Larson Ex. 10

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Safelite Group, Inc. and Safelite Solutions, LLC, Plaintiffs, vs. Michael Rothman, in his official capacity as Commissioner of the Minnesota Department of Commerce, Defendant.	)	Case No.: 15-cv-1878 (SRN/SER)

Under penalty of perjury, Michael Reid states as follows:

1. I am the president of Alpine Glass, Inc., a Minnesota corporation headquartered in Kirkland, Washington. Except as otherwise noted, I make this declaration of my own knowledge.

2. I have been in the auto glass business for over twenty years. I am a graduate of Western Washington University in Bellingham, Washington, with a degree in finance.

3. At the present time, Alpine Glass performs automobile glass repairs and replacements throughout Minnesota and in Western Wisconsin. We have, over the

years, had shops located in several other states including Florida, Kentucky, Iowa and Arizona.

4. Alpine Glass is not a member of the Safelite network and rarely agrees to the pricing that is offered to us by Safelite on behalf of insurance companies. In my judgment, the amounts offered for auto glass replacement are unreasonable and below market rates. Because we do not accept the rates, Safelite routinely tells our customers that the customers will be responsible for the difference between what we bill and what we are reimbursed. Often when this occurs, an Alpine representative is on the phone with the customer and Safelite and tells the customer and the Safelite representative that we do not collect any money from the customer other than the deductible, if there is a deductible (a relatively rare occurrence in Minnesota). We specifically try to arrange the calls to Safelite when we can be on the phone because we know from years of experience that Safelite makes false claims that the customer will be responsible for the amounts the insurance companies short pay.

5. Several times a year, customers will call us to cancel jobs they have scheduled with us because of what they are told by Safelite representatives. Often, they tell us that they were told that they would have out of pocket expense if they use our company. Fortunately, most of the time, our sales manager is able reassure the customer that such statements are not true and is able to save the job. Even with our best efforts, we still occasionally lose jobs because of the false statements made

by Safelite. In one instance, our customer got so frustrated with the number of times the Safelite representative asked her if she wanted to use our company she ended the call and we did not get to do the work.

6. Over the years, I have had several communications in writing and on the telephone with Safelite executives, specifically Andy Kipker and Tom Reid, and have told them both repeatedly that Alpine does not charge its customers when our invoices are not paid in full. Notwithstanding that fact, Safelite continues to mislead our customers and give them false information.

7. When Alpine is short paid on a Minnesota claim, we do not simply write off the amount owed. Instead, we pursue the amounts owed through arbitration pursuant to the Minnesota No-Fault Act. Alpine has prevailed in every arbitration that we have pursued. Some of the arbitrations have involved hundreds of invoices to a single insurer and hundreds of thousands of dollars. In many of the cases, the scripting and phone calls with customers has become an issue. Specifically, the issue arises over what our customers are told about their responsibility for the insurance company short paying our invoices. When that issue has arisen, Alpine's attorney typically asks the insurance company representative if he or she knows of any glass company in Minnesota that pursues customers for short paid balances. Not one witness on behalf of an insurance company has ever identified even one example of

a customer in Minnesota who was pursued by a glass company after the insurer short paid an invoice.

8. I am not aware of any company going after a customer for a short pay balance after the insurance company has issued payment on a claim. We certainly do not. We inform customers verbally and, if asked, will put that fact in writing for our customers. Our customers pay us by assigning to us the proceeds owed from their insurance companies. That allows us to step into the shoes of our customer and pursue the full amount owed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/21/15 By: s/ Mike Reid
Mike Reid

Larson Ex. 11

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Safelite Group, Inc. and Safelite Solutions, LLC, Plaintiffs, vs. Michael Rothman, in his official capacity as Commissioner of the Minnesota Department of Commerce, Defendant.	Case No.: 15-cv-1878 (SRN/SER) Declaration of Charles J. Lloyd

After swearing to tell the truth, Charles J. Lloyd states as follows:

1. I am an attorney with the firm of Livgard & Lloyd, PLLP. From time to time I have represented auto glass shops in litigation against insurers for failure to pay claims in full for services they rendered.

2. Attached to this declaration as Exhibit A is a true and correct copy of a partial transcript of the arbitration testimony of Mike Hendricks, the auto glass claim manager for American Family Insurance, in the matter *Alpine Glass, Inc. v. American Family Insurance.*

3. Attached to this declaration as Exhibits B-J are a true and correct copies arbitration awards and court orders affirming arbitration awards in some of the cases in which I represented the auto glass shop.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 13, 2016 By: s/Charles J. Lloyd
Charles J. Lloyd

Exhibit A

Exhibit B

THE AMERICAN TRIBUNALS OF THE
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between — Case No. 56 600 00833-13

Alpine Glass,

Claimant

and — **ARBITRATION AWARD**

AAA Insurance Company,

Respondent.

1. The above captioned matter involving 340 claims totaling $149,500.57 was consolidated for hearing on December 14th, 2012 by Order of District Court Judge Janet Poston. The matter then was assigned to this arbitrator for hearing.
2. The dispute arose as a result of Claimant Alpine Glass's (Alpine) insurance policy with Respondent wherein Claimant pays for glass repair and replacement work, gets an assignment for each individual claim, and then submits the claims to Respondent AAA Insurance Company (AAA). A third party administrator, in turn pays pursuant to the insurance policy what they deem to be the amount charged by a majority of the repair market for glass repair and replacement claims.
3. Alpine asserts, as assignee of its customers, that it is entitled to the full amount billed for glass repair and replacement work governed by the terms of the AAA insurance policy. The claims are from July 6, 2006 through May 9, 2012. These claims are called "short-pays" in the vernacular of the glass replacement business.
4. The cost of repair or replacement in AAA Insurance Policy is based upon one of the following:
   a. The cost of repair or replacement agreed upon by you and us; or
   b. A competitive bid approved by us; or

c. A written estimate that uses the prevailing competitive price. The prevailing competitive price means the price charged by a majority of the repair market in the area where the car is to be repaired as determined by a survey made by us. If you ask, we will identify some facilities that will perform the repairs at the prevailing competitive price. You agree with us that repair may include parts furnished by non-original equipment manufacturers. If you request parts that cost more than those in the estimate, we may require you to pay the difference.

5. AAA asserts that the amounts charged by Alpine exceed the price charged by a majority of the repair market. They claim that the payments made are consistent with the price charged by a majority of the repair market.
6. Testifying live for Alpine was Mike Reid, Owner of Alpine, and Rick Rosar by Affidavit. Testifying for Alpine were Priscilla Canterbury of Safelite Solutions (a third party administrator) and Patricia Deneau of AAA, both appeared live. In addition, numerous exhibits were introduced. All exhibits were received pursuant to the evidentiary rules of arbitration with relevancy and weight being determined by the arbitrator.
8. Based upon the testimony presented in this hearing AAA made payments on all invoices at issue here without rejecting any claims outright.
9. The issues before the arbitrator are:
   1) Whether AAA paid Alpine, an amount on each disputed invoice, equal to what is charged by a majority of the repair market in the area where the car was repaired or did Alpine breach the terms of their policy by failing to do so.
   2) Whether Alpine is entitled to the full amount of each disputed invoice as reimbursement for short pays based upon AAA's failure to abide by the terms of their policy.
10. None of the disputed invoices were paid based upon an agreement by the parties.
11. None of the disputed invoices were based upon a competitive bid approved by AAA.

12. None of the disputed invoices were based upon a written estimate that was submitted to AAA for approval before work was done.
13. AAA was obligated by the terms of its insurance contract to pay based upon a written estimate that used the prevailing competitive price.
14. AAA did not conduct a survey of the "area where the car is to be repaired."
15. The review of random invoices and compilation chart that covered the State of Minnesota was not a survey of a local market area.
16. The short-pays of Alpine's invoices was systematic and consistent but not based upon written estimates, competitive bids or an agreement.
17. AAA did not comply the terms of the policy in processing Alpine's claims.
18. AAA shall pay Alpine the amount of $149,500.57. This amount represents the short pays or the amount of underpayment by AAA on the glass claim submitted for review by the Arbitrator.
19. The administration and filing fees of the American Arbitration Association shall be borne as incurred.
20. Requests for costs and disbursements are denied.
21. The Arbitrator's compensation shall be borne equally by the parties.

This award is in full settlement of all claims submitted to this arbitration.

DATE: August 2, 2013 **SIGNED:** _____
David T. Magnuson, Arbitrator

Exhibit C

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Alpine Glass, Inc.

&

American Family Insurance Group

Case File №: 56 600 03519 14

Senior Case Manager: Susan B. Harrow

Claimant's Representative: Charles J. Lloyd, Esq.

Respondent's Representative: Georgeanna M. H. Ihrke, Esq.

ARBITRATION AWARD

I. Introduction

Pursuant to the parties May, 2014 Stipulation For Consolidated Arbitration Under Minn. Stat. 65B.525 the claims identified in the document attached hereto as Exhibit A, irrespective of the particular American Family entity by which each policyholder is insured, are consolidated for arbitration in the above proceeding pursuant to the Minnesota Rules Governing No-Fault Arbitrations and in the same manner as if this consolidated arbitration were directed by court order.

This arbitration proceeding consists of 15 single spaced pages (See Exhibit A) containing hundreds of separate claims for automotive glass repair or replacement claims which are consolidated into this arbitration. The hundreds of separate automotive glass repair or replacement claims submitted to this arbitration proceeding arose between the invoice dates of 03/02/2011 and 04/07/2014, are in varying amounts

totaling $441,294.20 and are alleged to be "short pays" from American Family Insurance Company, Inc. (hereafter American or Respondent) to Alpine Glass, Inc. (hereafter Alpine or Claimant).

An alleged "short pay" occurs when Alpine performs automotive glass repairs or replacements on behalf of American's policyholders and American pays to Alpine less than the amount invoiced or billed to American for the automotive glass repairs or replacements.

Alpine alleges that American has breached its contractual obligations to its policyholders (and to Alpine pursuant to assignments from American's policyholders) by paying an amount than is less than a competitive price that is fair and reasonable within the local industry at large. The full and complete language in American's policies is hereinafter set forth in detail in paragraph VI.

American does not challenge the invoice dates, the insured's names, invoice numbers, policy numbers, invoice amounts, amounts paid by American and amounts alleged due ("short pays") to Alpine as set forth in detail in Exhibit A. American alleges that it has at all times paid to Alpine the amount required to be paid pursuant to its contracts of insurance with its policyholders. American denies that it has breached its contracts of insurance with its hundreds of policyholders whose names are set forth in detail in Exhibit A.

By means of a letter dated August 4, 2014 American filed three (3) objections to Alpine's Petition for Arbitration and raised an additional 8 reasons as to why Alpine should not prevail in this arbitration (See attached Exhibit B). Alpine responded to American's objections to Alpine's Petition for Arbitration in a letter dated August 15,

2014 (See attached Exhibit C). On August 20, 2014 the arbitrator issued Arbitrators Ruling on Respondent's Objections and Requests (See attached Exhibit D).

Alpine is represented in this arbitration proceeding by Charles J. Lloyd, Esq. American is represented in this proceeding by Georgeanna M. H. Ihrke, Esq.

The above arbitration proceeding was heard by the arbitrator on November 12, 2014 at 295 Marie Avenue East, Suite 100, West St. Paul, MN.

II. Witnesses for Alpine

1. Michael Reid testified personally and on behalf of Alpine. He is president of Alpine and has been involved in the automotive glass repair and replacement business for in excess of 20 years. He has never personally installed or repaired a windshield. He has observed automotive windshields being removed and installed by his employees. He has a college degree in finance. As owner and president he is familiar with all phases of the business end of the automotive glass replacement and repair business. Alpine is located in the State of Washington. Alpine has 2 mobile automotive glass repair and replacement units which repair and replace automotive glass in the State of Minnesota
2. Jerry Mattison was not personally present and submitted a declaration under penalty of perjury dated 10/23/2014. He is president of Star Windshield Repair, Inc. based in St. James, Minnesota and has been in the automotive glass repair and replacement business since August of 1981. He has no interest or stake in the outcome of this arbitration. He has been actively involved in state and national trade associations regarding

automotive glass repair and replacement. He is familiar with the range of prices regarding automotive glass repair and replacement which he considers to be fair and reasonable in the State of Minnesota.

III. Witnesses for American

3. Michael Hendricks personally testified on behalf of American. He has been employed by American since 1998. He is currently the manager of Auto Specialty Operations in charge of glass and emergency roadside services for American. He supervises American's glass claims in 19 states, including 26,000 yearly automotive glass claims in Minnesota, and has been in a management position since 2006. Because of his position with American he is familiar with how glass claims are handled and processed by American. He is also familiar with American's Third Party Administrator (TPA), Safelite Solutions and the role they play in adjusting losses involving automotive glass repairs and replacement. He is familiar with the reimbursement rates that American pays to glass vendors for glass repair and replacement and how American's prices are determined. He also testified via affidavit dated 10/24/2014.

IV. Arbitration exhibits submitted by Alpine:

4. Alpine offered and the submitted 38 documentary arbitration exhibits in support of its position. These exhibits are described in attached Exhibit E. Alpine also offered and the arbitrator admitted a sampling of invoices for popular windshields (DW 1470, DW 1549, DW 1341) which were billed to American and discounted or "short paid" by American and other invoices for

the same popular windshields which were billed to other insurance companies and paid in full.

The Arbitrator has read all arbitration exhibits produced by Alpine in support of its position and has given the exhibits the weight to which they are entitled.

