

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

GLASSCO, INC., a.a.o. J. Bazan,	Case Nos. 16-CC-026608
GLASSCO, INC., a.a.o I. Lamboy,	16-CC-031286
GLASSCO, INC., a.a.o R. Camagho,	16-CC-029315
GLASSCO, INC., a.a.o B. Barnett,	16-CC-029301
GLASSCO, INC., a.a.o S. Adkins,	16-CC-034403
GLASSCO, INC., a.a.o C. Beauford,	16-CC-034756
GLASSCO, INC., a.a.o D. Tanoo,	16-CC-036273
GLASSCO, INC., a.a.o D. Matz,	16-CC-037057
GLASSCO, INC., a.a.o D. Matz,	16-CC-037082
GLASSCO, INC., a.a.o J. Kevins,	16-CC-037125
GLASSCO, INC., a.a.o N. Jospeh,	16-CC-039072
GLASSCO, INC., a.a.o A. Maldonado, and	17-CC-000870
GLASSCO, INC., a.a.o C. Marks,	

Division: M

Plaintiff(s)

vs.

**GEICO GENERAL INSURANCE
COMPANY,**

Defendant

_____ /

NOTICE OF FILING – TRIAL TRANSCRIPTS (August 17 & 18, 2020)

The Defendant (“GEICO”), by and through the undersigned counsel, hereby files the trial transcripts from August 17 and 18, 2020.

Law Office of David S. Dougherty

/s/ Nick Cavallaro

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Service via the E-filing Portal on this the 23rd day of September, 2020 to all designated service addresses on Florida's E-filing portal.

/s/ Nick Cavallaro
Nick Cavallaro, Esq

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Plaintiff, Division: M

GEICO GENERAL INSURANCE COMPANY,

Defendant.

TRANSCRIPT OF PROCEEDINGS
(Volume 1 of 2)

TAKEN BEFORE: THE HONORABLE MIRIAM VALKENBURG

DATE TAKEN: August 17, 2020

TIME: 9:00 a.m. - 4:00 p.m.

PLACE: Zoom-Edgecomb Courthouse
800 East Twiggs Street
Tampa, Florida

REPORTED BY: Arthur J. Roberts
Official Court Reporter
Notary Public
State of Florida at Large

Anthem Reporting, LLG, Suite 101
101 S. Franklin St, Tampa, Florida 3360

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13

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1 P R O C E E D I N G S

2 THE COURT: All right. Good morning. I'm
3 Judge Valkenburg. And we're here as to Glassco
4 versus Geico. I'm going to go through the cases.

5 The primary Case Number 16CC26608, 16CC31286,
6 16CC29315, 16CC29301, 16CC34403. I'm told there is
7 a voluntary dismissal on that case; is that
8 correct, Mr. Prieto?

9 MR. PRIETO: Your Honor, that matter was
10 resolved.

11 THE COURT: All right. Thank you.
12 16CC34756, 16CC36273, 16CC037057, 16CC37082,
13 16CC37125, 16CC39072, 16CC870.

14 MR. KOULIANOS: Your Honor, I believe that
15 last one is procedure. It's a 2017 filing.

16 THE COURT: Yes, sir. I'm sorry. So it's
17 2017. Thank you, Mr. Koulianos.

18 For the Court Reporter, we need to correct the
19 Case Number. It's 2017CC870.

20 It's my understanding that you all have a
21 request to continue the next two cases. So I want
22 to hear as to why we're not ready on these two,
23 18CC21218, Patriot Auto Glass versus Geico.
24 18CC21306, Patriot versus Geico.

25 Mr. Koulianos or Mr. Prieto first and then

1 I'll hear from Ms. Hamdan and Ms. Buza.

2 MR. KOULIANOS: Yes, good morning, Your Honor.

3 Mike Koulianos for the Plaintiff.

4 We seek to continue these two cases plainly
5 because we didn't have a Pretrial Order entered on
6 those two matters, so there were no deadlines for
7 discovery or depositions or anything to have these
8 cases go to trial.

9 We are aware that they were to consolidate the
10 two of them together to proceed under one case.
11 However, when there was no Pretrial Order entered
12 on that matter, the counsels believed that we were
13 moving forward only on the consolidated Glassco
14 cases.

15 THE COURT: I know the pretrial was back in
16 May. And the Court records clearly request that
17 these cases were carried along with all of these
18 other Glassco cases but for some inadvertence in
19 the space that they weren't added on any other
20 pleading or motion, doesn't mean that the intent
21 was to set these on a different trial calendar.

22 Ms. Hamdan.

23 MS. HAMDAN: Your Honor, this is Philistine
24 Hamdan on behalf of Geico. I spoke with
25 Mr. Koulianos about three weeks ago. I reached out

1 to him to see what was going on with this trial.
2 We're both of the same understanding that they were
3 to be consolidated separately. However, since
4 there was no trial order, we did reach out to the
5 JA to try to get some new dates.

6 We haven't finished discovery in this case.
7 We do need to conduct depositions. And there are
8 two MSJ's that will need to be had in both of these
9 cases. I did file them. Obviously I know they'll
10 have 20 days. And so we do need the hearing date
11 for that as well.

12 THE COURT: You know, the fact that I'm
13 hearing this three months later is of concern. You
14 all knew that it was in on the documents included
15 in the pretrial, yet no one said something.

16 And now we are here the morning of trial
17 hearing, "oh, no, we're not ready. We need
18 depositions and we need Motions for Summary
19 Judgment."

20 MR. KOULIANOS: Your Honor, the Plaintiff can
21 prepare expeditiously for this if the Court is
22 inclined to take these two matters to trial. We'll
23 have our evidence filed by today, after today's
24 proceedings and we will tee it up for trial if the
25 Court has time at the end of this docket. The

1 testimony will be the same. The lay witnesses that
2 we intend to call will be the same.

3 The Corporate Representative will be the only
4 difference. And of course the representative of
5 Patriot Auto Glass, we can reach out to them and
6 have them ready to go. So, if the Court is incline
7 to have them heard, we can proceed with trial.

8 There was no, of course, intent to misconstrue
9 the Court's Order. We simply reviewed the orders
10 that were entered. I have them all printed here
11 and the fact that they only contain Glassco cases,
12 we believe that that was with intent and proceeded
13 to prepare only the Glassco trials.

14 THE COURT: I'm looking at the docket, the
15 court docket from May 7. Anthony Prieto was
16 present, Keana Grasom (phonetic spelling) and
17 Shikita Brown. This all leads to exchanging
18 exhibits.

19 THE COURT REPORTER: I'm sorry, Judge. You're
20 cutting in and out on my end.

21 THE COURT: Okay. Well, I don' know what we
22 can do. I'm going to speak as slow as possible.

23 On May -- and so this was the pretrial on May
24 7th. And most of these cases were addressed and it
25 states trials set on these matters as well on 8/17

1 at 9:00, and it's within this Order.

2 So, again, these were left out through some
3 type of error.

4 The same week in October we have -- I think
5 it's Prieto's office. We have some other cases set
6 for trial October 19th, and I'm pretty sure it's
7 this same law firm and that's Superior Glass of
8 Tampa versus Geico.

9 MR. KOULIANOS: I do see that on my calendar
10 as well.

11 THE COURT: I recall -- I see Attorney
12 Franklin for Geico and Ms. Shikita Brums (phonetic
13 spelling) for Geico, and she's present on some of
14 these cases as well. So I'm going to reset it for
15 the week of October 19th for trial.

16 MS. BUZA: And, Your Honor, would you like the
17 MSJ to be heard prior to trial or would you like to
18 have a different date for that to be heard?

19 THE COURT: It's your responsibility. You an
20 MSJ, you need to set it before trial.

21 I'll set it for a case management conference
22 to re-discuss those deadlines, but the deadlines
23 should have been effective in May.

24 So I want to hear why any of those should be
25 extended since those are still under my original

1 Pretrial Order that was signed in February and then
2 again in April and then again in May. I think we
3 have three or four of them. So I'll set it next
4 week so that we can discuss that.

5 All right. Anything else on those two cases?

6 MS. BUZA: No, Your Honor.

7 THE COURT: I have -- I want to make sure that
8 we're operating under the Amended Complaint filed
9 on September 7th, 2016. Frasier, Koulianos, Calkin
10 Caldevilla, correct?

11 MR. PRIETO: Yes, Your Honor. It's Attorney
12 Anthony Prieto. Good morning.

13 THE COURT: Good morning.

14 MR. PRIETO: We are operating under the
15 Amended Complaints, Judge. There should be 11
16 consolidated matters left, Your Honor.

17 And it seems like, or I'm looking at the
18 Complaint now, Judge. There's two count
19 Complaints, the Declaratory Action and a Breach of
20 Contract.

21 Back in November, I believe, we had announced,
22 the Plaintiff had announced that we're not going to
23 be pursuing the Declaratory Action.

24 So for purposes of cleaning up this trial here
25 today, Judge, we're going to be announcing a Notice

1 of Voluntary Dismissal as to the Declaratory Action
2 count. We'd offer I guess at this time, so that
3 the record is clear that we're just moving forward
4 on the Breach of Contract cause of action, which is
5 what all the parties have been litigating since
6 that time when we make that announcement.

7 THE COURT: All right. Thank you.

8 Anything from Defense, Ms. Hamdan, Cavallaro,
9 on that you all are opposing? Anything, Ladies and
10 Gentlemen?

11 I didn't see answers filed, nor affirmative
12 defenses.

13 MR. CAVALLARO: No, we have no objection to
14 that, Your Honor.

15 THE COURT: And I didn't overlook anything,
16 correct? An answer was never filed and affirmative
17 defenses never set forth?

18 MR. CAVALLARO: That's correct, Your Honor.

19 THE COURT: All right. Thank you.

20 THE COURT REPORTER: Whoever is speaking is
21 cutting in and out, and I'm not sure who is
22 speaking because the name is not showing up, just a
23 phone image. This is the Court Reporter.

24 THE COURT: Mr. Roberts, do you see on the
25 very bottom I changed it on the audio through the

1 flash Hamdan, Cavallaro, audio?

2 THE COURT REPORTER: Right, I see that.

3 THE COURT: Yes, it's going to be a comedy of
4 errors today.

5 THE COURT REPORTER: I mean I'll put down
6 whose name I see, but like I said it was -- it was
7 Ms. Buza's name at the bottom.

8 THE COURT: I get it.

9 MR. CAVALLARO: If it will help -- if it
10 helps, we can announce our names each time. It may
11 take a little bit longer, but I can say "Nick
12 Cavallaro" and then start.

13 THE COURT REPORTER: That would be great.

14 MR. CAVALLARO: Okay. If that's okay with
15 Your Honor.

16 THE COURT: Yes, that's fine with me

17 MR. PRIETO: Your Honor, Attorney Anthony
18 Prieto.

19 I'm standing up, Mr. Court Reporter, so you
20 can see where I am.

21 THE COURT REPORTER: I can't see you at all.
22 I can't see your picture at all on my screen. So I
23 don't know what the deal is.

24 MR. PRIETO: Well, I'm on the community
25 screen, sir. But it's Attorney Anthony Prieto.

1 THE COURT REPORTER: Okay. Got it.

2 MR. PRIETO: Judge, I have two other minor
3 housekeeping matters, if Your Honor will indulge me
4 for a second.

5 THE COURT: Okay. Go ahead.

6 MR. PRIETO: Your Honor, I had previously
7 ordered the sequestration of witnesses. We have
8 our expert, Mr. Barrett. He is in the room with
9 us. You can see him on the bottom, probably the
10 bottom right-hand corner of your screen.

11 He is our expert and will be testifying in
12 this case, Judge. We are asking that he remain in
13 the courtroom throughout the trial. It's
14 completely up to Your Honor's discretion.

15 The last trial that we had in front of Judge
16 Berkowitz, he said that they were allowed to be
17 there. We've had multiple trials, Judge, in
18 circuit court on auto injury cases where the expert
19 is allowed to sit for the entire trial.

20 But it is completely up to Your Honor, and
21 within your discretion. We are asking that he
22 remain in the room with us throughout the trial
23 along side with our client as well.

24 THE COURT: Okay. All right. Thank you.

25 And I think that the language of the Pretrial

1 Order was, if it was invoked.

2 What says Mr. Cavallaro and Ms. Hamdan on this
3 issue?

4 MR. CAVALLARO: This is Nick Cavallaro, for
5 the record. We would object. We would be invoking
6 the Rule of Sequestration. So every witness except
7 for the party, being the Glassco corporate rep, we
8 would object to being in the room with Plaintiff's
9 counsel.

10 THE COURT: Okay. Mr. Prieto, what specific
11 rule are you relying on in allowing your expert to
12 remain?

13 MR. PRIETO: It's not a rule, Judge. It's
14 been interpreted in the case law that when the Rule
15 of sequestration has been invoked, that it's within
16 the Court's discretion to allow an expert to remain
17 in the courtroom. So it is clearly within your
18 discretion, Your Honor.

19 THE COURT: All right.

20 MR. CAVALLARO: And, Your Honor, I guess we
21 would just -- I'm not familiar with --

22 THE COURT REPORTER: Okay. I've got a male
23 voice with Ms. Buza at the bottom. I don't know
24 who's speaking.

25 MR. CAVALLARO: Okay, sorry. I apologize.

1 It's Nick Cavallaro.

2 We would just refer to the Pretrial Order's
3 language about the witnesses, and that's our
4 objection, Your Honor.

5 THE COURT: Okay. Again, if it is invoked, if
6 the parties wish to invoke upon invitation of the
7 Rule of Sequestration by either party, witnesses
8 will be required to remain in the waiting room
9 until they are called to testify and will be
10 removed from the hearing following their testimony.

11 So, at this time, since it's being invoked
12 pursuant to the Rules of Evidence, I'm going to ask
13 that he sit in a different room for now.

14 MR. PRIETO: Yes, ma'am. Thank you.

15 Attorney Anthony Prieto still on the record,
16 Mr. Court Reporter.

17 The other issue or the other matter, Judge, is
18 that we have prepared a -- the Plaintiff prepared a
19 summary of all of the claims for reference
20 throughout the trial. We didn't file it because we
21 didn't want to have any filings outside of Your
22 Honor's Order. But we can e-mail it to Your Honor
23 and to opposing counsel.

24 And it is simply the name of the case, the
25 case number, the invoicing date, the billed amount,

1 the amounts paid, and the amount at issue so that
2 Your Honor can reference them throughout the trial,
3 if Your Honor would like. It's only for reference
4 and convenience, Your Honor. It's not coming in as
5 evidence.

6 THE COURT: All right. Thank you, Mr. Prieto.

7 What says Cavallaro and Buza? It's just to
8 the summaries? It's going to be helpful and just
9 for the following through.

10 MR. CAVALLARO: Your Honor, I'm -- oh, I'm
11 sorry. This is Nick Cavallaro.

12 Your Honor, I mean I guess if we could -- at
13 this time we don't have an objection. We haven't
14 seen it yet. So if we could just quickly review it
15 to --

16 THE COURT: Mr. Prieto, why don't you just go
17 ahead and e-mail it to Cavallaro.

18 MR. PRIETO: Yes, ma'am.

19 THE COURT: What's the best e-mail where you
20 all can print it?

21 E-mail it to my Judicial Assistant as well at
22 civil@fljud13.org.

23 MR. PRIETO: Yes, ma'am.

24 THE COURT: You all want to take a look --

25 MR. PRIETO: And then we can revisit it. But

1 other than that, Judge, the Plaintiff is prepared
2 to proceed.

3 THE COURT: Is it coming through?

4 MR. CAVALLARO: It's going to take a few
5 minutes, Your Honor. This is Nick Cavallaro. I'm
6 going hunt it down and e-mail it to the group.

7 THE COURT: Do you want to begin with the --

8 MR. PRIETO: Your Honor, it's Attorney Anthony
9 Prieto, Judge. Is it okay if I remain seated
10 throughout this trial, Judge.

11 THE COURT: That's fine.

12 MR. PRIETO: Okay. Thank you.

13 THE COURT: Yes, that's fine. I can identify
14 you guys. It's just you look really small. So I
15 see Prieto on the left.

16 Who is at the very end? Is that Caldevilla?
17 I see two screens. Oh, it is. Okay.

18 MR. CALDEVILLA: Yes, Your Honor.

19 THE COURT: All right. So I can see you a
20 little bit closer.

21 And then Koulianos, Calkin. And then the
22 gentlemen on the far left with the white shirt,
23 that's your client?

24 MR. PRIETO: Yes, ma'am.

25 THE COURT: Okay.

1 MR. PRIETO: Attorney Anthony Prieto again --
2 Attorney Anthony Prieto again for the Court
3 Reporter, Judge.

4 And, when needed, when we are examining
5 witnesses, we can switch with Mr. Cavallaro. We
6 have one live screen just on Mr. Cavallaro at the
7 head of the table, and we had it set up so that you
8 could see the entire room. We thought it would be
9 easier if we were having any audio difficulties
10 like we had this morning.

11 THE COURT: All right. Thank you. It is
12 helpful.

13 All right. Do you want to identify -- go
14 ahead, Mr. Prieto, identify your client for the
15 benefit of the Court Reporter and everyone present.

16 MR. PRIETO: Yes, ma'am. Attorney Anthony
17 Prieto for the record. Attorney David Caldevilla
18 for the Plaintiff. Michael Koulianos, and
19 Christopher Calkin, and then our client, Mr. John
20 Bailey, is sitting to my right. He is the owner of
21 Glassco, Inc.

22 THE COURT: All right. Thank you. Will he be
23 testifying at some point in time?

24 MR. PRIETO: He will, Your Honor, as the
25 Corporate Representative.

1 THE COURT: All right. Geico, if you all want
2 to introduce yourself, please.

3 MR. CAVALARO: Yes, Your Honor. This is Nick
4 Cavallaro.

5 MS. BUZA: Melissa Buza.

6 MR. NALL: Joseph Nall.

7 MS. HAMDAN: Philistine Hamdan.

8 MR. CAVALLARO: And we have Susanna Eberling
9 with us.

10 THE COURT: Okay. Where is she?

11 MR. CAVALLARO: She is in the room. Would you
12 like her to be in view on the video?

13 THE COURT: She's in what room?

14 MR. CAVALLARO: Oh, she's in -- we're all in
15 the same room kind of like Plaintiff's counsel. So
16 she's just with us in a big conference room. Would
17 you like her to be in view on the video?

18 THE COURT: I do.

19 MR. CAVALLARO: Okay.

20 THE COURT: And she's a witness.

21 MR. CAVALLARO: Yes, Your Honor. She's
22 Geico's Corporate Representative.

23 And I guess that's kind of also a question we
24 had. Will the Corporate Representatives, because
25 they are parties, be permitted to stay in the room

1 throughout the trial, or when they are testifying,
2 will you want them to be outside of the room? I
3 just want clarification for both parties.

4 THE COURT: And you're invoking the Rule of
5 Sequestration. So wouldn't you agree that would
6 apply to this Corporate Representative?

7 Go ahead Mr. Prieto, Calkin, Koulianos.

8 MR. PRIETO: Yes, ma'am.

9 THE COURT: What is the objection on that.

10 MR. PRIETO: Attorney Anthony Prieto.

11 Judge, they are parties to this lawsuit. I
12 think that Ms. Eberling is actual Geico for the
13 purpose of this trial, so she's allowed to be in
14 the room at all times, and so is -- so is the
15 Plaintiff. And during the -- during the testimony,
16 we need to see her face to see her testifying
17 obviously, and you'll be able to see our client's
18 face testifying. But they do not need to leave the
19 room. They do not need to be sequestered --

20 THE COURT: Okay.

21 MR. PRIETO: That rule does not apply to
22 parties.

23 THE COURT: Okay. Even though she's a
24 corporate rep.

25 MR. CAVALLARO: We would agree with that

1 position. So I just wanted to make clear, even
2 when she's --

3 THE COURT: All right. Anyone else in the
4 room?

5 MR. CAVALLARO: No, Your Honor.

6 THE COURT: Okay. All right. Anything else?

7 MR. PRIETO: Not from the Plaintiff's, Your
8 Honor.

9 MR. CAVALLARO: Nick Cavallaro. Not at this
10 time, Your Honor.

11 THE COURT: All right. Thank you. All right.
12 Are you ready with opening statements?

13 MR. PRIETO: Attorney Anthony Prieto, Your
14 Honor. Yes, the Plaintiff is ready.

15 THE COURT: All right. You may proceed.

16 MR. PRIETO: Thank you, Your Honor. Judge, as
17 you're aware and if it pleases the Court -- I
18 apologize -- please the Court and counsel.

19 As you're aware, we're proceeding on 11
20 consolidated matters today. They all fall within
21 the time frame of the year 2016. And in each of
22 these cases, the Defendant sold an insurance policy
23 to their insured. Each policy of insurance
24 included comprehensive coverage, which was sold as
25 a premium to the insured. That coverage would

1 cover windshield loss claims.

2 The insured suffered a loss in the form of
3 windshield damage to insure automobiles in each of
4 these 11 matters. The insured then hired the
5 Plaintiff to replace their windshields. The
6 Plaintiff did in fact replace the windshields.

7 The Defendant extended coverage for the losses
8 after the Plaintiff performed the work. And
9 pursuant to an Assignment of Benefits, the
10 Plaintiff invoiced the Defendant, Geico and then
11 Geico short paid each of the invoices.

12 Geico acknowledged the Plaintiff's right to be
13 paid for performing the work, and made payment
14 directly to the Plaintiff for each job that was
15 performed in these 11 consolidated matters.

16 Since the amounts were alleged, Judge, as I
17 stated, we filed a cause of action for Declaratory
18 Relief and Breach of Contract, of which we are only
19 proceeding forward on the Breach of Contract cause
20 of action, seeking the difference in the amount
21 invoiced and the amount paid.

22 The contract at issue is the actual insurance
23 policy in each of these cases. And the language in
24 the limited liability references what has been
25 known now as the Prevailing Competitive Price.

