusion that there was no consideration in the *Alpine* is entirely consistent with the law in South Carolina. *City of Spartanburg v. Spartan Villa*, 273 S.C. 1, 5, 253 S.E.2d 501, 503 (1978)(“A promise by a party to do that which it has already legally obligated itself to do is not a valid consideration.”); *McLeod v. Sandy Island Corp.*, 265 S.C. 1, 11, 216 S.E.2d 746, 750 (1975)(“The authorities are clear that an agreement to do that which one is already legally bound to do is not sufficient consideration to support a contract.”); *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 54, 135 S.E.2d 311, 315 (1964).

The same failure of consideration analysis applies here. Grange’s obligation to the policyholder is fixed as of the time the damage is sustained. The insured is entitled to choose 20/20 to do work under South Carolina law, SC Code 38-57-75 (A), and is free to assign the proceeds of the policy as payment for the work. *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 444, 745 S.E.2d 90, 94 (2013). Under the terms of the referrals that are the basis of the unilateral contracts, at best what is promised is exactly what the insurer is already obligated to do under the law and

the terms of the insurance policy. At worst, it is an effort to do less than what is promised in the policy. 20/20 receives nothing in exchange from Grange for doing the work, demonstrating a complete lack of consideration for the alleged contract in this instance. That lack of consideration is fatal to the unilateral contract theory. The trial court's failure to acknowledge that Grange was only offering what it was obligated to pay under its insurance policy constitutes reversible error.

III. The trial court erred in relying on *Southern Glass & Plastics v. Kemper*, because it is distinguishable and because *Narrhun v. Alea London Ltd.* has changed the legal landscape.

The trial court relied heavily on this Court's decision in *Southern Glass & Plastics v. Kemper Ins. Co.* and the foreign cases cited in that decision. The facts of some of those cases are similar, but not identical to the facts here. In others of the cases, the facts are not similar at all. The differences in the facts between this case and all of those cited by the trial court, including *Southern Glass*, is what renders those other cases inapposite here.

In *Southern Glass*, the trial court relied on evidence that the glass company had agreed to the insurer's pricing during phone conversations and that the glass company had not contacted Safelite or the insurer to reject the pricing after receiving the faxed referral sheet. 399 S.C. at 497-98, 732 S.E.2d at 212-13. Here, the evidence shows that 20/20 rejected Grange's pricing proposals at every turn. The facts show that 20/20 specifically rejected Grange's pricing during the phone

calls with Safelite. (R. pp. 94, 95; Stipulated Facts ¶¶26, 32). As noted above, 20/20 also rejected the prices after receiving the faxed referral letters by submitting invoices in excess of the amounts in the referral letters and refusing to follow the billing instructions contained in the faxes. An additional fact that distinguishes this case from *Southern Glass* is that 20/20 wrote to Safelite putting it on notice that 20/20 was expressly rejecting the pricing in any future communications from Safelite absent an express written agreement to the contrary. (R. p. 95, 145; Stipulated Facts ¶ 32, Exh. C). 20/20 further emphasized its rejection of Grange's pricing by repeatedly emailing the insurer that it did not ever manifest intent to accept the stated prices. (R. p. 100, 155-56; Stipulated Facts ¶ 59, Exh. H, Stipulated Facts ¶ 60). The facts that were determinative in *Southern Glass* – the glass company accepting the prices on the phone and never expressly rejecting the prices – are all absent in the present case. Therefore, *Southern Glass* is factually distinguishable from the present case and should have no bearing on the Court's decision here.

Moreover, as noted above, the Supreme Court's decision in *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013), issued after this Court's opinion in *Southern Glass*, altered the legal landscape for cases such as this. The vesting of the claim at the time of the loss, when coupled with the consumer's right to choose a vendor to perform the replacement services without interference by the insurer,

South Carolina Code § 38-57-75(A) and (E)(2), effectively prevents Grange or any other insurer from making pricing offers to glass shops and forcibly binding those shops to those rates against their will if the shops perform the work. 20/20 had the ability to accept from its customers an assignment of the vested debt owed by Grange on each of these claims without Grange being able to interfere with that transaction. To conclude the contrary would permit Grange to offer pricing with the knowledge that 20/20 would never accept as a way of circumventing the statutorily protected consumer choice. Consequently, *Southern Glass* is inapplicable here both factually and legally.

The trial court also cited to *CIM Ins. Corp. v Cascade Auto Glass, Inc.*, 660 S.E.2d 907 (N.C. Ct. App. 2008), in support of its ruling. (R. p. 10; Order, Conclusion of Law ¶ 5, n. 3. That case involved another glass company along with several insurers' claims that unilateral contracts had been formed regarding the disputed invoices. *CIM*, however, is distinguishable on two grounds. First, there is no discussion of the consideration offered by the insurers in that instance. Indeed, given the block quote from *Erskine v. Chevrolet Motors Co.*, 185 N.C. 479, 117 S.E. 706 (1923), the decision suggests that the insurers promised something that they were not otherwise obligated to do but became obligated upon Cascade performing the replacement services. *CIM*, 660 S.E.2d at 910 quoting *Erskine* (emphasis added) ("where one makes a promise, *conditioned upon the*

doing of an act of another....”). In the present case, the promise made by Grange is not conditioned upon 20/20’s action but rather is conditioned upon the breakage of the glass and fulfillment of the insurance policy terms.

Second, there is no discussion of any assignments of the insurance proceeds or the corresponding contractual obligations owed by the insurers. The issues presented here by 20/20 were never addressed by the North Carolina Court of Appeals. As a result, that case is distinguishable the present case.

The other two cases cited by the trial court – and relied on by this Court in *Southern Glass* – are less applicable than even *CIM*. For example, in *Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.*, 141 Idaho 660, 115 P.3d 751 (2005), the Idaho Supreme Court confronted a question of interpretation of Idaho Farm Bureau’s insurance policy: “The issues presented require an interpretation of the insurance policy language and a determination of whether Farm Bureau met its obligations under the insurance contract.” 115 P.3d at 752. The entire case involved the meaning of Farm Bureau’s unique policy language; it had absolutely nothing to do with unilateral contracts. “After looking at the plain meaning of the words of the insurance contract at issue, the district court was correct in determining the policy is not ambiguous and that Farm Bureau has fully performed its obligations under the policy.” 115 P.3d at 755. That is clearly not the situation here. As a result, the Idaho case has no application to these facts at all.

Similarly, *Cascade Auto Glass v. Progressive Cas. Ins.*, 135 Wn. App. 760, 145 P.3d 1253 (Wash. App. 2006), is inapplicable because it involved facts that are radically different from the current case. There, the parties had entered into a written pricing contract that was terminable at will. 145 P.3d at 1255. In its analysis of the issue on appeal, the court noted that terminable at will contracts “may be unilaterally modified.” 145 P.3d at 1257. There was also no indication that the glass company objected to the alteration in the pricing terms and, in fact, the evidence was that such agreements were frequently modified. *Id.* Given those considerations, the Washington Court concluded: “Progressive can also modify its pricing terms unilaterally because the pricing agreement is terminable-at-will. Accordingly, in paying the revised amounts, Progressive has complied with its obligations under the pricing agreement.” 145 P.3d at 1258. Here, there was no prior terminable at will pricing agreement that may be unilaterally modified. Accordingly, both the reasoning and the outcome of the case are meaningless here.

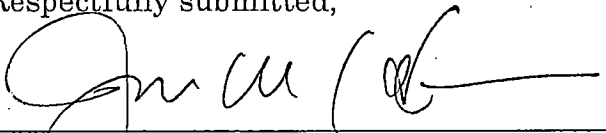
CONCLUSION

The undisputed facts show that neither side intended to be bound by the pricing terms set forth in Grange’s claim confirmation/notification documents. The documents themselves show that the pricing was not binding but was subject to alteration, 20/20 did not follow Grange’s instructions on either pricing or billing procedures and Grange then paid 20/20 more than the offered amounts. Beyond

the intent to be bound, there was no consideration given by Grange beyond what it was legally obligated to pay under the policy.

For all of the reasons stated, 20/20 Auto Glass respectfully requests that the judgment of the trial court be reversed and the matter remanded.

Respectfully submitted,



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The undersigned hereby certifies that the foregoing brief complies with Rule 211(b), SCACR.

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-1787

Grange Mutual Casualty and Trustgard Insurance
Company

Respondents,

v.

20/20 Auto Glass, LLC

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court properly applied this Court's precedent in *Southern Glass & Plastics, Inc. v. Kemper*, a case with identical material facts, and found 20/20 entered into a binding unilateral contract with Grange.
- II. The Circuit Court properly found the contract between Grange and 20/20 Auto Glass was supported by consideration.
- III. The Circuit Court should be affirmed because the transaction that took place in this case followed the statutory requirements of South Carolina Code § 38-57-75.

STATEMENT OF THE CASE

In *Southern Glass & Plastics Company, Inc. v. Kemper*, 399 S.C. 483, 732 S.E.2d 205 (Ct. App. 2012), this Court held that a unilateral contract is created when an insurer informs a glass repair company of the amount that it is willing to pay for auto glass repairs, tells the glass repair company that performance constitutes acceptance, and the glass company performs the glass repair services. The operative facts of this case are identical to those in *Kemper*. Since this Court rendered its decision in *Kemper*, South Carolina Code Section 38-57-75 has become law, codifying the exact transactions that took place in *Kemper* and in this case. Because the law has not changed since the *Kemper* decision was issued – in fact, South Carolina's insurance statutes are now directly in line with the holding in *Kemper* – the Circuit Court properly applied this Court's reasoning from *Kemper*, and this Court should affirm.