V. Arbitration exhibits submitted by American.

5. American offered and the arbitrator admitted 13 documentary arbitration exhibits in support of its position which are described in attached Exhibit F. American also offered and the arbitrator admitted a hand drawn document comparing the replacement cost of a popular automotive windshield identified as DW0603GTN in 2004 prior to the rebalance (cost alleged to be $506.85) in February, 2005 and in 2005 after the rebalance (cost alleged to be $677.72).

The Arbitrator has read all arbitration exhibits produced by American and has given the exhibits the weight to which they are entitled.

VI. American policies relevant language

6. American's policy provisions and endorsements (American Exhibits 6,7,8) relating to the payment of automotive glass repair and replacement claims provide in part as follows in END. 26-1 (MN) Ed. 12/02

"Limits of Liability

Our limit of liability for Loss shall not exceed the lesser of:

1. The actual cash value of the stolen or damaged property; or

2. The amount necessary to repair or replace the property. The amount necessary to repair or replace the property does not include any difference in the

market value of **your insured car** immediately prior to the **loss** and the market value of **your insured car** after repairs from the **loss** are completed.

Although you have the right to choose your own repair shop or vendor, the amount necessary to repair or replace the property is determined by one of the following:

a) The amount necessary to repair or replace agreed upon by **you** and **us**;
b) A competitive bid approved by **us**; or
c) An estimate based upon prevailing competitive prices. Prevailing competitive prices are the prices charged by a statistically significant number of repair facilities in the area where **your insured car** is to be repaired, as determined by **us**. Upon **your** request, we will identify facilities that will perform the repairs for the prevailing competitive price."

VII. Relevant Time Period

7. The relevant time period is between the dates of 03/02/2011 and 04/07/2014 when Alpine's first and last invoices were submitted to American (Alpine's Exhibit A) for consideration.

Based upon the above introduction, the oral testimony, the affidavit testimony, the arbitration exhibits, the American policy language, the arbitrator makes the following

FINDINGS OF FACT:

8. Alpine initiated this arbitration by hand delivering a Petition for No-Fault Arbitration form to the AAA on June 24, 2014. The Petition also included the Stipulation for Consolidated Arbitration Under Minn. Stat. 65B.525 signed by the attorneys for both parties and an itemized listing of the hundreds of separate automotive glass repair or replacement claims. The attached itemized listing provided a summary of the alleged date, name of American's insured, invoice number, policy number, amount invoiced, amount paid and amount due. The hundreds of alleged "short pays" sought by Alpine from American in this arbitration proceeding total $441,294.20

9. The Arbitrator's Rulings on Respondent's Objections and Requests dated August 20, 2014 is incorporated in these findings as Exhibit D.

10. NAGS stands for National Auto Glass Specifications. NAGS establishes the benchmark price or list price for automotive glass. The entire automotive glass industry including glass manufacturers, insurance companies, third parties administrators (TPA) and glass replacement and repair shops utilize NAGS.

11. NAGS utelizes what can best be described as a benchmark numbering system. Every piece of glass in every motor vehicle (domestic and foreign) is assigned a specific part number. This same part number is used by the original equipment manufacturers, aftermarket glass manufacturers, insurance companies, third party administrators, glass replacement companies and this number never changes.

12. NAGS determines the amount of time for which Alpine will be paid for a windshield removal and replacement. The amount of time varies between different windshields and different motor vehicles.

13. If it takes Alpine more time to remove and replace a windshield than published NAGS hours allows, Alpine does not bill and is not paid for the additional time. Likewise, if Alpine can remove and replace a windshield in less time than the NAGS published time, Alpine makes no deductions from the NAGS published time. Alpine invoices at the published NAGS hours without regard for the amount of time actually spent on the windshield removal and installation.

14. While NAGS publishes the time to remove and replace a windshield, NAGS does not publish or suggest an hourly rate for the labor required to remove and replace a

windshield. The hourly labor rate on Alpine's glass invoices is determined and is set solely by Alpine and not by NAGS.

15. A properly installed windshield is very important to the overall safety of a motor vehicle. It is designed to keep the occupants of the vehicle in the vehicle in the event of a collision or rollover. The windshield is a critical load bearing element and must stay in place at the time of a collision or rollover. The windshield is an integral factor in preventing the roof from collapsing and keeping occupants of a motor vehicle in the vehicle at the time of a collision. In addition, in the event of a collision, the airbag on the passenger side uses the windshield as a backboard when the occupant of the motor vehicle comes forward upon impact into the airbag. If a windshield is not properly installed, the airbag can blow out the windshield leaving nothing for the airbag to brace against. It is therefore very important for safety, that in the event of a rollover or collision that the windshield remain intact.

16. Michael Reid credibly testified that Alpine uses only OE or OEM glass unless it is not readily available. OE or OEM glass is more expensive than "aftermarket glass." Alpine employs two (2) qualified mobile glass and windshield installers in the State of Minnesota. One of them was employed prior to and the other has employed by Alpine since 1995. The arbitrator finds that OEM glass is superior to "aftermarket glass" and offers superior quality and fit as well as superior visual clarity which is a plus for American's policyholders.

17. Alpine uses only the full cut out method as opposed to the close cut out method when removing an existing windshield prior to its replacement. Some automotive glass shops employ the close cut method. The close cut out method results in leaving about

1/16th of an inch of the existing urethane attached to the pinch weld. The close cut method results in leaving the old urethane in place and placing a thin layer of new urethane on top of the old urethane bead in a motor vehicles pinch weld area. The full cut method of removing the old windshield takes more time. Often the pinch weld area needs to be cleaned and/or rust must be removed to insure proper adhesion. If rust in the pinch weld area is removed, Alpine uses proper primers to ensure proper adhesion of the windshield of the motor vehicle. The primers must be compatible with the old urethane and the windshield being installed. I find that Alpine employs the full cut out method which takes longer than the close cut out method, removes rust when it is found in the pinch weld area, uses the proper primers when necessary and results in a superior removal and installation which in turn results in the increased safety of American's policyholders.

18. The relevant portion of American's policy is referenced in paragraph 6 above and states that the amount necessary to repair or replace the property is to be determined in one (1) of three (3) ways. The parties agree that first two (2) ways are inapplicable. The third (3rd) way governs some of the issues between the parties and is defined as follows:

> "c) An estimate based upon prevailing competitive prices. Prevailing competitive prices are the prices charged by a statistically significant number of repair facilities in the area where **your insured car** is to be repaired as determined by **us**. Upon **your** request, we will identify facilities that will perform the repairs for the prevailing competitive price."

19. Alpine states that American has breached their policies of insurance because an estimate does not exist in any of the hundreds of claims in issue. American states that

the document prepared by American's third party administrator (Safelight Solutions LLC) for the hundreds of cases in issue in this proceeding which states INVOICE followed by an invoice number in the upper left hand corner could and/or should be construed as an "estimate." The word "estimate" is not defined anywhere in the insurance contracts drafted by American. If a contract contains language with wording or words which are capable of more than one meaning or interpretation, that ambiguity is construed against the drafter of the contract. American argues that the issue regarding the word "estimate" is a red herring advanced by Alpine for the purpose of diverting attention from the truth or from the matter at issue.

20. The arbitrator next turns attention to the meaning of the word "estimate." New Webster's Dictionary and Thesaurus of the English Language gives the following definitions of estimate:

> "A judgment of size, number, quantity, value, distance, quality, etc. esp. of something which needs calculation or assessment: An estimate can vary, according to context, from a rough guess to close determination."

Black's Law Dictionary defines estimate as follows:

> "An estimate as the word implies, is a mere approximation. A rough or approximate calculation only. As used in a contract for the sale of an estimated quantity of goods, "estimated" may mean the same as "more or less."

21. The arbitrator next turns attention as to whether there exists an "estimate" based upon prevailing competitive prices. The arbitrator randomly opened to a claim filed by Gary Robben and dated 04/26/2011 and found at Alpine's Exhibit 4 pages 120 (Alpine Invoice to American) and 121 (Alpine Glass – Customer Invoice). It is also found at American's Exhibit 3, Volume 1 (Alpine invoice to American; Alpine Glass – Customer

Invoice; INVOICE prepared by Safelite Solutions LLC regarding Gary J. Robben and directed to American). There are no documents entitled "Estimate." The document focused upon bears the name Safelite Solutions LLC in the upper left corner. The word estimate appears nowhere on the document. The invoice is directed from Safelite Solutions to American and advises that payment is to be remitted to Safelite Solutions LLC. It contains the invoice date, order date, installation date, work order number, referral number, insured's name (Gary J. Robben), account number, policy number, PO # ref. number, loss date, cause, type vehicle, VIN number, part numbers, list price numbers, selling numbers, labor numbers, kit price, and a total amount to be paid from American to Alpine in the amount of $307.31. Alpine's invoice to American was for $878.08. There is no language indicating that the invoice is an estimate. In every instance, the invoices at issue contain the amount of money which will be paid by American to Alpine. No evidence was presented to the arbitrator that American ever paid more or less than the amount set forth on the INVOICE prepared by Safelite. On all claims at issue, American paid less than Alpine invoiced.

22. American's manager of Auto Specialty Operations supervises American's glass claims in 19 states, including 26,000 yearly automotive glass claims in Minnesota and was cross examined regarding the meaning of the word "estimate" as used in the policy of insurance and its common usage in the automotive repair industry with which he is very familiar. He candidly admitted that an estimate is something different than an invoice or a bill and that an estimate as used in the industry is often adjusted upward or downward. American takes the position that the invoices prepared by their third party administrator are the same as or serve as "estimates" even if the word estimate is not

used. This arbitrator has seen thousands of what are termed invoices which are prepared by third party administrators (including Safelite) and has rarely, if ever, seen a corrected glass or windshield invoice or one that has been adjusted upward or downward. All the payments made by American to Alpine were based on the initial invoices prepared by Safelite which were never increased or decreased in amount upon completion of the windshield replacements. Because an "estimate" can be anything from a rough guess to a close determination, an approximation, or more or less, an "estimate" is frequently amended and adjusted upward or downward. The arbitrator however realizes that the cost of a windshield replacement necessitated by a rock chip or crack in a windshield is readily capable of being ascertained in advance of the actual repair. This is true because all glass replacement is governed by NAGS which sets the NAGS price and the number of hours allowed to be charged for the replacement. However the determination of NAGS plus or minus and the hourly labor rate remain at issue. In the traditional collision with front end damage, estimates are almost always necessary. There is often damage that appraisers cannot see or visualize until repairs are underway and the areas of the damage have been removed. If additional damage is noted which was not on the initial estimate, the body shop generally calls the insurance company or its appraisers and the 2 of them determine if the estimate should be increased to cover damage which was not originally visible or discoverable and therefore not on the original estimate. The arbitrator declines to decide this case based upon if there was or was not an "estimate." This case will be decided on other findings as set forth in this Award of Arbitrator.

23. The arbitrator finds that there was never an "estimate" as the term "estimate" is commonly understood, discussed in paragraphs 19 and 20 above and required in the contract of insurance. There being no "estimate," there can be no prevailing competitive prices upon which an estimate was based.

24. American infers that Alpine does not supply American's policyholders with copies of its invoices because Alpine does not want its customers to know how much Alpine is charging their insurance company for the windshield repairs. Michael Reis credibility testified that customers who asked for an invoice were supplied with a copy of the invoice. There is no credible evidence that Alpine hides its invoices from its customers so that the customer is in the dark about what the glass repair or replacement is costing American offered no evidence that its policy holders were prevented upon request from seeing Alpine's invoices. This issue has little to do with whether or not American has breached its contract of insurance with its policyholders.

25. Alpine's standard pricing to American for the time period in issue (03/02/2011 to 04/07/2014) was $49.00 flat rate for the kit (urethane and primer), NAGS list price plus 70% for the windshield, labor at $110.00 per hour, any additional costs for clips or moldings (at manufacturer's list price) and Minnesota sales tax on the materials.

26. Alpine's pricing for labor was $65.00 per NAGS hour prior to 03/02/2011. Alpine was of the impression that its hourly labor rate was on the low end of the spectrum for automotive related repairs. In the year prior to 03/02/2011 Tom Reid conducted a survey to determine what other businesses dealing with automotive related repairs were charging per hour for services rendered. He did not contact any other businesses engaged solely in the business of glass and windshield repairs or replacement. In the

year of the survey he made close to 100 telephone calls, did not identify himself by name or business, posed as a prospective customer and asked for their hourly labor rate. He could not identify any of the businesses he contacted, could not recall the specific date he made the phone calls, could not recall the names of any persons he contacted and he made no written record of any of the phone calls. He looked up the phone numbers of businesses and made calls to major metro areas as well as many towns in rural Minnesota and he specifically remembers making calls to businesses in Duluth, Brainerd, Albert Lea and Rochester. He called repair facilities that did mechanical automotive repair work, automotive electrical shops, automotive mechanics and brake shops to determine their hourly rate for labor. He is of the opinion that the skill set and training of windshield installers is equivalent to the skill set and training of those businesses he contacted in his survey. He credibly testified that the results of his non scientific survey showed that a labor rate of $110.00 per hour was mid range based upon the responses he received from those he contacted. He made a determination that effective 03/02/2011 his hourly rate for NAGS hours was to be set at $110.00. At the same time his windshield pricing was reduced from NAGS list price plus 140% to NAGS list price plus 70%. American offered no evidence as to how it set its hourly labor rate other than to state it used an average as set forth below.