1 The Prevailing Competitive Price, as stated in
2 the insurance policy, is stated to be the price
3 that we can secure from a competent and
4 conveniently located repair facility. That
5 language was a point of contention for quite some
6 time now, Judge, several years.

7 And as Your Honor is aware, there was a trial
8 that was had in front of Judge Berkowitz. It was a
9 four day trial on two consolidated matters and it
10 went up on appeal, and the Appellate Court -- or
11 the Circuit Court sitting in its Appellate capacity
12 in the Thirteenth Judicial Circuit had ruled on what
13 the prevailing competitive price is.

14 Your Honor has gone on to hear a Motion in
15 Limine to exclude inadmissible evidence and has
16 ruled at the Matthew Dick decision, as it will be
17 applied in this case, means the evidence that has
18 been set between Geico and a particular provider
19 and the price that has been negotiated with no one
20 is excluded.

21 Insurance transactions that reflect
22 negotiation or competition in price settings and do
23 not fall into the exclusion, noted in the preceding
24 paragraph, may be admitted.

25 Now, it's important to know, Judge, that --

1 and I argued this in the Motion in Limine -- that
2 during that period when the Matthew Dick decision
3 came up, the trial Court -- in that trial, in the
4 trial case, what went up on appeal was Plaintiff's
5 position that the policy was ambiguous and that the
6 Plaintiff could testify as to what their pricing
7 was.

8 Geico's position was, we paid a price that we
9 can secure from a competent conveniently located
10 repair facility and that is it. That is all
11 Geico's position was and that the policy was not
12 ambiguous.

13 In this case today, Your Honor -- in this case
14 today, Geico has no more evidence than they did
15 when the Matthew Dick decision was first decided in
16 the trial Court level.

17 And while we contend or the Plaintiff contends
18 that our burden is simply to prove that there was a
19 coverage, a covered loss in a policy period, which
20 is also a point of contention, that we're prepared
21 to present evidence today by way of our clients and
22 our witnesses as to what the prevailing price range
23 is for these types of losses in the year 2016.
24 Your Honor is going to hear from two windshield
25 shops that are direct competitors with the

1 Plaintiff.

2 The first witness is Mikel Slaman. He is the
3 owner and operator of a company called Bond Auto
4 Glass. He will testify of his experience in the
5 industry and how he sets his prices, how he sets
6 his negotiated prices in the known affiliated
7 competitive market.

8 You'll also hear from Shelton Radebaugh who
9 you'll come to find is an appraiser, an umpire for
10 windshield loss claims. He's been in the business
11 since he was a child. He will also testify how he
12 sets his prices in the competitive market,
13 nonaffiliated competitive market.

14 Your Honor is well aware of the Plaintiff's
15 expert, Mr. Barrett Smith. We had a Daubert
16 hearing on Mr. Smith. He's going to be the
17 Plaintiff's expert. His qualifications have been
18 noted.

19 He will testify as to what the prevailing
20 competitive price is for the year 2016. And most
21 important, Judge, he'll be able to line item to
22 Your Honor what the windshield prices would be, the
23 range for the actual piece of material, labor hours
24 and kits, if each of these invoices are line items
25 for concern items. Most notably is the windshield

1 part, labor hours and the kits that are used to
2 actually install these windshields. And he'll be
3 able to give Your Honor a breakdown of when the
4 prevailing competitive price range is based on the
5 information that he's obtained from several
6 competitors in a nonaffiliated market to our
7 client, as well as based on his experience.

8 And at the end of Plaintiff's case-in-chief, I
9 don't believe there's going to be any question,
10 Judge, that the Plaintiff's invoices in these
11 matters fall low within the prevailing competitive
12 price range.

13 In return, Judge, and throughout the entire
14 course of this litigation Geico has maintained one
15 witness that has testified so far, both in written
16 discovery and by deposition, Judge. And they are
17 presenting the exact same evidence, if they present
18 evidence at all, Your Honor, I believe they are
19 presenting the exact same evidence that was
20 specifically -- specifically cited in the Dick
21 opinion as to not be sufficient.

22 The Appellate Court ruled that Geico cannot
23 simply just walk into Court and say they paid the
24 price they paid and that's the price they paid.
25 They have to put their pricing parameters, their

1 pricing schedules into some sort of context.

2 We've asked, and the record will reflect of
3 this trial that we've asked in written discovery
4 how they arrived at their pricing, and that has
5 been met with objections to trade secret and
6 privilege.

7 The only answer that we've been able to pull
8 from the -- from Geico's corporate representative
9 is that they that they paid the price they can't
10 secure.

11 In the deposition Your Honor will see, if
12 Ms. Eberling takes the stand, that Geico simply
13 refuses to put any context to their pricing.

14 And when asked how did Geico come up with
15 their pricing structure, in the deposition it was
16 met with objection, trade secret privilege, and the
17 same answer again "we paid the price we can
18 secure." When asked how could Geico secure that
19 price, Ms. Eberling simply stated she doesn't know.

20 We don't expect to hear any relevant testimony
21 from Geico, if they do decide to put on any
22 case-in-chief. We don't believe they can put their
23 pricing in context. We believe that they waived
24 the right to even explain their pricing. And any
25 pricing that they may attempt to talk about in this

1 trial, Judge, will be met with objections to
2 hearsay at this point.

3 But that's what you can expect to see from
4 this trial, Judge. I think that's what the
5 evidence is going to show.

6 At the end of the day, Judge, you're going to
7 have overwhelming evidence that the Plaintiff's
8 pricing and each of these other consolidated
9 matters falls well within the prevailing
10 competitive price range.

11 We're going to meet not only our burden as we
12 see fit, that we see proper, we'll also meet the
13 burden that the Defendant has alleged that we have,
14 Judge.

15 We're going to put on our case-in-chief and at
16 the end, Judge, we're going to ask Your Honor to
17 find that the Defendant, Geico, breached their
18 policy insurance in each of these 11 consolidated
19 matters simply because they didn't pay a prevailing
20 competitive price, and because our pricing falls
21 well within the range of the prevailing competitive
22 price for the year 2016.

23 THE COURT: All right. Thank you.

24 And who will be presenting the opening for the
25 Defendant?

1 MS. BUZA: Melissa Buza.

2 THE COURT: Ms. Buza.

3 MS. BUZA: Yes, ma'am.

4 I'm sorry, Your Honor. Can I proceed?

5 THE COURT: Yes you may proceed.

6 MS. BUZA: Thank you, Your Honor.

7 Good morning. May it please the Court,
8 opposing counsel.

9 Your Honor, we are hear on 11 consolidated
10 Breach of Contract cases. Plaintiff filed these
11 suits against Geico for additional automobile
12 insurance benefits related to damage on the
13 windshield of a Geico insured allegedly occurring
14 between July 2016 and November of 2016.

15 The issue in these cases is not whether
16 Geico's has Limited Liability or what that Limited
17 Liability means. The binding authority of these 13
18 Judicial Circuit Court and Superior Auto Glass as
19 assignee of Matthew Decks versus Geico has found
20 the Limited Liability to be unambiguous as set
21 forth the test for its application. All that
22 remains is to safely apply the test in the
23 admissible evidence presented here today.

24 Specifically the issue before the Court is
25 whether Geico's prevailing competitive price

1 exceeds in the reimbursement paid by Geico in each
2 of these cases.

3 The burden of proof is fully on the shoulders
4 of Plaintiff to present Geico did not pay the
5 prevailing competitive price because the Honorable
6 Herbert M. Berkowitz in Auto Bond as assignee of
7 Nelson Cordaro versus Geico.

8 The admissible evidence will not show that
9 Geico's reimbursements were less than what the
10 services are in a competitive market in a normal
11 arm's length noninsurance transaction.

12 The admissible evidence presented by Plaintiff
13 will not show insurance transactions that reflect
14 negotiation or competition and price setting.
15 Instead, Plaintiff's evidence will show pricing
16 that has been negotiated with no one.

17 Further, Plaintiff's evidence in pricing will
18 fall short of establishing the prevailing price.

19 Lastly, Plaintiff's pricing data will not be
20 verifiable. Rather than strictly applying the
21 binding test to its evidence, Plaintiff will parade
22 a host of witnesses all asking this Court to simply
23 take their word for it.

24 Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 All right, Mr. Prieto, you may call your first
2 witness.

3 MR. PRIETO: Yes, Your Honor. I guess as a
4 matter of record we did -- the Plaintiffs did file,
5 and I believe that the Defendant also filed
6 memorandums of law regarding the Burden of Proof in
7 this matter and who has what burden actually, Your
8 Honor, to reference that. Not right now,
9 obviously. But ultimately that's an issue and a
10 point of contention for Your Honor to actually at
11 least consider throughout this trial, and if not,
12 part of making your ruling, if Your Honor doesn't
13 rule directly from the bench.

14 THE COURT: Okay.

15 MR. PRIETO: And with that being said, Your
16 Honor, we'll be calling -- the Plaintiff's first
17 witness will be Mikel Slaman. He's the --

18 THE COURT: Well, let me stop you there, Mr.
19 Prieto, and let's address some housekeeping
20 matters.

21 I did see your notice back in May 2020 with
22 complying. Are you referencing that filing?

23 MR. PRIETO: I did not.

24 THE COURT: I pulled --

25 MR. PRIETO: It was a trial brief that was

1 filed, Judge, probably on, I think Friday, maybe.

2 THE COURT: Well, that's the problem. It was
3 filed on Friday.

4 MR. PRIETO: Yes, ma'am. I understand.

5 THE COURT: I mean, everything was due by
6 Wednesday. Why am I getting late filings. And
7 there isn't anything in the docket that reflects
8 there were filings on Friday, Ladies and Gentlemen.

9 MR. PRIETO: Yes, Your Honor. I understand.
10 It was a document that was filed by Defense counsel
11 prior, and we responded with our memo of law. That
12 was the reason for our filing. So it is
13 essentially -- I guess it's a memorandum of law,
14 Judge.

15 THE COURT: I know but the Court hasn't had an
16 opportunity to look at it. Why do we have late
17 filings on Friday. Everything was due by
18 Wednesday. It hasn't even docketed. So it's not
19 showing up on any of my screen that anything was
20 filed by either party.

21 Ms. Buza, why are you filing things on Friday
22 when everything was due Wednesday?

23 MR. CAVALLARO: Your Honor, this is Nick
24 Cavallaro, for the record.

25 We haven't filed a trial brief yet. I

1 understand that in case there was any argument from
2 Plaintiff that Defendant would have the burden in
3 this action. There were other Court Orders from
4 Hillsborough County that were filed in an abundance
5 of caution, but there was a new trial brief filed
6 by Defendant regarding the burden.

7 THE COURT: What was filed on Friday?

8 MR. CAVALLARO: By our office, Your Honor?
9 This is Nick Cavallaro.

10 THE COURT: Yes, Mr. Cavallaro.

11 MR. CAVALLARO: It was a -- if I recall
12 correctly, I filed, I believe, on Thursday County
13 Court orders that have already addressed the burden
14 of proof issue. And then on Friday, yes --
15 actually, no. Sorry. I apologize.

16 I think it was yesterday I filed a hearing
17 transcript where Judge Smith had -- I'm sorry. Not
18 Judge Smith -- Judge Moody had concerned the same
19 argument about who has the burden. And again this
20 is -- and that was in response to the Friday
21 filing.

22 So to the extent that the Court was going to
23 be considerate and hear kind of a late motion, we
24 wanted to have something that we could argue, but
25 that's why that was filed.

1 THE COURT: All right. Any late filings, I
2 have not reviewed and I'm not sure if I'm going to
3 even consider at that point. I'll let you make
4 argument as it relates to the burden of proof.

5 On filing again, you all know that's one
6 nuance -- it's one of the things that really drives
7 me crazy. And late filings, and the Court not
8 having the opportunity to review it, is inherently
9 unprofessional as to all the parties.

10 Everything should have been filed by
11 Wednesday. So we'll address the burden of proof
12 when appropriate.

13 All right. Call your first witness.

14 MR. PRIETO: All right. Plaintiff calls --
15 Attorney Michael Prieto. The Plaintiff calls
16 Mr. Mikel Slaman who is the owner of Bond Auto
17 Glass, and Mr. Michael Koulianos will be doing his
18 direct examination.

19 THE COURT: All right. Mr. Slaman, if you can
20 spell your full name, please, for the clerk and the
21 Court Reporter.

22 MR. PRIETO: Judge, he's in the room by
23 himself. So Mr. Caldevilla can step in and unmute
24 him. I don't know if -- oh, there he goes.

25 THE COURT: He just did. Can you hear me,

1 sir?

2 THE WITNESS: Yes.

3 THE COURT: All right. Thank you. I'm going
4 to have you give us your full name and spell your
5 last name and then I'll place you under oath. Go
6 ahead.

7 THE WITNESS: Mikel Joseph Slaman. And my
8 last name is spelled S-l-a-m-a-n.

9 THE COURT REPORTER: I'm sorry. He's cutting
10 in and out.

11 THE COURT: You're cutting in and out. So
12 louder and slower, please.

13 THE WITNESS: Mikel Joseph Slaman. Last name
14 is spelled S-l-a-m-a-n.

15 THE COURT: Raise your right hand, sir. Do
16 you swear and affirm the testimony that you'll give
17 is the truth, and nothing but the truth?

18 THE WITNESS: Yes.

19 THE COURT: All right. Mr. Slaman, so where
20 are you presently?

21 THE WITNESS: I'm on the 20th floor of the
22 Bank of America building.

23 THE COURT: Okay. So you're here in the
24 Plaintiff's law firm, correct?

25 THE WITNESS: I'm sorry?

1 THE COURT: You're in the Plaintiffs' law
2 firm?

3 THE WITNESS: Yes, I believe so.

4 THE COURT: And are you in the room alone?

5 THE WITNESS: Yes.

6 THE COURT: And is anyone with you?

7 THE WITNESS: No.

8 THE COURT: And are the electronic devices
9 other than the electronic device that you're using
10 for the video zoom turned off?

11 THE WITNESS: Yes.

12 THE COURT: You're looking around. Thank you.
13 Your cellphone is off?

14 THE WITNESS: I don't even have it with me.

15 THE COURT: All right. Thank you.

16 All right. Counsel, you may proceed.

17 MR. KOULIANOS: Thank you, Your Honor. Mike
18 Koulianos for the Plaintiff.

19 Thereupon,

20 MIKEL JOSEPH SLAMAN,
21 a witness, called by the Plaintiffs, having been sworn
22 to tell the truth, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. KOULIANO:

1 Q. Good morning, Mr. Slaman.

2 A. Good morning.

3 Q. You already gave your name for the record and
4 spelled it. So we'll just get right into it.

5 Are you employed?

6 A. Yes.

7 Q. And by whom are you employed?

8 A. Bond Auto Glass.

9 Q. In what capacity are you employed by Bond Auto
10 Glass?

11 A. I am co-owner of Bond Auto Glass.

12 Q. Is Bond Auto Glass a windshield replacement
13 facility?

14 A. Yes. We also do door glasses, back glasses,
15 but mainly windshields.

16 THE COURT: What else do you do? I'm sorry.

17 THE WITNESS: Door glasses and back glasses,
18 not only windshields.

19 THE COURT: Thank you.

20 BY MR. KOULIANOS:

21 Q. How long have you been employed by Bond Auto
22 Glass?

23 A. Since 2016.

24 Q. In 2016 did you work anywhere else?

25 A. Yes. I worked for two other companies, Shazam

1 Auto Glass and Venom Auto Glass.

2 Q. In 2016 did you work for all three of those
3 companies at the same time?

4 A. Yes.

5 Q. What were your job duties and responsibilities
6 with these three companies?

7 A. Everything. I did ordering parts, routing,
8 technician work, setting prices, depositions. I've done
9 sales for two of those three companies, pretty much
10 anything that was required of me.

11 Q. In 2016, did all three of these companies
12 perform windshield replacement services throughout the
13 State of Florida?

14 A. Yes.

15 Q. In 2016 when you worked at Shazam, Venom and
16 Bond, would each of those three shops have performed
17 windshield replacement services in Lake County, Florida?

18 A. Yes.

19 Q. What about Orange County, Florida?

20 A. Yes.

21 Q. And Osceola County, Florida. What about that?

22 A. Yes.

23 Q. With regard to the cases that you're here to
24 testify about today, do you know the year in which the
25 windshield replacement services were performed?

1 A. 2016.

2 MS. BUZA: I'm objecting to hearsay, Your
3 Honor.

4 THE COURT: All right. Overruled.

5 BY MR. KOULIANOS:

6 Q. Can you explain what it means to be a network
7 or an Affiliated Shop with an insurance company?

8 A. Yes. So a network or an Affiliated Shop would
9 make an agreement with the insurance company at a
10 discounted rate to do the work. The insurance in return
11 would pay them in a timely manner. They would sometimes
12 offer them -- offer them work from their clients. But
13 it's pretty much taking a much lower amount than what
14 most people have for Auto Glass, and the exchange you
15 get which is like paid on time. They don't try and
16 steer your customers as much whenever you're in the
17 network or affiliate.

18 MS. BUZA: I'm going to object as not
19 relevant.

20 THE COURT: Do you want to respond, Mr.
21 Koulianos?

22 MR. KOULIANOS: Your Honor, Mr. Slaman is
23 simply providing his knowledge with regard to the
24 windshield replacement services market.

25 You'll find, if it's not already within Your

1 Honor's knowledge that, there is a sharp difference
2 between a network and a nonnetwork windshield
3 replacement facility. And providing Your Honor
4 through Mr. Slaman's testimony the details with
5 regard to being a network shop and reasons why
6 those pricing structures are different.

7 THE COURT: Overruled.

8 BY MR. KOULIANOS:

9 Q. Mr. Slaman, I started to do this but I'll go
10 ahead and re-ask the question just so the record is
11 clear. I know you had quite a lengthy description, but
12 if you can again explain to us the difference between a
13 network -- excuse me -- what it means to be a network or
14 an affiliate shop with an insurance company.

15 A. A network or an affiliate shop is agreeing to
16 take a much lower rate for the windshield work that's
17 done. And in exchanged, they don't steer your customers
18 to Safelite. They would pay you in a timely manner. I
19 believe it's usually two weeks. And I believe some of
20 them even would send the shops work.

21 Q. Thank you. And I know we talked about --
22 again, we're talking about your experience in 2016.

23 Mr. Slaman, how long have you been in the
24 windshield replacement industry, automobile windshield
25 replacement industry?

1 A. Since 2011.

2 Q. In 2016 was Bond Auto Glass affiliated with or
3 a member of any Geico insurance networks?

4 A. No.

5 Q. So in 2016, Bond Auto Glass was a nonnetwork
6 facility?

7 A. Correct.

8 Q. In 2016 was Venom Auto Glass a nonnetwork
9 facility?

10 A. Yes.

11 Q. In 2016 was Shazam Auto Glass a nonnetwork
12 facility?

13 A. Yes.

14 Q. In 2016 did all three of these windshield
15 replacement companies that you worked for bill insurance
16 companies pursuant to an Assignment of Benefits?

17 A. Yes. We were getting an Assignment of
18 Benefits with every invoice.

19 THE COURT: Mr. Slaman, if you could just
20 speak up, please.

21 And, Mr. Koulianos, if you could repeat it for
22 the Court Reporter. He had a difficult time with
23 that.

24 MR. KOULIANOS: Yes, Your Honor.

25 THE COURT: And I'm having a difficult time

1 hearing some of it as well.

2 If you could just speak up a little bit
3 louder, Mr. Slaman, please.

4 THE WITNESS: Of course.

5 THE COURT: Go ahead, Mr. Koulianos.

6 MR. KOULIANOS: Yes, Your Honor. Thank you.

7 BY MR. KOULIANOS:

8 Q. Mr. Slaman, in 2016, did the three windshield
9 replacement facilities that you worked for bill
10 insurance companies pursuant to an Assignment of
11 Benefits?

12 A. Yes.

13 Q. Can you briefly explain your interpretation of
14 what an assignment benefit is?

15 MS. BUZA: Your Honor, I'm going to object to
16 relevance. I think that's more appropriate for
17 Mr. Bailey's testimony.

18 THE COURT: Okay. Why is that relevant at
19 this point, Mr. Koulianos, for this witness?

20 MR. KOULIANOS: Again, Your Honor, we're
21 drawing the similarities between the Plaintiff who
22 is a nonnetwork windshield replacement facility
23 that billed to seek comprehensive insurance
24 benefits for windshield replacement services. And
25 we're drawing the similarity between the Plaintiff

1 and in three shops that Mr. Slaman has experienced
2 working for and/or owning in the same capacity and
3 billing pursuant to the assignment methods, and
4 you'll find that the Plaintiff did so in the 11
5 cases that we're here about today.

6 THE COURT: All right. It's a hearing that
7 goes towards the pricing. So overruled.

8 MR. KOULIANOS: Yes, Your Honor. And to add
9 the three companies that Mr. Slaman is testifying
10 about are direct competitors of the Plaintiff. So
11 we are essentially providing Your Honor with the
12 backdrop as to the competitive market, including
13 these three specific shops.

14 THE COURT: And let me make sure I'm hearing.
15 This is Shazam, Venom and Bond. Did I get that
16 correct?

17 THE WITNESS: Correct.

18 MR. KOULIANOS: Yes, Your Honor.

19 THE COURT: Those are the three companies.
20 All right. Thank you. Go ahead.

21 MR. KOULIANOS: Thank you, Your Honor.

22 BY MR. KOULIANOS:

23 Q. Mr. Slaman, including Geico, how many
24 different insurance companies did Bond Auto Glass bill
25 for windshield replacement claims?

1 A. I would say, in total, around 70, but the ones
2 that we consistently billed were probably about 50.

3 Q. You broke up a little bit. Was the later part
4 of your answer that you regularly bill about 50
5 insurance companies?

6 A. Yes.

7 Q. Thank you. At the time that you were with
8 Venom and Shazam, how many different insurance companies
9 did each of them bill for windshield replacement
10 claims?

