

**IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
SMALL CLAIMS DIVISION**

<b>GLASSCO, INC., a.a.o. J. Bazan,</b>	<b>Case Nos. 16-CC-026608</b>
<b>GLASSCO, INC., a.a.o. I. Lamboy,</b>	<b>16-CC-031286</b>
<b>GLASSCO, INC., a.a.o. R. Camagho,</b>	<b>16-CC-029315</b>
<b>GLASSCO, INC., a.a.o. B. Barnett,</b>	<b>16-CC-029301</b>
<b>GLASSCO, INC., a.a.o. C. Beauford,</b>	<b>16-CC-034756</b>
<b>GLASSCO, INC., a.a.o. D. Tanoo, et al.,</b>	<b>16-CC-036273</b>
<b>GLASSCO, INC., a.a.o. D. Matz,</b>	<b>16-CC-037057</b>
<b>GLASSCO, INC., a.a.o. J. Kevins,</b>	<b>16-CC-037082</b>
<b>GLASSCO, INC., a.a.o. N. Joseph,</b>	<b>16-CC-037125</b>
<b>GLASSCO, INC., a.a.o. A. Maldonado, and</b>	<b>16-CC-039072</b>
<b>GLASSCO, INC., a.a.o. C. Marks,</b>	<b>17-CC-000870</b>

Plaintiff,

**Division M**

vs.

**GEICO GENERAL INSURANCE COMPANY,**

Defendant.

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**FINAL JUDGMENT**

**THIS CAUSE** came before the Court on August 17, 2020 and August 18, 2020 for a non-jury trial utilizing “Zoom” video conferencing. After observing and assessing the demeanor and credibility of the witnesses, weighing the evidence presented, considering the arguments of counsel and legal authority, and being otherwise advised in the premises, the Court makes the following findings of fact and conclusions of law:

**Background and Summary of the Evidence**

1. This non-jury trial of these eleven cases results from this Court’s January 4, 2020 order consolidating these cases for purposes of trial. Each case involves the same Plaintiff, Glassco, Inc. (hereinafter “Glassco”), as the assignee of 11 different insureds from 11 different insurance claims made during 2016. Each insured is covered by a policy of

insurance with the same Defendant, GEICO General Insurance Company (hereinafter “GEICO”). Glassco replaced the windshield on each of the 11 vehicles insured by GEICO and, pursuant to an assignment of benefits, billed GEICO directly for the glass replacement.

2. It is undisputed that GEICO paid Glassco less than the amount invoiced. Glassco is claiming entitlement to full payment pursuant to the insurance policies and in all 11 cases has sued GEICO for declaratory judgment and breach of contract. The declaratory judgment count in each action was dismissed without prejudice prior to trial. As such, Glassco proceeds only on the breach of contract claims in each action and seeks damages equaling the difference between the amount it invoiced and the amount paid by GEICO. GEICO, in turn, responds that its liability is limited to the amount it paid under the policy.
3. These consolidated windshield loss cases are governed by the appellate decision in *Government Employees Ins. Co. v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Matthew Dick*, 26 Fla. L. Weekly Supp. 876a (Fla. 13th Jud. Cir. Ct. App. Div. March 27, 2018). In *Dick*, the appellate court held that the “prevailing competitive price” provision in the “Limit of Liability” section of the subject insurance policy “means the price the service would bring in a competitive market, not the price set in an agreement between GEICO and a particular provider.” *Id.* The appellate court also indicated the prevailing competitive price is not a proposed rate that has not been negotiated with anyone. *See Id.*
4. At trial, the Plaintiff called four witnesses: Michael Slaman, co-owner of Bond Auto Glass; Shelton Radebaugh, owner of Lloyd’s of Shelton Auto Glass; John Bailey, owner of Glassco; and Barrett Smith, Glassco’s expert witness. All four witnesses testified on billing practices in the windshield replacement industry and how prices are established.

5. Mr. Slaman, Mr. Radebaugh, and Mr. Bailey all testified that in determining pricing, they consider: a) cost of the material/glass (b) labor and (c) the cost of kits (urethane adhesive, clips, molding). All of these costs vary depending upon the make, model, year of the vehicle, and the number of kits used during the replacement of the windshield. The established prices for windshield services are also based on their experience in the glass industry, the market, and their competitors. Their testimony reflects that the prices invoiced are also set by considering the amount that the majority of insurance carriers will accept and pay without dispute.
6. While, both Mr. Slaman and Mr. Radebaugh are direct competitors of Glassco, they each testified that Glassco's pricing structure was consistent with other repair and/or replacement facility competitors in the market.
7. Mr. Bailey, Mr. Slaman, and Mr. Radebaugh also testified regarding the acceptance of their invoiced pricing by the majority of insurance carriers in the market. Mr. Slaman and Mr. Radebaugh testified that, considering the 50-60 insurance carriers they invoiced, in 2016 90-95% of the invoiced prices were accepted by the carrier(s) and were paid in full. Mr. Bailey also testified that in 2016, of all of the invoices his company submitted to its customers,<sup>1</sup> (approximately 100 insurance carriers it billed), 95% of the invoiced prices were accepted and paid in full without dispute. Further Mr. Bailey testified that the pricing is negotiated in that the invoices are submitted to the customer and the company accepts the invoiced price and pays the bill in full or rejects the invoiced pricing.