27. Alpine's standard pricing to American for the time period immediately preceding the time period in issue (05/05/2009 and 03/02/2011) was $19.50 for 1 unit of urethane, $39.00 for 2 units of urethane, NAGS list plus 140% for the windshield, labor at $65.00 per NAGS hour plus any additional costs for clips or moldings (at manufacturer's list price) and Minnesota sales tax on materials (see Alpine's Exhibit 14, page 12,

paragraph 25). The pricing for a prior time period is relevant to this proceeding because there was testimony from Tom Reid and arguments from Alpine's counsel that Alpine's rate adjustment after 03/02/2011 sometimes grossed Alpine less in dollars and sometimes grossed Alpine more in dollars after 02/02/2011 than it did for the prior time period from 05/05/2009 to 03/02/2011. The net effect of this pricing change or readjustment is that the pricing prior to 03/02/2011 was roughly the same as the pricing after 03/02/2011. The price of the glass was reduced from NAGS list plus 140% to NAGS list plus 70% and the price per NAGS hour was increased from $65.00 per hour to $110.00 per hour.

28. The following windshield replacements were testified to by Tom Reid during the arbitration hearing and illustrate the point that after the new pricing was adopted by Alpine that the price to American was modestly higher in some cases and modestly lower is other cases. The comparison of the Isaac Compton pricing shows the pre 03/02/2011 pricing ($926.91) was $16.68 lower than the post 03/02/2011 pricing ($943.59). The comparison of the Judine Beuing pricing shows that the pre 03/02/2011 pricing ($907.99) was $54.52 higher than the post 03/02/2011 pricing ($907.99).

Pre 03/02/2011 Pricing

a. Isaac Compton Invoice found at Alpine Exhibit 4, page 198:

$253.80 list price plus 140% = $355.32 for a total of	$609.12
NAGS hours are 3.9 x $65.00 hourly = $252.50 for a total of	$253.50
Kit cost or urethane =	$19.50
Subtotal =	**$882.12**
Sales tax on glass and Kit cost at 7.125% =	$44.79
	Total = $926.91

Post 03/02/2011 Pricing

a. Isaac Compton Invoice found at Alpine Exhibit 4, page 198:

$253.80 list price plus 70% = $177.66 for a total of	$431.36
NAGS hours are 3.9 x $110.00 hourly=$429.00 for a total of	$429.00
Kit cost or urethane =	$49.00

Subtotal =	**$909.36**
Sales tax on glass and Kit cost at 7.125% =	$34.23
	Total = $943.59

Pre 03/02/2011 Pricing

a. Judine Beuing Invoice found at Alpine Exhibit 4, page 232	
$277.45 list price plus 140% = $388.43 for a total of	$665.88
NAGS hours are 2.7 x $65.00 hourly =	$175.50
Kit cost or urethane =	$19.50
Subtotal =	**$860.88**
Sales tax on glass and Kit cost at 6.875% =	$47.11
	Total = $907.99

Post 03/02/2011 Pricing

a, Judine Beuing Invoice found at Alpine Exhibit 4, page 232	
$277.45 plus 70% = $192.44 for a total of	$471.67
NAGS hours are 2.7 x 110.00 hourly =	$297.00
Kit cost or urethane =	$49.00
Subtotal =	**817.67**
Sales tax on glass and Kit cost at 6.875 =	$35.80
	Total = $853.47

28. American states that its pricing for non-affiliates (such as Alpine) is determined by the Minnesota County in which the windshield replacements or repairs took place. Minnesota is divided into four (4) county areas identified as A, C, D and E. A is the most urban and E is the most rural. There is no County Code B because of an error by either American or Safelite. American alleges that the most urban areas in Minnesota are reimbursed or paid at a lower reimbursement rate because there is more competition in the glass repair and replacement industry. The most rural areas in Minnesota are reimbursed or paid at a higher rate because of a lack of competition. The more rural the area, the higher the reimbursement rate. American has nothing to do with determining the appropriate county code in which the windshield replacements or repairs took place. This function has been assigned to and contracted out to Safelite Solutions, its third party administrator. That attached hereto as Exhibit G is the county code map. The designations of A, C, D, and E in the county code map are alleged by American to be

based upon the populations in those respective counties. Alpines counsel cross examined American's witness about a lack of consistency in the county codes assigned by Safelite to the various counties and he had no knowledge other than to state that the county codes were assigned by American's third party administrator (Safelite).That attached hereto as Exhibit H is American's Non-Affiliate Pricing for Minnesota effective July 21, 2009. For the time period at issue in this arbitration proceeding (03/02/2011 through 04/07/2014) American's published Non-Affiliate Pricing for Minnesota is as follows:

1. NAGS minus 29% for windshields, NAGS hourly at $47.00, kit at $25.00, repair at $65.00 performed in County Code A;
2. NAGS minus 20% for windshields, NAGS hourly at $47.00, kit at $25.00, repair at $65.00 performed in County Code C;
3. NAGS minus 10% for windshields, NAGS hourly at $47.00, kit at $25.00, repair at $65.00 performed in County Code D;
4. NAGS minus 0% for windshields, NAGS hourly at $47.00, kit at $25.00, repair at $65.00 performed in County Code E.

29. American claims that its "prevailing competitive price" is determined by adding together all invoices received in one (1) year from each of the four (4) county codes discussed in paragraph 28 above and then dividing that number by the total number of invoices received in each of the four (4) county codes. American states that they review their pricing once or twice per year. American's pricing has not changed since 2009 for its non affiliates, which includes Alpine. American's "prevailing competitive prices" have decreased drastically following the NAGS rebalance in February, 2005 (see Alpine"s Exhibit 14, paragraph 28). American's method of determining its "prevailing competitive prices" rest almost solely upon the oral testimony of Mr. Hendricks. No documentary evidence or data was produced in support of American's claimed process of

determining its "prevailing competitive prices." American is a major insurer of automotive vehicles in the State of Minnesota and processes approximately 26,000 glass claims yearly in Minnesota. The documentary evidence and underlying data must be readily available (or can be made readily available) and exist somewhere on a spreadsheet located in its headquarters because American alleges that it relies upon it in periodically calculating its "prevailing competitive prices." American's pricing for the time period in question is $47.00 per NAGS hour for labor. American sets it own "prevailing competitive prices" and does not rely upon its third party administrator to do so.

30. American alleges that glass companies are accepting American's "prevailing competitive prices" but American has not produced any billing invoices, documentation or other evidence from glass companies other than Alpine in support of this allegation.

31. The relevant portion American's policy of insurance is set forth in paragraph 17 above and requires prices which are charged by a statistically significant number of repair facilities in the area where the insured car is to be prepared. American produced no compelling oral testimony or documentary evidence as to what is meant by the term "statistically significant." American takes the position that an average repair cost in a certain county code is statistically significant. In reviewing the amount invoiced for windshield replacements in Alpine's Exhibit A the cost varies from lows in the $600.00 range to many replacement costs in excess of $1000.00 and some replacement costs in excess of $2,000.00. Generally speaking, foreign windshields are more costly than domestic windshields. When you consider the large variation in the invoices from Alpine to American ($600.00 range to in excess of $2,000.00) the arbitrator finds that the

alleged average used by American for glass repairs in each county code is not statistically significant.

32. Some of the more common windshields involved in this arbitration proceeding are identified as DW 1341, DW 1549 and DW 1470/ The letters DW stand for domestic windshield as opposed to FW which stands for foreign windshield. That attached hereto as Exhibit I are the windshields in this arbitration proceeding bearing part # DW1341 which were billed by Alpine in the amount set forth in the Amount Billed column and paid by American in the amount set forth in the Amount Paid column. Set forth on page 2 of Exhibit H are windshields bearing part # DW1341 which were paid in full by multiple insurance companies (other than American) in the identical amount billed by Alpine.

33. That attached hereto as Exhibit J are the windshields in this arbitration proceeding bearing part # DW1549 which were billed by Alpine in the amount set forth in the Amount Billed column and paid by American in the amount set forth in the Amount Paid column. Set forth on page 2 of Exhibit J are windshields bearing part # DW1341 which were paid in full by multiple insurance companies (other than American) in the identical amount billed by Alpine. The arbitrator also finds that any other invoices referenced in Exhibits I, J and K and not falling within the time period for this arbitration proceeding are not relevant to this proceeding and are given no weight and are disregarded by the arbitrator.

34. That attached hereto as Exhibit K are the windshields in this arbitration proceeding bearing part # DW1470 which were billed by Alpine in the amount set forth in the Amount Billed column and paid by American in the amount set forth in the Amount Paid column. Set forth on page 2 of Exhibit K are windshields bearing part # DW1470 which

were paid in full by multiple insurance companies (other than American) in the identical amount billed by Alpine.

35. American asserts that the payments in full made by the insurance companies set forth Exhibits I, J and K should be given little or no weight for two (2) primary reasons. 1. These insurance companies are small in size when compared to American and have a much smaller market share. 2. These insurance companies because of their small size and smaller market share pay the invoices they receive from Alpine because they do not find it worth the cost, hassle and expense of defending their position in litigation or arbitration. Based upon multiple prior arbitration proceedings the arbitrator takes judicial notice of the fact that State Farm in the largest insurer of automotive vehicles in the State of Minnesota and that American is in the top 3 insurers of automotive vehicles in the State of Minnesota. The arbitrator rejects the position asserted by American and finds that State Farm Insurance Company is referenced several times as an insurer that has paid Alpine the amount which Alpine has billed for windshield replacements. Other than what the arbitrator has taken judicial notice of, American has produced no evidence regarding the size of the market share of any of the insurance companies found in attached Exhibits I, J.or K American has produced no evidence that the insurance companies in Exhibits I, J, or K have paid Alpine's bills in full because of the cost, hassle and expense of defending their position in litigation or arbitration.

36. Tom Reid credibly testified that State Farm pays many, but not all of Alpine's invoices in full.

37. Alpine has provided many invoices in Alpine's Exhibit 7 which show that many insurance companies were paying Alpine's invoices in full. Those invoices which are

outside of the time period in question (03/02/2011 to 04/07/2014) were excluded in making this finding.

38. Alpine does not offer to the policyholder any illegal incentives (such as free steaks) to entice the policyholder to enter into a business relationship with Alpine.

39. American's published Non-Affiliate Pricing for Minnesota effective July 21, 2009 and thereafter regarding NAGS windshield is found at attached Exhibit H and is as follows:

County Code A is - minus 29%;
County Code C is - minus 20%
County Code D is - minus 10%;
County Code E is - minus 0%.

A random sampling of seven (7) invoices in County Code E and submitted by Alpine to American shows that American was not paying to Alpine the reimbursement rate they published effective July 21, 2009. There are many other invoices which would yield similar results if one were to take the time to examine them all.

1. Larry Storm, Onamia, MN. Alpine Ex. 4, page 118 List price $700.50
Paid $497.36 which is 29% less ($203.14) than agreed.

2. Gary Robben, Bertha, MN. Alpine Ex. 4, page120 List price $196.80
Paid $139.73 which is 29% less ($57.07) than agreed.

3. Shirley Burton, Virginia, MN. Alpine Ex. 4, page147 List price $192.00
Paid $136.32 which is 29% less ($55.86) than agreed.

4. Mark Johnson, Morristown, MN. Alpine Ex. 4, page 234 List price $215.15
Paid $152.76 which is 29% less ($62.39) than agreed.

5. Michelle Reents, Glenwood, MN. Alpine Ex. 4, page 350 List price $227.95
Paid $161.84 which is 29% less ($66.11) than agreed.

6. Elmo Beal, Proctor, MN. Alpine Ex. 4. Page 419 List price $513.36
Paid $364.48 which is 29% less ($148.88) than agreed.

7. David Ellison, Cold Spring, MN. Alpine Ex.4, page 452 List price $251.00
Paid $178.21 which is 29% less ($72.79) than agreed.

39. American's policy of insurance as it relates to windshield repair or replacement limits its liability to the amount necessary to repair or replace the property. The amount necessary to repair or replace the property is determined by an estimate based upon prevailing competitive prices. Prevailing competitive prices are the prices charged by a statistically significant number of repair facilities in the area where your insured car is to be repaired, as determined by American (see paragraph 6 above).

40. American is obligated to pay a prevailing competitive price that is charged by a statistically significant number of repair facilities in the area in which the car is to be repaired. The price is to be determined from the viewpoint of the policyholder or its assignee (Alpine), not from the perspective of the insurance company (American). *Glass Service Company, Inc. v. Progressive Speciality Insurance Company 603 N.W.2d 849.*

41. Both Alpine and American are in agreement that there are ranges of prices which are reasonable. That is where the agreement ends. American is of the opinion that the Alpine's range of prices are much higher than is reasonable. Alpine is of the opinion that American's range of prices is much to narrowly drawn. American offered no evidence as to what they considered to be a reasonable range of prices. Alpine offered no evidence as to what it considered to be a reasonable range of prices.

42. The arbitrator finds Alpine's pricing set forth in detail on Exhibit A are in the upper range of prices necessary to repair or replace automotive glass and in the upper range of the prices charged by a significant number of repair facilities in the area where the automotive repairs and replacements took place.

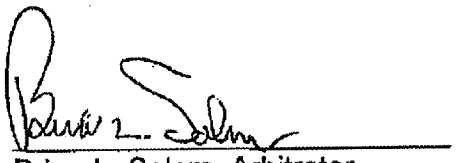
43. The arbitrator finds that Alpine has sustained its burden of proof and that American has breached its contractual obligations based upon the foregoing findings.

44. Alpine has sustained damages in the amount of Four Hundred Forty One Thousand Two Hundred Ninety Four and 20/100 Dollars ($441,294.20) because of American's breach of contract and Alpine is awarded damages in the sum of Four Hundred Forty One Thousand Two Hundred Ninety Four and 20/100 Dollars ($441,294.20).

45. The Minnesota No-Fault Standing Committee has resolved to permit an arbitrator to be compensated at the rate of $200.00 per hour. The Arbitrator has expended 51.6 hours on this arbitration file and the arbitrator's compensation of $10,320.00 shall be paid by American. An itemization of the hours expended will be provided upon request of either party or the AAA.