11 A. It was about the same --

12 MS. BUZA: Objection. Hearsay.

13 THE WITNESS: Mr. Koulianos, would you repeat
14 the question. There was an objection.

15 And then, Ms. Buza, I want you to make the
16 objection one more time. You completely broke up.
17 So I apologize.

18 Go ahead.

19 MR. KOULIANOS: Thank you, Your Honor.

20 BY MR. KOULIANOS:

21 A. Mr. Slaman, at the time that you worked for
22 Venom and Shazam, how many different insurance companies
23 did each of them bill for windshield replacement claims?

24 MS. BUZA: And I'd object to hearsay, Your
25 Honor. He's testified that he was simply a

1 subcontractor for Venom and Shazam.

2 MR. KOULIANOS: That's completely
3 mischaracterizing Mr. Slaman's testimony. He said
4 he did everything that was asked for him including
5 setting pricing, windshield replacement services.
6 This is part of his direct knowledge in working for
7 those two companies including Bond Auto Glass.

8 THE COURT: Why don't you establish one more
9 time if at the time he was with Venom, Bond and
10 Glass, whether or not he was involved with actually
11 billing. For clarification, I need him to --

12 BY MR. KOULIANOS:

13 Q. Mr. Slaman, at the time that you worked for
14 Venom Auto Glass and Shazam, did you participate in
15 billing insurance companies?

16 A. Not the billing. I was involved in pricing.

17 THE COURT: Okay.

18 BY MR. KOULIANOS:

19 Q. I'm sorry, Mr. Slaman, I heard that you were
20 involved in setting the pricing?

21 A. Yes. Not doing the billing.

22 Q. I understand.

23 THE COURT: Okay, Ms. Buza, did you hear his
24 response? Does your objection stand or --

25 MS. BUZA: Yes, ma'am, it stands.

1 THE COURT: All right. As to hearsay, one
2 more time, Mr. Koulianos.

3 MR. KOULIANOS: Your Honor, you wanted the
4 question one more time or did you want me to
5 continue to lay a foundation with Mr. Salman?

6 THE COURT: No. I needed your respond to
7 their objection on hearsay.

8 I think the question was at the time he worked
9 at Venom, Bond, did he regularly bill the insurance
10 companies; is that correct?

11 MR. KOULIANOS: No, Your Honor. Mr. Slaman
12 participated in setting competitive pricing for
13 both Venom and Shazam and Bond Auto Glass.

14 But here I'm asking specifically the amount of
15 insurance companies that Venom and Shazam
16 respectively billed insurance companies, the amount
17 of insurance companies they billed in 2016.

18 That involves having knowledge of how many
19 companies they've billed, not necessarily the
20 submission of the bill.

21 So I wasn't quite there but Mr. Slaman has
22 already again testified that this is part of his
23 direct knowledge in working for both of these
24 companies.

25 THE COURT: All right. Thank you. I'm going

1 to allow it. Overruled.

2 MR. KOULIANOS: Thank you, Your Honor.

3 BY MR. KOULIANOS:

4 Q. One more time. At the time you left -- excuse
5 me. At the time you worked for Venom and Shazam how
6 many different insurance companies did each of them bill
7 for windshield replacement claims?

8 A. It was about the same. Probably around 50.

9 Q. And when you say about the same are you
10 referencing the same amount that you testified with
11 regard to Bond Auto Glass?

12 A. Yes.

13 Q. In 2016, approximately what percentage of Bond
14 Auto Glass' customers had insurance that covered
15 insurance damage?

16 A. All of them.

17 Q. Same question for Venom and Shazam, in 2016
18 what percentage of their customers had insurance that
19 covered windshield damage?

20 A. I believe all of them. I don't recall ever
21 doing cash jobs for them.

22 Q. In windshield replacement industry, are there
23 different quality windshields and other parts that
24 windshield shops can use?

25 A. Yes.

1 MS. BUZA: Objection, Your Honor. Opinion.

2 THE COURT: I'm sorry. What's the basis of
3 the objection?

4 MR. BUZA: He giving an opinion, Your Honor,
5 and he's simply a fact witness in this case.

6 THE COURT: All right. What's the question
7 one more time, Mr. Koulianos?

8 MR. KOULIANOS: Yes, Your Honor.

9 BY MR. KOULIANOS:

10 Q. Mr. Slaman, in the windshield replacement
11 industry, are there different qualify windshield and
12 other parts that windshield shops can use?

13 A. Yes, there is.

14 THE COURT: All right. Ms. Buza, what's the
15 basis? Is it that he is giving an opinion as to
16 the quality of the type of windshields that are
17 used?

18 MS. BUZA: Yes, ma'am. He hasn't -- well,
19 he's specifically being brought as a fact witness,
20 not an opinion of the different kinds of
21 windshields, and the quality of each of those
22 windshields.

23 THE COURT: All right. Anything from Mr.
24 Koulianos specifically related to that?

25 MR. KOULIANOS: Yes, Your Honor. We're not

1 here to establish the specific piece of glass,
2 being of quality material, but simply Mr. Slaman's
3 knowledge as to his general industry knowledge that
4 there are different types of windshield glass. I
5 haven't quite gotten there yet. Of course I need
6 to ask him whether he was aware of different levels
7 of quality to be used in windshield replacement
8 services.

9 THE COURT: Right.

10 MR. KOULIANOS: Specifically, I believe in
11 Geico's policy they require lifetime quality use.
12 So I'm simply asking Mr. Slaman what his knowledge
13 is with regard to the quality of different parts
14 that can go into a windshield replacement service.

15 THE COURT: And all of that is a factor in
16 pricing, Mr. Koulianos.

17 MR. KOULIANOS: That's a factor as to
18 competency, Your Honor, providing the appropriate
19 quality of windshield so that the product and
20 services given to an insured customer lacked
21 because the windshield itself is an intragel part
22 of the vehicle's safety.

23 THE COURT: Okay. All right. I'm going to
24 allow it. Overruled.

25 BY MR. KOULIANOS:

1 Q. Mr. Slaman, can you please provide us a little
2 bit of insight with regard to different quality
3 windshield parts?

4 A. Yes. You have OEM, which is the Original
5 Equipment Manufacture. And then you have OEE glass,
6 which is Original Equipment Equivalent. Then we have
7 after market, and behind that, there is SGC, which I
8 don't know what that would be labeled as. It's just a
9 \$5 piece of glass that's filled with defects.

10 THE COURT: Can you just say that one more
11 time, S --

12 THE WITNESS: SGC stands for Safelite Glass
13 Company. It's a glass that Safelite manufactures.

14 THE COURT: Okay.

15 BY MR. KOULIANOS:

16 Q. What is the quality of the parts that Bond
17 Auto Glass uses in it's windshield replacement services?

18 A. We only use OEM and OEE.

19 Q. From which distributor does Bond Auto Glass
20 order it's windshield glass parts?

21 A. Mygrant and PGW, and just recently -- Mygrant
22 and PGW and also we just recently signed up Pilkington.

23 Q. In 2016 who set the prices that Bond Auto
24 Glass charged for windshield replacement services?

25 A. I did.

1 Q. What are the different component prices that
2 are typically found in a windshield replacement invoice?

3 A. There's all kinds of components. The three
4 major ones would be the glass, the labor and the kit,
5 which is your urethane and glue. But you can also have
6 moldings, clips, screen censor pads, storage disposal
7 fees, admin billing fees. You can have mobile fees.

8 Q. Does Bond Auto Glass price out each of those
9 components separately when you insurance an insurance
10 company, or is there one single breakdown for the total
11 price?

12 A. Everything is priced out online and then
13 there's a grand total at the end.

14 Q. In 2016 how did you come up with the prices
15 charged by Bond Auto Glass for windshield replacement
16 jobs?

17 A. I get my usual and customary prices from my
18 experience in the industry. Like I said, I've been in
19 the business sense 2011. So I took all of the knowledge
20 that I had form the other companies and what they were
21 charging and --

22 MR. BUZA: Objection. Hearsay, Your Honor.

23 THE COURT: In which part of that? He said
24 based upon his experience, and he took part of that
25 from other companies that he worked for. So as to

1 other companies that he worked for?

2 MS. BUZA: Yes, ma'am. He seems to be pulling
3 pricing information of other companies, and I
4 believe that falls under hearsay.

5 THE COURT: All right. Mr. Koulianos, as it
6 relates to any testimony on other companies that he
7 worked for.

8 MR. KOULIANOS: Yes, Your Honor. I'm on my
9 way to asking him with regard to Shazam and Venom.
10 But in so much that Mr. Slaman is just generally
11 referencing his knowledge base included
12 consideration of pricing from other companies,
13 we're not having him assert that for the truth of
14 those prices.

15 I'm not having him say company X, Y, Z charged
16 A, B, C. We're simply showing Your Honor that he
17 used several different components to come up with
18 his usual and customary pricing but we're not
19 offering that for the truth of those shops of
20 prices.

21 THE COURT: All right. I'm going to allow it
22 because he's basing his prior experience in
23 calculating prices on coming up with the prices in
24 testimony but based upon his experience. So
25 specific companies and in the industry.

1 So, again, he's not telling us what those
2 companies are eliciting -- or it's not eliciting
3 hearsay testimony.

4 All right. So, go ahead, Mr. Koulianos.

5 BY MR. KOULIANOS:

6 Q. Mr. Slaman, I'll go ahead and re-ask, if you
7 wouldn't mind, starting from the top.

8 In 2016 how did you come up with the prices
9 charged by Bond Auto Glass for windshield replacement
10 jobs?

11 A. Through my experience in the industry knowing
12 what the other companies charged and --

13 THE COURT REPORTER: I'm sorry. Your voice
14 went down. And --

15 THE COURT: If you can just keep -- sit up
16 straight as close as you can to the speaker because
17 I'm losing you as well.

18 THE WITNESS: Okay.

19 THE COURT: So all I heard was experience in
20 the industry --

21 THE WITNESS: And taking the prices that the
22 other shops were charging is how I came up with my
23 usual and customary pricing.

24 BY MR. KOULIANOS:

25 Q. Mr. Slaman, when you reference other shops,

1 are you referencing other nonnetwork shops within the
2 competitive market?

3 A. Yes, because if they were a network, I
4 obviously wouldn't know what their pricing is. They
5 aren't able to discuss that.

6 Q. Why wouldn't a shop be able to discuss it's
7 network pricing arrangement?

8 A. It's all in the agreement with the insurance
9 company.

10 Q. So is there some sort of confidentiality that
11 attaches to that?

12 A. Yes.

13 Q. Does your -- sorry -- does your personal
14 experience and your knowledge, training and experience
15 in the industry since 2011 include the prices charged by
16 Shazam?

17 A. I'm sorry. Can you repeat that.

18 Q. Does your knowledge, training and experience
19 in the industry, when being used to set Bond Auto Glass
20 prices in 2016, include pricing charged by Shazam?

21 A. Yes.

22 Q. Does it include price charged by Venom?

23 A. Yes.

24 Q. Does it include consideration given to the
25 amount of insurance companies that pay Bond Auto Glass'

1 full invoiced amount?

2 A. Can you repeat that one again. I'm sorry.

3 Q. Yes. Your knowledge, training and experience
4 that went into the pricing that Bond Auto Glass charged
5 for windshield replacement services provided in the
6 State of Florida, does that include the reimbursement
7 amounts received from the other insurance companies that
8 Bond Auto Glass billed?

9 A. Yes. I had to create like a sweet spot in my
10 billings so that I could get paid by most of -- most of
11 the insurance company. In the industry, we're told on
12 the big five -- it's the main five insurance companies
13 that pay anything to that was with Auto Glass. Like the
14 rest of them --

15 MS. BUZA: I'm sorry. I missed that last
16 part.

17 MR. KOULIANOS: Mr. Slaman, you tailed off
18 towards the end. I believe everyone heard
19 something with regard to the insurance companies
20 that do not pay.

21 THE WITNESS: Okay. What I was saying is you
22 have to find a sweet spot with your pricing because
23 we have what we called the big five, which is the
24 five major insurance companies in Auto Glass, and
25 then they just don't pay anybody unless you're in

1 an affiliated network agreement. But the rest of
2 them, you know, I had to come up with a pricing
3 that I knew I would get paid for.

4 BY MR. KOULIANOS:

5 Q. And approximately what percentage of insurance
6 companies paid Bond Auto Glass its full invoice price?

7 A. Probably between 90 and 95 percent of them
8 paid full.

9 Q. And who are some of the insurance companies
10 that you reference or labeled as part of the big five?

11 A. Geico, State Farm, Progressive, Allstate.
12 USAA used to be one of them. I don't have so many
13 problems with USAA anymore. They pretty much full pay
14 now.

15 Q. In 2016 what were the usual and customary
16 prices that Bond charged for windshield replacement
17 services?

18 A. 2016, I was charging \$90 a NAGS hour, 100
19 percent of NAGS on the glass, roughly \$50 for the kits.
20 I was charging \$25 per kit and 1.5 and 2.5 per vehicle
21 depending on what vehicle it is.

22 I also had --

23 THE COURT REPORTER: I'm sorry. You're
24 cutting out. Also had --

25 THE COURT: Yes, you're cutting out. Mr.

1 Koulianos, please repeat it. It's really hard for
2 us to hear. The Court Reporter didn't catch it.
3 I'm not catching it. So I last heard \$50 a kit,
4 1.5 to two.

5 MR. KOULIANOS: Yes, Your Honor.

6 BY MR. KOULIANOS:

7 Q. Mr. Slaman, I'll re-ask. In 2016, what were
8 the usual and customary prices that Bond charged for
9 windshield replacement services in the State of Florida?

10 A. I charged \$90 a NAGS number, 100 percent of
11 NAGS' list for the glass, and \$25 storage and disposal
12 fee, \$25 mobile fee, and roughly -- roughly about \$50
13 per kit. You would use -- I charged \$25 per tube and
14 you would use 1.5 to 2.5 per vehicle depending on what
15 vehicle it is, but mostly \$50.

16 THE COURT: All right. So anywhere from 50 to
17 100 depending upon how many kits you used; is that
18 correct?

19 THE WITNESS: No. It would be 37.50 to 60.

20 THE COURT: Okay.

21 THE WITNESS: It's \$25 per tube and you use
22 1.5 to 2.5(2).

23 BY MR. KOULIANOS:

24 Q. So, Mr. Slaman, your usual and customary --
25 Bond's usual and customary prices for in 2016 for

1 windshield replacement services was 100 percent of NAGS
2 for the windshield glass, \$90 per NAGS' labor hour, \$25
3 mobile fee, \$25 storage and disposal fee, and \$25 per
4 urethane kit?

5 A. Correct.

6 Q. And the urethane kit used for any windshield
7 replacement service in the State of Florida typically
8 ranges from 1.5 to 2.5 kits?

9 A. Correct.

10 Q. And that was the range that you provided to
11 the Judge, correct?

12 A. Correct.

13 Q. In 2016, when setting your Bond's usual and
14 customary prices, did Bond take into account the usual
15 and customary prices structure of other competitors in
16 the market?

17 A. Yes.

18 MS. BUZA: Objection. Hearsay.

19 THE COURT: All right. Mr. Koulianos.

20 MR. KOULIANOS: Same response as earlier, Your
21 Honor. Mr. Slaman's knowledge, training and
22 experiences in the industry. He's already
23 testified that he's considered the competitive
24 pricing of other competitors in the market. So I'm
25 simply asking if he considered those prices in

1 setting his Bond Auto Glass prices.

2 THE COURT: All right. Overruled.

3 BY MR KOULIANOS:

4 Q. You previously testified that the pricing that
5 you considered in setting Bond Auto Glass' usual and
6 customary prices included Shazam and Venom, correct?

7 A. Say that one more time. I'm sorry.

8 Q. You previously testified that you considered
9 Shazam and Venom Auto Glass' pricing structure in
10 setting the usual and customary prices of Bond Auto
11 Glass; is that correct?

12 A. Yes.

13 Q. Did you consider the charges by any other
14 competitors?

15 A. Yes.

16 Q. Can you name some?

17 A. Yes. Royal Auto Glass, Suite and Tie Auto
18 Glass, First-Class Auto Glass.

19 MS. BUZA: Objection, Your Honor. Hearsay.

20 He hasn't testified that he works for either of
21 those companies or was involved in pricing for
22 either of those companies.

23 THE COURT: All right. Mr. Koulianos, as to
24 his knowledge of pricing for Royal, First-Class
25 Auto Glass, and the third one I didn't catch.

1 MR. KOULIANOS: Yes, Your Honor. It's again
2 part of Mr. Slaman's knowledge, training and
3 experience in the industry in 2011. We're not
4 offering any of these shops up for the schedule of
5 charges that they had, but simply the fact that
6 Mr. Slaman spoke to these shops and used his
7 knowledge, training and experience as a result of
8 that to develop the pricing that Bond imposes.

9 MS. BUZA: And, Your Honor --

10 MR. KOULIANOS: And Mr. Slaman has not made
11 any out-of-court statement at all.

12 THE COURT: All right. Ms. Buza.

13 MR. BUZA: Your Honor, his names of these
14 shops is hearsay and he's using self-statements to
15 support his pricing which does go to the truth of
16 the matter asserted.

17 THE COURT: All right. I think the
18 distinguish is in his testimony as it relates to
19 Bond, Venom and Shazam, he is directly involved in
20 the pricing of something, developing pricing and he
21 was aware of the billing because he worked many
22 different facets within those three Auto Glass
23 facilities.

24 So the last three that he testified on, I
25 think, it was that he spoke to those in

1 determining, in developing prices. So I do find
2 that that's hearsay. Sustained.

3 BY MR. KOULIANOS:

4 Q. Mr. Slaman, you previously testified that
5 approximately 90 to 95 percent of the insurance
6 companies that you billed, or that Bond Auto Glass
7 bills, paid Bond Auto Glass' full and usual and
8 customary prices; is that correct?

9 A. Yes.

10 Q. When you worked for Shazam --

11 THE COURT: I'm sorry. Ms. Buza, were you
12 saying something? You're breaking up.

13 MR. BUZA: Yes, ma'am. I was going to object
14 to relevance because that wasn't limited to 2016.

15 THE COURT: Mr. Koulianos, can you rephrase
16 that, please.

17 MR. KOULIANOS: Your Honor, I can move on. I
18 simply was bringing back as far as testimony, but I
19 have other -- I have another question that can go
20 in its place. No problem. I can strike that.

21 THE COURT: Okay. We're going to move on.

22 BY MR. KOULIANOS:

23 Q. Has Shazam, Venom or Bond ever billed less
24 than the amounts that you're aware of as their usual and
25 customary prices?

1 A. No.

2 Q. Based upon your personal knowledge of the
3 independent nonaffiliated windshield replacement
4 services market and as the owner of Bond, were Bond's
5 2016 prices that your testified about consistent with
6 the range of usual and customary prices that were being
7 charged by your competitors in the nonaffiliated --

8 MS. BUZA: Objection, Your Honor.

9 THE COURT: What's your objection, Ms. Buza.
10 You broke up.

11 MS. BUZA: I'm sorry, Your Honor. I was
12 letting Mr. Koulianos finish. I didn't mean to
13 interrupt him.

14 THE COURT: Were the prices consistent with
15 competitors? Is that the question, Mr. Koulianos?

16 MR. KOULIANOS: In essence, Your Honor. Were
17 the prices consistent with the prices being charged
18 by competitors in the nonaffiliated windshield
19 replacement market?

20 MS. BUZA: And, Your Honor, I'm going to
21 object to opinion testimony, improper opinion.

22 THE COURT: Overruled.

23 BY MR. KOULIANOS:

24 Q. Since 2016, has Bond Auto Glass negotiated a
25 new, usual and customary pricing structure?

1 THE COURT: Let him answer the last question.

2 So I want to hear --

3 MR. KOULIANOS: My apologies, Judge. My
4 apologies.

5 THE COURT: All right. So ask the last
6 question.

7 BY MR. KOULIANOS:

8 Q. Based upon your personal knowledge as an
9 independent nonaffiliated windshield replacement
10 services market, and as the owner of Bond Auto Glass,
11 were Bond's 2016 prices that you testified about
12 consistent with the range of usual and customary prices
13 that were being charged by your competitors in that
14 nonaffiliated windshield replacement market?

15 MS. BUZA: And, Your Honor, I'm going to
16 object to hearsay as well regarding charges of
17 noncompetitors in market -- in a noncompetitor's
18 market.

19 THE COURT: Okay. All right. Overruled.

20 THE WITNESS: That's a yes.

21 BY MR. KOULIANOS:

22 Q. Mr. Slaman, just confirming that the answer to
23 the question posed was yes?

24 A. Yes.

25 Q. Thank you. Since 2016 has Bond Auto Glass

1 negotiated a new, usual and customary pricing structure?

2 A. Yes, I have.

3 Q. And what is that current pricing structure?

4 A. The same as I stated previously, except we
5 increased our NAGS hours to 120 per NAGS hour, and we
6 added an admin billing fee of \$100.

7 MS. BUZA: Your Honor, I'm going to object to
8 any testimony outside of 2016.

9 THE COURT: All right. Why is this relevant,
10 Mr. Koulianos, the increase in the -- in the
11 billing and the pricing structure?

12 MR. KOULIANOS: Your Honor, because I'm
13 showing that there has been -- or I will show that
14 there has been an increase in pricing structure
15 that Bond had undergone based upon a competitive
16 market and that my follow-up questions were going
17 to go directly to the relevance of that.

18 But, in addition, Geico has been -- we'll find
19 out that Geico has been paying the same pricing
20 structure since 2012 without increase, and that
21 it's not competitive. It doesn't reflect any type
22 of reference to the competitive market, and we're
23 showing Your Honor that the facilities can either
24 maintain themselves with one structure or
25 consistent with the market, increase their pricing

1 schedule. And Your Honor will see that that
2 increase in pricing schedule does not affect their
3 rate of reimbursement from other insurance
4 companies.

5 THE COURT: All right. Anything else, Ms.
6 Buza, based upon the increase in the market prices?

7 MR. BUZA: Just that, we're here on 2016 cases
8 and I'm not sure what pricing outside of that year
9 has to do with pricing competitively in 2016.