Respondents Grange Mutual Casualty and Trustgard Insurance Company¹ filed this declaratory judgment action on August 21, 2014 seeking a declaration that Appellant 20/20 Auto Glass, LLC ("20/20") entered into a unilateral contract with Respondents when it performed glass replacement work for five of Grange's insureds after Grange communicated the amount Grange was willing to pay for glass repair services. In each instance, a Grange insured had a vehicle

¹ Grange and Trustgard are related insurance companies. For ease of reference, both entities will be collectively referred to as "Grange."

sustain glass breakage. The insured selected 20/20 to perform repairs, and a three-way telephone call took place between Grange's authorized agent, the insured, and a 20/20 representative. During that three-way telephone call, Grange's agent informed 20/20 and the insured how much Grange was willing to pay for the repairs. 20/20 objected to the rate, but also guaranteed that the insured would not be required to pay anything out of pocket for the repairs. As a result, the insured chose to allow 20/20 to perform the work. Grange then followed the conversation up by sending a referral sheet to the glass repair company reiterating the price or rates that it would pay and stating that "performance of services constitutes acceptance of the communicated price and billing instructions." (R. pp. 10-11).

After receiving the referral sheet, 20/20 performed the repair services without any additional communication to Grange and then sent invoices directly to Grange. Grange issued payments to 20/20 based on the price and rates previously offered by Grange in both the phone conversation and in the referral sheet prior to the work being performed. In each instance, 20/20 accepted and deposited the payments.

After accepting and depositing the checks, 20/20 contacted Grange purporting to invoke the appraisal provision in the Grange policies by using an "Assignment of Proceeds and Authorization to Pay" that 20/20 obtained from the Grange insureds after it performed the work. Before performing the work, 20/20 assured the Grange insureds that they would not be personally responsible for any amounts that Grange did not pay. (R. p. 94, ¶ 26). Then, after performing the work, 20/20 had the insureds sign a Work Order giving the purported assignment. (R. p. 96, ¶ 36).

This case came before the Honorable Judge R. Scott Sprouse in a bench trial on October 26, 2016. The parties submitted a Stipulation of Facts and Exhibits prior to trial. After hearing the evidence and considering the arguments of the parties, the Circuit Court entered Findings of

Fact, Conclusions of Law, and Final Judgment on December 6, 2016 ruling in Grange's favor and finding a unilateral contract was formed between the parties when 20/20 performed the glass repair services after Grange communicated the price it was willing to pay for the services. In doing so, the Circuit Court relied upon this Court's holding in *Kemper*, and found the facts indistinguishable from the relevant facts of this case.

In particular, the Circuit Court found 20/20 was on notice of the amount Grange was willing to pay prior to performing the glass repair services, 20/20 was familiar with the pricing structure and did not find the pricing or rates to be ambiguous, and Grange communicated in a fax referral sheet that "[p]erformance of services constitutes acceptance of the communicated price and billing instructions." (R. pp. 10-11). Therefore, 20/20's performance of the work, knowing the price Grange was willing to pay, constituted acceptance of Grange's offer, thereby creating a valid, binding unilateral contract. When Grange paid for the work at the offered price and 20/20 accepted and deposited the payment, Grange satisfied its obligations under the contract and the insurance policy.

Appellant filed a Motion to Reconsider on December 16, 2016. Grange filed a memorandum opposing the Motion to Reconsider on January 13, 2017, and the Circuit Court entered an Order denying Appellant's motion on January 18, 2017. This appeal followed.

STATEMENT OF THE FACTS

A. Grange's network of glass repair providers.

Grange and Trustgard are insurance companies that are authorized to transact business and write insurance policies in the State of South Carolina. (R. p. 90, ¶ 1). Grange's glass claims are generally handled through a third-party administrator, Safelite Solutions ("Safelite"). (R. p. 91, ¶ 6).

Safelite works with Grange and other insurance companies to determine reimbursement rates for automobile glass repair and replacement work for given geographic areas based on quarterly reviews of National Auto Glass Specifications (NAGS) and industry data for glass claims. (R. p. 92, ¶ 13). NAGS is the industry standard for providing benchmark prices and standard labor/installation times for automobile glass replacement parts. (R. p. 92, ¶ 14). Both Grange and 20/20 base their pricing off NAGS benchmark prices. (R. p. 92, ¶ 15).

Through Safelite, Grange informs glass shops what Grange is willing to pay for glass repair services under an insured's automobile insurance policy. Grange provides advance notice to all network and non-network glass shops of the rates Grange approves for glass claims. (R. p. 93, ¶ 17). A "network glass shop" or "network provider" is a glass shop with whom an insurance company has an established, pre-existing agreement regarding the prices and rates for glass repair or replacement jobs. (R. p. 93, ¶ 18). A "non-network glass shop" or "non-network provider" is a glass shop that does not have a pre-existing agreement with the insurer. (R. p. 93, ¶ 18).

20/20 is not a member of the Grange network of glass shops and does not have a pre-established agreement with Grange regarding prices or rates. (R. p. 93, ¶ 21). However, on or about April 15, 2011, Safelite sent a letter on Grange's behalf to all network and non-network glass shops in upstate South Carolina – including 20/20 – announcing the pricing and rates that had been established for shops in the area, which prices were effective for work performed on or after April 22, 2011. (R. p. 93, ¶ 19).

Since January 2014, there are eighty-seven (87) glass shops and companies in Grange's South Carolina network that have performed glass services for Grange and Grange insureds at the rates and pricing established by Grange. (R. p. 93, ¶ 22). In addition, twenty-eight (28) non-network shops have also performed glass services for Grange and Grange insureds at the rates and

pricing established by Grange. (R. p. 93, ¶ 22). In total, at least one hundred fifteen (115) glass shops in South Carolina performed work at Grange's established rates between January 2014 and the date of the Stipulation of Facts signed on October 7, 2016.

B. Grange insureds approach 20/20 for glass repair services, and Grange communicates with the 20/20 representative and the insured.

When a customer approaches 20/20 to perform glass repair services under an insurance policy, a representative of 20/20 will connect the customer with the customer's insurance company or the company's representative – in this case, Grange's third-party administrator, Safelite.² (R. p. 94, ¶ 25). Then, the customer, the 20/20 representative, and the Grange representative take part in a three-way call.

During the call, the Grange representative reiterates the amount it is willing to pay for the glass repair services. (R. p. 95, ¶ 28). Then, the 20/20 representative reads a scripted response stating they accept the job but not the price. (R. p. 94, ¶ 26). Nonetheless, the 20/20 representative also guarantees that the customer will not be responsible for any difference in the cost. (R. p. 94, ¶ 26). Grange's representative then informs the insured that he or she may be responsible for any difference in price between what 20/20 charges – even though 20/20 has guaranteed that the customer will not have to pay anything – and the amount Grange is willing to pay in reimbursement – an amount that 115 shops in South Carolina have found acceptable. (R. p. 95, ¶ 30).

20/20 admits in this case that it never found Grange's representatives' responses vague or ambiguous. (R. p. 95, ¶ 31). After the telephone call, Grange's representative sends a document to 20/20 containing a dispatch or referral number. 20/20 receives the referral sheet before performing the work. (R. p. 99, ¶ 51). The referral sheet reiterates the price or rates that Grange

² This case involves repair services performed for five Grange insureds. The parties agree that each of the transactions were materially the same for purposes of this case.

is willing to pay for glass repair services. (R. p. 99, ¶ 52). Importantly, the referral sheet also contains the following statement: "Performance of services constitutes acceptance of the communicated price and billing instructions." (R. p. 99, ¶ 53).

20/20 further admits it understood Grange was not willing to pay any amount greater than the prices or rates stated over the phone by the claims representative, previously communicated to 20/20 by letter, and confirmed in the referral sheet. (R. p. 95, ¶ 31). Moreover, 20/20 never communicates a counterproposal to Grange for the price of the glass repair services. (R. p. 95, ¶ 32). Instead, 20/20 simply proceeds with the work with the only price ever communicated between the parties being the amount that Grange stated it was willing to pay. (R. p. 95, ¶ 32).

20/20 submits an invoice to Grange for the glass repair services that exceeds the amount Grange previously stated it was willing to pay. (R. p. 99, ¶ 56). In accordance with all of its communications before the work was performed, Grange sends payment for an amount less than 20/20's invoice but in the amount previously communicated by Grange. (R. p. 99, ¶ 57). In each instance, 20/20 accepts and deposits the payment. (R. p. 99, ¶ 57). Then, after accepting and depositing the payment, 20/20 sends a "Short Pay Invoice" to Grange. (R. p. 99, ¶ 58).

Months later, 20/20 makes a demand for appraisal under the terms of the insurance policy as a purported assignee of the insured's rights under the policy. (R. p. 100, ¶ 61). 20/20 obtains the assignment from the insured after the three-way telephone call during which 20/20 assures the insured that he or she will have no out-of-pocket obligations for the glass repair services. In fact, the insured signs the Work Order providing the assignment after the work has been completed. (R. p. 99, ¶ 55; p. 101, ¶ 69; p. 103, ¶ 82; p. 105, ¶ 101). The assignment reiterates that 20/20 "agrees not to charge the [insured] any amount excluding any applicable deductible, when insurance proceeds are the chose[n] method of payment." (R. pp. 102-103, ¶ 81). The Work

Orders do not state the amount that is being charged for the glass repair services.³ (R. pp. 149 & 162).

C. The Grange insurance policy.

The policy terms in this case are the same for each customer. In the policy, Grange “agrees to pay for” certain losses to a covered auto, including for glass breakage. (R. p. 130). The policy gives Grange the express right, at its option, to “pay to repair or replace the damaged or stolen property.” (R. p. 133, Payment of Loss). Grange limits its coverage to that “[a]mount necessary to repair or replace the property using parts from the vehicle’s manufacturers or parts from other manufacturers.” (R. p. 133, Limit of Liability).