46. Each of the parties shall be responsible for their own respective costs, disbursements, attorney fees and filing fees. The parties shall pay any outstanding fees due to the American Arbitration Association. This Arbitration Award is in full disposition of all claims submitted to this arbitration proceeding.

Dated: December 30, 2014



Brian L. Solem, Arbitrator

Exhibit D

THE ARBITRATION TRIBUNALS OF THE
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between

Alpine Glass, Inc., as assignee for Guggisberg, et al.,

Petitioner,

and

American Family Insurance Group,

Respondent.

Case No.: 56 600 02202 09

ARBITRATION AWARD

The above arbitration hearing took place on December 15 and December 16, 2009. The record was left open for post-hearing submissions by the parties which were submitted on January 15, 2010 and thereafter. The record was declared closed on February 19, 2010.

THE CLAIMS

Pursuant to the Order of 11/11/2009 by the undersigned, Alpine Glass was permitted to submit claims contained in the Declaratory Judgment Action Order of Judge David Doty of 5/29/2007 which consolidated "short pay claims" from November 4, 2004 through August 17, 2006 and was further permitted to submit post-Declaratory Judgment claims for glass replacement covering the time frame from 8/22/2006 to 10/17/2009. Pursuant to the Order of the undersigned, claims contained in the Declaratory Judgment Action of Judge David Doty by his Order of 5/29/2007 and claims in addition to those that arose from and after the date of his Order were allowed to be submitted, as the undersigned determined that consolidation of these post-Declaratory Judgment claims were warranted based upon the interest of efficiency and danger of inconsistent judgments. It was understood by all parties that any award would be separated out

so that if it's determined that the scope of the arbitration was limited to the claims contained in the Declaratory Judgment Action, that amount would clearly be distinguished from post-Declaratory Judgment Action claims for purposes of any appeals. At the hearing, Alpine Glass submitted claims in the amount of $450,568.04 for "short pay claims" from 11/4/2004 through 8/17/2006 and submitted post-Declaratory Judgment "short pay claims" covering the time frame from 8/22/2006 to 10/17/2009 in the claimed amount of $572,547.70.

POST-TRIAL SUBMISSIONS

There were several pretrial motions that were brought and post-trial submissions by the parties. Respondent American Family Insurance Group in its post-trial submissions alleged several instances of fraud, arguing that the claimant invoiced for windshields that were more expensive than those installed, billed for new moulding when in some instances the old moulding was re-used or it was alleged moulding was included in the price of the windshield, and further billed for premium price windshields when less than "premium" windshields were installed. Based upon the submissions of both parties, there was insufficient evidence presented to establish that the above discrepancies rose to the level of an intent to defraud American Family Insurance Company.

At the conclusion of the record, Claimant Alpine Glass withdrew some claims and therefore submitted its final claim for invoices covering the time period from November 4, 2004 through August 17, 2006 in the amount of $445,870.77 and its claims from August 22, 2006 through October 17, 2009, in the amount of $596,966.70.

THE ISSUE

An issue arose over the insurance policy in question and an endorsement that changed the policy at issue and made it different from the policy and endorsements that were submitted to the

Court in the Declaratory Judgment action, Alpine Glass, Inc. v. American Family Insurance Company, U.S. District Court, District of Minnesota, Civil No. 06-4213(DSD/SRN). The undersigned determined that Minn. Stat. § 72A.201, Subd. 6(14) is applicable to this case and the issue to be decided is whether American Family Insurance Company failed to provide payment to Alpine Glass based on a competitive price that is fair and reasonable within the local industry at large. Or in other words, did American Family Insurance Company breach its contract for payment of glass based upon this standard.

Substantial evidence was introduced as to whether American Family Insurance Company paid a competitive price for windshield replacements that was fair and reasonable within the local industry at large, which included the cost of and charges for labor and materials. Live testimony was presented in this case by Mr. Michael Reed on behalf of Alpine Glass, and on behalf of American Family Insurance Group by Tom Ellefson, Michael Hendricks, Russell Corsi, James Kipker, William M. Thronson, and Robert Ozmun.

In addition, testimony was presented by way of Affidavit of Chul Kwak, Jerry Mattison, John Boulay, Marc Anderson and Rick Rosar on behalf of Alpine Glass and Kurt Eischens, Harlan Mielke, Ilene Watke, Carol Myran, Denise Merrill, Rachel Melberg, Justin Tumblin, Jerry Wintterota, Russell Corsi, and Gretchen Touchette, and Karen Runyon. This case was vigorously contested and both parties presented evidence as to the factors that are considered in evaluating pricing from the perspective of Alpine Glass, and as to factors that are considered in evaluating pricing and payment by American Family Insurance Company. There was evidence presented regarding pricing for glass based upon a discount from NAGS before February 2005 and then various price structures including re-balancing after NAGS prices following February 2005 as well as pricing considerations for labor and moulding.

ASSIGNMENT

American Family Insurance Company contended that Alpine Glass' claims should be reduced by $112,615.96 for failure to obtain an assignment. In all cases, American Family Insurance Company has paid on all of the claims that it alleges an assignment was not provided, and thus has waived its defense of lack of assignment having not objected to any assignment at the time invoices were submitted.

MOULDING

American Family Insurance Company contends that Alpine Glass' claim for moulding charges should be reduced by $9,593.74 because the price for mouldings as charged in the invoice was contained in the price for the glass, and the undersigned agrees, therefore, the moulding charges in this submitted by Alpine Glass shall be reduced by the amount of $9,593.74.

AWARD

Based upon all of the evidence, including the testimony of witnesses, counsels' memoranda and submissions, and the declarations of witnesses and based upon the proceedings herein, the undersigned arbitrator makes the following award:

Claimant Alpine Glass is awarded $306,960.31 for claims covering the time period from 11/4/2004 through 8/17/2006;

Claimant Alpine Glass is awarded the sum of $423,846.36 for claims from 8/17/2006 through 10/17/2009.

Costs and disbursements:

Claimant's request for costs and disbursements are denied.

Administrative Fees:

All administrative fees shall be borne as incurred.

Arbitrator's Fee:

The arbitrator's fee of $7,300.00 is to be split equally between the parties and paid as directed by the American Arbitration Association.

Interest:

Respondent shall pay Claimant pre-award interest to be calculated by the parties following applicable Minnesota law for pre-award interest. In the event the parties are unable to agree, the arbitrator will review respective calculations as to interest for awarding of a decision.

Dated: 3/12/10

Bernie M. Dusich, Arbitrator

Exhibit E

AMERICAN ARBITRATION ASSOCIATION

Alpine Glass, Inc. as assignee of Erickson, et al.,

Claimant,

v.

USAA Insurance Company,

Respondent.

AMENDED ARBITRATION AWARD AND MEMORANDUM

File Number: 56 600 05621 11

The above-captioned matter came on for hearing before the undersigned, the duly designated arbitrator, on the 31st day of July, 2012. Charles J. Lloyd appeared on behalf of Claimant, and Gregory J. Myers appeared on behalf of Respondent.

The parties submitted voluminous documents without objection, and submitted extensive oral testimony at the hearing.

The submissions of the parties presented the following issues:

1) Respondent objected to consideration of over half of the individual invoices submitted by the Claimant. Respondent's basis for its objection was that in its Complaint in the District Court, Alpine only named USAA Casualty Insurance Company (CIC) and USAA General Indemnity Company (GIC). Respondent claimed that over half of the invoices were for insureds of United Services Automobile Association (USAA) and Garrison Property and Casualty Company (GAR). Accordingly, USAA asserted that the arbitrator should not consider the invoices except those of assureds of CIC and GIC. USAA's motion to exclude the invoices of

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CONFIDENTIAL
EXHIBIT 16
PAGE 1

insureds of companies other than GIC and CIC is denied for reasons set forth in the attached memorandum.

2) USAA asserted that two of the claims submitted by Alpine were submitted after the expiration of the statute of limitations. Following post-hearing submissions, this claim was withdrawn.

3) Claimant asserted that USAA was in breach of its contractual obligations in having failed to pay the full amount of the invoices submitted by Alpine pursuant to paragraph B. of the "Insuring Agreement" at page 20 of the policy (USAA Exhibit 10 at Bates Number USAA000939). USAA denied the breach on the following grounds:

   a) That the amount paid by USAA complied with the contract in that they paid a reasonable amount for the service in the marketplace.

   b) USAA also asserted that in transmitting a fax to Alpine in the form set forth at Exhibit 7B (Page USAA000304), a unilateral contract had been formed at the price set forth in the fax which set forth USAA's pricing with respect to the windshield part at NAGS list.

The arbitrator finds that USAA's failure to pay the full invoice of Alpine Glass constituted a breach of contract. Further, the arbitrator finds that USAA has failed to establish the existence of a unilateral contract on grounds set forth more fully in the Memorandum attached hereto.

WHEREFORE, the undersigned arbitrator does hereby make the following award in favor of the Claimant:

Respondent shall pay to Claimant the sum of $137,019.00. Claimant's request for costs is denied.

The arbitrator's compensation at the rate of $200.00 per hour shall be borne equally by the parties.

Dated: 8/27/12

Arbitrator

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Memorandum

This case is the latest in a series of lawsuits and arbitrations arising out of issues between various glass providers and various insurers for auto glass (primarily windshield) claims. The Claimant, Alpine, is in the business of auto glass replacement and Respondent USAA is an insurer doing business in the State of Minnesota.

Alpine submitted invoices to USAA for payment after obtaining assignment of the policy rights from policyholders and performing glass replacement. Until June of 2006 USAA generally paid these invoices in full; however, commencing June 12, 2006, USAA refused to pay the full amount of the invoice, asserting that the price of the glass part (again, primarily windshields) was "grossly inflated." (USAA Memorandum page 1.)

In response, Alpine asserted that the amounts claimed were essentially identical to amounts that were claimed prior to June 12, 2006 and further that the amounts charged were reasonable costs for the work performed for the USAA policyholder. No issue was raised at the hearing regarding the validity of the assignments from the USAA insureds to Alpine of their rights under the policy.

1) Invoices at issue.

USAA raised a threshold issue in its Memorandum and at the commencement of the arbitration. USAA noted that the initial District Court Complaint submitted by Alpine Glass named only USAA Casualty Insurance Company (CIC) and USAA General Indemnity Company (GIC) defendants. Respondent asserted that fewer than half of the invoices were for insureds of CIC and GIC; the majority of the invoices, according to the claim of Respondent,

were for insureds of United Services Automobile Association (USAA) and Garrison Property and Casualty Insurance Company (GAR) and therefore, because these entities were not sued, these invoices were not properly before the arbitrator. This assertion of USAA is rejected for the following reasons:

A) The evidence was undisputed at the hearing that CIC and GIC are wholly owned subsidiaries of USAA. USAA clearly had notice of the claims in a timely fashion and indeed made no claim of any prejudice from the asserted omission in the caption of the Complaint. As such, even if this issue had been preserved (see below), the Complaint would properly be amended pursuant to Rule 15.03 and would relate back to the initial Complaint.

B) USAA agreed to submission of all of the invoices before the arbitrator to this arbitration. Exhibit 1 of the Alpine documents is the Stipulation for Consolidation and Order of the Honorable Regina M. Chu of the Hennepin County District Court. The Stipulation which was executed by the attorneys for the Claimant and Respondent specifically states that:

> "The USAA defendants have agreed to consolidation of the identified claims for arbitration pursuant to the rules governing no-fault arbitrations as set forth at Minn. Stat. §65B.525. In exchange, Alpine has agreed to provide copies of the assignments for the claims at issue and an electronic copy of the spreadsheet attached to the Complaint as Exhibit "A"."

At the hearing the parties stipulated that the invoices before the arbitrator were identical to the "identified claims" and the "claims at issue" referenced in the Stipulation.

Furthermore, the Order of Judge Chu, an Order stipulated to by the parties, specifically ordered "that the invoices identified by the

plaintiff in its Complaint be consolidated for arbitration pursuant to the rules governing no-fault arbitrations." Accordingly, pursuant to the parties' own Stipulation and the Court's Order, all of the invoices submitted to the arbitrator were agreed to be consolidated and considered at this arbitration.

C) This matter was commenced by the Arbitration Petition identified as Exhibit 2, page 1, of the Alpine submissions. That Arbitration Petition noted that the parties were Alpine Glass and that the Respondent was USAA. Nothing in USAA's 5F response contested any issue as to the identity of the parties. Accordingly, and for the foregoing reasons, the arbitrator has rejected USAA's claim that some of the invoices were not properly subject to this arbitration.

2) Breach of Contract.

As set forth in the Arbitration Award, the arbitrator has determined that USAA breached its contract in failing to make payment on the full Alpine Glass invoices. USAA's position that it had fulfilled the requirements of its contract rested upon two grounds:

a) That the amounts charged exceeded the reasonable cost for the services and materials rendered; and

b) That USAA had imposed a unilateral contract in sending a fax in the form of USSA Exhibit 7B to Alpine.

This Memorandum will consider each of these contentions in turn.

A. Glass Cost.

As Claimant, Alpine bore the burden of proof with respect to the breach of contract. As noted in the Award, the arbitrator has found that Alpine met its

burden to show that the amounts invoiced were the cost of repairing and replacing the glass on the insured's vehicle.

The applicable provision of the USAA contract is at USAA Exhibit 10, Page 20 of the policy (identified as USAA Bates No. 000939). This provision provides:

> "Full safety glass coverage. We will pay under comprehensive coverage for the cost of repairing and replacing damaged safety glass on your covered auto without a deductible."

The principal dispute between the parties in this matter is the price for the glass part, in this case, the windshield of the vehicle.