10 THE COURT: Okay. All right. I'm going to
11 allow a little bit of that, Mr. Koulianos,
12 understanding your position in the increase in the
13 market price and continued payment on those. So go
14 ahead. I want to hear how those have increased
15 from 2016.

16 MR. KOULIANOS: Yes, Your Honor.

17 BY MR. KOULIANOS:

18 Q. Mr. Slaman, I believe my last question was
19 confirming that you had increased Bond Auto Glass' NAGS
20 labor hour rate to \$120 per hour?

21 A. That's correct.

22 Q. And Bond Auto Glass also added a \$100
23 administrative fee?

24 A. Yes. An administrative/billing fee, yes.

25 Q. And what percentage of insurance companies

1 paid Bond's usual and customary increase competitive
2 rate?

3 MR. BUZA: The same objection, Your Honor.
4 Relevance.

5 THE COURT: All right. Sustained.

6 THE WITNESS: Do I answer.

7 THE COURT: Yes, go ahead. I said sustained,
8 but it, I'm sorry, overruled.

9 So go ahead. Answer what percentage of
10 insurance companies had paid.

11 THE WITNESS: It's still the same, about 30 to
12 95 percent of them with the major five, but four of
13 them now.

14 BY MR. KOULIANOS:

15 Q. And with regard to the insurance companies
16 that paid Bond Auto Glass' full, unusual and customary
17 rate, Geico is not part of the 90 to 95 percent,
18 correct?

19 A. No. No. They are part of what we call the
20 big five.

21 Q. Based upon your personal knowledge, since you
22 have been in a windshield replacement industry, what
23 insurance company reimburses the absolute lowest amount
24 for windshield replacement services in the State of
25 Florida?

1 MS. BUZA: Objection. Improper opinion
2 testimony, also relevance, Your Honor.

3 THE COURT: All right. Mr. Koulianos, why is
4 that relevant and proper testimony?

5 MR. KOULIANOS: Your Honor, I'm not asking for
6 his opinion. It's a fact based upon his personal
7 knowledge.

8 THE COURT: All right. Why don't you rephrase
9 the question.

10 BY MR. KOULIANOS:

11 Q. Mr. Slaman, based upon your personal
12 knowledge, what insurance company reimbursed at the low
13 amount -- lowest amount for windshield replacement
14 services in State of Florida?

15 MS. BUZA: Same objection, Your Honor.

16 THE COURT: On that question. So overruled.
17 Go ahead.

18 THE WITNESS: That would be Geico.

19 BY MR. KOULIANOS:

20 Q. And is that the same in 2016?

21 A. Yes. Since I've been in Auto Glass, it's
22 always been Geico that pays the least.

23 Q. And to be clear, you've been in this industry
24 since 2011; is that correct?

25 A. Yes, that is correct.

1 MR. KOULIANOS: Thank you, Mr. Slaman. I
2 don't have any further questions at this time.

3 THE COURT: Do you all want a five minute
4 break, Ms. Buza?

5 MR. BUZA: Yes, Your Honor, please.

6 THE COURT: All right. So we'll be on a quick
7 five minute break.

8 All right. So the witness just hang tight.

9 Do you want to just stay there, Mr. Slaman?

10 THE WITNESS: Yes, that's fine.

11 THE COURT: Do you want some water? If
12 someone could just bring him some water.

13 Do you have water in your room?

14 THE WITNESS: I do. Thank you.

15 THE COURT: Okay. Perfect.

16 So just a quick five minutes. So don't leave
17 the room.

18 (Whereupon, a recess was taken.)

19 MR. CAVALLARO: This is Nick Cavallaro. I'm
20 sorry. What document are you referencing, Your
21 Honor?

22 THE COURT: I'm referencing a comment by
23 Prieto and you that there were some filings that
24 were docketed or uploaded Friday and Sunday. They
25 are still not listed on the clerk's website, just

1 to let you know.

2 MR. CALDEVILLA: Thank you, Your Honor. And I
3 do know that -- I mean, I understand the clerk's
4 position. But I do know that sometimes and
5 especially when the docket gets real busy, it can
6 take up to half a week where something has been
7 filed -- something has been filed and then it
8 doesn't show up on the docket.

9 And it has actually created issues at hearings
10 I've been to where -- I'm sorry -- this is just
11 kind of a tangent -- but it's created issues
12 that -- hearings not before Your Honor -- but where
13 I'll be saying something was filed and the Court
14 doesn't have it and it's been up to a half a week
15 before.

16 And also I guess as far as the trial brief, I
17 also understand it's not motion in itself and it's
18 just to be used in support of Plaintiff's argument.
19 So to the extent that may be considered at a later
20 time, I do understand that that is not a motion
21 itself.

22 THE COURT: Is everyone back? Everyone is
23 back for the Plaintiff?

24 MR. KOULIANOS: The Plaintiff is back.

25 Your Honor, did you -- did you receive the

1 damages summary, while we're talking about things
2 being exchanged?

3 THE COURT: Yes, I do have that?

4 MR. KOULIANOS: Okay, great, Judge. Thank
5 you.

6 THE COURT: Have you had a chance to look at
7 that, Mr. Cavallaro?

8 MR. CAVALLARO: Sorry. I'm just checking now,
9 Your Honor. I had my e-mail off for just a little
10 bit.

11 Yes, I got something from Mr. Koulianos, and
12 he sent it to all counsel, including my co-counsel
13 here. So I'm just pulling it up now real quick.

14 THE COURT: All right. We'll address that in
15 a moment.

16 Do we need -- we don't need it now,
17 Mr. Prieto, correct?

18 MR. PRIETO: That's correct, Your Honor. It
19 won't ever become part of any relevant testimony
20 until the Plaintiff takes the stand, I don't
21 believe, or the expert.

22 THE COURT: Okay. All right.

23 MR. PRIETO: It's just for convenience. It
24 will all be testified to, Your Honor.

25 THE COURT: Okay. All right, go ahead.

1 MR. CAVALLARO: And if I could -- it may just
2 take 30 seconds if I could just confer with counsel
3 to see if we have any objection, Your Honor, if
4 that's okay.

5 THE COURT: All right. Quickly. We can
6 address this at the appropriate time.

7 MR. CAVALLARO: Okay. If I can just speak
8 with her now. I'm turning it on mute real quick.

9 Your Honor, we don't have any objection to
10 that being used as a demonstrative aid.

11 THE COURT: Okay. All right.

12 MR. CAVALLARO: Thank you.

13 THE COURT: Who is crossing the witness?

14 MS. BUZA: Melissa Buza, Your Honor.

15 THE COURT: All right. Ms. Buza, you may
16 begin.

17 MS. BUZA: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. BUZA:

20 Q. Good morning, Mr. Slaman.

21 A. Good morning.

22 Q. Mr. Slaman, you just testified about Bond,
23 correct?

24 A. Correct.

25 Q. And when did Bond complete its first

1 windshield replacement in 2016?

2 A. When did we complete our first one?

3 Q. Just the month, if you know it.

4 A. I believe November.

5 Q. So you were only operating for that two months
6 out of the year with Bond in 2016?

7 A. Yes, with Bond.

8 Q. And you previously worked for Shazam, you
9 said?

10 A. Yes.

11 Q. Who is owner of Shazam?

12 A. Pardon?

13 Q. Who is the owner of Shazam Auto Glass?

14 A. Shawn Martineau.

15 Q. And does he dictate the pricing for Shazam?

16 A. Yes.

17 THE COURT REPORTER: Can I get the spelling of
18 that last name -- this is the Court Reporter --
19 Shawn --

20 THE WITNESS: I can attempt it, but I'm not
21 100 percent certain. M-a-r-t-i-n-e-a-u.

22 BY MS. BUZA:

23 Q. Mr. Slaman, you're currently in suit with
24 Geico, correct?

25 A. Currently what?

1 Q. You're current filing lawsuits against Geico?

2 A. Yes.

3 Q. How many lawsuits have you filed against
4 Geico?

5 A. I'm not sure.

6 Q. Over 200?

7 A. I honestly don't know how many. I can tell
8 you how many Geico jobs I've done, roughly, if that
9 helps. I don't know.

10 Q. So, if Geico were forced to paying more for
11 windshield replacement, your company would benefit from
12 that, correct?

13 A. If they were forced to pay more?

14 Q. Correct. If Geico lost this lawsuit here
15 today, that would benefit your company, correct?

16 A. I don't know if it would benefit my company.

17 Q. So, if Geico's payment in this case were
18 determined by the Judge to not be currently linked to
19 any competitive market, that wouldn't help your lawsuits
20 against Geico?

21 A. I don't know. To be honest, this is my first
22 time being in any type of trial.

23 Q. Bond Auto Glass is a mobile windshield
24 replacement company, correct?

25 A. Yes.

1 Q. You can travel anywhere throughout the State?

2 A. Yes.

3 Q. How many glass shops existed in the State of
4 Florida in 2016?

5 A. I don't know.

6 Q. How many windshield replacements occurred in
7 the State of Florida in 2016? I'm sorry. Did you
8 answer?

9 A. Yes. I said I don't know.

10 Q. How many windshield replacements did Bond Auto
11 Glass perform in 2016?

12 A. I also don't know.

13 Q. I'm sorry?

14 A. I also don't know that. I don't know how
15 many.

16 Q. You don't know how many windshield
17 replacements your company performed in 2016?

18 A. No.

19 Q. You testified on direct examination that
20 you've never charged below 100 percent of NAGS for a
21 windshield; is that correct?

22 A. Yes. I don't recall any instances of doing
23 that.

24 Q. And you don't recall the shop you previously
25 worked for, Venom or Shazam, charging less than that

1 either?

2 A. No. Not any jobs that I had, I don't recall
3 any.

4 Q. Why wouldn't you want to charge less with Bond
5 to try to entice customers to choose your shop?

6 A. I'm sorry.

7 Q. Why wouldn't you want to charge less to entice
8 customers to choose your shop over say Shazam or Venom?

9 A. Why wouldn't I want to choose to charge less?

10 Q. Yes, sir.

11 A. Like I stated previously, I'm in what we call
12 a sweet spot of getting paid for my jobs. When I came
13 up with my pricing, I had to decide what kind of hourly
14 rate and what part -- percentage of NAGS is going to --

15 Q. I'm sorry. I missed the last part of that.

16 A. I had to decide what part of percentage of
17 NAGS I would abide by, 100 percent of NAGS. I don't --

18 THE COURT REPORTER: He's cutting out.

19 THE COURT: Well, if you can repeat that one
20 more time. I did get part of that. The Court
21 Reporter did not. So one more time, please.

22 THE WITNESS: Yes. Like I stated before, I'm
23 in what we call the sweet spot. I put my pricing
24 where it is because I knew that I would get paid by
25 the other insurance companies. And I don't do cash

1 jobs, so I don't think I'd be able to entice
2 anybody my lowering my prices. I just do my work.

3 BY MS. BUZA:

4 Q. So then you would agree that pricing isn't a
5 factor in acquiring customers?

6 A. In my company?

7 Q. Yes, sir.

8 A. I can say that pricing would affect customers,
9 any customers that have knowledge of the industry.
10 Isn't that what PGW list price is? There's a lot of
11 customers that have been -- I don't know what the word
12 would be. But they've had to pay for part of their
13 windshield replacement because of companies over-billing
14 or trying to --

15 Q. If you --

16 A. Or we were billing --

17 Q. I'm sorry.

18 THE COURT: And let him finish.

19 THE WITNESS: Billing more than what the usual
20 Auto Glass companies bill.

21 BY MS. BUZA:

22 Q. If Bond Auto Glass, Shazam Auto Glass and
23 Venom are all charging the same amounts, how is pricing
24 a factor in acquiring customers?

25 A. I don't believe it is. I don't know if

1 they've -- I've ever done cash jobs, but like I said,
2 Bond Auto Glass doesn't. I don't recall doing any for
3 Shazam and Venom.

4 Q. Could you repeat the last part for me,
5 Mr. Slaman.

6 A. I don't believe the pricing would affect the
7 flow of customers so much as the company and how they do
8 their work. When it comes to Auto Glass in Florida,
9 it's covered with comprehensive collision insurance. So
10 when it comes to trying to acquiring customers, you just
11 have to out perform the other shops or show why they
12 should choose you instead of someone else.

13 Q. So in line regarding insurance transactions
14 you said that Bond doesn't take cash customers; is that
15 correct?

16 A. Correct.

17 Q. When Bond Auto Glass is dealing with a
18 customer going through comprehensive insurance coverage,
19 is that customer ever shown the cost that's going to be
20 charged to that insurance company?

21 A. If they ask, yes. But our rule in the Auto
22 Glass industry is, if the customer, if they are not
23 paying for it, they get a receipt that shows zero
24 balance. Every auto glass company that I've worked for
25 has done that, including Safelite.

1 Q. So the document that the insured signs has
2 zero dollar?

3 A. Correct, with every company that I've worked
4 for.

5 Q. Does Bond Auto Glass employ independent
6 contractors or did they in 2016?

7 A. Yes, in 2016.

8 Q. Were some of those independent contractor
9 tasked with acquiring customers?

10 A. Were some of those independent contractors
11 what?

12 Q. Were they -- was their job to acquire
13 customers for Bond Auto Glass?

14 A. Some sales reps would.

15 Q. And would they go door to door, or would they
16 find someone with a crack in their windshield in the
17 parking lot? How would they do that?

18 A. What you said and more. Word of mouth.
19 Sometimes they replace -- we would replace the
20 windshield and that customer would tell someone, "you
21 got to call so and so and get your windshield done."

22 Yes, there's all kinds of methods for the
23 sales reps. Sometimes people rent out spaces in car
24 washes, gas stations, parking lots, door-to-door.

25 Q. And were they instructed that if they had

1 comprehensive insurance coverage that it would be of no
2 cost to them?

3 A. More than likely, yes. It's a good selling
4 point.

5 Q. You conducted windshield replacement for Geico
6 Insurance in 2016, correct?

7 A. Yes.

8 Q. And are you aware that Geico sends a work
9 order via Safelite to your job?

10 A. A work order?

11 Q. Yes, sir.

12 A. Yes, I guess you can call it a work order.
13 Are you talking about the fax that they send with the
14 customers?

15 Q. Yes.

16 A. Okay.

17 Q. And do you typically receive their work orders
18 prior to completing the actual work on the insured's
19 vehicle?

20 A. Do we receive them prior? I'm not sure.
21 Sometimes -- I mean I wouldn't say that we receive them
22 on every job. I'm sure there's a couple we've missed.
23 You know, I see Geico jobs on there but I don't get the
24 faxes.

25 Q. But you have in the past?

1 A. Yes, I've gotten them before, yes.

2 Q. So you're aware of what Geico's reimbursement
3 rate is, correct?

4 A. What their reimbursement -- their discount
5 rate is?

6 Q. The reimbursement. What they pay for
7 windshield replacement.

8 A. I know that, when we get that invoice, it's
9 got a discounted percent off of NAGS and it will have
10 what day they wanted to charge for NAGS hour?

11 Q. You are aware that there is reimbursement rate
12 information on that document?

13 A. Right.

14 Q. (Inaudible)

15 A. I'm sorry?

16 Q. I missed your answer to that question.

17 A. I said correct, yes. There's information.

18 Q. Now, when you receive those documents, have
19 you ever called Geico to discuss that reimbursement
20 rate?

21 A. Yes. I remember one instance calling and they
22 said that they wouldn't discuss any pricing or
23 negotiated any pricing with me so I never called again.

24 Q. Even though you know what Geico reimburses
25 their windshield replacements, do you still take work

1 knowing that?

2 A. Do I still take work?

3 Q. Would you still accept a job, a Geico insured
4 windshield replacement, knowing what their reimbursement
5 is?

6 A. Are you asking would I accept it at those
7 rates?

8 Q. Let me rephrase.

9 Even though you know what Geico's
10 reimbursement rate is for a windshield replacement, do
11 you still accept the work for a Geico insured knowing
12 that rate?

13 MR. KOULIANOS: Your Honor, Mike Koulianos for
14 the Plaintiff. We were going to wait and see but
15 this line of questioning is entirely irrelevant and
16 entirely outside of the scope of direct and has
17 nothing to do with competitive pricing.

18 It seems like Geico is trying to prove some
19 type of estoppel defense with a company who is not
20 on trial. So this is highly irrelevant at best.

21 THE COURT: All right. Ms. Buza, what is the
22 question relevant, the line of questioning?

23 MS. BUZA: Yes, ma'am. It goes towards the
24 Court's Order in the Motion in Limine regarding
25 negotiations.

1 MR. KOULIANOS: I would ask Geico to expand as
2 to how. Geico -- this is not in anyway relevant to
3 negotiations as it's defined.

4 THE COURT: Mr. Koulianos, hang tight.

5 MS. BUZA: I'm sorry, Your Honor. I missed
6 that.

7 THE COURT: I asked Mr. Koulianos to hang
8 tight. Let's go to my Order. And we're trying to
9 establish whether or not it's negotiated or not
10 negotiated.

11 Paragraph two. I'm looking at the Court's
12 Order dated April 23rd, 2020, Paragraph 2. Is that
13 what you're referencing, Ms. Buza, evidence of
14 pricing that has been set by an agreement between
15 Geico and a particular provider?

16 MS. BUZA: No, Your Honor. I'm referencing
17 pricing that has been negotiated with no one as
18 excluded, and I'm asking questions about Mr. Slaman
19 having charged prices and the fact that he
20 completes jobs without negotiating a price with
21 Geico insurance.

22 THE COURT: All right. As to that,
23 Mr. Koulianos, is that portion -- so the order and
24 Ms. Buza's argument.

25 MR. KOULIANOS: Yes. And, your Honor, first

1 and foremost, Geico in their cross is referencing a
2 document that is not Geico's document. It is not
3 in evidence nor do I believe it can come into
4 evidence, because the party that creates that
5 document is not a party to this lawsuit. It's
6 Safelite. So that's the first problem.

7 The second problem is, Mr. Slaman testified as
8 to a competitive market and the reimbursements and
9 the rate of reimbursement that he receives from all
10 other insurance companies. Nothing was put at
11 issue with regard to Geico other than the
12 reimbursed beliefs. And on top of that, Mr. Slaman
13 has already acknowledged that Geico would not
14 negotiate it's pricing. That is the pricing
15 schedule that Geico attempts to foist upon
16 everyone, and that's not at issue.

17 What's at issue is the competitive pricing,
18 the competitive market and these questions do
19 nothing to establish that, and do nothing to go to
20 the direct examination of Mr. Slaman.

21 THE COURT: And, Ms. Buza, what is the
22 document that you're relying upon, this work order
23 that you've been referencing, and that your
24 questions are based upon, this work order?

25 So that's not a document that is created by

1 Geico? It's created by a third-party?

2 Ms. Buza, did you hear me.

3 MS. BUZA: Yes, ma'am, Your Honor. It is a
4 Geico document, and Geico dictates the information
5 contained in that document. And it's actually
6 how -- it directs auto glass companies of how to
7 submit invoices to Geico.

8 THE COURT: The work order that you're
9 referencing is a Geico document.

10 MS. BUZA: Yes, ma'am, Your Honor. And the
11 witness has already laid a foundation that he knows
12 what the document is talking about, he knows that
13 there is pricing information on it and he knows the
14 document relates directly to Geico.

15 MR. KOULIANOS: Your Honor, our objection
16 stands. And if you're going to review the document
17 that Ms. Buza is referencing, you will find that
18 this is not a Geico document. Mr. Prieto has an
19 extensive response prepared for that.

20 THE COURT: Okay. Do I have the document
21 which was sent to me or is it in the Court file to
22 review?

23 MS. BUZA: It should have been provided to the
24 Court, Your Honor, and with hand deliver, as well
25 as in filing.

1 THE COURT: Are you finished?

2 MS. BUZA: Your Honor, we don't seek -- we're
3 not seeking to submit that into evidence. We're
4 just asking questions regarding it.

5 THE COURT: I know. You're relying upon it in
6 your questioning. So I'd like to look at it,
7 Ms. Buza.

8 Your questioning is based upon this document
9 and you are alleging it's part of Geico's claim
10 file, it's produced by Geico. So certainly the
11 Court wants to look at it. Where is it?

12 MS BUZA: Your Honor, it should be in our
13 exhibit packet that Ms. Hamdan dropped off last
14 week.

15 THE COURT: Which exhibit number?

16 MS. BUZA: So if you look at Defendant's
17 Exhibit A, Number 1 has a sample work order copy.

18 THE COURT: And it's Safelite Solutions on the
19 top?

20 MS. BUZA: Yes, ma'am.

21 THE COURT: All right. Go ahead, Mr. Prieto,
22 as it relates to this document.

23 MR. PRIETO: Yes, Your Honor. First, that
24 document that they are referencing and attempting
25 to impeach Mr. Slaman on as a Corporate

1 Representative of Bond was not sent to Bond Auto
2 Glass. That's the first objection, the first part
3 of the objection.

4 Also, Your Honor, there was a -- there is an
5 exhibit that we have that I was going to be
6 prepared to use that Geico attempted to put in this
7 exact document into evidence if they did put on a
8 case-in-chief.

9 Mr. Goan is sharing -- or margining all of our
10 documents. But it's a May 15th letter. I'd ask
11 him to put it up if he's with us. I believe he is.
12 But if he could share the document labeled May 15,
13 2017 letter from Geico. And we concede, Judge,
14 they actually call it a Safelite solution to work
15 order.

16 MR. GOAN: Your Honor, Keith Goan. I am
17 present, Judge, but at this point it looks like --
18 I'm not sure if you're the host, Judge, but I need
19 to be able to be allowed to share documents and I
20 can share the exhibits.

21 THE COURT: Other than -- Okay. Who's
22 speaking. I'm not seeing your name.

23 MR. KOULIANOS: Keith Goan.

24 MR. GOAN: Keith Goan, Judge.

25 THE COURT: Okay. Keith Goan.

1 All of your questions are prefaced by these
2 documents. I want to respond to Mr. Prieto's
3 question whether the documents were sent to Bond or
4 not. These say Glassco.