20/20 purports to evoke the policy’s appraisal provision, which deals with disputes between an insured and the insurer over the actual cash value of the insured vehicle, not the cost of repairs. The provision states:

Appraisal

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

(R. p. 134). None of the claims in this case involve a dispute over the actual cash value of the vehicles.

³ Kelly Gregg, one of the Grange insureds who submitted a glass claim, signed a Work Order electronically. The Work Order was electronically converted – after Gregg had applied his signature – into an Invoice that included the price of the work performed. (R. p. 102, ¶ 79).

ARGUMENT

The Circuit Court properly applied this Court's precedent set forth in *Kemper* – a case with identical relevant facts – and held that 20/20 entered into a unilateral contract with Grange. Grange communicated the price it was willing to pay for the glass repair services and sent a referral sheet stating that “performance of services constitutes acceptance of the communicated price and billing instructions.” Then, without any further communication between 20/20 and Grange, 20/20 performed the glass repair services. Therefore, 20/20 entered into a binding unilateral contract with Grange to perform the glass repair services at the price previously established by Grange. When Grange paid that amount to 20/20 for the glass repair services, Grange satisfied its obligations under the contract and the insurance policy.

- I. **As this Court held in *Kemper*, Grange's unambiguous communication of the price it was willing to pay for the work constituted a unilateral offer, and 20/20's performance of glass repair services constituted acceptance of a unilateral contract at the price stated by Grange.**

Grange communicated the price that it was willing to pay to 20/20 before any work was performed. Grange communicated that performance constituted acceptance of the price. Then, after receiving the referral sheet with the offered price but without any further communication, 20/20 performed the work. As this Court held in *Kemper*, performance after receiving an unambiguous offer constitutes acceptance of the offer. Because 20/20 performed the work after receiving an unambiguous offer from Grange, its performance created a binding unilateral contract at the price offered by Grange.

- A. **On facts that are materially identical to those in this case, this Court in *Kemper* found a unilateral contract.**

“A unilateral contract is formed when one party makes a promise and expressly or impliedly invites the other party to perform some act as a condition for making the promise binding on the promisor.” *Kemper*, 399 S.C. at 492, 732 S.E.2d at 210 (quoting *CIM Ins. Corp. v. Cascade*

Auto Glass, Inc., 190 N.C. App. 808, 811, 660 S.E.2d 907, 910 (Ct. App. 2008)). A valid offer “identifies the bargained for exchange and creates a power of acceptance in the offeree.” *Saunders v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). “A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance.” *Id.* at 405, 581 S.E.2d at 165-66 (citation omitted).

The classic example of a unilateral contract includes an offer by a homeowner for a painter to paint his home for a fixed price, stating “I will pay you \$50 if you paint my house.” *Vanegas v. American Energy Svcs.*, 302 S.W.3d 299, 303 (Tex. 2009). The painter accepts the offer by performance – i.e., painting the home. The homeowner cannot attempt to decrease the price after the painter has completed the task, and the painter cannot paint the home and then tell the homeowner that he wants to be paid more than the offered price. By doing the work, the painter has accepted the contract. *See id.* (“But once the individual accepts the offer by performing, the promise to pay the \$50 becomes binding.”).

A unilateral contract has three elements: (1) a specific offer, (2) communication of the offer, and (3) performance. *Prescott v. Farmers Telephone Co-Op, Inc.*, 335 S.C. 330, 337, 516 S.E.2d 923, 926 (1999). Like the transaction in *Kemper*, each element is satisfied in this case.

The first and second elements are satisfied by communication of a clear offer by the offeror to the offeree. In *Kemper*, this Court quoted favorably from the North Carolina Court of Appeals decision in *CIM Ins. Corp.* dealing with the communication of an offer for a unilateral contract. Notably, this Court recognized the many ways in which the insurance company in *CIM Ins. Corp.* communicated the amount it was willing to pay for the repair services prior to and after the performance of the work:

The court found the prices were communicated (1) via letter to defendant’s shops, (2) via telephone when initial claims were made,

(3) via confirmation fax after claims were made but before work was performed, and (4) via eventual payment of invoices at the GMAC rate.

Kemper, 399 S.C. at 492, 732 S.E.2d at 209-210 (citing *CIM Ins. Corp.*, 190 N.C. App. at 812, 732 S.E.2d at 910). These are precisely the same ways in which Grange communicated the amount it was willing to pay 20/20 for the repair services here. (R. pp. 10-11, ¶ 7). Grange communicated the pricing or rates in four ways: (1) by letter sent by Safelite on Grange's behalf dated April 15, 2011, which 20/20 received; (2) by telephone during the three-way call with the Grange insured, 20/20 and the Grange representative; (3) by letter or fax in the referral sheet; and (4) by payment after receiving an invoice from 20/20. (R. pp. 10-11, ¶ 7).

As in *Kemper*, the first and second requirements for a unilateral contract in this case were satisfied when Grange communicated specific offers to 20/20 stating the price it was willing to pay for the glass repair services. The Circuit Court found Grange unambiguously communicated the price it was willing to pay 20/20 for the glass repair services. (R. pp. 8, ¶ 14). Moreover, 20/20 concedes that it understood Grange's pricing structure and did not find the pricing or rates to be vague or ambiguous. (R. p. 11, ¶ 7).

The third requirement for a unilateral contract was satisfied when 20/20 performed the glass repair services after receiving the referral sheet with Grange's offered price and without any further communication to Grange or Grange's representative. In *Kemper*, this Court held that the glass repair shop's performance of the repairs constituted acceptance of the offer: "By proceeding with the work after receiving notice of the prices via phone conversation and fax, Southern Glass accepted the prices." *Id.* at 497, 732 S.E.2d at 212. The same transaction occurred here. After Grange sent referral sheets to 20/20 stating the amount it was willing to pay and that "[p]erformance of services constitutes acceptance of the communicated price and billing

instructions,” 20/20 performed the work. By doing so, 20/20 accepted the specific offer communicated by Grange and created a contract at the pricing offered by Grange.

The facts of this case are identical to those in *Kemper*. Grange stated the amount it was willing to pay and sent a referral sheet to 20/20 stating that performance constituted acceptance of Grange’s offered price. 20/20 performed the work, thereby accepting the offer and creating a unilateral contract at Grange’s offered price. Therefore, the Circuit Court properly relied upon this Court’s holding in *Kemper* and found Grange’s payment of the offered price after 20/20 performed the work satisfied Grange’s contractual obligations.

B. Appellant’s efforts to distinguish this case from *Kemper* fall flat.

In an effort to avoid this Court’s binding precedent set forth in *Kemper*, Appellant argues this case is distinguishable. However, the facts of this case are identical to the material facts in *Kemper*, and the two cases are indistinguishable.

i. In *Kemper*, as in this case, the unilateral contract was not accepted or rejected by the glass company’s words, but rather by its performance.

The adage that actions speak louder than words has particular significance in the context of unilateral contracts. Appellant claims *Kemper* is distinguishable because the glass company in that case verbally agreed to the insurer’s pricing during the phone conversation. However, this Court held it was the company’s actions, and not its words, that created the unilateral contract: “a unilateral contract was created by Southern Glass’s *performing* the work on Kemper’s insureds, not by Southern Glass’s verbal response.” *Kemper*, 399 S.C. at 498, 732 S.E.2d at 213 (emphasis in original). The glass company in *Kemper* objected to the transcript of the telephone conversation and raised that issue on appeal. On appeal, this Court held admission of the transcript was not prejudicial because the glass company’s performance constituted acceptance of the contract.

Like 20/20 here, the glass company in *Kemper* routinely informed Safelite – the third-party administrator for glass claims – that the glass company rejected the quoted rates, that its contract was between the glass company and the customer, and that it was not entering into a contract by performing the work. *Id.* at 488, 732 S.E.2d at 208. Despite the glass repair shop’s words, the Court in *Kemper* held that the shop’s actions – performing the work – constituted acceptance of the contract at the price offered by the insurer. The same rule applies here. Regardless of 20/20’s words, its conduct in performing the work after Safelite sent the referral sheet stating that performance constitutes acceptance created a binding unilateral contract.

ii. The Supreme Court’s decision in *Narruhn v. Alea London Ltd.* has no application in this case.

In an apparent effort to avoid this Court’s clear precedent in *Kemper*, Appellant argues that South Carolina law has changed as a result of the Supreme Court’s decision in *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013). That case dealt with a post-judgment assignment of an insured’s breach of contract claim for failure to defend and indemnify an insured under a liability policy. None of those issues are present in this case. The glass breakage claims are wholly unrelated to liability claims, there is no judgment against any insured, and Grange satisfied its contractual obligations to its insureds – their windows were repaired at no cost to the insured. Therefore, *Narruhn* has no relationship to the issues in this case.

Instead of relying on the actual holding in *Narruhn* – which merely held that an insurance company lacked standing to object to a judicial assignment of an insured’s claim in a case to which the insurance company was not a party – Appellant argues that *dicta* in the *Narruhn* opinion changed South Carolina law. Specifically, Appellant argues the holding in *Narruhn* changed South Carolina law with respect to assignments of an insured’s rights after a loss. However, the Supreme Court clearly stated that it was *not* ruling on that issue: “*Although we need not reach the issue*

here, it appears the referee did not believe Insurer's approval of the assignment of RKC's rights was required, and we note it is generally held that an assignment after a loss has already occurred does not require an insurer's consent." *Id.* at 344, 745 S.E.2d at 93-94 (emphasis added). The holding in *Narruhn* did not purport to change South Carolina law.⁴

The glass repair shop in *Kemper* obtained assignments from the insureds. *Kemper*, 399 S.C. at 488, 732 S.E.2d at 208. There has been no change in the law of post-loss assignments since *Kemper*. Because the Supreme Court's holding in *Narruhn* did not create any substantive change in South Carolina law with respect to post-loss assignments, the opinion in *Narruhn* has no bearing on this case, and the holding in *Kemper* controls here.