Testimony at the hearing demonstrated that the windshield is an important structural component of the vehicle. Among other safety functions, it provides a substantial percentage of the strength of the roof and also assists in the proper functioning of the airbag system.

The evidence showed that the prices charged by glass installers for the windshield or other glass part is generally quoted by reference to the NAGS (National Auto Glass Specification) benchmark price. Up to 2005, Alpine billed insurers at a rate of approximately 85% of the then existent NAGS benchmark price, as did other glass replacement companies. The evidence at the hearing showed that, with very few exceptions, USAA paid the Alpine invoice in full. (Seven of the invoices at issue in this matter pre-dated June 12, 2006.)

In 2005, NAGS, for reasons which were never made clear at the hearing and are apparently unknown to the parties, elected to "re-balance" their benchmark pricing. Thereafter, insurers, including USAA, issued new pricing guidelines. USAA submitted a letter to glass shop owners/managers identified as Alpine Exhibit 36, page 2, in which it stated that the "fair and reasonable

price" for the glass windshield part would be 140 percent over and above the NAGS list price. Thereafter, until June 12, 2006, USAA continued to pay invoices, including Alpine billings, at this rate for installed windshield glass parts.

The dispute here centers on USAA's unilateral decision as of June 12, 2006 to only pay invoices for glass parts at NAGS list, omitting the 140 percent additional payment that had been "fair and reasonable" through June 11, 2006. USAA witnesses at the hearing did re-affirm that the payment at the rate of 140 percent in addition to the NAGS list price was fair and reasonable, but asserted that, as of June 12, 2006, it had found that other insurers were paying a lesser rate. Evidence at the hearing, however, showed that other insurers, including State Farm Insurance, continued to pay at the higher previous rate. This included the information contained attached to the Affidavit of Marc Anderson at Exhibit 38 of the Alpine exhibits. Evidence was also submitted both at the hearing and by way of documents that the "re-balancing" of the NAGS benchmark prices was intended to be "revenue neutral" – that is, glass replacement businesses would receive the same amount for the windshield part after the re-balancing as they had before, thus clearly necessitating an adjustment or "mark up" of the price. The owner of Alpine Glass testified at the hearing that his prices were reasonable amounts for the work performed, and Rick Rosar and Marc Anderson submitted Affidavits also attesting to the reasonableness of the amounts charged for the services performed by Alpine.

In response, Alpine presented the testimony of a USAA employee as well as an employee of Safelite, a contractor for USAA handling its glass service program. Significantly, Safelite is a competitor of Alpine and other independent

glass replacement dealers, and indeed had a contract with USAA to administer glass claims. Testimony at the hearing also dealt with the difference between Safelite services and those of other glass replacement or repair companies. Most significantly, the evidence submitted by USAA in support of its payment was culled only from invoices submitted to USAA, and not those submitted and paid by other insurers. Furthermore, even USAA's own evidence included invoices from glass shops charging as much or more for windshield parts as that charged by Alpine.

Based upon all of the factual and documentary evidence submitted to the arbitrator, including all the testimony at the hearing of this matter, the arbitrator has concluded that the amounts submitted by Alpine constitute the "cost of repairing or replacing damaged safety glass on (the insured's) covered auto" and are reasonable.

B. Unilateral Contract.

USAA also asserted that it was not obligated to make payment of the full invoices because a unilateral contract had been formed with Alpine. As noted in the Award, the basis for this claim was that USAA submitted to Alpine a form such as that set forth in Exhibit 7B of the USAA exhibits. The language at issue appears in the middle of Exhibit USAA000304 in Exhibit 7 of the USAA exhibits. It states:

"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, or other charges and any molding parts. Performance of services constitutes acceptance of the communicated price and billing instruction."

In *Alpine Glass, Inc. vs. Illinois Farmers Insurance Company and Mid-Century Insurance Company*, the 8th Circuit enumerated the elements under Minnesota law to form a unilateral contract. The Court there stated:

> "To form a unilateral contract, Minnesota law requires a definite offer, communication of the offer, acceptance and consideration (citing *Martens vs. Minnesota Mining & Manufacturing Company*, 616 N.W.2d 732, 742 (Minn. 2000)). "An offer must contain sufficiently definite terms to enable the fact finder to interpret and apply them." (Citations omitted.) Acceptance must be unequivocal and comply exactly with the requirements of the offer." *Markmann v. H. A. Buntjen Company*, 81 N.W.2d 858, 862 (Minn. 1957). If the purported acceptant changes the terms of the offer, "it is not positive and unequivocal, and constitutes a rejection of the offer and counteroffer. Id."

The arbitrator finds that under the evidence in this case USAA has fallen far short of its burden of proving its claim of the formation of a unilateral contract. While USAA did apparently submit a communication similar to that set forth in Exhibit 7B to Alpine, it appears that in many, if not most or all of the cases, such a communication occurred after Alpine had performed the windshield replacement service. Furthermore, the arbitrator finds that the specified language is not at all a "definite offer"; to the contrary, it appears to the arbitrator that the quoted language "performance of services constitutes acceptance of the communicated price and billing instructions" applies only to work for "any part not priced by NAGS" such as RV, sunroofs or OEM parts. In the present case, there is no claim that any of the windshield parts at issue were not priced by NAGS, and thus this provision of the contract does not appear to even apply. At the very least, it does not constitute a definite offer. Furthermore, there is absolutely no evidence of any unequivocal acceptance and certainly Alpine did not "comply exactly with the requirements of the offer",

in that they immediately submitted an invoice that did not comply with the terms of the purported "offer".

It is also notable that USAA's purported claim would certainly contradict the ethos of USAA about which witness Horner of USAA testified. While the arbitrator has no doubt that USAA has concern for its members, who are servicemen and their dependents, the arbitrator similarly finds it difficult to believe that USAA would wish to further inconvenience members by requiring they go from shop to shop if shops refuse to serve their members when windshield glass has been damaged and thus compromises the safe operation of the vehicle. Rather, it would strike the arbitrator that USAA would wish to have prompt replacement of this important safety component by an installer, such as Alpine, who follows the highest industry standards and utilizes the highest quality parts.

Finally, while finding that the Respondent breached its contract in failing to make a proper payment, the arbitrator has, in his discretion, denied Claimant's requires for costs. It should be noted, however, that both sides were skillfully represented by excellent counsel and that submissions in this matter in the hearing were conducted in a manner as to focus on and clearly elucidate the issues. The arbitrator compliments both counsel on their submissions.

PWR:ska

Exhibit F

AMERICAN ARBITRATION ASSOCIATION

Alpine Glass, Inc., as assignee of
Diane Jane Cartwright, et al.,

Claimant,

v.

Allstate Insurance Company,

Respondent.

Case No: 56 600 03634 08

AMENDED
ARBITRATION AWARD

This is an amendment of the Arbitration Award dated August 26, 2009 in the above-captioned matter, and is based solely on the letter submissions of Charles Lloyd dated August 28, 2009 seeking clarification of certain errors in the August 26, 2009 Arbitration Award concerning claims barred by the statute of limitations and claims voluntarily withdrawn by Alpine Glass. Based upon the submission, the claims barred by the statute of limitations is $124,849.63, and claims voluntarily withdrawn by Alpine Glass total $7,539.66.

The balance of the award is incorporated in this amendment, and ultimately awards Alpine Glass $693,364.58 in short pays from Allstate, all as more fully set forth in this Amended Arbitration Award.

These matters were consolidated by order of the United States District Court, District of Minnesota, Judge Joan Ericksen dated March 12, 2007, and referred to arbitration.

Historically, the matter involved the timeline:

- February 21, 2006 Alpine filed a Complaint for declaratory relief for 618 claims.
- March 12, 2007 Alpine's motion to consolidate 618 claims was granted by the United States District Court, Judge Joan Ericksen.
- July 9, 2008 Eighth Circuit Court of Appeals affirmed the District Court's consolidation order.
- October 15, 2008 Alpine's online filing demand for arbitration, now including 1,613 claims (1,014 previously unidentified) totaling $774,028.24.
- February 20, 2009 Pre-Arbitration meeting with attorneys.
- February 24, 2009 Allstate's objection to Alpine's increase to 1,613 claims.
- April 10, 2009 Pre-Arbitration meeting, arbitration originally scheduled for April 14, 2009, was continued to August 3, 2009, as I ordered the additional 1,614 claims be consolidated in this proceeding.
- On May 5, 2009 I allowed ninety (90) additional claims to be added to the arbitration totaling $51,725.63. The new total is $825,753.87

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On October 15, 2008, the Alpine Glass, Inc. ("Alpine") filed this matter with the American Arbitration Association in accordance with the Minnesota No-Fault Arbitration rules with a claimed amount $774,028.24 on "short pay" claims as a result of Allstate Insurance Company's ("Allstate") partial payments to Alpine. Service was made upon Allstate's attorneys of record at that time.

This Arbitrator was designated in accordance with Minn. Stat. §65B.525[1], conducted the hearing on August 3, 4 and 6, 2009 at the offices of Jensen, Bell, Converse & Erickson, 1500 Wells Fargo Place, 30 East Seventh Street, St. Paul, Minnesota. Each party produced significant amounts of materials either written or in digital format.

Alpine's testimony was presented by Alpine's President, Mike Reid.

Allstate presented live testimony from Paul McFarland, Director, Paducah Operations and Program Administration Lynx Services, and Douglas Smith, Claim Project Manager, Auto Process Development/Master, Allstate Insurance Company.

Each party submitted the identical Allstate Property and Casualty Insurance Company auto insurance policy with the identical language applicable to these claims (pages 21 and 22):

> Allstate's limit of liability is... 2) the cost to repair or replace the property or part to its physical condition at the time of loss, using parts produced by or for the vehicle's manufacturer or parts from other sources, including but not limited to non-original equipment manufacturers subject to applicable state laws and regulations.

The governing statute concerning competitive price is Minn. Stat. §72A.201 Regulation of Claims Practices, subd. 6, Standards for Automobile Insurance Claims Handling (14), which dictates that the insurer shall pay for damaged window glass "...a competitive price that is fair and reasonable within the local industry at large".

This is the statutory provision and applicable to this hearing. Evidence was provided as to whether Allstate paid a competitive price for the windshield replacements that was fair and reasonable within the local industry at large, and that is the point of contention in this hearing.

Both parties produced evidence as to how they keep abreast of the glass replacement market in their local area, and while Allstate claims it has determined the dollar amount of the fair and reasonable price, Alpine alleges it is more of a range based upon NAGS and pricing elements, and submitted documentation from insurers detailing varied price structures in the form of plus or minus NAGS, individual labor, sealants and molding/clip prices.

[1] In this proceeding, this arbitrator also heard the arbitration proceeding entitled Alpine Glass, Inc. as assignee of W. Whitenberg, et al., Claimant, and Illinois Farmers Insurance Company, American Arbitration Association case number 56 600 01433 07, and rendered an award in favor of Alpine on October 4, 2007. Both attorneys were made aware of this at an early pre-arbitration meeting.

Allstate's glass program has prices for participants and non-participants. Alpine denies they were a participant, and Allstate has failed to prove otherwise, at least after October 15, 2002.

Statute of Limitations

Respondent has challenged the inclusion of the short paid invoices consolidated in this hearing, but has failed to adequately demonstrate that it was prejudiced by the including of the claims. I have ruled all claims were properly included in this proceeding.

Minn. Stat. §541.05, subd. 1(1), dictates a six year statute for breach of contract. Allstate asserts, and the evidence supports, that Alpine seeks to recover on numerous claims arising before October 15, 2002, claims that are barred by the statute of limitations. I agree and $5,071.34 short pays from 2001 and $119,778.29 short pays through October 15, 2002 are untimely brought and barred. This is my determination based on the evidence and differs from the dollar calculations of the parties.

Withdrawn Claims

Claimant has willingly withdrawn $7,539.66 of claims involving deductibles, fuel charges, rust abatement, and mobile service fees.

Pricing and Payments on the $693,364.58 "Short Pays"

Glass vendors use the National Auto Glass Specifications ("NAGS") list prices and Allstate regularly paid Alpine less than the amount billed, claiming Alpine's percentage of the NAGS price was not correct.

Alpine utilized different percentages of the NAGS list prices throughout the time period at issue. The Alpine formula for glass replacement is not car selective. It is based upon the NAGS formula and both parties have described the pricing and payment in the auto glass industry as "formulaic".

Glass vendors bill insurance companies for auto glass by referring to current NAGS price lists, and a percentage discount or percentage increase.

The prices established by Alpine have been accepted and paid by other Minnesota insurance carriers during the time period of the invoices at issue in this arbitration.

Auto glass companies routinely bill the insureds' insurance companies directly. Alpine follows this practice. Payment was issued by Allstate to the glass companies by its Third Party Administrator (here Lynx Services).

All the glass at issue here was replaced by Alpine, and they received payment from Allstate by an assignment of the debt to Alpine.

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Assignments for Payment

Allstate routinely made payments to Alpine on all of the invoices in this matter (all are short pays), but now disputes the validity of certain assignments concerning missing signatures, illegible signatures, or signatures where the name does not match the invoice.

However, Allstate paid after an investigation that its policyholder had coverage for the type of loss, that the work was done, and that payment was to be made to Alpine. Allstate never objected to any assignment in its payments and the assignment objections are waived, as Allstate had information or could have requested information by denying payment if it doubted the assignments, or that the work was done, or that there was coverage and could have denied or delayed its payments to Alpine.

Allstate objects to the assignments on a variety of grounds, but does acknowledge those assignments are legally necessary to pay the glass vendor the proceeds once coverage is determined.

The pricing and payment by the insurer was to be the prevailing competitive rate in Minnesota. An affidavit of Gary Polzin was introduced stating Allstate was paying his glass shop more. Additionally, Alpine submitted affidavits and declarations that dispute Allstate's claims that its payments complied with the statute and/or policy.