5 MS. BUZA: Yes, Your Honor.

6 THE COURT: Why are they relevant?

7 Ms. Buza, go ahead.

8 MS. BUZA: Sorry, Your Honor, you're kind of
9 breaking up. I wasn't sure when you were finished
10 and I didn't want to interrupt.

11 But these documents that we provided in our
12 Exhibits are work orders relevant to the cases
13 before the Court, but they are the same work orders
14 except with Bond Auto Glass' information and
15 different claim numbers that are sent to Bond Auto
16 Glass that Mr. Slaman is familiar with. He has
17 testified that he received them before and he knows
18 the contents of it.

19 THE COURT: All right. I believe the question
20 is, "Did you receive work orders prior to
21 completing the job?" And I believe his testimony
22 was "not sure."

23 "Are you aware of Geico's reimbursement rate?"

24 "I know the invoice has the rate" was the
25 response.

1 And the last question where the objection is,
2 "Even though you know the price, Geico's rate for
3 the windshield replacement, do you still accept
4 payments?"

5 Correct, Ms. Buza, that's the question?

6 MS. BUZA: Your Honor, you broke up towards
7 the end. Could you repeat that, please.

8 THE COURT: The question that we left off
9 before the objection, "Even though you know the
10 pricing of Geico's rates for the windshield
11 replacement, do you still accept payment?" Is that
12 the question?

13 MS. BUZA: No, Your Honor. Does he still
14 perform the work even though he's aware of Geico
15 reimbursement rate.

16 THE COURT: All right. Was there any question
17 as to his knowledge on the reimbursement rate prior
18 to that?

19 MS. BUZA: I believe he did establish that
20 he's aware of the reimbursement rate that's listed
21 on the work order.

22 THE COURT: All right. So if you're relying
23 on any Glassco document that he hasn't seen, that
24 objection is sustained.

25 So don't reference any documents that he

1 hasn't seen that are for Glassco and not in the
2 litigation. If he has knowledge of his business as
3 it relates to any document or work orders that were
4 sent to him from 2016 to the present and the amount
5 that Geico was reimbursing, I'm going to let him
6 testify. I'm limiting it though to that last
7 question.

8 MS. BUZA: Thank you, Your Honor.

9 BY MS. BUZA:

10 Q. Mr. Slaman, did Bond Auto Glass receive
11 documents from Geico with pricing information on it?

12 MR. PRIETO: Objection, Your Honor. Are we --
13 Objection. This is Attorney Prieto, for the
14 record.

15 Objection. What year are we talking about?

16 THE COURT: Clarify.

17 BY MS. BUZA:

18 Q. Mr. Slaman, in 2016, did Bond Auto Glass
19 receive documents from Geico with reimbursement rate on
20 it?

21 A. I believe we have, along with the rates that
22 Geico would be able to -- but, as they stated before,
23 I'll not sure if it's from Geico or Safelite. It says
24 Safelite on the top when it was given.

25 Q. But you're aware that the information

1 contained in it is Geico's reimbursement for windshield
2 replacements, correct?

3 A. Correct.

4 Q. So you know what Geico reimburses for
5 windshield replacement services, correct?

6 A. I know what they reimburse before the job is
7 complete. Is that the question?

8 Q. That's where I was going with it.

9 Mr. Slaman, you have the knowledge but you
10 still complete windshield replacement work for Geico
11 insurance, correct?

12 A. Correct. I mean sometimes that number that
13 they offer doesn't cover our cost. It doesn't mean that
14 we turn a customer down and leave them with a broken
15 windshield. Of course I will still do the work.

16 Q. And that was my next question. So you're free
17 to decline any customer, right?

18 A. Can we decline customers? Yes, of course.

19 Q. And did you have any -- were you in network
20 with any insurance companies?

21 A. I'm sorry?

22 Q. In 2016 were you in network with any insurance
23 companies?

24 A. No.

25 Q. Did you have any agreements with any insurance

1 companies in 2016?

2 A. No.

3 Q. Now, you've advised that you worked for a
4 Venom Auto Glass company; is that right?

5 A. Venom.

6 Q. And that's the auto glass company that's owned
7 by Jason Rue?

8 A. Yes.

9 Q. And you said you worked for them in 2016?

10 A. I believe it was 2016. I know I worked for
11 Shazam and then Jason Rue was at Shazam. I believe he
12 was the manager, and then I'm not sure when it happened,
13 but he branched off and created Venom.

14 Q. So if -- if there was an article filed with
15 Sunbiz's website that said that was created in 2017;
16 would that be correct?

17 MR. PRIETO: Objection. Hearsay, Your Honor.
18 Relevance.

19 THE COURT: All right. As to the form of the
20 question, it calls for hearsay. Sustained.

21 And why is it relevant, Ms. Buza, as to that?

22 MS. BUZA: Pricing for Venom Auto Glass and if
23 it wasn't created until 2017, I don't understand
24 how that has a bearing on 2016 cases.

25 THE COURT: Was it '16 forward? I believe the

1 testimony was that he started towards the end of
2 '16 -- 2000 -- November 2016. Rephrase the
3 question. Let me hear it one more time.

4 MS. BUZA: Yes, ma'am.

5 BY MS. BUZA:

6 Q. Mr. Slaman, when did you work for Venom?

7 A. I believe it was in 2016.

8 Q. Would it refresh your recollection to see a
9 document from Sunbiz about when they filed to be a
10 business?

11 A. Honestly, I don't think so. The reason I left
12 Venom was because Jason was not doing anything he was
13 supposed to. So it's possible that he didn't even file
14 with Sunbiz until later. There's a lot of things that
15 he did incorrect and wrong. But he was in business with
16 other people before I even showed up. He had other
17 technicians, too.

18 Q. So you're testifying that you may have worked
19 for Venom Auto Glass prior to them incorporating with
20 the State of Florida?

21 A. It's very possible. He did not do very much
22 of anything right or on time, and that's one of the main
23 reasons I took my technicians and left from him.

24 Q. So the owner of one of the auto glass you
25 worked for did a few things wrong in your opinion?

1 A. In my opinion, yes. Things that I wouldn't
2 have done at my shop. And to be honest, I'm surprised
3 he was even registered with Sunbiz. There's some
4 companies out there that I've even -- I've even gotten
5 documents from insurance companies saying this company
6 said they would do it at this rate and this company said
7 they would do it at this rate, and then you look them up
8 on Sunbiz and they are registered with Sunbiz.

9 THE COURT: All right. How is this line of
10 questioning relevant at this point, Ms. Buza?
11 Let's move on.

12 MS BUZA: I can move on, Your Honor. I was
13 letting the witness finish, but I can move on.

14 THE COURT: Okay. Next question.

15 BY MS. BUZA:

16 Q. Mr. Slaman, you testified that, I think it was
17 between 90 and 95 percent of insurance companies in 2016
18 paid your invoice in full?

19 A. Um-hum.

20 Q. I'm sorry. Is that a yes?

21 A. I'm sorry. Yes. Ninety to 95 percent of the
22 insurance companies paid the invoice in full.

23 Q. And can you list for me the insurance
24 companies that did that?

25 A. There's a lot of them. Like I said, 50 to 60

1 insurance companies.

2 Q. So would one of those companies be Esurance?

3 A. I'm sorry?

4 Q. Would one of those companies that paid your
5 invoice in full be Esurance?

6 A. I've received full payments from Esurance,
7 yes.

8 Q. But didn't you sue them in 2018?

9 A. Probably. I've received --

10 Q. Was it enough -- I'm sorry. I'm sorry, Mr.
11 Slaman. Can you repeat that. I missed that.

12 A. I just said, yes, I've received full payments
13 from Esurance. Possibly I sued Esurance for one that
14 they didn't pay or a couple. I don't know.

15 Q. Okay. But you have sued Esurance?

16 A. Yes.

17 Q. What about 21st Century North American
18 Insurance, have you sued them?

19 A. Probably.

20 Q. They are not one of the big five, right?

21 A. It doesn't seem like one that's common to sue,
22 though.

23 Q. But you would agree that's not one of the big
24 five you discussed, correct?

25 A. Right. What I'm stating is, there could be a

1 reason we're suing them. They may have not paid
2 thinking that there was no coverage or something. To
3 say that we're suing somebody doesn't mean that they
4 don't full pay.

5 Q. What about Direct General Insurance, are they
6 one of the big five?

7 A. No. Direct General, no. I received full
8 payments from them.

9 Q. Have you sued them as well?

10 A. Possibly. I honestly don't have a list in my
11 head or anything where of companies that I've sued.

12 Q. The entry in the Circuit Court system under
13 17CC03434 Bond Auto Glass -- I'm sorry -- 17CC028241
14 Bond Auto Glass versus Direct General, that would be you
15 suing them, correct?

16 A. Yes. But once again, you're discussing one --
17 one lawsuit out of thousands of Auto Glass cases. Just
18 because I sued them doesn't not mean that's a company
19 that does not full pay regularly.

20 Q. What about Liberty Mutual, are they one of the
21 big five?

22 A. I don't consider them that, no.

23 Q. So you sued them in 2017, right?

24 A. Yes. Sure. Once again, I have a list of
25 insurance companies that I've sued.

1 Q. 19CC03143 Bond Auto Glass versus Liberty
2 Mutual --

3 THE COURT REPORTER: Okay. I'm sorry. Could
4 you start over

5 MR. PRIETO: Your Honor, I'm going to object.

6 THE COURT: Mr. Slaman, let her repeat the
7 question for the Court Reporter. And then if
8 Mr. Prieto is talking and you want to make an
9 objection -- and I didn't quite hear the question
10 either because she was breaking up.

11 So go ahead and ask the question and then
12 pause and then you can make your objection, Mr.
13 Prieto.

14 MR. BUZA: Yes, ma'am.

15 BY MS. BUZA:

16 Q. Mr. Slaman, if there was a court case opened
17 in the Hillsborough County Circuit Court system under
18 17CC028143, Bond Auto Glass versus Liberty Mutual, would
19 that be you suing Liberty Mutual in 2017.

20 A. I believe --

21 MR. PRIETO: And we're going to object to this
22 entire line of questioning. Relevancy, and
23 Mr. Slaman has already answered the questions with
24 regard to these insurance companies. There was not
25 a 100 percent of the time full pay.

1 Mr. Slaman provided his testimony of the
2 companies that paid him in full. He never
3 testified that he didn't sue any of those insurance
4 companies. This is outside of direct, the scope of
5 the direct.

6 Moreover, Geico has not established any of
7 these cases as evidence, has not provided anything
8 for reference. We don't know the nature of the
9 lawsuit. We know nothing.

10 This is direct -- this is right in line with
11 what Geico tried to do with the Safelite document a
12 few minutes ago.

13 THE COURT: All right. Ms. Buza, on
14 relevance, you haven't established that these were
15 not full paid, they were full paid cases. We don't
16 know the basis of the lawsuit. You bring up this
17 line of questioning is improper at this time unless
18 you can prove some type of direct correlation.

19 MS. BUZA: Yes, ma'am. I'll move on.

20 THE COURT: All right. Thank you. Sustained.

21 BY MS. BUZA:

22 Q. Mr. Slaman, going back to the big five that
23 you named, do you recall that?

24 A. The big -- yes, the big five. Sure.

25 Q. Well, what is the percentage of your business

1 represented by the big five of the insurance companies
2 that you referenced?

3 A. I don't know.

4 MR. PRIETO: Objection. Relevance.

5 THE COURT: Well, I think that we are getting
6 way outside the scope of direct. So why is this
7 relevant? What does this go to?

8 MS. BUZA: Your Honor, if he's going to
9 testify that 90 to 90 percent of insurance
10 companies paid his business in full, I want to
11 cross him on what the volume is to determine
12 whether it can be considered prevailing.

13 THE COURT: You just ask him volume of
14 businesses is then. Is that your question?

15 I'm not hearing you.

16 MS. BUZA: I would like to know the percentage
17 of these big five insurance companies that make up
18 his full volume.

19 MR. PRIETO: Your Honor, again, the question
20 is, if I may, that's entirety irrelevant. He's not
21 talking about the volume of business. And I'm sure
22 that these large insurance companies control a
23 large portion of the market, and that's why we're
24 here.

25 Geico tries to manipulate the prices based

1 upon the control of the market, but that's not the
2 inquiry that we're here about. We're here to
3 prove competitive pricing.

4 Mr. Slaman testified about competitive pricing
5 without reference to the volume of business that he
6 does because it's irrelevant. What's relevant is
7 how many insurance companies out there do.

8 THE COURT: Sustain. It doesn't go to
9 competitive pricing. All right. Go ahead and move
10 on.

11 BY MS. BUZA:

12 Q. Mr. Slaman, you've testified that Bond Auto
13 Glass billed according to NAGS, correct?

14 A. Well, I bill my windshield at 100 percent of
15 NAGS. NAGS doesn't have a pricing structure for an
16 hourly rate?

17 Q. And do Shazam and Venom do the same?

18 A. Bill 100 percent of NAGS.

19 Q. Yes, sir.

20 A. They did and then they dabbled in PGW list
21 price too, which I didn't. I never did that?

22 Q. What about in 2016, did those two glass shops
23 base their price off of a percentage of NAGS?

24 A. In 2016 did they base their price off of a
25 percentage of NAGS?

1 Q. Yes, sir.

2 A. Yes.

3 Q. Do you have any personal knowledge of these 11
4 glass replacement cases that we're here on today?

5 A. No.

6 Q. Do you have any personal knowledge of the
7 quality of service that Glassco provides?

8 A. No.

9 Q. Do you have any personal knowledge of the
10 market that Glassco operates in?

11 A. No.

12 Q. Do you consider Glassco a competitor of yours?

13 A. If they do Auto Glass in the State of Florida,
14 yes.

15 Q. So if Glassco and Bond both says windshield
16 replacement, then you would consider Glassco a
17 competitor of yours?

18 A. I'm sorry. Can you repeat that.

19 Q. If Glassco and Bond -- if Glassco does
20 windshield replacement in Florida, you would consider
21 them a competitor of yours; is that correct?

22 A. Yes.

23 Q. So you would agree that you're in competition
24 with Glassco over insurance dollars?

25 A. Over insurance what?

1 Q. Insurance dollars.

2 A. Insurance dollars?

3 Q. Yes. Insurance -- payment from insurance
4 companies. You compete over payments from insurance
5 companies for windshield replacements in Florida?

6 A. I'm sorry. I guess I'm not understand. Do we
7 compete for what, insurance dollars?

8 Q. So Bond Auto Glass does exclusively insurance
9 windshield replacements, correct?

10 A. Correct.

11 Q. So you would be --

12 THE COURT REPORTER: I'm not hearing anything.
13 Hello. I think we're frozen.

14 THE COURT: The video paused for a moment. Go
15 ahead.

16 MS. BUZA: I'm going to have to go back a
17 little further than the question and answer and the
18 objection, Your Honor.

19 THE COURT: Go ahead.

20 BY MS. BUZA:

21 Q. Mr. Slaman, Bond Auto Glass does windshield
22 replacements exclusively for customers that carry
23 comprehensive insurance coverage, correct?

24 A. Correct.

25 Q. So if Glassco does windshield replacement work

1 in Florida, would you consider them a competitor?

2 A. Yes.

3 Q. I'm sorry. I missed that. Was there an
4 answer?

5 A. I said yes.

6 Q. So Bond Auto Glass and Glassco are both
7 competing for customers who carry comprehensive
8 insurance coverage in the State of Florida, correct?

9 A. Yes.

10 Q. And when you -- when you have a windshield
11 replacement to do, where do you purchase the windshield
12 glass from?

13 A. Mygrant and PGW, or the dealership?

14 Q. And do you purchase that windshield glass at a
15 percentage of NAGS?

16 MR. PRIETO: Objection. Relevancy. Outside
17 of the scope of direct. And if Geico is attempting
18 to elicit testimony with regard to the cost that
19 Bond Auto Glass incurs for purchase of windshields
20 or windshield replacement parts, that information
21 is subject to trade secrets or proprietary
22 information.

23 Mr. Slaman specifically did not testify that
24 he relied upon this costs and said he was pricing.
25 So not only is it irrelevant but it's protected

1 information.

2 THE COURT: All right. Ms. Buza, anything
3 from you?

4 MS. BUZA: Yes, ma'am, Your Honor. In the
5 sentence previously discussed, Plaintiff discussed
6 plaintiff expressed an intent to argue the
7 applicability of something called the Broad
8 Evidence Rule, and according to their brief, the
9 Broad Evidence Rule commits any evidence that
10 largely intends to establish a reasonable
11 approximation of that destroyed property value.

12 Geico is prepared to argue against the
13 application of the Broad Evidence Rule in these
14 cases. However, if Plaintiff intends to argue
15 that, the Defense has a right to ask these
16 questions that go to evidence of the Broad Evidence
17 Rule and evaluation of any destroyed property.

18 THE COURT: And you broke up when you were
19 mentioning that the Plaintiff expressed intent of
20 the Broad Evidence Rule. And what pleading or
21 where was that? Was that the latest filing?

22 MS. BUZA: Yes, ma'am, Your Honor.

23 THE COURT: All right. Go ahead. I haven't
24 seen them, once again. So, Mr. Koulianos, I don't
25 know what was outlined in any of those filings. If

1 you can just go ahead and respond.

2 MR. KOULIANOS: Yes, Your Honor. The response
3 is twofold. The first part -- Mr. Caldevilla will
4 handle the second with regards to the filing.

5 But the first part is, again, costs are not
6 relevant to evaluations of the prevailing
7 competitive price and the competitive price within
8 the market.

9 Mr. Slaman did not testify that he relied upon
10 those things. So the cross examination with regard
11 to costs is improper and irrelevant. It's also
12 subject to business protection, to proprietary
13 information that, frankly, Mr. Slaman can agree to
14 waive but I anticipate, he will not, considering
15 his proprietary information.

16 With regard to the filing, Mr. Caldevilla can
17 explain that further.

18 THE COURT: Thank you.

19 MR. CALDEVILLA: If I may be heard, Your
20 Honor. David Caldevilla here. So, Your Honor --

21 THE COURT: What happened to your face?

22 MR. CALDEVILLA: My computer went dead until
23 just recently right now. So I'm just standing up
24 in the background here, if you can see me.

25 So, Your Honor, just so it's clear. On Friday

1 afternoon Geico filed a document with a case saying
2 that as to what our burden of proof was, which we
3 dispute. We filed a memo in response to that
4 filing, called our Trial Brief.

5 That Trial Brief explained what type of
6 evidences is admissible in Florida to determine
7 price in general. In general, it's called the
8 Broad Evidence Rule of the price. And it discusses
9 who has the burden of proving Geico's limitation of
10 liability, and what is the prevailing competitive
11 price and whether we exceeded the prevailing
12 competitive price. So it's the first.

13 So I really don't understand the objection
14 because nothing in the Broad Evidence Rule has
15 anything to do with the cost I paid for a product.

16 So if I'm Publix and I'm selling eggs for \$1 a
17 dozen, it doesn't matter if I paid 25 cents for a
18 dozen eggs or 75 cents for a dozen. The price was
19 \$1 and if you wanted to provide it, you can -- it
20 doesn't have anything to do with how much Publix
21 paid for the eggs. That's not a part -- that's not
22 relevant, even under the Broad Evidence Rule.

23 THE COURT: All right. Anything else, Ms.
24 Buza?

25 MS. BUZA: Yes, ma'am, Your Honor. As far as

1 the bench brief filed by the Plaintiff, the Florida
2 Broad Evidence Rule permits any evidence that
3 logically tends to establish a reasonable
4 approximation of the destroyed property's value.

5 And a case called New York Central Mutual Fire
6 Insurance Company versus Diaks at 69 So.2d 786,
7 found that in terms of actual cash value evidence
8 of wholesale price was relevant.

9 THE COURT: So this specific witness as it
10 relate to the destroyed property -- the value of
11 the destroyed property and it's going to be
12 testimony that relates to him finding the costs
13 associated with the windshield kit costs in
14 establishing what he believed to be a prevailing
15 competitive price.

16 So at this time as to relevance, I do find
17 that it's not relevant to the line of questioning
18 of his underlying costs. So sustained.

19 All right. Next question.

20 MS. BUZA: Your Honor, may I have a minute to
21 confer with co-counsel?

22 THE COURT: Yes, you may.

23 MS. BUZA: Thank you.

24 Thanks, Your Honor, the Defense has no further
25 questions at this time.

1 THE COURT: Thank you.

2 Any redirect?

3 MR. PRIETO: Nothing from the Plaintiff, Your
4 Honor.

5 Thank you, Mr. Slaman.

6 THE COURT: All right. Mr. Prieto, who is
7 your next witness and how long do you anticipate
8 from your direct?

9 MR. PRIETO: Yes, Your Honor. The next
10 witness is Shelton Radebaugh. His direct testimony
11 should probably be half if not less than what
12 Mr. Slaman just testified to.

13 THE COURT: About half an hour, 45 minutes?

14 MR. PRIETO: Yes, Your Honor.

15 THE COURT: I'm trying to gage that you all
16 are allowed to proceed with that witness and the
17 cross and then take a lunch, or if you prefer to
18 take a brief lunch now and come back at 12:30.

19 What do you all want to do?

20 MR. PRIETO: Judge, we prefer to keep going
21 through, Your Honor. Mr. Radebaugh, he lives a
22 little bit of a distance away, Judge, and he has a
23 business to run and he would also rather go ahead
24 and get this testimony over with.

25 THE COURT: All right. Ms. Buza, how long do

1 you intend to take?

2 MS BUZA: Your Honor, I'm not sure. It could
3 be similar in length to Mr. Slaman. I would prefer
4 to just take a brief break right now and return at
5 12:30.