The Supreme Court's holding in *Narruhn* has no bearing here for a second reason: The Circuit Court here did not rely on the assignment in reaching its decision. The question in this case is whether 20/20 entered into a unilateral contract with Grange – not Grange's insured – when 20/20 performed glass repair services after Grange communicated the amount it was willing to pay for the services and communicated that performance constituted acceptance of Grange's offer. If there is a unilateral contract, then the assignment is irrelevant because Grange satisfied its obligations under both the unilateral contract and the insurance policy when it paid and 20/20 accepted and deposited the payment. At that point, the glass was repaired – satisfying Grange's promise under the insurance policy – and the repairs were paid for – satisfying Grange's promise under the unilateral contract. Therefore, the assignment is not relevant to the issues in this case.

⁴ Despite Appellant's argument that *Narruhn* changed the law with respect to post-loss assignments, Appellant states in its brief that the Supreme Court "reaffirmed its view" regarding post-loss assignments. (Initial Brief of Appellant, p. 13).

iii. The out-of-jurisdiction cases cited by Appellant are the same cases this Court considered in *Kemper*.

In *Kemper*, this Court evaluated cases from five other jurisdictions and found that the facts of the *Kemper* case – which are materially identical to the facts in this case – were more in line with the other jurisdictions that had found a unilateral contract. *Kemper*, 399 S.C. at 498, 732 S.E.2d at 213 (“The present case is more in line with the North Carolina, Idaho, and Washington cases.”). In particular, this Court relied upon the North Carolina Court of Appeals’ decision in *CIM Ins. Corp. v. Cascade Auto Glass, Inc.*, 190 N.C. App. 808, 660 S.E.2d 907, 910 (2008), the Idaho Supreme Court’s decision in *Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.*, 141 Idaho 660, 115 P.3d 751 (2005), and the Washington Court of Appeals’ decision in *Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co.*, 135 Wash. App. 760, 145 P.3d 1253 (Ct. App. 2006). In each of those cases, the appellate courts held that the glass company’s performance of glass repair services after receiving offers from the insurers created binding unilateral contracts.

In *CIM Ins. Corp.*, the North Carolina Court of Appeals found the glass company accepted a unilateral contract by performing work after the insurer communicated the amount it was willing to pay. 190 N.C. App. at 812, 660 S.E.2d at 910 (“Because defendant performed the requested repairs or replacements, it accepted the terms of GMAC’s offers, forming valid unilateral contracts at GMAC’s stated prices.”). Like in this case, the glass service company in *CIM Ins. Corp.* disputed the prices set by the insurance company. *Id.* at 809, 660 S.E.2d at 909. However, just like this Court in *Kemper*, the North Carolina Court of Appeals looked to the glass service company’s actions, not its words, in determining that a unilateral contract was formed. “It is a fundamental concept of contract law that the offeror is the master of his offer. He is entitled to require acceptance in precise conformity with his offer. By choosing to do the work, the glass company accepted the insurance company’s offer. *Id.*

Appellant attempts to distinguish *CIM Ins. Corp.* on two grounds. First, Appellant claims the facts in *CIM Ins. Corp.* are different because the glass company in that case did not get an assignment from the insureds. This argument is a *non-sequitur*. Whether 20/20 obtained an assignment from the insured is wholly irrelevant because 20/20 entered into a unilateral contract with Grange by performing the work. The contracts between Grange and its insureds stated that Grange – at its own option – could choose to pay to repair the glass. By entering into a unilateral contract with 20/20 to repair the glass and paying 20/20 the amount owed under that unilateral contract, Grange satisfied its obligations under the insurance policies. Therefore, the assignment has no bearing on the facts of this case and would not have had any bearing on the case in *CIM Ins. Corp.*

Appellant also argues that the Court in *CIM Ins. Corp.* failed to address the requirement of consideration. However, the Court in that case – and this Court in *Kemper* – did not discuss consideration because the consideration was obvious. The amount offered by Grange for the glass repair services is the most classic form of consideration – money. Grange offered to pay 20/20 a fixed sum if 20/20 performed repairs to Grange’s customers’ glass. Consideration from Grange came in the form of the monetary payment, and acceptance from 20/20 came in the form of performing the work. Therefore, the contract was supported by adequate consideration.⁵

Appellant’s arguments with respect to *Progressive Cas. Ins.* likewise fail to show a meaningful distinction. Appellant argues *Progressive Cas. Ins.* is different because the glass company in that case had a prior contract with the insurance company. However, the holding in *Progressive Cas. Ins.* did not rely upon the prior contractual relationship. In fact, the Washington Court of Appeals held that the prior contract was terminated by the insurance company when it

⁵ The issue of consideration is further discussed below in Section II.

notified the glass company of changes in its approved rates for glass repair services. *Progressive Cas. Ins.*, 135 Wash. App. at 768-69. After making that determination, the Court of Appeals found that – despite the fact that any prior contracts were no longer effective – the glass company entered into new unilateral contracts with the insurer every time it performed glass repair services after the insurer communicated the amount it was willing to pay.⁶ *Id.* at 769 (“Cascade created binding unilateral contracts each time it repaired or replaced auto glass for Progressive’s insureds after receiving Progressive’s new offer.”). Likewise, 20/20 entered into a unilateral contract with Grange each time it performed glass repair services. Therefore, the holding in *Progressive Cas. Ins.* fits squarely with the facts of this case.

Lastly, Appellant attempts to distinguish *Idaho Farm Bureau Ins. Co.*, based on the specific policy language at issue in that case. Admittedly, the Farm Bureau policy in that case had somewhat different language. However, this Court’s reliance on the opinion in *Idaho Farm Bureau Ins. Co.* was not based upon the policy language. Rather, this Court cited the Idaho Supreme Court’s decision for the description of the options that the auto glass company had when faced with the offer from the insurance company:

Cascade had one of three options available to it upon receiving Farm Bureau’s notice: it could simply do the work and accept the amount Farm Bureau had stated it would pay; it could accept the insurance payment and collect the difference from the insured; or it could refuse to perform services for Farm Bureau insureds unless the customer paid it for the work, leaving the customer to seek reimbursement from Farm Bureau.

Idaho Farm Bureau Ins. Co., 141 Idaho at 664, 115 P.3d at 755. The Idaho Supreme Court found the glass company chose the first option by performing the work. *Id.*

⁶ The insureds in *Progressive Cas. Ins.* also gave assignments to the glass repair shop. *Id.* at 763, 145 P.3d at 1254. Nonetheless, the Washington Court of Appeal – like this Court in *Kemper* – focused on the contract entered into between the insurer and the glass repair company.

20/20 had the same three choices as the glass company in *Idaho Farm Bureau Ins. Co.* 20/20 could choose to do the work at the price offered by Grange – which it did. Alternatively, 20/20 could have accepted payment from Grange for the amount Grange offered and then sought to pursue the difference from the insured. However, 20/20 precluded itself from this avenue by guaranteeing to the insured before the job was assigned to 20/20 that the insured would never have to pay anything out of pocket. Lastly, 20/20 could have refused to deal with Grange at all and simply contracted with the insured, making the insured pay, and leaving the insured to pursue recovery directly from Grange. Obviously, 20/20 did not choose the last two options.

The quoted language from *Idaho Farm Bureau Ins. Co.* highlights the problem with 20/20's approach in this case. 20/20 claims it is entitled to additional recovery under the insurance policy because the insured can choose whatever glass company it wants, and the insured signed an assignment of its claim to 20/20. However, if the insured had ever faced the risk that 20/20 would seek a direct payment from the insured for the glass services, then the insured would never have selected 20/20. Instead, the insured would have chosen to go to one of the 115 auto glass servicers in South Carolina who would do the work at Grange's rate. To avoid this problem and obtain the work, 20/20 guarantees to the insured that the insured will never be charged for any work. The guarantee is an inducement to get the insured to choose 20/20 to perform the work.

Only after receiving the guarantee does the insured agree to allow 20/20 to do the work. (R. p. 94, ¶ 26; p. 95 ¶¶ 29-30; p. 96, ¶ 36). Nonetheless, 20/20 claims that the assignment from the insured – obtained *after* the work has already been completed – somehow allows 20/20 to obtain more than the amount Grange has agreed to pay. An assignee is in no better position than the assignor. *See e.g., First Nat. Bank of S.C. v. Wade*, 245 S.C. 426, 430, 141 S.E.2d 102, 104

(1965) (“generally the assignee has no better rights than his assignor.”) (citation omitted). If the insured was never under an obligation to pay any money to 20/20, then neither is Grange.

iv. This Court in *Kemper* already distinguished and disagreed with the other out-of-jurisdiction cases cited by 20/20.

In *Kemper*, this Court reviewed and rejected the Eighth Circuit’s reasoning in *Alpine Glass, Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659 (8th Cir. 2011) and the Connecticut Supreme Court’s reasoning in *Auto Glass Express, Inc. v. Hanover Ins. Co.*, 293 Conn. 218, 975 A.2d 1266 (2009).⁷ In both of those cases, the appellate courts did not discuss any communication from the insurers to the glass companies that performance would constitute acceptance of the offered price. In *Auto Glass Express*, the Court expressly found that no such message was communicated to the glass company. *See* 293 Conn. at 228, 975 A.2d at 1273. In *Alpine Glass, Inc.*, the Eighth Circuit never discusses the referral sheet. Instead, the Eighth Circuit’s opinion only discusses “blast faxes” that were sent to glass repair shops throughout Minnesota. *See* 643 F.3d at 662. In the analysis section of the Eighth Circuit’s opinion, the Eighth Circuit again focuses on the “blast fax” and never references or even acknowledges the referral sheet. *Id.* at 666-67 (“Even if the blast faxes constituted offers . . .”).