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<sup>1</sup> The Court notes the term "customer" as used by the witness in this context is a reference to the insurance carriers not the insureds. The witnesses' testimony reflects that cash transactions for these services are virtually non-existent. The transactions almost always involve insurance carriers and the insured is not shown the pricing that will be billed to the insurance company.

8. The Court notes that the testimony of Mr. Slamon, Mr. Radebaugh, and Mr. Bailey indicates that there really are no cash transactions for these types of services and, in their business, the insurance companies are effectively their customers in that they agree to accept the invoiced pricing or reject the pricing.
9. The testimony of Plaintiff's expert witness, Mr. Smith, reflects that he was retained to "perform comparative market research regarding the products and services provided in windshield replacement service" and to tender an opinion "as to the prevailing competitive price of the goods and services (glass, labor, and kit) in dispute." *See* Plaintiff's Exhibit 13b "Expert's Report". At trial, Mr. Smith corroborated the prior testimony of the witnesses that Glassco's prices were competitive and prevailing. Mr. Smith based his opinion on his individual research of the market (which included a survey of 24 glass repair facilities and their pricing), his 40 years of experience in the automotive industry, his prior experience as a field adjuster for the insurance industry, and his work as an umpire in dispute resolution. In determining usual and customary prices, Mr. Smith also took into consideration the cost of glass, labor and material in his analysis. His findings also revealed that Glassco's prices were at the lower range in the market.
10. GEICO called Susana Eberling, its corporate representative, who is assigned to glass litigation claims. Ms. Eberling's testimony was very limited in scope. Ms. Eberling concluded that GEICO paid according to the "prevailing competitive price;" however, she did not provide any testimony relative to the establishment of the "prevailing competitive price" or to rebut Plaintiff's evidence with regard to establishment of the "prevailing competitive price."<sup>2</sup> Much of Ms. Eberling's testimony related to GEICO's relationship

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<sup>2</sup> Ms. Eberling's testimony did establish that GEICO is not contesting that Glassco is competent and conveniently located or disputing the quality of the work performed by Glassco.

and glass pricing agreement with its affiliate SGC/Safelite.

11. The following exhibits were admitted into evidence:

- a. Plaintiff composite exhibits 1a-4a and 6a-12a: The 11 invoices (hereinafter “the Invoices”) and assignments of benefits (hereinafter “the AOBs”) that were furnished to GEICO as Plaintiff’s billing;
- b. Plaintiff exhibits 1c-4c and 6c-12c: The 11 subject insurance policies (hereinafter “the Policies”) for Plaintiff’s assignors/GEICO’s covered claimants;
- c. Plaintiff’s exhibit 13a: Barrett Smith’s curriculum vitae;
- d. Plaintiff’s composite exhibit 13b: Barrett Smith’s expert report and survey summary; and
- e. Plaintiff’s exhibit 13c: The 11 invoices that were furnished to GEICO as Plaintiff’s billing (duplicative of Plaintiff’s exhibits 1a-4a and 6a-12a).

**Burden of Proof Regarding “Prevailing Competitive Price”**

12. It should be noted that the parties disputed their respective burdens of proof concerning the “prevailing competitive price” issue. The Defendant relied on *Auto Glass America a.a.o. Nelson Cordero v. Geico Gen. Ins. Co.*, Case No. 17-CC-19839, “Final Judgment for the Defendant” (Hillsborough County Ct. July 31, 2018) for the proposition that the Plaintiff bears the burden of proving that its prices did not exceed the “prevailing competitive price.” In contrast, the Plaintiff relied on *State Farm Mut. Auto. Ins. Co. v. Curran*, 135 So. 3d 1071, 1079 (Fla. 2014), *St. Paul Mercury Ins. Co. v. Couch*, 837 So. 2d 483, 487 (Fla. 5th DCA 2002), and other appellate decisions for the proposition that the “prevailing competitive price” provision in the “Limit of Liability” section of the subject insurance policy is an affirmative defense for which the Defendant bears the burden of proof.