6 THE COURT: Mr. Caldevilla, are you going to
7 share your sandwich.

8 MR. CALDEVILLA: Judge, I apologize. I was so
9 hungry. Please forgive me. It's a protein bar.

10 THE COURT: Not a problem at all. It looks
11 much better than my --

12 MR. CALDEVILLA: It's a protein bar and I can
13 promise you it tastes like chalk.

14 THE COURT: It was Georgette in the courtroom.
15 She's the one who pointed it out. She's jealous.
16 She's hungry.

17 MR. CALDEVILLA: We do have a box of Krispy
18 Kremes behind me and not one person has opened the
19 box here, so --

20 THE COURT: We would have indulged if they
21 were in the courtroom.

22 All right. So it seems like it's going to be
23 an hour, matter a little bit over. Let's just get
24 through it and we can hopefully take a break by
25 1:00.

1 MR. PRIETO: Yes, ma'am.

2 THE COURT: We'll take a half an hour break.

3 MR. PRIETO: Can Mr. Slaman be excused, Your
4 Honor.

5 THE COURT: Yes, he may be excused. I'm
6 sorry.

7 MS. BUZA, did you want to take a quick break?

8 MS. BUZA: Yes, Your Honor, if that's okay.

9 THE COURT: I'm sorry.

10 MR. BUZA: Yes, I would like to get some
11 water.

12 THE COURT: All right. So let's just take
13 another five minute break in between this witness.
14 You all can grab maybe a quick protein bar and some
15 water. The donuts apparently they are only at
16 Morgan and Morgan. I'm jealous. So a couple of
17 minutes, five to ten minutes.

18 MR. PRIETO: Thank you, Your Honor.

19 MS. BUZA: Thank you.

20 THE COURT: You're welcome.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right, Mr. Prieto, you may
23 call your next witness

24 MR. PRIETO: The Plaintiff calls Mr. Shelton
25 Radebaugh. And for the Court Reporter that's

1 S-h-e-l-d-o-n R-a-d-e-b-a-u-g-h.

2 THE COURT: All right. One more time for the
3 Clerk, please.

4 MR. PRIETO: Sure. Shelton, S-h-e-l-t-o-n,
5 Radebaugh, R-a-d-e-b-a-u-g-h.

6 THE COURT: All right, sir. Raise your right
7 hand. Do you swear and affirm the testimony you
8 will give is the truth, the whole truth and nothing
9 but the truth?

10 THE WITNESS: I do.

11 THE COURT: Is that a yes?

12 THE WITNESS: Yes.

13 THE COURT: All right, sir, make sure that you
14 speak clearly and as loud as you can. Get a little
15 closer to the microphone.

16 THE WITNESS: Okay.

17 THE COURT: All right. So you are in
18 Plaintiff's conference room?

19 THE WITNESS: Yes.

20 THE COURT: Is anyone else with you?

21 THE WITNESS: No.

22 THE COURT: Do you have any electronic
23 telephone devices, any other devices other than the
24 computer that is picking up the video zoom
25 conference?

1 THE WITNESS: No.

2 THE COURT: And have all electronic devices
3 been turned off?

4 THE WITNESS: I don't have any.

5 THE COURT: Okay. Thank you.

6 All right. Mr. Prieto, you may proceed.

7 MR. PRIETO: Thank you.

8 Thereupon,

9 SHELTON RADEBAUGH,
10 a witness, called by the Plaintiffs, having been sworn
11 to tell the truth, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. PRIETO:

15 Q. Good morning, Mr. Radebaugh. If you could,
16 please tell us, how are you employed?

17 A. I'm am owner of Lloyds of Shelton Auto Glass,
18 LLC.

19 Q. And Lloyds of Shelton, is that a windshield
20 repair and replacement facility?

21 A. Yes, it is.

22 Q. And does Lloyds of Shelton do business in the
23 entire State of Florida?

24 A. Yes.

25 Q. And how long have your been employed by Lloyds

1 of Shelton?

2 A. Approximately nine years.

3 Q. That would be since what, 2011, 2010?

4 A. Yes, sir, 2011.

5 Q. Real briefly, prior to being employed with
6 Lloyds of Shelton, did you have any other experience in
7 the windshield replacement industry?

8 A. Yes, I grew up in the industry. My father
9 had -- he's a current glass shop owner, and I have
10 pretty much since I can remember been involved in some
11 shape or form in the industry.

12 Q. Did you work for your father as a young man?

13 A. Yes, I did.

14 Q. What are your job responsibilities as it
15 relates to the Lloyds of Shelton?

16 A. I do just about anything, including the
17 setting of pricing, and helping my technicians with
18 scheduling, routing, ordering parts and all the way down
19 to installations.

20 Q. Are you in charge of hiring and firing
21 employees?

22 A. I am.

23 Q. Are you an actual windshield, glass
24 replacement technician?

25 A. Yes, I am.

1 Q. Have you ever served as an umpire for a
2 windshield glass replacement job?

3 A. Yes, I have.

4 Q. Have your ever served as an appraiser for a
5 windshield glass replacement job?

6 A. Yes.

7 MS. BUZA: Objection, Your Honor. Relevance.
8 Geico doesn't have the appraisal clause.

9 THE COURT: Mr. Prieto.

10 MR. PRIETO: Sure, Judge. Let me just ask one
11 more question and maybe it will make a little more
12 sense. And I can withdraw that question for one
13 second, if you don't mind, Judge.

14 THE COURT: Yes, go ahead. The question is
15 withdrawn in lieu of your next question and then
16 you can circle back.

17 BY MR. PRIETO:

18 Q. Okay. Mr. Radebaugh, have you had an occasion
19 to appraise windshield glass jobs?

20 A. I've pretty much for the most part only been
21 involved with the umpire position, and I'm also
22 representative of my company when -- wherever we are
23 deposed.

24 Q. Okay. And when you were an umpire, as an
25 umpire, are you privy to see what other charges, or what

1 other pricing other shops charge for windshield glass
2 replacement in the State of Florida?

3 A. Yes.

4 Q. Okay.

5 THE COURT: Ms. Buza, your objection --

6 THE COURT REPORTER: Judge, I'm sorry. You're
7 cutting in and out.

8 THE COURT: The Court is asking Ms. Buza to
9 renew her objection.

10 MS. BUZA: Yes, Your Honor, objection as to
11 relevance for appraisals, as well as hearsay,
12 because if he's privy to these charges, he's going
13 to be hearing them from other people or reading
14 them from documents, that would be hearsay.

15 THE COURT: All right, Mr. Prieto.

16 MR. PRIETO: Yes, ma'am. And we haven't
17 gotten that far, Judge, but that will be the basis
18 for how we set this pricing for his company. All
19 of his personal training and experience and all the
20 knowledge he's garnered throughout the years,
21 inclusively working for his father's company since
22 he was a young man, is essentially how he set these
23 prices and how he knows what the competitive market
24 holds for the windshield replacement.

25 THE COURT: All right. At this point the

1 question was "are you aware." It's not soliciting
2 a hearsay response. Is he aware of it based upon
3 where he was an umpire. So that question, I'm
4 going to allow it. So overruled.

5 Mr. Radebaugh, you can testify. Are you aware
6 of the charges of other companies?

7 THE WITNESS: Yes.

8 BY MR. PRIETO:

9 Q. And in 2016 you previously stated that Lloyds
10 of Shelton services the entire State of Florida.

11 In 2016, did Lloyds of Shelton service the
12 entire State of Florida?

13 A. Yes.

14 Q. That includes some of Lake County, Florida?

15 A. Yes.

16 Q. That includes some of Orange County, Florida?

17 A. Yes.

18 Q. And does that include Osceola County, Florida?

19 A. Yes.

20 Q. For the cases that we're here for today, are
21 you aware of what year the losses took place when the
22 invoicing occurred?

23 A. 2016.

24 Q. And are you prepared to testify as to how
25 Lloyds of Shelton established the prices back in 2016

1 for windshield glass replacements?

2 A. Yes.

3 Q. In 2016 was Lloyds of Shelton an affiliated or
4 member of any Geico Insurance networks?

5 A. No.

6 Q. In 2016 did Lloyds of Shelton bill insurance
7 companies for windshield glass replacements on behalf of
8 insureds?

9 A. Yes.

10 Q. Including Geico, how many insurance companies
11 did Lloyds of Shelton invoice for glass replacement
12 services in 2016?

13 A. Approximately 50.

14 Q. And in 2016, approximately how many or what
15 percentage of customers had insurance that covered
16 windshield glass damage for Lloyds of Shelton?

17 A. Most all of them.

18 Q. I want to direct your -- direct you a little
19 bit to windshield invoicing. On windshield invoicing
20 for Lloyds of Shelton in 2016, were there different
21 component prices that were broken down in your invoices?

22 A. Yes.

23 Q. Was windshield glass broken down for the
24 actual part?

25 A. Yes. Glass, urethane kits, moldings, clips

1 that hold onto moldings, any components that are
2 required to replace a windshield for each individual
3 car.

4 Q. Was labor one of those components as well?

5 A. Labor as well, yes, sir.

6 Q. In 2016 how did you set the pricing charged by
7 Lloyds of Shelton for windshield replacement jobs in
8 Florida?

9 A. 2016 we charged 100 percent of NAGS, 125 an
10 hour and --

11 THE COURT REPORTER: I'm sorry. After 125 an
12 hour, I lost you.

13 THE COURT: Okay. Mr. Radebaugh, I lost you
14 as well. So all I heard was 100 percent of NAGS.
15 Next.

16 THE WITNESS: And then \$125 an hour, \$65 a
17 kit.

18 THE COURT: It's \$125 an hour for labor?

19 THE WITNESS: Per NAGS' listed labor hours,
20 yes.

21 THE COURT: All right. What was the third.

22 THE WITNESS: \$65 per urethane kit.

23 THE COURT: And when you referenced 100
24 percent of NAGS, that's for the cost of the
25 windshield?

1 THE WITNESS: Correct.

2 THE COURT: You can continue, counsel. I'm
3 sorry.

4 MR. PRIETO: Thank you.

5 BY MR. PRIETO:

6 Q. What did -- what did you take into
7 consideration when setting your prices in 2016 for
8 Lloyds of Shelton?

9 A. Our listing of pricing -- our usual and
10 customary pricing based on the competitive market,
11 factoring in knowledge, training, experience in the
12 industry, it would be within the competitive market.

13 Q. Did Lloyds of Shelton additionally take into
14 consideration the amounts reimbursed by insurance
15 companies in 2016?

16 A. In our network shop --

17 THE COURT REPORTER: I'm sorry. Could you
18 repeat that, your answer.

19 THE WITNESS: Could you rephrase the question
20 or ask the question again.

21 BY MR. PRIETO:

22 Q. Sure. Did Lloyds of Shelton also take into
23 consideration the reimbursements from insurance
24 companies at Lloyds of Shelton invoiced amounts in 2016?

25 A. Yes.

1 Q. Based on your training and experience, what
2 happens if Lloyds of Shelton sets their prices too high
3 or too low?

4 A. Well, if you set a -- in my experience, if you
5 set your usual and customary prices too high, the
6 companies that pay us will probably not pay us anymore,
7 and then -- which is 95 percent of the companies we
8 typically billed throughout the year.

9 And, of course, if you set them too low,
10 it's -- you're going to go out of business. It's kind
11 of hard to maintain a company if you don't have enough
12 money. So we try to find a sweet spot.

13 Q. In reference to the percentage of insurance
14 companies, of all the insurance companies that pay -- or
15 that, of all the insurance companies that Lloyds of
16 Shelton conducts business with and invoices in the State
17 of Florida, what percentage of those insurance companies
18 actually pay Lloyds of Shelton invoice in full?

19 A. All but three of them. So all but about three
20 or four. So at least 95 percent.

21 Q. And does that hold true for the year 2016?

22 A. Yes.

23 Q. And the prices that you mentioned -- just so
24 I'm clear, the prices you mentioned that you charged in
25 2016, are those Lloyds of Shelton's usual and customary

1 prices in a nonaffiliate competitive market?

2 A. Yes.

3 Q. And based on your experience, are you familiar
4 with Geico's reimbursement rates in 2016?

5 A. Yes.

6 Q. Are you also familiar with all the other
7 insurance companies reimbursement rates to Lloyds of
8 Shelton in 2016?

9 A. Yes.

10 Q. Of all the insurance companies that Lloyds of
11 Shelton invoiced in the year 2016, which insurance
12 companies reimbursed the absolute lowest amounts?

13 MS. BUZA: Objection. Relevance. Improper
14 opinion testimony.

15 THE COURT: All right. Mr. Prieto, response.

16 MR. PRIETO: It's not an opinion, Judge. I
17 didn't hear the first part. But it's relevant to
18 the pricing and how set this price in this market
19 because you set this pricing based on a certain
20 part of what other insurance companies reimbursed.

21 It's not an opinion testimony in the slightest
22 because he is testifying based on his training,
23 knowledge and experience which we've already gone
24 through in detail.

25 THE COURT: So as it relates to opinion, I

1 mean he has direct knowledge as it relates to what
2 companies have paid and has not paid him. So he
3 can testify as to what companies has judiciously in
4 his experience with Lloyds since 2011 not paid.

5 I'm going allow it. Go ahead.

6 BY MR. PRIETO:

7 Q. I think the question was, Mr. Radebaugh, in
8 2016 which insurance company reimbursed the absolute
9 lowest?

10 A. Geico.

11 MR. PRIETO: Thank you, Mr. Radebaugh.

12 I'll pass the witness, Your Honor.

13 THE COURT: Mr. Buza, who's inquiring? Is it
14 Cavallaro, Ms. Buza?

15 MS. BUZA: Melissa Buza, Your Honor.

16 CROSS EXAMINATION

17 BY MS. BUZA:

18 Q. Good afternoon, Mr. Radebaugh.

19 A. Good afternoon.

20 Q. You testified that your market for windshield
21 replacement work is the entire State of Florida,
22 correct?

23 A. Correct.

24 Q. And that was true in 2016, correct?

25 A. Correct.

1 Q. Do you know how many windshield replacement
2 facilities existed in the State of Florida in 2016?

3 A. A lot. I don't know the exact figure but
4 several 100.

5 Q. Do you know how many windshield replacements
6 occurred in 2016?

7 A. Again, I don't know the exact number but I
8 would think 10s of 1,000s.

9 Q. And how many windshield replacements does
10 Lloyds of Shelton do in 2016?

11 A. Approximately 2,500 up to 3,000.

12 Q. You said that you billed at 100 percent of
13 NAGS list price for windshield glass in 2016, correct?

14 A. My pricing is different now but that was the
15 usual and customary pricing in 2016, correct.

16 Q. Have you ever billed less than that in 2016?

17 A. No.

18 Q. And you base that pricing off NAGS, correct?

19 A. Yes.

20 Q. So Lloyds of Shelton, I assume that's why they
21 take customers with comprehensive insurance coverage,
22 sir?

23 A. Correct.

24 Q. Are those insureds ever shown a price to be
25 invoiced to there insurance company?

1 A. No.

2 Q. So, as far as the insureds are concerned, this
3 is a free windshield for them as long as they have
4 comprehensive insurance coverage, right?

5 A. It's a zero deductible.

6 THE COURT REPORTER: I'm sorry. I didn't get
7 your question. Please say the question again.

8 BY MS. BUZA:

9 Q. Lloyds doesn't collect any money from the
10 insureds, correct?

11 A. Correct.

12 Q. Did you conduct any windshield replacements
13 for Geico Insurance in 2016?

14 A. Yes.

15 Q. Does Lloyds of Shelton receive a document from
16 Geico via Safelite with Geico information on it prior to
17 conducting any windshield replacements for Geico
18 Insurance?

19 A. Yes.

20 Q. Does that document contain Geico's
21 reimbursement rates, to your knowledge?

22 A. Yes.

23 MR. PRIETO: Objection. Relevance, Your
24 Honor, relevance in time and relevance to the
25 direct examination I just conducted. We hit on

1 prevailing competitive price. My client is here to
2 testify later, but Mr. Radebaugh has only testified
3 as to what his pricing was in 2016.

4 It seems as though once again Geico is trying
5 to establish some sort of equitable estoppel
6 defense against a nonparty litigant -- or a
7 nonparty that's not a litigating in this case.

8 He's simply a fact witness as to what he
9 charged in 2016 for windshield glass replacements
10 and how he set his pricing.

11 Is his pricing set competitive in a relevant
12 market is the only relevant line of questioning
13 that's been asked and it's the only relevant line
14 of real questioning that should be crossed on.

15 Whether or not he received a Geico or a
16 Safelite document, whether or not he does Geico
17 jobs, none of that is relevant.

18 So we're asking Your Honor to have opposing
19 counsel move from these line of questionings and
20 ask him questions that are relevant to the trial,
21 which is how he set his pricing.

22 THE COURT: All right. Ms. Buza, how do you
23 respond as to relevance? I know there was a
24 prior -- there was a prior witness with the same
25 line of questioning. So how is it relevant as to

1 this witness?

2 MR. BUZA: Yes, Your Honor. It goes to
3 whether there are any assets of negotiation in his
4 pricing and his dealing with insurance companies --
5 at insurance companies as described in your Motion
6 in Limine Order.

7 MR. PRIETO: If I may respond to that, Judge.

8 THE COURT: Go ahead

9 MR. PRIETO: Once again, if Geico -- is Geico
10 contesting that because Safelite Solutions sends a
11 document to a shop owner that that somehow is part
12 of its policy.

13 The document is the work order that they are
14 referencing. One is a Safelite work order. It
15 comes from Safelite, Geico calls it a Safelite work
16 order. So it's hearsay within hearsay.

17 Second of all, just because an insurance
18 company has an agent or a third-party, sending a
19 document that references a pricing parameter that
20 has found no rate in the insurance, that doesn't
21 change the pricing structure in the insurance
22 policy.

23 The pricing structure in the insurance policy
24 is very clear prevailing competitive price. Geico
25 knows the language. Geico has to live with the

1 language. They are not happy with the way that the
2 Court is interpreting that language both from Your
3 Honor and from the Appellate Court.

4 They are still trying to establish that either
5 Safelite sends some payment parameter, that
6 therefore the policy language is changed. That
7 argument was specifically rejected by the Appellate
8 Court and it is not proper line of questioning for
9 this particular witness or any witness in this
10 case. Once again, it's irrelevant to how this
11 witness set his pricing.

12 THE COURT: Sustained. The same ruling as to
13 this line of prevailing competitive price as to his
14 testimony.

15 Go ahead and move on.

16 BY MS. BUZA:

17 Q. Mr. Radebaugh, you're free to decline any
18 customers you so choose, correct.

19 A. Correct.

20 Q. Did you offer any incentive in 2016 for
21 customers going through insurance coverage?

22 A. Maybe a gas card, gift card here and there.

23 Q. Any cash incentive?

24 A. Not every customer, no.

25 Q. Which customers?

1 A. Some customers.

2 Q. So there were incentives offered to certain
3 customers?

4 A. Correct. Sometimes a customer might call our
5 phone and ask if we give a Glassco card, you know, for
6 using our services and, you know, if \$25 to \$50 is going
7 to make a happy customer along with our excellent work
8 we perform, then we have no problem taking that out of
9 our profit. So the answer is yes.

10 Q. Wasn't there cash back incentives in general.

11 A. We don't advertise that, no.

12 Q. But are those ever available in 2016?

13 A. Yes.

14 Q. Did you have a pricing agreement with any
15 insurance companies in 2016?

16 A. No.

17 Q. Prior to 2016 --

18 A. I'm sorry. You were distorted there. What
19 was your question?

20 Q. You didn't have a pricing agreement with State
21 Farm in 2016?

22 A. I was a network participant. So it was a
23 price agreement because I was a network participant with
24 them. There was not a negotiated pricing. There were
25 accepted prices.

1 Q. Without answering any proprietary information,
2 where those expected prices less than 100 percent of
3 NAGS for a windshield?

4 A. Yes.

5 MR. PRIETO: Objection. Relevance, Your
6 Honor.

7 THE COURT: All right. I'm going to allow it.
8 So overruled.

9 MS. BUZA: Your Honor, can you say that again,
10 please.

11 THE COURT: Overruled. Continue. You can
12 ask.

13 BY MS. BUZA:

14 Q. I can repeat the question. Without getting
15 into any proprietary information, the amount that you
16 charged to State Farm was it less than a 100 percent of
17 NAGS pursuant to the pricing agreement?

18 A. Yes.

19 Q. Per windshield?

20 A. Correct.

21 Q. So you testified on direct that in 2016 you
22 billed approximately 50 insurance companies for
23 windshield work?

24 A. Yes. Correct.

25 Q. And of those 50 companies all but three or

1 four paid your invoice in full?

2 A. Correct.

3 Q. What were those companies that paid your
4 invoice in full. Could you name them?

5 A. Well, it would be easier to name the ones that
6 didn't pay the invoice in full, but I can -- you know, I
7 just don't have a list with me, but I can name the ones
8 that don't pay in full.

9 Q. You're testifying that you have knowledge
10 about 46 insurance companies that pay your invoice in
11 full. I'm just asking you to list them.

12 A. Okay. Well, there's Peachtree, Zurich, USA.
13 Even Geico hadn't paid invoices in full back 2016
14 randomly. Auto Owner, Southern Auto Owners, Top Cord.
15 GMAC, Philadelphian, Cincinnati -- I don't know.

16 I wasn't allowed to bring a list of companies
17 in but there's several that you've probably never heard
18 of that -- or I've only heard of once or twice that have
19 paid their invoice in full. So if you would like, I can
20 get you a list one day.

21 Q. Did you bring a list here with you today?

22 A. No.

23 MR. PRIETO: Objection, Your Honor. Asked and
24 answered. He's already answered that he doesn't
25 have a list with him. And he's also answered that

1 it's not and exhausted list and he doesn't have it
2 memorized.

3 THE COURT: Let's move on. He did answer. So
4 let's move on.

5 BY MS. BUZA:

6 Q. Of those insurance companies that you
7 testified pay your invoice in full, in 2016 did they pay
8 your invoice in full 100 percent of the time?

9 A. Yes.

10 Q. 100 percent of the time?

11 A. All but three or four of them, correct, 95
12 percent of the 50.

13 Q. I'm sorry. Could you repeat that last part?

14 A. 95 to 100 percent or almost 100 percent of the
15 50, however the math breaks down, paid me in full every
16 time for my pricing.