Although 20/20 digs so deep as to cite the parties’ briefs in the *Alpine Glass* case to show that the insurance company in that case sent a referral sheet to the glass service shop stating that performance constituted acceptance, there is no indication whatsoever that the Eighth Circuit ever

⁷ Although 20/20 argues that those distinctions are misplaced, it makes no substantive argument for why this Court improperly distinguished *Auto Glass Express*. As this Court noted in *Kemper*, the offers in *Auto Glass Express* case did not include language that performance constituted acceptance: “Moreover, nothing in the language of the pricing letters, either expressly or impliedly, suggests that the mere performance of glass repairs on automobiles insured by the defendant was sufficient to bind the plaintiffs to the defendant’s prices.” *Auto Glass Exp., Inc.*, 293 Conn. at 228, 975 A.2d at 1273; *see also Kemper*, 399 S.C. at 495, 732 S.E.2d at 211. Therefore, Grange’s referral letters stating that performance constitutes acceptance – like the referral letters in *Kemper* – clearly distinguish this case from the facts in *Auto Glass Exp., Inc.*

considered or was aware of that fact. Nothing in the Eighth Circuit's written opinion discusses the fact. This Court cannot divine the Eighth Circuit's impressions concerning the impact of the referral sheet when the Eighth Circuit never even references it in its written opinion. Thus, the relevant fact at issue in this case and in *Kemper* – that the insurer sent a referral sheet specifically referencing the work to be performed on the insured's car, the price or rate that would be paid, and stating that “[p]erformance constitutes acceptance of the communicated billing price and billing instructions” – does not appear to have been considered by the Eighth Circuit, and the case is properly distinguished. (R. p. 99, ¶ 53; 101, ¶ 67; p. 102, ¶ 78; p. 105, ¶ 101).

The Eighth Circuit's opinion in *Alpine Glass* is distinguishable for another significant reason. In *Alpine Glass*, the Eighth Circuit mistakenly applied a rule that applies to bilateral contracts. The Eighth Circuit held that “[i]f the purported acceptance changes the terms of the offer, ‘it is not positive and unequivocal, and constitutes a rejection of the offer and a counteroffer.’” 643 F.3d at 666 (quoting *Markmann v. H.A. Bruntjen Co.*, 249 Minn. 281, 81 N.W.2d 858, 862 (1957)). Respectfully to the Eighth Circuit, this rule of contract law does not apply in the context of a unilateral contract under South Carolina law. Rather, it applies to the formation of bilateral contracts.

The *Markmann* case that the Eighth Circuit relies upon addresses contract principles that expressly apply to bilateral contracts, not unilateral contracts. *Markmann*, 249 Minn. at 288-89, 81 N.W.2d at 863 (“If the contemplated agreement is to be bilateral, the proposal must state the terms of each promise in full.”) (quoting 1 Corbin, *Contracts*, § 83, p. 262). Then, the Court in *Markmann* found the contract in that case was bilateral: “We have no difficulty in reaching the conclusion in the instant case that the contract agreement contemplated between the parties was by its terms a bilateral one.” *Id.*

In contrast, acceptance of a unilateral contract occurs through substantial performance. If performance is completed, but non-conforming, the performance simultaneously constitutes acceptance and a breach of the contract, but it does not constitute a counteroffer. *See e.g.*, 25 Wash. Prac., Contract Law and Practice § 2:19 (3d ed.) (“In the case of unilateral contracts, acceptance occurs only through performance. Substantial performance (rather than full performance) is sufficient to constitute acceptance of an offer to form a unilateral contract, although defective performance may constitute a breach of the contract.”); Howard Engelskirchen, *Consideration as the Commitment to Relinquish Autonomy*, 27 Seton Hall L. Rev. 490, n. 186 (1997) (“Just as with a promise followed by a defective performance in breach of the promise, so too for a unilateral contract a defective performance may be in breach of the commitment offered in acceptance of the promisor’s offer, but in this instance the commitment is expressed by action and may be breached by the action that expresses it.”).

By performing the glass repair services after Grange stated that performance constituted acceptance, 20/20 accepted the contract at Grange’s price. Like the painter in the classic unilateral contract example, if the painter performs the work and then submits an invoice to the homeowner for more than the amount offered, his performance nonetheless constitutes acceptance, but the homeowner is only required to pay the amount previously offered. Likewise here – and in contrast to the Eighth Circuit’s bilateral contract reasoning in *Alpine Glass* – 20/20 accepted the unilateral offer by performing the work. Therefore, its decision to submit an invoice for more than the contractual price cannot be construed as a counteroffer.

II. Grange’s offer to pay 20/20 Auto Glass for glass repair services and subsequent payment constitutes both consideration sufficient to create the contract and satisfaction of its contractual obligations to both 20/20 and its insureds.

Grange contracted with its insureds to pay to repair the insured’s car windshield in the event of breakage. Grange expressly reserved the right to pay for the repair rather than making a

payment to the insured. (R. p. 133, Payment of Loss) (“We may, at our option, pay to repair or replace the damaged or stolen property.”). Therefore, when the insured sustained glass breakage, Grange could have paid the insured for the “amount necessary to repair or replace the property” or it could simply pay a vendor to have the property repaired. Grange chose the latter option in each of these instances. There is no claim that Grange paid its insureds directly. Instead, Grange chose to offer a fixed rate or price to 20/20 to perform the glass repairs, which 20/20 admittedly did in this case.

To avoid this Court’s finding in *Kemper* and the Circuit Court’s finding here that 20/20’s performance constituted acceptance of Grange’s unilateral offer, 20/20 argues that Grange’s offer lacked consideration because Grange was already contractually obligated to its insured to pay for repairs to the windshield.⁸ However, the mere fact that Grange was satisfying another contractual obligation by contracting with 20/20 to perform the repairs does not mean that Grange’s offer to pay money to 20/20 lacked consideration. Grange had no contractual obligation to pay money directly to its insured. At its option, Grange could choose to pay to repair the vehicle instead of paying its insured, which is exactly what it did here.

Grange had a contractual obligation to its insureds to pay to repair the windshields. Grange satisfied that obligation by entering into a separate unilateral contract with 20/20 to perform the repairs. Both contracts are enforceable by the parties to the contract. Suppose, for example, that Grange had entered into a bilateral contract with 20/20 instead of a unilateral contract, Grange paid 20/20 beforehand, and 20/20 failed to perform the glass repairs. Under those circumstances,

⁸ Perhaps because there is no authority to the contrary, Appellant is forced to resort to citing an off-the-cuff oral holding in a summary judgment hearing in an out-of-jurisdiction case – citing to the transcript of a summary judgment hearing in a United States District Court in Minnesota. There is no legal analysis or supporting case law to support the holding.

Grange's insured could pursue Grange for failing to satisfy its obligations under the policy because Grange neither paid its insured directly nor paid to have the repairs performed. In turn, Grange could sue 20/20 for failing to perform the repairs that were promised. Both contracts are enforceable.

The cases cited by Appellant do not support its argument here. Two of the cases dealt with situations where one party to a contract attempted to change the contract's terms after entering into the contract. See *City of Spartanburg v. Spartan Villa*, 273 S.C. 1, 253 S.E.2d 501 (1978); *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964). Importantly, both of those cases only involved the same two parties to a pre-existing contract. One side of the pre-existing contract attempted to create a second contract between the same contracting parties in order to avoid a pre-existing contractual obligation between those two parties. See *Spartan Villa* (holding that a city could not increase the cost of a sewer permit after entering into a contract with a developer because the city was already contractually bound to provide sewer services for the development based upon the prior contract between the city and the developer); *Castell* (holding a debtor's promise to pay a liquidated debt on a truck after default was not sufficient consideration to create a new contract between the creditor and the debtor because the debtor already owed that obligation under the existing contract between the debtor and creditor).

Neither *Spartan Villa* nor *Castell* dealt with the creation of a new contract with a new party. Here, Grange did not use a promise to pay for repairs to modify an existing contract with any of its insureds. Rather, Grange used the offer to pay a fixed sum for repairs to create a new contract with a new party – 20/20 – in separate transactions. There was separate consideration paid in each of the five separate transactions.

In sum, Grange entered into a unilateral contract with 20/20 when 20/20 performed the work. At that point in time in each of the separate transactions, the price for the glass repairs was fixed and binding. Therefore, the insureds' post-performance assignment of any benefits under the insurance contract cannot increase Grange's obligations to 20/20.⁹

When 20/20 performed the repairs, it accepted Grange's offer of a unilateral contract. When Grange paid 20/20 for the work at the price offered by Grange, Grange satisfied its contractual obligation to 20/20 under the unilateral contract. At the same time, Grange satisfied its contractual obligations to its insured under the insurance policy. Therefore, the Circuit Court correctly applied basic principles of contract law when it found that Grange's payment to 20/20 simultaneously satisfied its contractual obligations to both 20/20 and to its insureds. (R. p. 12, ¶¶ 10-11).

III. After this Court's holding in *Kemper*, South Carolina Code § 38-57-75 became law, codifying the transactions that took place in *Kemper* and here.

20/20 is correct in one regard: South Carolina statutory law has changed since this Court's decision in *Kemper*. After this Court rendered its decision in *Kemper*, South Carolina Code § 38-57-75 came into effect on January 1, 2013. *See* S.C. Code Ann. § 38-57-75. Appellant cites this statute for the rule that an insured has the freedom to select whatever glass service shop he or she chooses. This is true. *See* S.C. Code § 38-57-75(A) (prohibiting an insurer from requiring that repairs be made by a particular provider of glass repair work). However, the statute does much more. Unlike the statutes cited by 20/20 from other jurisdictions, the South Carolina statute allows

⁹ 20/20's citation to *McLeod v. Sandy Island Corp.*, 265 S.C. 1, 216 S.E.2d 746 (1975) is even less applicable. That case dealt with whether a father's agreement in a divorce settlement to convey stock to his minor child was a gift or a sale. *Id.* at 9, 216 S.E.2d at 749. The Court found that the provision in the divorce agreement for the father to convey stocks to his minor child was merely a gift and not a sale. *Id.* There is certainly no argument in the present case that Grange's payment to 20/20 constituted a gift.

the insurer to establish rates that it believes are fair and reasonable and gives the insurer the right to inform an insured that he or she may be responsible for the difference in cost if the insured selects a glass repair shop that charges a higher rate.