13. As the issue was not raised until the eve of trial, the Court did not rule on or consider argument on the burden of proof issue prior to trial. As such, both parties proceeded and presented their cases without a ruling on same and with the knowledge that either party may be determined to have the burden of proof on this issue.
14. The Court agrees with Defendant and finds that Plaintiff has the burden of proof on the issue. In breach of contract cases, it is elementary that the burden is on the plaintiff to prove all elements of its claim. *Ferguson Enters., Inc. v. Astro Air Conditioning and Heating, Inc.*, 137 So. 3d 613, 615 (Fla. 2d DCA 2014) (citing *Havens v. Coast Florida, P.A.*, 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013)). To prevail on its claim, plaintiffs are required to prove (1) a valid contract; (2) a material breach; and (3) damages. The second and third elements – “material breach” and “damages” are inextricably intertwined for these cases because Glassco must prove GEICO materially breached the Policies by not paying in accordance with its policies—that GEICO did not pay the “prevailing competitive price.” To do this, Glassco must offer substantial, competent evidence to establish its prima facie case for what the prevailing competitive price is because this is also the only measure from which damages can be ascertained. Glassco must establish where its charges are in relation to the prevailing competitive price in order to fix damages. Glassco’s charge is not per se the “prevailing competitive price.” Just as GEICO’s payment amount is not automatically the “prevailing competitive price.” If Glassco meets this burden of establishing the “prevailing competitive price” is more than GEICO’s reimbursement and that its invoiced amount is in line with that pricing, it will have established a prima facie case for all elements of its breach of contract claim. The burden would then shift to GEICO to rebut that evidence.

15. However, given that this issue is contested, and the Court did not rule on the issue prior to trial, the Court has also considered the evidence placing the burden on the Defendant, and in these cases, the same result is ultimately achieved. Defendant did not present any evidence to either establish the “prevailing competitive price” or to rebut the Plaintiff’s establishment of same.

### **Conclusion**

16. In each case, regardless of which of the two standards for burden of proof on the issue of the “prevailing competitive price” is applied, this Court finds that the greater weight of the evidence demonstrates that, according to the requirements articulated in *Dick*, the “prevailing competitive price” is more than the amount GEICO paid as reimbursement for the services at issue, and that Plaintiff’s invoiced amount did not exceed the “prevailing competitive price.”

17. Therefore, in each case, Plaintiff’s claim for breach of contract has been established—a valid contract existed (the subject insurance policies); the Defendant materially breached the insurance policy by paying less than the “prevailing competitive price;” and the Plaintiff incurred damages, which are measured by the difference between the Plaintiff’s invoiced amount and the Defendant’s partial payment.

Based on the foregoing, it is therefore **ORDERED AND ADJUDGED:**

1. In each of the above-styled consolidated cases, final judgment is hereby entered in favor of the Plaintiff, Glassco, Inc., and against the Defendant, Geico General Insurance Company, as follows:
  - a. In Case No. 16-CC-026608, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$310.86, plus pre-judgment interest since

July 14, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.

- b. In Case No. 16-CC-029301, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$347.46, plus pre-judgment interest since August 3, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- c. In Case No. 16-CC-029315, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$451.47, plus pre-judgment interest since August 3, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- d. In Case No. 16-CC-031286, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$393.25, plus pre-judgment interest since August 18, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- e. In Case No. 16-CC-034756, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$353.44, plus pre-judgment interest since September 15, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.



- f. In Case No. 16-CC-036273, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$493.61, plus pre-judgment interest since September 27, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- g. In Case No. 16-CC-037057, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$642.13, plus pre-judgment interest since October 4, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- h. In Case No. 16-CC-037082, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$379.54, plus pre-judgment interest since October 4, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- i. In Case No. 16-CC-037125, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$364.17, plus pre-judgment interest since October 4, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.
- j. In Case No. 16-CC-039072, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$378.75, plus pre-judgment interest since October 24, 2016 through the date of this judgment, plus post-judgment interest,

at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.

k. In Case No. 17-CC-000870, the Plaintiff is awarded and shall recover damages from the Defendant the amount of \$579.75, plus pre-judgment interest since November 30, 2016 through the date of this judgment, plus post-judgment interest, at the interest rates established pursuant to Section 55.03(1), Florida Statutes, for all of which, let execution issue.

2. The Court reserves jurisdiction to determine entitlement to and amount of any claims for attorneys' fees and costs in each of these matters.

**DONE AND ORDERED**, in chambers, in Tampa, Hillsborough County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

  
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HONORABLE MIRIAM VALKENBURG  
COUNTY COURT JUDGE

**Conformed copies to:**

**Plaintiff's Counsel:** Anthony T. Prieto, Esquire, Christopher P. Calkin, Esquire, Mike N. Koulianos, Esquire, and David M. Caldevilla, Esquire

**Defendant's Counsel:** Melissa M. Buza, Esquire, Philistine Hamdan, Esquire, Nicholas R. Cavallaro, Esquire, and Joseph D. Nall, Esquire