17 Q. Except for about three or four?

18 A. Correct.

19 Q. Was Esurance one of those three or four?

20 A. Occasionally they would.

21 Q. Occasionally they would pay your invoice in
22 full?

23 A. Correct. So were they one of the 46 that you
24 said did pay the invoice in full 100 percent of the
25 time?

1 A. No. They were affiliated with Allstate then.
2 So they were a few -- one of three or four that for the
3 most part did not pay in full all the time.

4 But I've been paid in full by every insurance
5 company in 2016 at one point or another, including
6 Geico.

7 Q. What about Nationwide, were they one of the
8 three or four that didn't pay your invoice in full?

9 A. Yes.

10 Q. What about Liberty Mutual, were they one of
11 the three or four that didn't pay your full invoice?

12 A. No.

13 Q. So they did pay your full invoice in 2016?

14 A. Correct.

15 Q. Did you ever sue Liberty Mutual in 2016?

16 A. I don't believe I ever had to. They paid in
17 full.

18 Q. What about Safeco Insurance Company, did they
19 pay your invoice in full in 2016?

20 A. I believe so, yes.

21 Q. Did you ever sue Safeco in 2016?

22 A. I don't recall, but it's a possibility.

23 Q. Do you have personal knowledge of the 11 glass
24 replacements that we are here for today?

25 A. I'm sorry. Would you repeat the question?

1 Q. Do you have any personal knowledge of the 11
2 glass replacements we're here for today?

3 A. No.

4 Q. Do you have any personal knowledge about the
5 quality of service Glassco provides?

6 A. No.

7 Q. Do you have any personal knowledge as to what
8 Glassco's markets?

9 A. I'm assuming they are a Florida market.

10 Q. Do you consider Glassco a competitor?

11 A. I never heard of Glassco but, yes, if they
12 compete and they service the State of Florida, they are
13 competitive.

14 MS. BUZA: Your Honor, can I have just one
15 brief moment with co-counsel, please.

16 THE COURT: Go ahead.

17 MS. BUZA: Thank you, Your Honor. I'm ready
18 to proceed if the parties are ready.

19 THE COURT: Yes.

20 MS. BUZA:

21 Q. Mr. Radebaugh, going back to your statement
22 about, I think you said, 90 to 95 percent of your
23 invoice were paid in full by insurance companies in
24 2016; is that correct?

25 A. Yes. Actually, that would not be correct.

1 Not 90 to 95 percent of my invoices -- 90 to 95 percent
2 of my invoices with 50 percent or of the 50 companies I
3 billed in 2016 paid for invoices.

4 Q. Okay. And of the total invoices that you
5 billed to those 50 companies in 2016, what percentage
6 were not paid in full?

7 A. I don't have that figure with me.

8 Q. Would it be over 50 percent?

9 MR. PRIETO: Objection, Your Honor. Asked and
10 answered. He doesn't have that information.

11 MS. BUZA: I'll withdraw, Your Honor.

12 BY MS. BUZA:

13 Q. Mr. Radebaugh, when you're doing a windshield
14 replacement, do you have to buy the glass from
15 somewhere?

16 A. Yes.

17 MR. PRIETO: Objection. And, Judge, let me
18 get ahead of this and object because they are going
19 to get into the cost analysis again.

20 Same objection as the previous witness. The
21 cost plays no role in how these particular shops
22 are setting their prices with what the prevailing
23 competitive price is. And he didn't testify that
24 he took his cost into consideration when setting
25 his pricing.

1 THE COURT: Thank you, Mr. Prieto.

2 Ms. Buza, are we getting into the same area?

3 MS. BUZA: Yes, ma'am, Your Honor. And just
4 for the record, I would like to again argue for the
5 Defense's ability to go into Broad Evidence Rule
6 evidence as described in the Plaintiff's bench
7 brief. Even though Geico would argue that it
8 doesn't apply, if they are going to argue that it
9 does, Geico would like to ask a few questions of
10 the witnesses.

11 THE COURT: All right. And if it's
12 applicable, maybe later on there will be something
13 to recall, but at this time, I don't think your
14 testimony is being used to rate cost of -- the cost
15 of the windshield as one of factors in establishing
16 the prevailing competitive price for his pricing.
17 So at this time it will be the same ruling. I'll
18 sustain.

19 MS. BUZA: Thank you, Your Honor. I have no
20 further questions at this time.

21 THE COURT: All right. Redirect.

22 MR. PRIETO: Yes, Your Honor. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. PRIETO:

25 Q. Mr. Radebaugh, you were asked some questions

1 regarding your agreement with State Farm back in 2016;
2 do you recall that?

3 A. Yes.

4 Q. Did State Farm promise you any incentives to
5 accept their pricing?

6 A. Yes. Faster payment and to grow some new
7 business, unsolicited business, I just have to be part
8 of their network.

9 Q. So they would -- they promised to refer you
10 business, windshield glass claims, correct?

11 A. Correct.

12 Q. Okay. And the pricing that was received or
13 the pricing that you accepted from State Farm, was that
14 more than Geico reimbursed in 2016?

15 A. Yes.

16 Q. Remember the line of questioning regarding
17 suits filed in 2016 that Ms. Buza asked you?

18 A. Yes.

19 Q. Is it true that even sometimes the insurance
20 company doesn't normally pay you, your full rate, you
21 have had occasion to sue them for certain things like
22 coverage issues or material misrepresentation issues
23 whereby you have to establish that there was insurance
24 coverage?

25 A. Right. Very random, but, yes, that's correct.

1 Q. And just because they -- just because the
2 matter was filed in 2016, that doesn't mean that the job
3 took place in 2016, correct?

4 A. Correct.

5 Q. And just so that we're clear, you don't know
6 Mr. John Bailey, the owner of Glassco, correct?

7 A. No, I don't.

8 Q. You don't have any alliance to Glassco Auto
9 repair shop or windshield repair shop, correct?

10 A. Correct.

11 MR. PRIETO: Okay. That's all I have for you,
12 Mr. Radebaugh. Thank you for your time.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Thank you.

15 May this witness be released

16 MR. PRIETO: By the Plaintiff, correct.

17 THE COURT: All right, sir. Thank you for
18 coming in. Have a good day.

19 THE WITNESS: Thank you. Appreciate it.

20 THE COURT: All right. Mr. Prieto, who is
21 your next witness?

22 MR. PRIETO: Our next witness is going to be
23 the Plaintiff, Mr. John Bailey, Your Honor.

24 Did you want to start that prior to a lunch break.

25 THE COURT: Do you all want to take a quick

1 lunch? I don't really want to take -- we've taken
2 a couple of breaks more than a half an hour. Do
3 you all need a break or do you want to work
4 through?

5 MR. PRIETO: Can we take a 15 minute break, a
6 30 minute break, Judge, just to go grab something
7 to eat.

8 THE COURT: All right. Then we're going to
9 start again at 1:00.

10 MR. PRIETO: Yes, ma'am.

11 THE COURT: I'll give you guys a lunch.

12 MR. PRIETO: Yes, ma'am.

13 THE COURT: Just so that you all know for
14 purposes of schedule, tomorrow is election day --
15 and this is off the record, Mr. Robert. You don't
16 have to take it.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right, Mr. Prieto, you may
19 call your next witness. It's Mr. Bailey, correct?

20 MR. PRIETO: Yes, Your Honor. The Plaintiff
21 calls Glassco Corporate Representative, Mr. John
22 Bailey.

23 THE COURT: 904 Section CRE. Mr. Cavallaro,
24 it's the 904 number in case you're auditing.

25 MR. CAVALLARO: Yes, Your Honor, the 904 is

1 Joseph Nall's firm.

2 THE COURT: Yes, sir, Mr. Nall.

3 MR. CAVALLARO: So it's Joseph Nall, Ms.

4 Melissa Buza, Philistine Hamdan and Nick Cavallaro.

5 THE COURT: Wait just a second.

6 All right. Are we all already?

7 MS. BUZA: Yes, ma'am.

8 MR. PRIETO: Yes, Your Honor.

9 THE COURT: Mr. Prieto, are you going to have
10 your client testify from that room, or are you
11 going to switch seats because it's hard to see him?

12 MR. PRIETO: Judge, we're going to go ahead
13 and put him in Mr. Cavallaro's seat, if that's okay
14 with you.

15 THE COURT: Yes, absolutely it's okay. Thank
16 you.

17 Are we ready?

18 MR. PRIETO: Yes, Your Honor.

19 THE COURT: All right. Mr. Prieto.

20 MR. PRIETO: It's actually going to be
21 Mr. Koulianos questioning the Plaintiff.

22 THE COURT: Okay. All right, let me place you
23 under oath. Sir, raise your right hand.

24 Mr. Bailey, do you swear or/and affirm the
25 testimony you will give is the truth, the whole

1 truth and nothing but the truth?

2 THE WITNESS: I do.

3 THE COURT: Thank you. You may question,
4 Mr. Koulianos.

5 MR. KOULIANOS: Yes, Your Honor. In a couple
6 of places during the direct, Mr. Keith Goan will be
7 initiating some documents to share for us. I'll be
8 sure to of course notify the Court and set a
9 foundation for that.

10 THE COURT: Okay.

11 MR. KOULIANOS: My apologies, Judge. I'm
12 asking the Court if you could please allow Mr. Goan
13 permission to do that when it is appropriate.

14 THE COURT: Yes. So I need to be putting in
15 stuff at my end. I generally don't.

16 MR. KOULIANOS: Yes, Your Honor, I believe as
17 the host, you have to authorize him to do that.

18 THE COURT: Allow records, is that what I
19 authorize?

20 MR. KOULIANOS: Is there something called
21 "file share" or "Stream share," "Document share?"

22 THE COURT: Not on my end. I don't see that.
23 I see host. But it would be -- screen share.

24 MR. KOULIANOS: Screen share.

25 THE COURT: Okay.

1 MR. KOULIANOS: That's exactly what's needed.

2 THE COURT: Yes, but I don't think -- I don't
3 have to authorize it. There is nothing on my end
4 requires authorization.

5 MR. KOULIANOS: Yes, we'll proceed and of
6 course make sure that it ends if and when the
7 witness has to reference it.

8 MR. GOAN: Your Honor -- Keith Goan, for the
9 record, Judge.

10 In your setting is a narrative. When I go to
11 screen share it says, "the host has disabled
12 partition screen sharing." So it may be in the
13 general settings for the Zoom use.

14 THE COURT: Right. I just changed one of the
15 settings. Four participants can share
16 simultaneously.

17 All right. I click on the participant cam
18 share simultaneously.

19 MR. GOAN: That's perfect, Judge. I don't go
20 on the record, but Keith Goan. So it's working
21 now, Judge. Thank you.

22 THE COURT: All right. You're welcome. Thank
23 you for that.

24 All right. Mr. Bailey and Mr. Koulianos, you
25 may proceed.

1 MR. KOULIANOS: Thank you, Judge.

2 Thereupon,

3 JOHN DAVID BAILEY,
4 a witness, called by the Plaintiffs, having been sworn
5 to tell the truth, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. KOULIANOS:

9 Q. Good afternoon, Mr. Bailey. Please state and
10 spell your full name for the record.

11 A. John, J-o-h-n, David, D-a-v-i-d, Bailey,
12 B-a-i-l-e-y.

13 Q. Are you employed?

14 A. Yes.

15 Q. By whom are you employed?

16 A. Glassco, Inc.

17 Q. And in what capacity are you employed by
18 Glassco?

19 A. I own it.

20 Q. Is Glassco, Inc a Florida based windshield
21 replacement company?

22 A. It is.

23 Q. How long have you owned Glassco?

24 A. Since the company was founded in 2015.

25 Q. So about five years?

1 A. Yes, about five years.

2 Q. What are your job duties and responsibilities
3 with Glassco?

4 A. I wear a lot of hats because it's a small
5 business. So I handle the day-to-day operations of the
6 business, as well as setting pricing, oversight of
7 ordering materials, and I take out the trash at the end
8 of the day.

9 Q. Do your job duties include billing?

10 A. Yes.

11 Q. Do your job duties include insurance claim's
12 processing?

13 A. Yes.

14 Q. Do your job duties include collections?

15 A. Yes.

16 Q. And do you also serve as the records custodian
17 for Glassco?

18 A. Yes.

19 Q. What type of license or certification does
20 Glassco have in order to replace windshields in the
21 State of Florida?

22 A. We are licensed with the Department of Motor
23 Vehicles, which I believe is the Department of
24 Agricultural. So we have a motor vehicle registration
25 number. And we have business licenses with Osceola

1 County, the city of Kissimmee, and we have a sales tech
2 license.

3 Q. Does Glassco warranty its work?

4 A. Yes.

5 Q. What type of warranty does Glassco provide for
6 it's windshield services?

7 A. Lifetime on parts and workmanship.

8 Q. Does Glassco provide windshield replacement
9 services throughout the State of Florida?

10 A. Yes.

11 Q. How is any one service location for windshield
12 service is selected if the job is mobile?

13 A. Service location.

14 Q. Well, stop. Let me rephrase that.

15 How is any one location for the windshield
16 replacement service selected if it is a mobile
17 windshield replacement service?

18 A. Based time location. We have installers
19 throughout the State that -- a network of independent
20 contractors, that if there is an installation in that
21 area that we would call them and have them install it.

22 Q. And the specific location for any one
23 windshield replacement service, if it's mobile, is that
24 selected by the customer?

25 A. That is correct. It's determined basically

1 per instructions from the customer based on convenience
2 for them.

3 Q. Do you know what it means to be a network or
4 Affiliated Shop with an insurance company?

5 A. Yes.

6 Q. Can you briefly describe your understanding of
7 what it means to be a network or an Affiliated Shop?

8 A. A network has an agreement with the insurance
9 company and based on the agreement, there is business
10 that is referred to the network company and the company
11 agrees to pricing.

12 Q. In 2016 was Glassco affiliate with or a member
13 of any Geico insurance networks?

14 A. No. We've always been independent.

15 Q. So in 2016, Glassco was a nonnetwork shop?

16 A. That's correct.

17 Q. Does Glassco bill insurance companies for
18 windshield replacement services performed on the behalf
19 of insured customers?

20 A. Yes, we do.

21 Q. Does Glassco bill insurance companies for
22 windshield replacement services pursuant to an
23 Assignment of Benefits?

24 A. Yes.

25 Q. Approximately how many different insurance

1 companies does Glassco deal with on windshield
2 replacement claims?

3 A. We have probably billed about 100 over the
4 course of the past five years. Seventy -- 60 or 70 or
5 so we work with pretty regularly.

6 MR. BUZA: Your Honor, I'm going to object
7 because he said to 2016.

8 THE COURT: I'm sorry. You are objecting up
9 to 2016?

10 MR. BUZA: To the time frame, Your Honor, to
11 2016.

12 THE COURT: Did he not ask the question as it
13 relates to 2016?

14 MR. BUZA: No, ma'am.

15 THE COURT: All right. Mr. Koulianos, what
16 time frame? If you could clarify the time frame.

17 MR. KOULIANOS: Yes, Your Honor. But to be
18 clear, as we have discussed with prior witnesses,
19 we do feel that it's relevant to inquire as to the
20 amount of the insurance companies billed and the
21 amount of the insurance companies from which
22 Glassco has received payments in full, even present
23 day because it again shows a continued practices by
24 Geico to be part of the very few Glassco insurance
25 companies that refuse to pay these competitive

1 prices.

2 THE COURT: All right. Mr. Koulianos, ask if
3 it relates to 2016, and then you can ask a followup
4 years thereafter. Let me hear if you've got some
5 questions that relates to 2016.

6 MR. KOULIANOS: Yes, Your Honor.

7 BY MR. KOULIANOS:

8 Q. Mr. Bailey, how many different insurance
9 companies did Glassco bill for windshield replacement
10 claims in 2016?

11 A. To the best of my knowledge, approximately,
12 100. I don't think that after 2016 there were any new
13 insurance companies that we added. I'm pretty sure that
14 by the end of 2016, we had billed pretty much everybody
15 that we currently work with.

16 Q. Would that amount of insurance companies
17 remain the same to present day?

18 A. Yes.

19 Q. Approximately how many windshield replacement
20 services does Glassco perform per year?

21 MS. BUZA: Objection.

22 THE COURT REPORTER: I didn't get your
23 objection.

24 THE COURT: Ms. Buza, I don't know why,
25 whenever you speak -- can you get closer to the

1 mic. It keeps breaking up. Try switching -- can
2 you switch with Cavallaro. He seems to be in a
3 good spot.

4 MR. CAVALLARO: Your Honor, I'm sorry. The
5 phone is in front of Ms. Buza. I don't have my
6 computer audio on. So maybe you can try sitting
7 even closer on this side.

8 MS. BUZA: Is this better?

9 THE COURT: Yes. You just keep breaking up.
10 I don't know why. It's generally when you make an
11 objection or speak. I didn't know if it was the
12 placement of the mic.

13 All right. Can you repeat that? The Court
14 Reporter didn't catch it.

15 MS. BUZA: Yes. I was objecting to the
16 timeframe.

17 MR. KOULIANOS: Your Honor, Glassco is of
18 course the Plaintiff in this case. We're
19 establishing competency at the facility. We're
20 establishing his normal course of business. We're
21 establishing the breath of business that he does,
22 and with that comes his knowledge with regard to
23 the industry.

24 THE COURT: All right. Overruled. Continue.

25 BY MR. KOULIANOS:

1 Q. Approximately how many windshield replacement
2 jobs does Glassco perform per year?

3 A. Approximately 2,500.

4 Q. Would that have been the same in 2016?

5 A. Yes.

6 Q. Approximately what percentage of
7 Glassco Insurance Company -- Glassco -- let me start
8 over.

9 Approximately what percentage of Glassco
10 customers had insurance that covered windshield damage
11 in 2016?

12 A. Practically all of them, 99 percent.

13 Q. And would that be the same present day?

14 A. Yes.

15 Q. Approximately how many windshield replacement
16 jobs did Glassco perform in 2016 that were for customers
17 that were insured by Geico?

18 A. Again, this is an approximation. About a
19 third. I would say 35 or 40 percent.

20 Q. Would that be the same present day?

21 A. Yes.

22 Q. With respect to windshield replacement claims
23 in Florida that are covered by the customer's insurance,
24 please briefly describe the typical standard operating
25 procedures from the time that the customer initially

1 contacts Geico to the time that the bill is paid?

2 A. Well, first, we -- we locate damage or the
3 customer contacts us. Either they call us or they just
4 pull up out front.

5 And then they meet with the safety inspector
6 who gets the information for the vehicle, examines the
7 damage, and then he calls the -- Geico with the
8 customer.

9 Geico issues the claim number and then the
10 installation is scheduled -- oh, based on -- based on
11 two things. Based on the time and place as specified by
12 the customer and also based on the Geico inspection.
13 Geico does inspect our windshields before we install
14 them.

15 Then we order the materials. The installer
16 goes out to the location, installs the windshield, and
17 then we prepare an invoice and submit it for payment.

18 MR. KOULIANOS: And to be clear, it seems as
19 though Mr. Bailey understood my question, but I
20 believe I may have misstated. It imposed the word
21 Geico for Glassco. The question should reflect the
22 procedures from the time that the customer
23 initially contact Glassco to through the time that
24 the bill is paid in full.

25 BY MR. KOULIANOS:

1 Q. You explained that the technician showed up
2 at the time and place requested by the customer; is that
3 correct?

4 A. Yes.

5 Q. Is part of technicians job to explain the
6 documents exchanged including the assignment vested to
7 the customer?

8 A. Yes.

9 Q. And then those documents are in turn compiled
10 and held after the windshield replacement service is
11 performed and submitted to the respective insurance
12 company for payment; is that correct?

13 A. Yes.

14 Q. Does Glassco have brick and mortar location
15 for performing windshield replacement services?

16 A. Yes, we do.

17 Q. How many?

18 THE COURT REPORTER: I'm sorry. I didn't get
19 that answer.

20 THE COURT: Mr. Koulianos, hold on. Neither
21 of us caught that response. How many facilities?

22 THE WITNESS: One.

23 THE COURT: Thank you.

24 BY MR. KOULIANOS:

25 Q. Approximately what percentage of windshield

1 replacement claims performed by Glassco are mobile?

2 A. The vast majority. 95 percent, 90 or
3 thereabouts.

4 Q. Does Glassco charge for mobile services?

5 A. We don't.

6 Q. Based upon your knowledge of the industry, are
7 you aware of other facilities that charge for mobile
8 services?

9 A. Yes, I know that there are some that do.

10 MS. BUZA: Objection to hearsay.

11 THE COURT: Ms. Buza, an objection to
12 relevance; is that correct?

13 MS. BUZA: Hearsay, Your Honor.

14 THE COURT: Oh, hearsay. All right.

15 Mr. Koulianos.

16 MR. KOULIANOS: Your Honor, the question was
17 prefaced based upon Mr. Bailey's personal knowledge
18 that if it's a fact as to whether he knows if other
19 facilities charge for mobile services. We're not
20 providing testimony as to the amount of the charge,
21 but his personal knowledge he's permitted to let
22 the Court know what he knows about.

23 MS. BUZA: And, Your Honor, if I may?

24 THE COURT: Yes, go ahead.

25 MS. BUZA: The only way he would get that

1 knowledge is by hearing it from the other shop or
2 reading it from something the other shop sent him.
3 He wouldn't have personal knowledge. He would
4 develop that knowledge via hearsay.

5 THE COURT: All right. That's fine. All
6 right, it is based on hearsay evidence. At this
7 point sustained. All right. Move on.

8 BY MR. KOULIANOS:

9 Q. Who performs the windshield replacement work
10 for Glassco?

11 A. A technician, which we call an installer.

12 Q. Approximately how many installers does Glassco
13 have presently?

14 A. Presently we use two; however, throughout the
15 State, we have sort of a network of independent
16 installers, and that allows us to do jobs outside of our
17 immediate surrounding areas.