The interaction that took place in *Kemper* and in this case is now statutory. “When an insured requests to have covered glass repair work performed by a provider who is not a member of the insurer’s or third party administrator’s vehicle repair program” – such as 20/20 here – “the insurer or third party administrator must” take certain steps. S.C. Code § 38-57-75(E). The insurer “must confirm that the provider agrees to perform the repair at the insurer’s fair and reasonable rate of reimbursement.” S.C. Code § 38-57-75(E)(1). If the provider agrees to the rates, then no further statements regarding costs shall occur. However, if the provider does not accept the rates, “the insurer or third party administrator may inform the insured that he will be responsible for additional costs.” S.C. Code § 38-57-75(E)(1). Grange satisfied this statutory requirement by informing the insured that he or she may be responsible for the additional cost *even though* 20/20 had already guaranteed during the telephone call that the insured would not be responsible for any additional cost. The Circuit Court found that the transactions that took place in this case followed this statutory approach. (R. p. 7, n.1).

Nothing in the statute suggests that the insurer can be forced to pay the repair shop's higher rates. Instead, the insurer sets a "fair and reasonable rate of reimbursement," and the insured can be required to pay the difference if he or she insists on using the more expensive shop anyway.¹⁰

The only change that has taken place in South Carolina law since this Court's opinion in *Kemper* is the codification of the precise transaction that took place in *Kemper* and in this case. The new statute is consistent with and confirms the appropriateness of this Court's opinion in *Kemper*.

CONCLUSION

The Circuit Court properly found Grange entered into a unilateral contract with 20/20. By 20/20's own admission, Grange clearly communicated the amount it was willing to pay for the glass repair services, and Grange sent a referral sheet to 20/20 stating that performance constituted acceptance of the offered price. Then, after receiving the referral sheet, 20/20 performed the work without any additional communication with Grange. By doing so, 20/20 entered into a binding,

¹⁰ The statutory language also makes the Idaho Supreme Court's holding in *Idaho Farm Bureau Ins. Co.* more applicable. The Supreme Court in that case relied on the fact that the insurance policy stated the insurer would pay "the cost of repair agreed upon by" the insurer. *Id.* at 661, 115 P.3d at 752. Under the South Carolina statute, Grange sets its "fair and reasonable rate." S.C. Code § 38-57-75(E) (using a possessive for the "*insurer's* fair and reasonable rate" to indicate that the rate is established by the insurer). There is no meaningful difference between an amount "agreed upon" by the insurer or the "insurer's fair and reasonable rate." Both phrases indicate that the authority to set the amount owed under the policy rests with the insurer.

As noted by the Supreme Court of Idaho in *Idaho Farm Bureau Ins. Co.*, there may be other causes of action or challenges which could be asserted if an insured believed the rates the insurer was willing to pay were not fair and reasonable. 141 Idaho at 664, 115 P.3d at 755. Those issues do not apply here because the insured was promised by 20/20 Auto Glass before any work was ever performed that the insured would not be personally responsible for any of the glass repair cost. Therefore, this is not a situation where the insured – or 20/20 as the insured's purported assignee – could not get the work done at Grange's fair and reasonable rate.

unilateral contract at Grange's offered price. When Grange issued payment in the amount offered, Grange satisfied its contractual obligations to 20/20 to pay for the work. Likewise, by paying 20/20, Grange satisfied its contractual obligations under the insurance policy to pay for repairs to the glass. Therefore, the Circuit Court properly entered judgment in favor of Grange, and this Court should affirm.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-1787

Grange Mutual Casualty and Trustgard Insurance
Company,..... Respondents,

v.

20/20 Auto Glass, LLC..... Appellant.

CERTIFICATE

I, Wesley B. Sawyer, Esquire, attorney for Respondent, certify that the Respondent's
Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule
211(b) of the South Carolina Court Rules.



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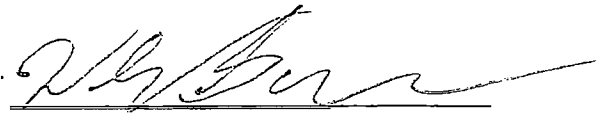
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INTRODUCTION

In their brief, Grange Mutual and Trustgard Insurance do not present the Court with a basis to affirm the trial court's judgment. The stipulated facts of this case are compelling and demonstrate conclusively that (a) neither party intended to be bound by the "offers" made by Grange; (b) there was no consideration for the alleged contract; and (c) the statute cited by Grange, South Carolina Code §38-57-75, conclusively establishes that there can be no binding agreement between Grange and 20/20 in this instance. Accordingly, the trial court's judgment should be reversed.

ARGUMENT

1. Neither Grange nor 20/20 intended to be bound.

As Grange points out in its brief, the South Carolina Supreme Court has held that a unilateral contract requires, among other things, "a specific offer." *Prescott v. Farmers Telephone Co-Op, Inc.*, 335 S.C. 330, 337, 516 S.E.2d 923, 926 (1999). The "contract" in this instance fails on this critical threshold requirement. Grange never addresses the fact that its written "offers" are not specific. As noted in 20/20's opening brief, the fax offer sheets contain at least two indications that the offers

are not for a specific price. (See R. pp. 147, 160, 168; Exhibits D, J and N). The offers provide for the possibility that the price charged by 20/20 could exceed \$1,000 and that if it did so, it would have to obtain approval for that price. That certainly indicates that if the price charged by 20/20 is less than \$1,000, no additional approval is required.¹ It also indicates Grange understood that 20/20 was not bound by pricing offered in the fax; if 20/20 were bound by that pricing, Grange would know that the amount charged would not exceed \$1,000 and thus would not have to provide for that contingency.

Moreover, the fax "offers" specify if 20/20 was to include other charges beyond what was specified, it should contact Grange's third-party administrator about those charges. Again, if Grange had intended to bind 20/20 to the pricing contained in the faxes, there would have been no provision at all for 20/20 to include other charges in its billing. Plainly, what was stated in the faxes *in this case* did not

¹ The Collins and Gregg referral sheets, Exhibits J and N (R. pp. 160, 168), state a specific price that Grange states it is willing to pay as opposed to just a pricing formula as is the case in the Hampton referral, Exhibit D (R. p. 147). Even though those two offers provide prices of \$248 and \$254.16, both state "If the cost of the claim is over \$1000, please call or email Pricing Approval."

constitute “specific offers” sufficient to form the basis of a unilateral contract.

The house painting analogy that Grange uses from a Texas case illustrates this point perfectly. Grange Brief at 9 *citing Vanegas v. American Energy Serv.*, 302 S.W.3d 299, 303 (Tex. 2009). There, the analogy was a homeowner offering to pay a painter \$50 if the painter paints the homeowner’s house. That is not what occurred in this case. Here, if Grange’s offer to 20/20 were applied to painting the homeowner’s house, the homeowner’s offer would be that she would pay \$50 to paint the house, but the painter should contact the homeowner if the cost of the job exceeds \$100 and if there were additional costs for items like additional materials. That is not a sufficiently definite offer to establish a unilateral contract upon performance.

Grange’s conduct post-performance by 20/20 further demonstrates that the offer was not intended to be binding. The undisputed evidence shows that Grange never paid the amount that was set forth in its offers. Grange claimed in its brief that “In accordance with all of its communications before the work was performed, Grange sends payment for an amount less than 20/20’s invoice *but in an amount previously*

communicated by Grange.” Grange Brief at 6 (emphasis added). That claim is flatly untrue. The record demonstrates without ambiguity that Grange never paid the amount it communicated to 20/20; it always paid more, further evidencing that Grange did not intend its offers to bind 20/20 to the pricing communicated. Grange is conspicuously silent on this fact in its brief.

Similarly, 20/20 never intended to be bound by the terms of the faxes. 20/20 rejected the pricing when it was offered generally, it rejected the pricing when it was offered over the telephone, it did not follow the specified billing instructions contained in the faxes and it did not use the rates specified in the faxes. In other words, it ignored, nearly in their entirety, the terms provided by Grange. Even so, Grange never rejected 20/20’s invoices as being non-compliant. Again, Grange never addresses that fact.

Because there is no evidence showing that either Grange or 20/20 intended to be bound by the terms of Grange’s fax confirmations, the trial court’s conclusion that a contract was formed when 20/20 performed work for its customers was plain error. As this Court has noted previously: “a contract only arises when there is an actual

agreement by the parties in which the parties demonstrate a mutual intent to be bound.” *Electro Lab of Aiken v. Sharp Constr.*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (S.C. App. 2004).² That analysis is completely consistent with the Supreme Court’s requirement that there must be a meeting of the minds “with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). Because the evidence here demonstrates no meeting of the minds and no intent to be bound, no contract – unilateral or otherwise – could have been formed. The trial court’s determination to the contrary constitutes reversible error.

2. As a matter of law, no consideration exists for the “agreement.”

A unilateral contract requires consideration. In the present case, there is no consideration because Grange did nothing more than what it was already obligated to do. That is not consideration to support its claim of a binding contract with 20/20.

² *Electro Lab* is of further significance because it cites favorably the Restatement (Second) of Contracts. As 20/20 argued in its opening brief – without response from Grange – under the Restatement, 20/20’s actions would not have constituted acceptance of Grange’s offer and no contract would have been formed. Yet another reason the trial court’s decision in this case should be reversed.