Upon all of the submission, both electronic and paper, the memoranda of counsel, the testimony and declarations of witnesses, and proceedings herein, the undersigned Arbitrator designated in accordance with Minn. Stat. §65B.525, makes the following award.

The arbitration was commenced by the filing in a proper form with the American Arbitration Association pursuant to the Minnesota No-Fault Arbitration rules.

The applicable policy language is to pay the cost to repair or replace, and there is no unilateral contract based upon communications between Allstate and Alpine.

Each party provided information about its informal market survey to support its pricing. Based upon the evidence, the market survey and NAGS pricing determinations by Allstate for the claims subject to the periods involved in this arbitration, Allstate has failed to establish that Alpine's service pricing is unreasonable.

The declarations offered and accepted by various parties detailed the role of the windshield in the structural safety system of a vehicle, both rollover and airbag deployment; market prices for auto glass replacement pursuant to the NAGS formulation (and its part numbers for auto glass); benchmark prices and standard labor times.

Claimant offered testimony concerning problems with aftermarket glass, describing its reverse engineering process and why it is inferior to OEM glass and claims its installations are high quality, using high quality materials.

It is the finding of this arbiter that the remainder of the claims, all of which are $693,364.58 "short pays", and none of which were ever denied payment by Allstate or its administrator, are awarded as being within the range of a price that was reasonable and fair within the local industry based upon the stipulated policy language agreed to by the parties covering these claims.

Claimant alleges violations by the insurer of spoliation for disposing of materials provided, noting that none of the Alpine work orders or invoices (containing the assignment language) are kept by Allstate. Allstate submitted many documents from its third party administrator, Lynx. Claimant's spoliation claim is denied.

Lastly, there were various objections, primarily to foundation of exhibits offered and received by this arbiter. All exhibits offered were received with the understanding that I would determine what relevance and particular weight any exhibit was entitled to. Each party should know that all documents, PDF or written, were reviewed and those to which foundation objections were made were given the weight decided by me. This includes the question regarding Bates numbers ALP-ALL 101207-101319.

Costs and Disbursements

Claimant's request for costs and disbursement is denied in its entirety.

Administrative Fees

The administrative and filing fees of the American Arbitration Association shall be borne as incurred, and neither party shall be reimbursed for their respective filing fees.

All administrative fees for additional meetings shall be borne equally by the parties.

Award on Claims

All claims asserted by either Claimant or Respondent in this arbitration proceeding and not addressed above are denied in their entirety, and this award is full disposition of all claims submitted.

Arbitrator's Fee

Claimant's request that the Respondent pay the entire fee of the Arbiter is denied. Pursuant to the resolution of the No-Fault Standing Committee, the Arbitrator's fee is $13,400.00 to be split equally between the parties and paid as directed by the American Arbitration Association.

Interest

Respondent shall pay Claimant pre-award interest which is to be calculated by the parties following the applicable Minnesota statutory dictates for pre-verdict interest. In the event the parties are unable to agree, this Arbiter will review their respective compilations as to interest and render a decision. Anything submitted to the Arbiter must be sent to the other party, and the Arbiter's jurisdiction remains to decide the proper amount of interest.

Interest shall be calculated pursuant to the rates set by the State Court Administrator pursuant to Minn. Stat. 549.09, or at a rate agreed to by the parties.

Dated: 9/10/09

James C. Erickson, Sr.
Arbiter

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Exhibit G

AMERICAN ARBITRATION ASSOCIATION

Alpine Glass, Inc., as assignee of
W. Whidtenberg, et al.,

Claimant,

v.

Illinois Farmers Insurance Company,

Respondent.

Case No: 56 600 01433 07

ARBITRATION AWARD

Alpine Glass, Inc. ("Alpine") is in the business of replacing automotive glass and for the issues here involved, performed such work and submitted invoices to Illinois Farmers Insurance Company ("Farmers") for auto glass replacement on behalf of Farmers insureds.

Pricing in the auto glass industry is based primarily on three components: glass, adhesives and labor.

The pricing of these components is based upon a national price list publication known as the National Auto Glass Specifications ("NAGS"). The NAGS benchmark pricing is updated and published quarterly, however during the period at issue here, 2003 to 2006, Farmers changed its pricing once and that was after the NAGS rebalancing which was effective in February 2005.

Insurers and glass providers based their glass prices on NAGS benchmark prices, but employ different percentages to calculate the claimed amount or the amount to be paid.

NAGS provides price by part number for each glass part, a price per tube of adhesive, and either a flat or hourly rate for labor. In this arbitration, there is no dispute about the pricing as to moldings.

These claims were consolidated by order of the United States District Court for this arbitration proceeding. Claimant alleges Farmers breached its policy and as a result Claimant alleges it has suffered damages. The total amount claimed is $476,703.13. There is no evidence that any Alpine invoice was wholly unpaid by Farmers, and Alpine's claims are all detailed as "short paid invoices."

Various motions have been filed by the parties, and the arbitration hearing commenced on Tuesday, September 11, 2007 before the undersigned Arbiter, and the hearing was held at 1500 Wells Fargo Place, 30 East Seventh Street, St. Paul, Minnesota 55101. The hearing concluded on Wednesday, September 19, 2007, and both parties submitted proposed findings on September 28, 2007. Final summations were heard on Tuesday, October 2, 2007.

During the hearing on this matter, the arbitrator heard live testimony from Michael Reid, President of Alpine Glass, on behalf of Alpine and from Andy Kipker of Belron, USA, Edward Sprigler of Belron USA, Michael Keller of Farmers Insurance and Barry Carbaugh of Farmers

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Insurance on behalf of Farmers. In addition, testimony was presented by way of affidavit and declaration from Marc Anderson, Chul Kwak on behalf of Farmers and Dino Lanno on behalf of Farmers in their respective cases in chief and from Gary Polzin, Rob Murphree and Rick Rosar in rebuttal for Alpine. The parties also submitted numerous exhibits in this matter. It is on this evidence that these findings of fact are based.

The Arbiter, after hearing all of the evidence introduced by the parties and being fully advised on the premises and upon all the files, records and proceedings herein, makes the following award.

Alpine replaced automotive glass for Farmers insureds and submitted invoices to Farmers on behalf of its named insureds.

Alpine's standard policy was, upon contact by an insured, to notify the insurer of the loss, verify the coverage and perform the work and bill the insurer directly.

The insured is free to select any auto glass repair company to do the work and any insured of Farmers has the right to hire Alpine to repair the auto glass.

The Alpine customer invoices have printed on them in part "...I have insisted that, where possible, Alpine Glass, Inc. use parts and materials from original equipment manufacturers in the replacement of my automobile glass." Alpine alleges that is uses original equipment manufacturer (OEM) glass, high end adhesives (Essex and Sitka), as well as employing certified technicians. During the time at issue for these invoices, not all Alpine installers were certified by the National Glass Association.

For the time period here under consideration, all insureds were insured by the standard Farmers policy and the claims are essentially categorized as:

a. pre-rebalance claims without a deductible
b. post-rebalance claims without a deductible
c. pre-rebalance claims with a deductible
d. post-rebalance claims with a deductible

Regardless of whether or not a deductible applied, or whether the claim was a pre-rebalance (before February 28, 2005) or a post-rebalance (after February 28, 2005) both the insurers and the glass providers based their prices on NAGS benchmark prices, but employed different percentages to calculate the amount.

Farmers routinely paid Alpine, but not always, less than the amount billed, alleging it paid what it considered to be the prevailing competitive rate or the amount necessary[1] for Alpine's glass replacement rather than paying the invoice in full.

[1] Various policy endorsements were amended from time to time. MN008 for policies with a deductible mandated "...the maximum amount...is the prevailing competitive price." Endorsement E1400, First Edition, mandated "...the amount necessary to...replace safety glass..." and remained essentially the same through a Second edition (March 2004) and a Third Edition (December 2005). For the analysis of short pays under consideration here, the award is the same regardless of which policy endorsement is applicable.

Farmers adjusted the loss by determining coverage and then assignment from the insured and made payment. The authorization to pay Alpine directly is contained in the Alpine documents and reads in pertinent part that the insured authorizes:

> ...my insurance company to pay this invoice directly to Alpine Glass, Inc. and I assign any and all claims in connection with this automobile glass installation or repair against my insurance company and all policy proceeds due for this installation or repair to Alpine Glass, Inc.

Farmers made payments directly to Alpine on each of the invoices at issue in this proceeding. Farmers contends that Alpine lacked an assignment on certain claims. Based upon the testimony, payment would not have been made by Farmers to Alpine without a signed assignment. Farmers alleges these claims total $39,529.93 and they are entitled to a set off because of the lack of an assignment. Because Farmers paid a portion of the claims, Alpine's claims will not be reduced because it does not now have copies of all the assignments.

Glass is a significant part of the vehicle's structural integrity and the quality of the replacement glass and its fit are important considerations.

The evidence is that Farmers was paying a rate not based upon competitive pricing in the auto glass replacement industry in Minnesota which is a competitive industry.

Farmers has breached the terms of its insurance policy regardless of which limit of liability is applied.

Based on the above, Farmers has underpaid Alpine $400,436.63.

Not included in this claim and eliminated by consent of the parties were three Wisconsin residents' claims, Collington, Patterson and Smith, which have been voluntarily withdrawn, as well as an additional $6,930.31 of claims, mileage charges, etc. withdrawn by Claimant.

COSTS AND DISBURSEMENTS

Claimant's request for costs and disbursement is denied in its entirety.

ADMINISTRATIVE FEES

The administrative and filing fees of the American Arbitration Association shall be borne as incurred, and neither party shall be reimbursed for their respective filing fees.

AWARD ON CLAIMS

All claims asserted by either Claimant or Respondent in this arbitration proceeding and not addressed above are denied in their entirety, and this award is full disposition of all claims submitted.

ARBITRATOR'S FEE

Claimant's request that the Respondent pay the entire fee of the Arbiter is denied. Pursuant to the resolution of the No-Fault Standing Committee, the Arbitrator's fee is computed at $200.00 per hour. The Arbitrator's fee is $9,220.00 to be split equally between the parties and paid as directed by the American Arbitration Association.

INTEREST

Respondent shall pay Claimant pre-award interest which is to be calculated by the parties following the applicable Minnesota statutory dictates for pre-verdict interest. In the event the parties are unable to agree, this Arbiter will review their respective compilations as to interest and render a decision. Anything submitted to the Arbiter must be sent to the other party, and the Arbiter's jurisdiction remains to decide the proper amount of interest.

Interest shall be calculated pursuant to the rates set by the State Court Administrator pursuant to Minn. Stat. 549.09, or at a rate agreed to by the parties.

Dated: 14/4/2007

James C. Erickson, Sr.
Arbiter

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Exhibit H

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Re: 56 600 01470 14
Garlyn, Inc. (d/b/a Polzin Glass)
and
American Family Insurance Company

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARD as follows:

Consolidated comprehensive loss claims for auto glass repair and replacement: $99,347.33

Arbitrator's compensation in the amount of $3,830.00 shall be borne equally by the parties, and paid as directed by the American Arbitration Association.

Filing fees shall be borne as incurred.

This award is in full settlement of all claims submitted to this arbitration.

DATE: September 19, 2014 **SIGNED:** _____
Denise S.S. Gullerton, Arbitrator

Exhibit I

STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1492

BuyRite Auto Glass, Inc., d/b/a Rapid Glass,
Respondent,

vs.

Progressive Casualty Insurance Company, et al.,
Appellants.

Filed April 9, 2012
Affirmed in part and reversed in part; motion denied
Connolly, Judge

Hennepin County District Court
File No. 27-CV-10-4058

Charles J. Lloyd, Rachael J. Abrahamson, Livgard & Lloyd PLLP, Minneapolis, Minnesota (for respondent)

Leny K. Wallen-Friedman, Paul M. Floyd, Wallen-Friedman & Floyd, PA, Minneapolis, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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PAGE 1

UNPUBLISHED OPINION

CONNOLLY, Judge

The district court consolidated numerous individual auto-glass repair or replacement payment claims assigned to respondent auto-glass company for purposes of arbitration against the insurer appellants. The arbitrator issued an award in favor of respondent auto-glass company against insurer appellants and included prejudgment interest at a rate of four percent. Appellants challenge the district court's decision to confirm the arbitrator's award in favor of respondent and its imposition of ten-percent prejudgment interest. Because the arbitrator did not exceed his authority in determining that appellant breached its contractual obligation to pay the disputed claims, we affirm the district court's denial of appellants' motion to vacate the arbitration award, but because none of the individual claims or awards exceeded the $7,500 threshold for prejudgment interest, we reverse the district court's application of a ten-percent interest award. We deny appellants' motion to strike as moot.

FACTS

For each of the auto-glass repair or replacement payment claims involved, respondent BuyRite Auto Glass, Inc., d/b/a Rapid Glass repaired or replaced auto glass for appellants Progressive Casualty Insurance Company, et al., insured policyholders and received an assignment of the policyholders' claim for payment of the cost of the replacement. Respondent then billed appellants for the auto-glass work. The 580 claims here all involve invoices that were allegedly underpaid or unpaid by Progressive from January 2005 through April 2010, and each claim was for less than $7,500.

In June 2010, the district court granted respondent's motion to consolidate the 580 allegedly underpaid and unpaid glass repair and replacement invoices for arbitration. In October 2010, a No-Fault Arbitration was held pursuant to the Minnesota No-Fault Automobile Insurance Act (No-Fault Act), Minn. Stat. § 65B.525, subd. 1 (2010). Appellants' policy requires it to pay "the amount necessary to repair the damaged property to its pre-loss condition.". The policy further provides:

> [I]n determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by [Progressive]:
>
> (i) shall not exceed a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment; and
> (ii) will be based on a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment . . . .

The central issue at the arbitration was whether the charges submitted by the claimant, respondent, or the payments made by appellants were fair, reasonable, and competitive within the local industry at large. Respondent argued that the issue related to the charges submitted, while appellants argued that the issue related to the payments made. The arbitrator "determined that the word 'price' is synonymous with 'charge' and though the respective parties' positions is one largely of semantics, the [arbitrator] has determined that the charge or price submitted by [respondent] is the focal factor in the case." The arbitrator considered evidence presented by both sides regarding the factors to be considered in evaluating pricing, ultimately awarding respondent a total of $157,851.46 for the underpaid and unpaid claims. Following arbitration, the arbitrator granted respondent prejudgment interest at a rate of four percent.

Appellants brought a motion in district court to vacate the arbitration award. Respondents then filed a motion to modify the arbitration award, seeking ten-percent interest rather than the four-percent interest awarded. The district court denied appellants' motion to vacate the award and granted respondent's motion to modify the interest awarded to ten percent. This appeal follows.

DECISION

I. Arbitration Award

Appellants argue that the district court erred in denying its motion to vacate the arbitration award because the arbitrator exceeded his authority by applying a legal standard contrary to appellants' insurance contract. Appellants argue that, in determining whether appellant breached its policy, the arbitrator decided a legal question, which is to be reviewed de novo. Respondent disagrees, arguing that the arbitrator made a factual determination which is conclusive and not subject to review by this court.

"There is a strong policy in Minnesota favoring the finality of arbitration, and the grounds for vacating an arbitrator's award are narrow." *Erickson v. Great Am. Ins. Cos.*, 466 N.W.2d 430, 432 (Minn. App. 1991). Minn. Stat. § 572.19 (2010) sets forth the narrow grounds on which a court may vacate an arbitrator's award. One such exception is where the arbitrator exceeds his or her powers. Minn. Stat. § 572.19, subd. 1(3). An arbitrator exceeds his or her powers when the arbitrator errs as a matter of law in making an award.

Under the No-Fault Act, arbitrators "are limited to deciding questions of fact, leaving the interpretation of law to the courts." *Weaver v. State Farm Ins. Cos.*, 609

N.W.2d 878, 882 (Minn. 2000). An arbitrator's findings of fact are final and not subject to review by this court. *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004). Questions of law, however, are subject to de novo review. *Id.* at 333-34. "When applying the law to the facts, an arbitrator has authority to decide a legal question, but the arbitrator's legal determination is subject to de novo review by the district court." *Id.* This rule reflects the state's goal for consistent interpretation of the No-Fault Act. *Weaver*, 609 N.W.2d at 882. The party seeking to vacate an arbitration award "has the burden of proving the invalidity of the arbitration award." *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

"Generally, a coverage dispute presents a question of law for the courts, not the arbitrators . . . ." *W. Nat. Ins. Co. v. Thompson*, 797 N.W.2d 201, 206 (Minn. 2011); *see also Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988) (concluding that an arbitration panel exceeds the scope of its authority when it decides a coverage issue). "The distinction between coverage disputes for the court and other types of disputes for the arbitrators is that questions that go not to the merits of a claim but to whether a claim exists should be decided by the district court." *W. Nat. Ins. Co.*, 797 N.W.2d at 206 (quotation omitted).

The dispute in this case is not whether a claim exists or whether coverage itself is available; both parties agree that respondent has a right to be paid by appellants *some* amount for the auto-glass repair work that it completed. The dispute before the arbitrator was whether appellants breached the insurance policy, or rather, whether appellants

satisfied the contract by paying "the amount necessary to repair damaged property to its pre-loss condition."

Appellants argue that the arbitrator was required to interpret appellants' insurance policy, particularly the word "necessary," in order to resolve the dispute. Therefore, they argue that the arbitrator improperly decided a legal issue involving contract interpretation. We disagree because the interpretation of the policy language was not an issue here. The arbitrator was not required to interpret the term "necessary" because the contract provided the definition:

> In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by [Progressive]:
>
> (i) shall not exceed a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment; and
>
> (ii) will be based on a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment . . . .

Under the terms of the contract, "necessary" means "a competitive price that is fair and reasonable within the local industry at large . . . ." Issues regarding reasonableness are issues of fact. *Weaver*, 609 N.W.2d at 883 ("Reasonableness has traditionally been considered an issue of fact."). In this case, the arbitrator examined evidence from both parties "addressing whether [respondent] submitted a competitive price for windshield replacements that was fair and reasonable within the local industry at large" before awarding respondent $157,851.46 for the underpaid and unpaid claims. The arbitrator's determination that the price charged by respondent was fair and reasonable is a factual finding that is not subject to review by this court.

Appellants argue that the arbitrator erred by focusing his inquiry on the reasonableness of the price *charged* by respondent rather than the reasonableness of the price *paid* by appellants. The case *Glass Serv. Co., Inc. v. Progressive Specialty Ins. Co.*, 603 N.W.2d 849 (Minn. App. 2000) (*Glass Service I*) is directly on point. That case also arose when Progressive did not pay the full amount of the auto-glass company's invoices. *Id.* at 850. The court was required to interpret the term "necessary" in the insurance contract where the policy stated that the insurer would pay the amount necessary to replace a windshield with one of like kind and quality. *Id.* at 852. The court determined that "common sense dictates that the amount 'necessary' to replace a windshield with one of like kind and quality is a price that is reasonable in the marketplace." *Id.* The court then found that in determining the "necessary" costs, "[t]he trial court properly focused on the reasonableness of [the glass company's] *charges*." *Id.* (emphasis added).

Appellants argue that *Glass Service I* does not apply here because it involved a different contract and that contract did not define "necessary," as does the current policy. However, appellants' definition of necessary in their own contract reflects the definition of "necessary" provided by the court in *Glass Service I*—"a price that is reasonable in the marketplace." *Id.* Appellants' current contract states that in determining the amount necessary to repair damaged property, the amount to be paid by appellants "shall not exceed" and "will be based on" "a competitive price that is fair and reasonable within the local industry at large . . . ." The definition of "necessary" provided both in appellants' current contract and by the court in *Glass Service I* focuses on a reasonable price in the marketplace. The court in *Glass Service I* held that, in determining a reasonable, or

necessary, price, the court properly focused on the charges. *Id.* Therefore, the arbitrator did not err in focusing on the reasonableness of the price charged by respondent rather than the reasonableness of the price paid by appellants.

Appellants also argue that the *Glass Service I* decision is no longer applicable because the legislature has since amended the Unfair Claims Practices Act (UCPA) so that it no longer requires insurers to pay "all reasonable costs." However, any analysis of the UCPA is irrelevant because the UCPA is for regulatory enforcement only and is not a basis for a private cause of action. *Id.*, n.2. Because *Glass Service I* did not rely in any way on the UCPA in arriving at its decision, the subsequent amendment of the UCPA has no bearing on this case.

Finally, appellants argue that, as long as they paid an amount that was within a range of reasonableness under the policy, the policy provision that appellants will pay a price that "shall not exceed a competitive price," only obligates appellants to pay any amount in the range of reasonableness, even if a higher amount billed is also reasonable. This argument was squarely rejected by this court in *Garlyn, Inc. v. Auto-Owners Ins. Co.*, ___ N.W.2d ___, 2012 WL 987321, at *3 (Minn. App. Mar. 26, 2012). As in *Garlyn*, appellants' policy "does not say that [the insurance company] will pay the lowest of a range of necessary costs." *Id.* Based on a plain reading of the policy, there is no merit to appellants' assertion that they are only required to pay the lowest reasonable amount.

Because the arbitrator properly focused on the reasonableness of the price charged by respondent and because a determination of reasonableness is an issue of fact

unreviewable by this court, we affirm the district court's denial of appellants' motion to vacate the arbitrator's award.

II. Prejudgment Interest

Appellants also argue that the district court erred in applying an interest rate of ten percent to the consolidated arbitration claims. After the arbitration, the arbitrator awarded respondent four-percent prejudgment interest. The district court then modified the prejudgment interest, holding that, because the award on the consolidated claims after arbitration was for more than $150,000, "Minnesota Statute Section 549.09 provides that awards in excess of $50,000 are subject to an interest rate of 10%." Appellants argue that the district court erred in awarding ten-percent interest because each arbitration claim was less than $7,500, and under Minn. Stat. § 549.09 (2010), awards under $7,500 shall not be awarded prejudgment interest.

First, respondent argues that appellants did not properly challenge the interest award before the district court. Appellants' only motion before the district court was a motion to vacate the award. Respondent then filed a motion to modify the prejudgment interest, and appellants responded to that motion, asking the district court to correct the interest rate. Appellants' response seeking a modification was filed more than 90 days after the initial award.

Minn. Stat. § 572.20 (2010), requires that motions to vacate or modify awards by a party be made within 90 days of receiving a copy of the award. Respondent relies on *Abd Alla v. Mourssi*, 680 N.W.2d 569 (Minn. App. 2004) to argue that appellants failed to meet this deadline. In *Mourssi*, the appellant filed a motion to vacate outside the time

limits prescribed in the arbitration statutes, even though it was filed in response to a motion to confirm. 680 N.W.2d at 572. *Mourssi* is distinguishable because here, appellants properly and timely filed their initial motion to vacate the arbitration award within 90 days. Although they did not specify in their motion to vacate that they were challenging the interest award, the proper amount of interest due under Minn. Stat. § 549.09 was an issue presented to the arbitrator and went to the merits of the controversy. Therefore, appellants properly raised the issue to the district court by timely filing a motion to vacate.

Two statutes govern prejudgment interest in arbitrations. Minn. Stat. § 572.15 (2010), states that an arbitration award "must include interest." Minn. Stat. § 549.09, subd. 1(b) provides:

> Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) . . . Except as otherwise provided by contract or allowed by law, preverdict, preaward or prereport interest shall not be awarded on the following: . . .
>
> > (4) judgments or awards not in excess of the amount specified in section 491A.01.

Minn. Stat. § 491A.01, subd. 3 (2010) specifies this amount to be $7,500.

This court recently held, in *Garlyn*, that these two statutes governing prejudgment interest should be read together so that Minn. Stat. § 549.09 is read as a limitation on Minn. Stat. § 572.15. 2012 WL 987321, at *5. When determining how much prejudgment interest to award in a consolidated arbitration, the court considers the value of each individual claim, and not the value of the total award. *Id.* Because none of the

individual claims or awards in this case exceeded the $7,500 threshold for prejudgment interest, the district court erred in awarding respondent ten-percent interest and we reverse the district court's denial of appellants' motion to vacate the prejudgment-interest award.

Appellants moved to strike portions of respondent's appendix and references to those pages in respondent's brief. Because we did not rely on the challenged documents in reaching our decision, appellants' motion to strike is denied as moot.

Affirmed in part and reversed in part; motion denied.

Exhibit J

AMERICAN ARBITRATION ASSOCIATION

Alpine Glass, Inc.,

Claimant,

Case No.: 56 600 05200 13

vs.

Arbitrator: Karen J. Kingsley

AAA Insurance Company,

Respondent.

ARBITRATION AWARD

The above-caption matter involving 112 claims totaling $48,500.38 was heard by this arbitrator on May 22, 2014. The parties submitted voluminous documents and presented extensive oral testimony at the hearing. The claims all involve policyholders of AAA Insurance Company who had damaged automobile glass. They selected Alpine Glass to perform replacement services. Alpine performed the work and billed AAA and AAA paid a portion of the bill. Alpine received assignments of the claims of its customers against AAA. These claims involve disputes between Alpine and AAA as to how much AAA was required to pay for replacing broken auto glass. Alpine claimed that it was due the amount billed for the glass. AAA claimed that it only owed the amount it deemed reasonable in the market for the replacement of such glass. These claims are called "short-pays" in the glass replacement business.

The AAA policy language applicable to these claims is as follows:

> The cost of repair or replacement is based upon one of the following:
> a. The cost of repair or replacement agreed upon by you and us; or
> b. A competitive bid approved by us; or
> c. A written estimate that uses the prevailing competitive price. The prevailing competitive price means the price charged by a majority of the repair market in the area where the car is to be repaired as determined by a survey made by us. If you ask, we will identify some facilities that will perform the repairs at the prevailing

> competitive price. You agree with us that repair may include parts furnished by non-original-equipment manufacturers. If you request parts that cost more than those in the estimate, we may require you to pay the difference.

It was uncontested that paragraphs a. and b. are inapplicable to the claims in this matter. Paragraph c. requires a written estimate that uses the prevailing competitive market price. Other than a few samples, AAA did not provide copies of the written estimates for most of the claims as evidence in this matter so there was insufficient proof that AAA had complied with that portion of its policy.

The primary issue under the policy is whether the amount AAA paid on these claims was "the price charged by a majority of the repair market in the area where the car is to be repaired as determined by a survey made by [AAA]." Neither the policy nor case law allows the insurer to set the standard for what the reasonable or the prevailing competitive price is. When determining whether a price is reasonable, prevailing or competitive, this is to be viewed from the prospective of the policyholder or the glass shop and not from the perspective of the insurance company. The majority of the evidence presented by AAA in this matter concerned the amounts the insurance companies are paying or willing to pay as opposed to what the majority of glass companies are charging for replacing the glass in an area where the car is to be repaired.