Grange's argument with respect to the consideration issues is tortured at best. It argues because it elected to pay 20/20 directly, that was consideration for the unilateral contract. That position has no support at all in the record. Nowhere in Grange's "offer" does it promise to pay 20/20 directly, as opposed to paying the policyholder; the confirmation faxes that form the "offers" only indicate when payment will be made, not to whom. (*See* R. pp. 147, 160, 168; Exhibits D, J and N, "Payment will be rendered upon receipt of funds from the client."). Consideration has to be stated in the offer. "The offer identifies the bargained for exchange and creates a power of acceptance in the offeree." *Prescott v. Farmers Telephone Co-op*, 335 S.C. 330, 336, 516 S.E.2d 923 (1999) *quoting* *Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (S.C. App. 1993) and Restatement (Second) of Contracts § 29 (1981). Because it did not include the promise to pay the funds to 20/20, that payment cannot constitute consideration for the agreement.

In reality, the payment was made to 20/20 not as consideration for the "agreement," but because of the assignment that was executed by 20/20's customers. (*See* R. p. 96; Stipulated Facts ¶ 35, "I assign any

and all insurance claims and all policy proceeds owed by my insurance company in connection with my damaged glass to 20/20 Auto Glass, to be paid directly to them.”). Upon execution of the assignment, there was no election for Grange to make about whom to pay – if such an election ever existed – because the policyholder properly assigned the proceeds to 20/20.

Grange’s claim that it has the ability to choose whom to pay is not at all supported by the policy language cited and is contrary to law. The language that Grange may elect to pay to repair or replace the damaged property does not determine the payee of what is owed, but rather reflects the ability of Grange to pay the repair or replacement cost as opposed to buying the vehicle from the policyholder under the actual cash value provision of the limit of liability. (*See* R. p. 133, 91-92; Exhibit A, p. D-4 and Stipulated Facts ¶ 10). Given that the policyholder retains the ability to determine what shop will perform the work under South Carolina Code 38-57-75, Grange cannot claim an ability to pay a repair facility directly because that would presume that Grange may select the repair facility. Moreover, Grange cannot claim that it has the legal ability to bypass the policyholder with its payment

absent either a directive or consent to do so. The debt that Grange was obligated to pay became fixed at the moment of damage and could be freely assigned and sold by the policyholder. *Narruhn v. Alea London Ltd*, 404 S.C. 337, 344, 745 S.E.2d 90, 94 (2013). As a matter of law, that prevents Grange from bypassing the policyholder with its payment.

At its core, Grange's contractual obligation under the insurance policy is to pay the amount necessary to repair or replace the policyholder's damaged glass. If that is all that it paid to 20/20, it did nothing more than what it was legally obligated to do, which cannot form the basis of consideration for a contract. The only thing that Grange points to as being beyond its pre-existing legal duty is that the payments were made directly to 20/20, something that was not included in its offers and was in fact compelled by the policyholders' assignments. That is not consideration sufficient to support the formation of a binding contract.³ Given that the trial court failed to

³ While Grange attempts to minimize the analysis provided by United States District Judge Patrick Schiltz in his on the record ruling that facts identical to these do not create unilateral contracts – even when viewing those facts in a light most favorable to the insurance company on a motion for summary judgment – it neither addresses that court's analysis nor cite's any contrary authority. *See* Grange Brief at 21, n. 8. While it references in passing *Southern Glass & Plastics Co. v. Kemper*,

identify any consideration for the agreement, it was reversible error for the court to conclude that a binding contract was formed on these facts.

3. South Carolina Code § 38-57-75 proves there is no unilateral contract.

Grange's final defense of the trial court's judgement is to cite to South Carolina Code § 38-57-75 and claim that the legislature somehow codified the Court's decision in *Kemper*. Grange Brief at 23-24. In fact, the statute makes clear that no unilateral contract is possible.

Section 38-57-75(E)(1) provides that if a glass shop, in this instance, 20/20, refuses to accept the insurer's proposed reimbursement rate, the policyholder may be informed that the policyholder "will be responsible for additional costs." This is significant with respect to this case for two reasons: one, it provides 20/20 with the statutory ability to reject Grange's proposed pricing; two, it establishes that 20/20 cannot be bound by those prices through some other means because the policyholder may be responsible for additional charges. If Grange had the ability to bind 20/20 to its pricing, the policyholder would never be

399 S.C. 483, 732 S.E.2d 205 (S.C. App. 2012), that case did not address any claim of lack of consideration. That fact is also true with respect to all of the cases from outside of South Carolina cited to by Grange that 20/20 distinguished in its opening brief. Grange therefore cites to no authority at all in support of its consideration position.

responsible for some additional amounts – the “offers” do not purport to limit themselves to what Grange will reimburse but rather attempt to place a limit on what 20/20 will charge. If the offers in fact led to a binding contract, 20/20 would be foreclosed from pursuing anyone for additional amounts beyond what Grange promised to pay. Yet, Grange acknowledges in its brief that Grange informed its policyholders that they may be responsible for some amounts out of pocket if they chose to have 20/20 replace their damaged glass. Grange Brief at 24. (*See also* R. p. 95; Stipulated Facts ¶30).⁴

Grange tries to contend that the statute somehow gives it the ability to set whatever pricing it wishes. Grange Brief at 24, n. 10. Unfortunately for Grange, the statute only applies to administrative requirements and not policy requirements. Section 38-57-75, provides that “[v]iolations of this section are subject to the provisions of the South Carolina Insurance Unfair Claim Practices Act,” S.C. Code Ann. § 38-59-20, *et. seq.* The South Carolina Supreme Court has held that jurisdiction over compliance with the Trade Practices Act and Claims Practices Act is vested with the Department of Insurance, not the

⁴ This further evidences that Grange did not intend 20/20 to be bound by the faxed “offers.”

courts. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001).

Apart from the fact that Grange is attempting to use the statute for an impermissible purpose, the wording of the statute does not give Grange *carte blanche* to determine what constitutes “fair and reasonable.” Were that to be the case, it would render the terms “fair and reasonable” completely meaningless; the phrases “the insurer’s rate” and “the insurer’s fair and reasonable rate” would have identical meaning. That cannot be presumed to be the legislature’s intent. Thus, Grange’s effort to take a statute that is to regulate and restrict an insurer’s conduct and turn it into something permissive fails.

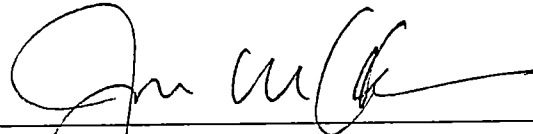
CONCLUSION

The stipulated facts demonstrate that this case does not present a situation where a unilateral contract exists. The wording of the “offers” that were made demonstrate that Grange did not intend to bind 20/20, as did both its words to the policyholders and its subsequent payments, which were all greater than what was proposed. Similarly, 20/20 at all times demonstrated that it did not intend to be bound by Grange’s “offers.” Moreover, Grange did not promise 20/20 to do anything that it

was not already legally obligated to do in exchange for 20/20's performance of the work. As a result, the effort to form a contract would fail for lack of consideration. Finally, the statute that Grange cites to justify the trial court's decision actually precludes there being a unilateral contract.

For all of those reasons, as well as the reasons set forth in its opening brief, 20/20 Auto Glass respectfully requests that the judgment of the trial court be reversed and the case remanded.

Respectfully submitted,



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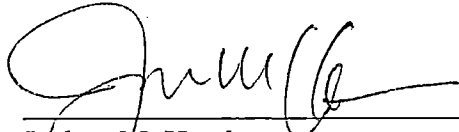
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October 26, 2017

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing brief complies with Rule 211(b), SCACR.

October 26, 2017



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Attorneys for Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Grange Mutual Casualty and Trustgard Insurance
Company, Respondents,

v.

20/20 Auto Glass, LLC, Appellant.

Appellate Case No. 2017-000259

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2019-UP-419
Submitted November 1, 2019 – Filed December 31, 2019

AFFIRMED

Joshua Matthew Henderson, of Henderson Brandt &
Vieth, PA, of Spartanburg, SC, and Charles J. Lloyd, of
Livgard & Lloyd, PLLP, of Minneapolis, MN, for
Appellant.

Ronald Barton Diegel and Wesley Brian Sawyer, both of
Murphy & Grantland, PA, of Columbia, for Respondents.

PER CURIAM: Grange Mutual Casualty and Trustgard Insurance Company filed
this declaratory judgment action against 20/20 Auto Glass, LLC, to determine

rights under an automobile insurance policy. 20/20 Auto Glass appeals, arguing the circuit court erred in (1) finding unilateral contracts were formed despite the parties' lack of intent; (2) finding unilateral contracts were formed when there was no consideration for the alleged contracts; and (3) relying on distinguishable case law. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in finding the existence of the requisite acceptance and intent to be bound to form unilateral contracts: *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 166, 594 S.E.2d 511, 516 (Ct. App. 2004) ("Because declaratory judgment actions are neither legal nor equitable, the standard of review depends on the nature of the underlying issues."); *id.* ("In an action at law, tried without a jury, the appellate court will not disturb the trial court's findings of fact unless they are found to be without evidence that reasonably supports those findings."); *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000) ("When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts."); *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 405, 581 S.E.2d 161, 165-66 (2003) ("A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance."); *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 498, 732 S.E.2d 205, 213 (Ct. App. 2012) (finding a glass company's performance of work for an insurer's customer created a unilateral contract).