AAA claims it has complied with the terms of its policy because it conducted a survey of the price charged by the majority of the repair market in the area where the car is to be repaired. The arbitrator disagrees. Much of the evidence presented as part of the survey were reports prepared by AAA's own third-party administrator (TPA) Safelite Solutions. Patti Deneau of AAA testified that Safelite is a competitor of every other glass company in Minnesota. In spite of this, when an AAA insured has a claim, they have to report it to Safelite, not directly to AAA.

Safelite compiles information and provides reports to AAA which serve as at least part of AAA's basis for determining the rates that it will pay other glass companies.

Evidence was presented that, when an AAA insured calls to report a claim, Safelite tells the insureds during that phone contact that the customer, themselves, might be responsible for the difference between what AAA will pay and what Alpine Glass charges (even though the evidence was that has never occurred). There was also evidence presented that Safelite employees repeatedly asked the customer whether they would like to speak to a glass company who is willing to accept AAA's reimbursement rates.

The survey done by AAA is inadequate for several reasons. First, part of this survey relies upon reports generated by Safelite, who is in direct competition with the other glass replacement companies. Second, the survey does not focus on what the reasonable value of the glass is for either the glass replacement companies or the customers. Instead, it focuses on how much the insurance companies are willing to pay the glass companies. Third, the survey does not represent a "majority of the repair market." AAA's exhibit number 105 was a survey of insurance companies which purported to show what the reasonable reimbursement rates were in the market. In actuality, this was a survey of insurance companies for which Safelite is the TPA. The testimony indicated that this survey used to have 20 companies listed instead of 15 and that the five companies which had been removed from the survey provided reimbursement at a higher rate. Accordingly, the remaining survey was skewed toward the low end. In addition, the survey did not represent the majority of the market.

Finally, and perhaps most importantly, the documents presented into evidence which were generated by Safelite or AAA did not present an "apples to apples" comparison. The documents do not provide side by side comparison of glass service companies who provide the same level of service and use the same high quality materials. The undisputed testimony was that Alpine uses OEM glass (the type used by the manufacturer which typically costs more). Alpine also uses the full-cut replacement method of taking out and installing new urethane and uses high-quality urethane and experienced installers. The undisputed testimony was also that when replacing the glass and removing the adhesive,

the full-cut method is more time consuming and results in safer glass. Some glass service companies use the short-cut method in which the old urethane is left in and the new urethane is put on top of it. There was also undisputed testimony that glass is a structural element in rollover accidents and the quality of glass and the type of installation performed are very important in maintaining the structural integrity of the vehicle. None of the documents provided by AAA set forth the price charged by a majority of the repair market in the area where the car is to be repaired and using the same quality of materials and the same level of skilled labor.

This arbitrator's finding is that AAA did not pay for automobile replacement glass based upon competitive pricing in the auto glass replacement industry in Minnesota. For that reason, AAA has breached the terms of its insurance policy with its insureds.

AWARD

Respondent AAA shall pay Claimant Alpine Glass the amount of $48,500.38 pursuant to the terms of its insurance policy. This amount represents the short-pay or underpayment by AAA on the glass claims submitted for review to this arbitrator.

The administrative and filing fees for the American Arbitration Association shall be borne as incurred and neither party shall be reimbursed for their respective filing fees.

The arbitrator has spent 15.2 hours on this arbitration file and, pursuant to the resolution of the No-Fault Standing Committee, the arbitrator's fee is computed at $200 per hour. The arbitrator's fee is $3,040 to be split equally between the parties and paid as directed by the American Arbitration Association.

Dated: June 18, 2014

Karen J. Kingsley, Arbitrator

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between

Case No. 56-600-02202-09

Alpine Glass, Inc., as assignee for Guggisberg, et al.,

Petitioner,

vs.

American Family Insurance Group,

Respondent.

ARBITRATION

Wednesday, December 15, 2009

Thursday, December 16, 2009

Reported by: Beverly J. Hauswirth
Registered Professional Reporter
Hauswirth Court Reporting
11-19th Avenue Southwest
St. Paul, Minnesota 55112
(651) 636-9896

APPEARANCES:

THE ARBITRATOR: BERNIE M. DUSICH, ESQ.

FOR THE PETITIONER:

CHARLES J. LLOYD, ESQ.
Livgard & Lloyd, PLLP
2520 University Avenue SE, Suite 202
Minneapolis, MN 55414

FOR THE RESPONDENT:

MARK A. SOLHEIM, ESQ.
and
PAULA DUGGAN VRAA, ESQ.
Larson King, LLP
2800 Wells Fargo Place
30 East Seventh St.
St. Paul, MN 55101

ALSO PRESENT:

WILLIAM G. RASCHE, ESQ.
THOMAS ELLEFSON
MICHAEL HENDRICKS
MICHAEL T. REID
J. ANDREW KIPKER
GRETCHEN TOUCHETTE
DEBRA A. NELSON

* * *

E X A M I N A T I O N I N D E X

E X H I B I T S

O B J E C T I O N S

By Mr. Lloyd: Pages: 51, 128, 131, 134, 136, 139-141, 155, 157, 160, 161, 168, 169, 173, 176-178, 187, 190, 194, 200, 201, 225, 244, 262, 284, 285, 294, 296, 329, 333-335, 349, 357, 382, 383, 390, 396, 400, 407

By Mr. Solheim: Pages: 51-54, 61, 62, 64, 65, 67, 69, 70, 75, 79, 82, 88

By Ms. Vraa: Pages: 357, 360, 367, 376

WHEREUPON, the following proceedings were duly had:

A

Q

A

Q

A

Q

A

Q

A

Q All right. Now part of your job -- you're the glass claims manager; is that right?

A Yes, sir.

Q Now you've been in auto glass for nine years?

A Yes, sir.

Q How long have you been the glass claims manager?

A Since 2006.

Q 2006; okay. And what was your job in auto glass before 2006?

A I was brought in as a technical adjustor for American Family as its support group manager and then they really

had no one that -- it was just a support staff that paid claims.

Q Okay. Now you said that you write scripts; is that right?

A Yes, sir.

Q All right. And if I recall correctly, I made a note and I might be wrong, but you said in the scripts that you write the first thing that gets asked a customer is whether they have a shop in mind; is that right?

A It's part of the initial part of the script; yes, sir.

Q Part of the initial part. So what would that mean? In the first two or three questions? How far in do you suppose that would be? Based on your recollection of the script that you wrote?

A We get the policy information, we get everything that we need up to shop of choice, so we would get the policy information, the customer information, date of loss, place where the loss was, and then I think we go right

into do you have a shop of choice in mind.

Q Okay. You give them some information first before you ask them about the shop of choice, don't you?

A As far as?

MS. VRAA: If you're going to ask him about the --

MR. LLOYD: No, I'm asking about the scripts that he wrote, his recollection.

MS. VRAA: -- he should have the scripts in front of him. But there's a number of them over the six-year period and they've been disclosed to you and you

know what they say. And to expect this witness to remember every piece of every script over a six-year period is ridiculous and he should be able to look at them.

MR. LLOYD: So your objection is what?

MR. SOLHEIM: Ridiculous I heard.

MS. VRAA: Isn't that a basis?

MR. DUSICH: This is cross examination. You can certainly redirect. Go ahead.

MR. LLOYD: And I'll show it to him, I just want to get his recollection of the scripts that he wrote.

BY MR. LLOYD:

Q In the scripts that you wrote did you include something

called a features and benefits statement?

A Yes, sir.

Q Okay. And you have the policyholder read the features and benefits statement before you ask them the shop of choice, don't you?

A That I can't tell you.

Q Okay. Well because I'm just going back to what you said, that one of the first things you asked of the customer was whether they had shop in mind.

MR. LLOYD: Why don't we mark that as Exhibit 38, please.

(Exhibit 38 was marked for identification.)

BY MR. LLOYD:

Q Now I will represent to you that this is a script that was provided to me by American Family's Counsel. It's got a little AMF number down at the bottom. Do you see

that? 001001?
A Okay.
Q And this is one that was written or implemented in 2008, correct?
A That's correct.
Q All right. And so this would have been a script that you would have written?
A Yes, sir.
Q Now when it says approval date, who approves the scripts?

A That comes directly from Cliff.
Q So you and he write them and then he approves them?
A Yes.
Q So now if we look through here we don't get to the shop of choice question until page 1006, correct? Oops, wait a minute; 5, sorry. That's what I get for trying to read without my glasses; 1005?
A Correct.
Q All right. Now when you get to question number 17, right, you have to consider the following questions prior to reading the features and benefits statement. Do you see that?
A Right.
Q Is that something that you wrote for this script?
A Yes, Cliff and I did.
Q Okay. And the first thing you gotta wonder, first thing you gotta consider is did the insured mention a name of a shop. Now none of the questions leading up to number 17 are designed to elicit the name of a shop, are they?
A Well on page 1002 if the caller is a shop they must

speak to the policyholder, agent or adjustor to report a claim; if the policyholder is with you we put them on the line. So when a shop calls in that would elicit the shop information right there.

Q If the shop calls in. I'm talking about if the customer

calls in?

A Okay. No, sir; not that I see.

Q All right. And then if they tell you that there's an appointment set with the glass shop, again there's nothing in there that would elicit that response. There may be things that happen, the shop calls you, but if the customer is just calling in cold, as a policyholder, there's nothing that asks whether they have an appointment, there's nothing that asks if they're calling from the glass shop, there's nothing that asks if they were told to call in by the glass shop, right?

A That's true.

MS. VRAA: I'm going to object to this on relevance grounds. This doesn't go to the pricing of auto glass, which is at issue in this arbitration.

MR. LLOYD: Well actually if I can be heard on that there's two reasons why it's useful. A, Mike Reid talked about the fact that steering is an issue and it causes them to spend more time, et cetera. And that's why the insurance price is higher and this is going to be designed to that.

And B, they brought this up on direct about the scripts and his testimony was -- the first thing they asked him is whether they have a shop in mind and the script proves otherwise.

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MR. DUSICH: Go ahead.
BY MR. LLOYD:
Q All right. And then even if we get to question 17 before you ask them if they have a shop you gotta have somebody read them something, right?
A Correct.
Q All right. And that is the fact that you want to recommend a shop for them first, you'll give them the names of shops, and then you'll ask them if they have a shop in mind, right?
A I wouldn't put it that way.
Q Okay.
A I would put it that we're advising them that they have the right to choose any glass facility that -- exactly as it's written here, as a policyholder you have the right to choose any glass repair facility that you want to use to complete the repairs on your vehicle. That is pretty direct and it's not steering to anything.

American Family has program shops available and will guarantee the work for as long as you own your vehicle. I can provide names of the shops in your area. Would you like to choose one of the shops we just mentioned or do you have another shop in mind. That's pretty cut and dried, I think --

Q Okay. And you think that constitutes asking them early

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on first thing about whether they have a shop in mind?
A Absolutely.

Q All right. And if they pick a shop that you don't -- isn't on your program they get read some additional information, don't they?
A Which they deserve the right to know; yes, sir.
Q But they're going to be held accountable for the difference?
A Yes, sir.
Q Okay. Are they being held accountable for the difference?
A No, sir; that's why we're here.
Q Okay. So what you're doing then is telling the policyholder something that is not true, correct?
A Well we represent the policyholder so by essence and us representing the policyholder I would think that's why we're here instead of having the policyholders here.
Q But you're telling the policyholders that they may be response for the difference and you know that's not true, don't you?
A No, sir. They would be responsible for paying a non-competitive, non-fair and non-reasonable price.
Q How many policyholders have been asked to pay an additional amount over their deductible of the 13,351

corrected claims?

MS. VRAA: I object to that as vague. Asked to pay by whom? The glass shop or by American Family? Because American Family wouldn't be asking them to pay.

MR. LLOYD: Okay.

MS. VRAA: By the glass shop.

MR. LLOYD: All right, I'll ask it that way.

BY MR. LLOYD:

Q How many policyholders are you aware of that the glass shop has been asked to -- has asked them to pay the difference after American Family has short-paid them?

A None because they deal with us.

(Concluded at approximately 2:20 p.m., Wednesday, December 16, 2009.)

* * *

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF RAMSEY)

I, Beverly J. Hauswirth, Registered Professional Reporter, hereby certify that I reported the 423-page Arbitration,on the 15th and 16th of December, 2009, in Hastings, Minnesota, and that the witnesses were first duly sworn to tell the whole truth;

that the testimony was transcribed by me and is a true record of the testimony of the witnesses;

that the cost of the original has been charged to the party who noticed the Arbitration, and that all parties who ordered copies have been charged at the same rate for such copies;

that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of said attorney or counsel;

that I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

WITNESS MY HAND AND SEAL THIS 30th day of December, 2009.

Beverly J. Hauswirth
Registered Professional Reporter
Ramsey County Notary Public

Larson Ex. 12

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Safelite Group, Inc. and Safelite Solutions, LLC, Plaintiffs, vs. Michael Rothman, in his official capacity as Commissioner of the Minnesota Department of Commerce, Defendants.	)	Case No.: 15-cv-1878 (SRN/SER) Placeholders for Exhibits 9J, 12, 15 to the Declaration of Oliver J. Larson in Opposition to Summary Judgment

This document is a place holder for the following items which are filed in conventional or physical form with the Clerk's Office:

1. Exhibit 9J, copies of telephone scripts used by Plaintiff Safelite Solutions
2. Exhibit 12, a copy of a telephone script used by Plaintiff Safelite Solutions
3. Exhibit 15, a copy of a telephone script used by Plaintiff Safelite Solutions

If you are a participant in this case, this filing will be served upon you in conventional format.

This filing was not e-filed for the following reason(s):

☒ Item Under Seal pursuant to a court order* (Document number of protective order: DKT 40)

E-file this place holder in ECF in place of the documents filed conventionally. File a copy of this Placeholder and a copy of the NEF with the Clerk's Office along with the conventionally filed item(s).