2. As to whether the trial court erred in finding the necessary consideration to form a contract: *Hennes v. Shaw*, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct. App. 2012) ("The necessary elements of a contract are offer, acceptance, and valuable consideration."); *McLeod v. Sandy Island Corp.*, 265 S.C. 1, 11, 216 S.E.2d 746, 750 (1975) ("The authorities are clear that an agreement to do that which one is already legally bound to do is not sufficient consideration to support a contract."); *Contracts - Consideration - Unilateral Contract to Perform a Legal Duty*, 19 Harv. L. Rev. 379, 379 (1906) ("It seems clear, however, that in a unilateral agreement consideration need move only from the promisee, since the doing of an act requires no consideration."); *Small v. Springs Indus., Inc.*, 292 S.C. 481, 484, 357 S.E.2d 452, 454 (1987) (finding an employment agreement to be a unilateral contract and the employer's offer to hire the employee in return for specified wages, with the employee's acceptance by performing the work, constituted the terms of the agreement).

3. As to whether the trial court erred in relying on *Kemper* and the statutory scheme enacted in 2012, after *Kemper* was published: S.C. Code Ann. § 38-57-

75(A) (2015) (prohibiting an insurer from requiring that repairs be made by a particular provider of glass repair work); S.C. Code Ann. § 38-57-75(E) (2015) (providing the procedure for an insured who requests to have glass repair work performed by a provider not in the insurer's program or on the preferred provider list); *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 344, 745 S.E.2d 90, 94 (2013) ("[I]t is generally held that an assignment *after* a loss has already occurred does not require an insurer's consent."); *id.* at 343, 745 S.E.2d at 93 (recognizing that an assignee receives only the rights of the assignor under an assignment of an insurance contract).

AFFIRMED.¹

SHORT, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

RECEIVED

JAN 17 2020

SC Court of Appeals

Case No. 2014-CP-04-1787

Grange Mutual Casualty and Trustguard Insurance
Company.....Respondents,

v.

20/20 Auto Glass,
LLC.....Appellant.

PETITION FOR REHEARING

January 15, 2020

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TABLE OF AUTHORITIES

Cases

<i>Hughes v. Edwards</i> , 265 S.C. 109, 220 S.E.2d 231 (1975)	1
<i>Narruhn v. Alea London Ltd.</i> , 404 S.C. 337, 745 S.E.2d 90 (2013).....	3,5
<i>Player v. Chandler</i> , 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989).....	1
<i>Southern Glass & Plastics Co. v. Kemper</i> , 399 S.C. 483, 732 S.E.2d 205 (S.C. App. 2012).....	5

Statutes

South Carolina Code § 38-57-75.....	4
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Secondary Authorities

Restatement (Second) of Contracts §§53(2)	1
Restatement (Second) of Contracts §§53(3)	1

INTRODUCTION

Appellant 20/20 Auto Glass, LLC, hereby respectfully requests that the Court of Appeals reconsider its unpublished decision in this case, affirming the ruling of the Anderson County Circuit Court. While the opinion identifies several cases upon which the affirmance is based, there is no factual analysis showing how the cases apply to the stipulated facts in the record. Indeed, an analysis of the facts stipulated to by the parties show that the cases require the trial court's determination be reversed. As a consequence, the decision issued in this case is erroneous and should be reconsidered.

1. The facts establish that there was an insufficient offer and no intent to be bound

The decision properly identifies the standard of review as applicable to decisions below predicated on stipulated facts. The error in the opinion is failing to apply that standard. The stipulated facts show that 20/20 rejected Grange's offers on pricing, both verbally and in writing. These facts are critical to determining whether a unilateral contract was formed by subsequent performance. Restatement (Second) of Contracts §§53(2) and (3). For there to be an enforceable contract, "there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989) citing *Hughes v. Edwards*, 265 S.C. 109, 220 S.E.2d 231 (1975). The Court's opinion fails to address the stipulated facts

that compel the conclusion that there was absolutely no meeting of the minds for payment of 20/20's work.

Moreover, the undisputed, stipulated evidence shows that the "offers" made by Grange were, on their face, not intended to be binding. First, the documents contained two different provisions indicating that the amounts charged could exceed the amounts in the documents. Those provisions demonstrate that the pricing identified in the documents was not intended to create a unilateral contract upon performance. Second, Grange's payments once 20/20's non-conforming invoices were submitted showed that Grange did not intend for its prior communications to be binding because the payments were all for amounts different than the amounts supposedly offered. The exhibits and stipulated facts go to Grange's intent, not 20/20's. The evidence establishes that, at the time of the communication and at the time the work was performed, billed and paid, neither party intended to be bound by the pricing terms communicated by Grange. The effort to make them binding was purely a lawyer construct, made well after the fact. That does not create a contract in South Carolina and this Court's opinion affirming a decision to the contrary is manifest error and should be reconsidered.

2. The opinion fails to address the facts that establish a failure of consideration

Although the Court's decision cites the appropriate authorities establishing the necessity of consideration for the formation of a contract, it fails to identify a

single fact that would merit the conclusion that consideration is present in the claims at issue. Indeed, the Court correctly notes that performance of a task that one is legally obligated to perform is not consideration that would support the existence of a contract. Here, the stipulated facts and the analysis of applicable cases establish that there was no legitimate consideration supporting Grange's assertion that contracts were formed when 20/20 performed work for Grange insureds.

Significantly, the Court's decision fails to address the impact of the Supreme Court's decision in *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013). The Supreme Court's decision clarifies that, regarding property insurance claims like these here, once the loss has occurred, the policyholder has a vested claim and can freely assign that claim. *Id.* at 344, 745 S.E.2d at 94. Grange owes a debt to each policyholder when the policyholder's automobile glass is damaged. The amount of that debt is defined by the contract – the insurance policy – between Grange and the policyholder. The policyholder is then free to transfer that debt “like any other chose in action or piece of property.” *Id.* Grange is legally obligated to pay that debt.

Three possible outcomes arise when 20/20 submits its invoice to Grange for 20/20's replacement services: (1) Grange pays exactly what its policy obligates it to pay; (2) Grange pays less than what its policy obligates it to pay; or (3) Grange

pays more than what its policy obligates it to pay. Only the third possible outcome would form a basis for consideration for its unilateral contract theory. Paying exactly what its contract requires is nothing more than what it is legally obligated to do and thus cannot be consideration. Similarly, paying less than what it is obligated to pay is not consideration but rather a breach of its insurance contract. As a result, given the valid assignments of the insurance proceeds made by the policyholders, there cannot be consideration for the alleged unilateral contracts. The Court's failure to apply the facts to the cited cases requires reconsideration.

3. South Carolina Code §38-57-75 precludes the creation of a unilateral contract.

The Court's decision further fails to properly apply South Carolina Code § 38-57-75 to the unilateral contract analysis. Section 38-57-75(E)(1) provides that if the glass shop refuses to accept the insurer's proposed reimbursement rate, the policyholder may be informed that the policyholder "will be responsible for additional costs." This is significant with respect to this case for two reasons: one, it provides 20/20 with the statutory ability to reject Grange's proposed pricing; two, it establishes that 20/20 cannot be bound by those prices through some other means because the policyholder may be responsible for additional charges. If Grange had the ability to bind 20/20 to its pricing, the policyholder would never be responsible for some additional amounts. Critically, the alleged "offers" do not purport to limit themselves to what Grange will reimburse but rather attempt to

place a limit on what 20/20 will charge. If the offers could create binding contracts upon 20/20's performance of the work, 20/20 would be foreclosed from pursuing anyone for additional amounts beyond what Grange promised to pay. That, however, was not Grange's position at the time the claims were being made and the work was being performed. As the stipulated facts show, Grange informed the policyholders that they could be charged some amount if 20/20 refused to accept Grange's pricing. Those communications plainly show that Grange's "offers" were not intended to bind 20/20 to Grange's pricing.

The statute, combined with *Narruhn*, creates a circumstance whereby this Court's decision in *Southern Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 732 S.E.2d 205 (S.C. App. 2012), is neither controlling nor persuasive regarding whether unilateral contracts were formed in this case, based on the stipulated facts presented. This Court's failure to analyze the impact of the statute on the trial court's conclusion that a unilateral contract existed requires reconsideration.

CONCLUSION

The Court's decision affirming the trial court is at odds with the stipulated facts and contrary to the applicable law, both cases and the South Carolina Code. As a result, 20/20 respectfully requests that the Court reconsider its December 31, 2019, decision in this case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-1787

RECEIVED
JAN 17 2020
SC Court of Appeals

Grange Mutual Casualty and Trustgard Insurance
Company, ... Respondents,

v.

20/20 Auto Glass, LLC, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on the Respondents Grange Mutual Casualty and Trustgard Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on January 15, 2020, addressed to their attorneys of record, Wesley B. Sawyer, Esq., P.O. Box 6648, Columbia, SC 29260.

January 15, 2020



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The South Carolina Court of Appeals

Grange Mutual Casualty and Trustgard Insurance
Company, Respondents,

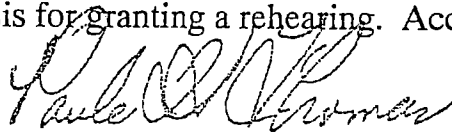
v.

20/20 Auto Glass, LLC, Appellant.

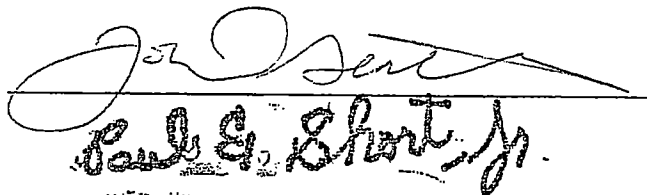
Appellate Case No. 2017-000259

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.

A.J.

Columbia, South Carolina

cc:

Joshua Matthew Henderson, Esquire
Wesley Brian Sawyer, Esquire
Ronald Barton Diegel, Esquire
Charles J. Lloyd, Esquire
The Honorable R. Scott Sprouse

FILED

February 10, 2020