18 Q. Would that be the same in 2016?

19 A. Yes.

20 Q. What are the minimum qualifications that
21 Glassco requires all of its technicians to have?

22 A. I vet the installers and typically we require
23 anywhere from, you know, five to -- we have an installer
24 that actually has 18 years of experience. And then it's
25 based on their reputation.

1 We usually start them kind of on a
2 probationary period with a few jobs, and then they work
3 out based on their performance and based on response or
4 feedback from the customer.

5 Q. Would those qualifications and your vetting of
6 the technicians have been the same procedures that took
7 place in 2016?

8 A. Yes.

9 Q. And the technicians installers employed by
10 Glassco. Are those 1099's, independent contractor or
11 W-2s employees?

12 A. They are 1099 independent contractors.

13 Q. Who is ultimately responsible for the quality
14 of work performed by Glassco's technicians and for the
15 parts that they install?

16 A. I am.

17 Q. And is that through the lifetime warranty that
18 Glassco supplies?

19 A. Yes.

20 Q. Does Glassco maintain any insurance coverage
21 to cover the liabilities associated with windshield
22 replacement services?

23 A. Yes, we do.

24 Q. Do Glassco's technicians also maintain
25 insurance coverage for liabilities as a result of

1 windshield replacement services?

2 A. Yes, they do.

3 Q. Would that have been the same in 2016?

4 A. Yes.

5 Q. You briefly described the vetting of Glassco
6 technicians or installers and that you observe them and
7 integrate them into your business based upon their
8 feedback from customers and their poor performance; is
9 that correct?

10 A. Yes, it is.

11 Q. Does Glassco also provide training to it's
12 employees?

13 A. Yes, we do.

14 Q. Did all of the technicians involved in the 11
15 claims that we are here about today, have at least the
16 same levels of experience and other qualifications that
17 you just testified about?

18 A. Yes, they did.

19 Q. Were there any warranty claims made on the 11
20 jobs you are here testifying about today?

21 A. I don't believe so, no.

22 Q. And to be clear, a warrant claim would mean
23 that there was some issue with the workmanship or
24 products provided?

25 A. That's right.

1 Q. But none were reported, to your knowledge, for
2 the 11 claims that we are here about today?

3 A. Correct.

4 Q. In the windshield replacement industry, based
5 upon your personal knowledge, are there different
6 quality windshields and other parts that windshield
7 shops can use?

8 A. As with anything else, yes, there are
9 different qualities of materials?

10 Q. What types of quality parts does Glassco use?

11 A. We use -- again, we use the OEM or OEE. We
12 use the best quality that we can get.

13 THE COURT REPORTER: Can you say that again.
14 I'm sorry. Can you start that answer again. You
15 use what?

16 THE WITNESS: OEM or OEE. OEM being Original
17 Equipment Manufacturer. Meaning the windshield
18 that came with the vehicle. And OEE meaning it's
19 an equivalent of the windshield that came with the
20 vehicle.

21 BY MR. KOULIANOS:

22 Q. Did Glassco also use dealer glass?

23 A. We do. If the vehicle is less than one year
24 old, the insurance company pays for a replacement with
25 the logo on it, and we would buy that glass from the

1 dealer.

2 Q. If it's not coming from the dealer, from whom
3 does Glassco purchase its windshield glass parts from?

4 A. Mygrant, PGW and Pilkington.

5 THE COURT REPORTER: Can you say that again.

6 I'm sorry.

7 THE WITNESS: The three companies are Mygrant.

8 It's M-y-g-r-a-n-t. PGW, the letters. I believe
9 it's Pittsburgh Glasswork is the name of the
10 company. And then the third company is Pilkington.
11 I think it's P-i-l-k-i-n-g-t-o-n.

12 BY MR. KOULIANOS:

13 Q. You previously testified that Glassco provides
14 lifetime warranties on parts and workmanship; is that
15 correct?

16 A. Yes.

17 Q. Did the customers in these 11 cases receive
18 that same lifetime warranty?

19 A. They did.

20 Q. And there were no warranty claims made on
21 these, but would Glassco otherwise honor that lifetime
22 warranty provided?

23 A. That's what our reputation is based on, and
24 the success of our company is based on the satisfaction,
25 which means standing behind our work.

1 Q. Who set the prices that Glassco charge for
2 windshield replacement jobs in these cases?

3 A. I did.

4 Q. What are the different component prices that
5 are typically found in a windshield replacement invoice?

6 A. In our invoices, you would have the cost of
7 materials, which would be the glass and the kits, the
8 urethane adhesive being in the kits, and then you would
9 have any molding or anything that was specific for that
10 replacement and then labor.

11 Q. And would the labor include the manual labor
12 hour and your hourly labor rates?

13 A. Yes.

14 Q. Does Glassco impose a mileage charge?

15 A. We do not.

16 Q. Does Glassco impose a delivery charge?

17 A. We don't.

18 Q. Does Glassco impose a storage or disposal
19 charge?

20 A. No, we don't.

21 Q. Does Glassco impose an administrative fee?

22 A. No.

23 Q. For the invoices that we briefly just
24 referenced, as far as the tempered component prices,
25 each of those -- are each of those priced out separately

1 on an invoice or is there just one total charge of all
2 of the prices filed?

3 A. Well, both. I mean the individual components
4 are itemized. They are listed one line at a time, and
5 then at the bottom there is a total invoice amount that
6 includes sales tax and then everything else on the
7 invoice.

8 Q. How did you come up with the prices for
9 windshield replacement jobs performed in 2016?

10 A. Our usual and customary pricing is based on --
11 first of all like my knowledge of the industry and my
12 expertise. Second, NAGS, which is kind of a baseline in
13 the industry, as we discussed.

14 None of my competitors, to the best of my
15 knowledge, charge less than NAGS.

16 MS. BUZA: Objection. Hearsay.

17 THE COURT: Mr. Koulianos, what's your
18 response as to hearsay.

19 MR. KOULIANOS: Your Honor, again, we're
20 providing a basis of Mr. Bailey's knowledge,
21 training and experience and the breath of knowledge
22 as he's simply testifying as what he is aware of,
23 his direct knowledge as to the industry and the
24 competitors.

25 THE COURT: All right.

1 MR. KOULIANOS: We're not providing any
2 specific competitors. He hasn't listed anyone out
3 and we haven't provided any.

4 THE COURT: Overruled. You can continue.

5 MR. KOULIANOS: I'm sorry, Your Honor.

6 THE COURT: I said overruled. Continue.

7 BY MR. KOULIANOS:

8 Q. We'll get you started from the beginning, if
9 you don't mind, Mr. Bailey.

10 A. Sure. Could you ask the question again,
11 please?

12 Q. Absolutely. How did you come up with the
13 price for the windshield replacement jobs?

14 A. Well, first it's my knowledge of the industry
15 and my experience in the field.

16 Second, of course, would be the NAGS data base
17 pricing, which is provided in software that we lease.

18 Next the distributors, they all have a
19 suggested retail price, that we're constantly keeping an
20 eye on those.

21 Conventions, glass shows, also the -- the
22 office manager who does my -- who enters the data has
23 previously worked for other glass companies. So he has
24 direct knowledge of having worked for them.

25 And then based on my knowledge of what our

1 competitors charge.

2 Q. Do you consider the amounts paid -- or the
3 amount of insurance companies that paid Glassco's full
4 invoice price?

5 A. I'm sorry. Can you repeat that?

6 Q. Do you consider the amount of insurance
7 companies that pay Glassco there full invoice price?

8 A. Yes.

9 Q. Do you take into consideration for each
10 specific job, year, make and model of the vehicles in
11 need of the windshield replacements and service?

12 A. Yes.

13 Q. Earlier you reference NAGS. What is NAGS?

14 A. NAGS is a standard, it's a baseline, it's a
15 data base of pricing that is maintained. It's updated
16 three times a year, and it's regional.

17 And NAGS -- it was my understanding that NAGS
18 was created in order to avoid exactly what we're
19 litigating.

20 MS. BUZA: Objection. Improper opinion.

21 THE COURT: What's the basis for the
22 objection?

23 MR. BUZA: Objection. Improper opinion. He
24 doesn't know why NAGS was created.

25 THE COURT: All right. Go ahead.

1 Mr. Koulianos, any response?

2 MR. KOULIANOS: Your Honor, Mr. Bailey has
3 been in the industry for at lease five years and is
4 aware of NAGS and he's providing what his personal
5 opinion is in regards to NAGS.

6 THE COURT: Okay. Just strike his statement
7 "created in order to avoid litigation." So as to
8 that, it's sustained.

9 Continue.

10 BY MR. KOULIANOS:

11 Q. Mr. Bailey, does NAGS publish a suggested
12 price for the windshield replacement component?

13 A. Yes.

14 Q. Let me rephrase. I'm sorry.

15 Does NAGS provide a provide a suggested list
16 price for the windshield glass component?

17 A. Yes, it does.

18 Q. Does NAGS provide a suggested amount of hours
19 for each specific windshield replacement job?

20 A. Yes.

21 Q. Are those two things -- and that's what you
22 otherwise reference as a NAGS' hours; is that correct?

23 A. That's correct.

24 Q. And those two pieces of information are
25 automatically populated into Glassco software?

1 A. That's correct. When we produce a work order
2 and then an invoice, it populates with the types of
3 windshields specific to the vehicle and the number of
4 the labor hours to replace it.

5 Q. Is that triggered by the input of the vin
6 number for the vehicle?

7 A. Yes, it is.

8 Q. And is that also reflective of the current
9 NAGS pricing as of the date of the installation?

10 A. Yes.

11 Q. Were all of the factors that you just
12 previously testified to, you did testify that they were
13 taken into consideration in setting your charges for
14 windshield replacement services for 2016; is that
15 correct?

16 A. Yes.

17 Q. Does that remain the same for present day?

18 A. Yes, it does.

19 Q. You also referenced distributors. Who do you
20 mean by that?

21 A. The distributors are the companies that we
22 purchase the glass from, the materials essentially, or
23 at least most of them. So the three major players are
24 Mygrant, PGW and Pilkington.

25 Q. Do Mygrant, PGW and Pilkington provide

1 suggested list prices for windshield replacement funds?

2 A. Yes, they do.

3 Q. And those suggested list prices, are they
4 considered by Glassco in setting these prices?

5 A. Yes.

6 Q. Would they have been considered in 2016?

7 A. Yes.

8 Q. How does the list price for the windshield
9 replacement component of PGW, Mygrant and Pilkington
10 compare to the NAGS price generally speaking?

11 A. General speaking, they are significantly more
12 expensive.

13 Q. To be clear --

14 A. That the distributors suggested list price,
15 retail price, is more expensive than NAGS.

16 Q. Based upon your personal knowledge, is NAGS
17 generally used and relied upon by persons in the
18 windshield replacement industry?

19 A. It is the industry standard.

20 MS. BUZA: Objection. Lack of personal
21 knowledge. Hearsay.

22 THE COURT: Overruled.

23 BY MR. KOULIANOS:

24 Q. And you did testify that you used NAGS to set
25 your prices for 2016?

1 A. We did.

2 Q. Would that be the same present day?

3 A. Yes, it is.

4 Q. In 2016 were Glassco prices for windshield
5 replacement services 100 percent of NAGS, \$90 an hour
6 for the labor hour and \$94 for the two kits?

7 A. Yes.

8 THE COURT: Can you go through those numbers
9 one more time, 100 percent NAGS, Mr. Koulianos. I
10 lost you.

11 MR. KOULIANOS: Yes, Your Honor. The
12 scheduled requested and confirmed by the witness is
13 100 percent of NAGS for the windshield part, \$90
14 per NAGS labor hour, and \$94 for the two kits.

15 THE COURT: Thank you.

16 BY MR. KOULIANOS:

17 Q. Is that the pricing structures used for each
18 of the windshield replacement services you are
19 testifying about today?

20 A. Yes.

21 Q. And you previously testified that the NAGS
22 labor hour, meaning the amount of time taken for
23 windshield replacement service and billed, is
24 automatically populated into your billing software; is
25 that correct?

1 A. Yes, it is.

2 Q. Would that have been the case for the 11 cases
3 that we are here about today?

4 A. Yes.

5 Q. Based on your years of experience, what would
6 happen if Glassco set its prices too high or too low?

7 A. Too high, we would invite a risk problem, you
8 know, not getting paid. Too low and we would go out of
9 business. So we have to maintain a -- sort of an
10 equilibrium.

11 Q. You previously testified that in 2016 Glassco
12 billed approximately 100 insurance companies for
13 windshield replacement services; is that correct?

14 A. Approximately, yes.

15 Q. In 2016, approximately, how many of those
16 insurance companies paid Glassco's full invoice of
17 Glassco's full invoice amounts for windshield
18 replacement services?

19 A. Approximately 95 percent.

20 Q. In 2016 which insurance company paid the least
21 amount of all of the insurance companies that Glassco
22 did business with?

23 A. Geico.

24 Q. Is that the same present day?

25 A. Yes, it is. I'm actually not getting anything

1 from Geico now.

2 Q. Meaning you don't receive any payment in
3 response to insufficient invoices?

4 A. Correct.

5 MS. BUZA: Objection to relevance.

6 THE COURT: Okay. Mr. Koulianos, as to
7 present day, the relevance of that.

8 MR. KOULIANOS: I'm just showing inconsistent
9 business practices, Your Honor, that Geico has been
10 the lowest to reimburse out of all the insurance
11 companies, and present day it seems they have up
12 the ante at least with regards to the Plaintiff
13 specifically and has stopped paying him entirely.

14 THE COURT: All right. That objection is
15 sustained.

16 BY MR. KOULIANOS:

17 Q. In 2016 how did Glassco negotiate it's pricing
18 structure?

19 A. We negotiated our pricing structure for usual
20 and customary pricing based on a couple of different
21 factors.

22 First of all, my knowledge of the business and
23 understanding that we have to keep our -- our prices at
24 the equilibrium that I previously described.

25 And then the fact that we received payment

1 from 95 percent of the companies that we billed
2 and that's -- if I send an invoice and it's paid, that's
3 the negotiation.

4 Q. We are here today about 11 Glassco claims that
5 have been consolidated for trial. Is that your
6 understanding?

7 A. Yes.

8 Q. Are these -- are all 11 claims at issue today
9 windshield replacement services?

10 A. Yes.

11 MR. KOULIANOS: Your Honor, at this time, I
12 would like to have the witness review Plaintiff's
13 Exhibits 1-A, 2-A, all the way to 12-A, and inquire
14 into those. If I can have Mr. Goan. He's right on
15 it.

16 THE COURT: Okay. Go ahead.

17 BY MR. KOULIANOS:

18 Q. If you could, Mr. Bailey, turn to the first
19 notebook, Volume 1.

20 A. Okay.

21 Q. Mr. Bailey, if you could please review
22 Exhibit's 1-A, 2-A, 3-A, all the way through 12-A,
23 please?

24 A. Okay.

25 Q. Are you personally familiar with these

1 documents in the windshield replacement claim
2 involving --

3 A. Yes.

4 Q. Exhibit's 1-A through 12-A, are they
5 reflective of Glassco's work order, invoice, customer
6 form and proof of fax?

7 A. Yes.

8 Q. Okay. And when I say, "proof of the fax," I
9 mean proof that the subject invoices were submitted to
10 Geico; is that correct?

11 A. Yes. The fax cover page on the top left-hand
12 side shows the number that the fax was sent to, the
13 number of pages and then whether it was successful. And
14 in the event it didn't go through, it would say
15 "failure."

16 Q. I understand. If I can bring you back to the
17 first volume, we're going go through it and verify each
18 of the claims.

19 A. Okay.

20 Q. Is Exhibit, Plaintiff's Exhibit 1-A reflective
21 of the windshield replacement service performed to Jesus
22 Bazan, Invoice Number 5831?

23 A. Yes, it is.

24 Q. And for reference, I'm just referencing the
25 invoice where we have the full charge displayed.

1 A. Okay. Yes.

2 Q. Is Exhibit 2-A reflective of Invoice Number
3 6380. Insured's last name Lamboy, L-a-m-b-o-y?

4 A. Yes, it is.

5 Q. Exhibit 3-A, Invoice Number 6200. Insured's
6 last name Camagho, C-a-m-a-g-h-o?

7 A. Yes. Ricardo Camagho.

8 Q. Exhibit 4-A. Invoice Number 6088 for an
9 insured, Barnett, B-a-r-n-e-t-t?

10 A. Yes. Brian Barnett.

11 Q. Exhibit 5-A we will be skipping because that
12 is the Adkins' matter that has been resolved.

13 Exhibit 6-A. Invoice Number 6656. Insured's
14 last name Beauford, B-e-a-u-f-o-r-d.

15 A. Yes. Kevin Beauford.

16 Q. Exhibit 7-A. Invoice Number 6959. Last name
17 Nauearakul. That's the best I can do.

18 A. Yes. I'm not --

19 Q. N-a-u-e-a-r-a-k-u-l.

20 A. I'm sorry. Which exhibit is that?

21 Q. This is Exhibit 7-A.

22 THE COURT: 7-A?

23 THE WITNESS: Yes, 7-A, I have a different
24 name here.

25 BY MR. KOULIANOS:

1 Q. Is that Invoice Number 6959?

2 A. Yes.

3 Q. The first name -- it could be their last name.

4 Tanoo, T-a-n-o-o.

5 A. Yes, Tanoo. I didn't -- I wouldn't try to
6 pronounce that, but, yes.

7 Q. Exhibit 8-A. Invoice 6985. Insured, last
8 name Matz, M-a-t-z.

9 A. Yes 6985.

10 Q. Exhibit 9-A. Invoice 7004. Insured, Kevins?

11 A. It's seven -- or 8-A is 7034.

12 Q. We're on 9-A.

13 A. Oh, 9-A?

14 Q. Did you go through that already?

15 A. Yes. I got -- yes, that was -- oh, no. I got
16 it. That's 10. There's 8. 7004.

17 Q. And insured's name, Kevins.

18 A. Yes.

19 Q. Exhibit 10-A. Invoice Number 7034, Joseph?

20 A. Yes. Naomi Joseph.

21 Q. It's 11-A. Invoice Number 7279. Last name
22 Maldonado.

23 A. Rosco Maldonado, yes.

24 Q. And Exhibit Number 12-A. Invoice Number 7448.

25 Insured's name Marks?

1 A. Yes. Christine Marks.

2 Q. And you confirm that you're personally
3 familiar with these documents in windshield replacement
4 claims involved in this trial, correct?

5 A. Correct.

6 Q. Did you follow your standard procedure for
7 processing and invoicing these claims?

8 A. Yes, we do.

9 Q. Is the information contained in these exhibits
10 maintained, kept and generated as far as those regular
11 business conducted activities?

12 A. Yes.

13 Q. Was the information contained in these
14 exhibits made at or near the time of the occurrences
15 set-forth therein by a person with knowledge of that
16 information?

17 A. Yes.

18 Q. Is this information kept in Glassco's normal
19 course of the regularly conducted activity?

20 A. Yes, it is.

21 Q. Is this made as a regular practice in course
22 of Glassco's regularly conducted activities?

23 A. Yes.

24 MR. KOULIANOS: At this time I would move in
25 Exhibit's 1-A through 12-A, with the exclusion of

1 Number 5 since it's been resolved into evidence as
2 Plaintiff's Exhibits.

3 THE COURT: Any objection?

4 MS. HAMDAN: Your Honor, may I have a brief
5 Voir Dire of the witness regarding these documents.

6 THE COURT: Go ahead. Yes.

7 MS. HAMDAN: I'm sorry?

8 THE COURT: Yes, ma'am.

9 VOIR DIRE EXAMINATION

10 BY MS. HAMDAN:

11 Q. Mr. Bailey, I have a few questions for you. I
12 want to start with Plaintiff's Exhibit 1-A. Do you have
13 that?

14 A. May I have just one moment, please.

15 That would be invoice 5831?

16 Q. Correct, sir.

17 A. All right.

18 Q. I want to bring your attention to the first
19 page.

20 A. Okay.

21 Q. What is the difference between the first and
22 second page?

23 A. If you will -- on the first page, if you will
24 look at the top of the form, it has a work order number.
25 Below that it has our federal tax ID, and below that it

1 has a Florida motor vehicle number. And then below the
2 stick bar, it says "invoice." Do you see it?

3 Q. I do.

4 A. So the next page would be identical, except if
5 you look in the same spot, it says "work order."

6 THE COURT: Go back to the first one,
7 Mr. Goan, the first page. Okay. Thank you.

8 Is the invoice and the work order the same
9 number or different numbers?

10 THE WITNESS: No. The work order is used to
11 generate the invoice. It's part of the software
12 that we use. Yes, it is the same number.

13 All right. Ms. Buza -- Ms. Hamdan, you can
14 continue. I just wanted clarification.

15 MS. HAMDAN: Thank you, Your Honor.

16 BY MS. HAMDAN:

17 Q. Let's move to the second page.

18 A. The work order?

19 Q. Yes, sir.

20 A. All right.

21 Q. Is the page that has the Assignment of
22 Benefits on it?

23 A. No. It does have an assignment on it, but
24 that's not the assignment that we use.

25 Q. What page has the assignment on it?

1 A. The next page is the Customer Form. This is
2 not a very good copy, but if you look at the bottom part
3 of the page you'll see the complete assignment of
4 benefit just below the customer's signature, at the very
5 bottom of the page.

6 Q. Can you point to the area that has the
7 Assignment of Benefits on it?

8 A. How would you like me to do that?

9 Q. Do you have control of the mouse right now or
10 no?

11 A. No, I don't.

12 Q. Can you describe to me where --

13 A. It would be below -- I'm sorry?

14 Q. Can you describe for me where on the page the
15 Assignment of Benefits language is?

16 A. It's the last paragraph at the very bottom of
17 the page. It's a very fine print. And in most cases
18 it's pretty clear here. It's this page that's probably
19 been copied several times.

20 Q. But you would agree with me that that's pretty
21 illegible right now.

22 A. Definitely, yes. This is not the one that the
23 customer got. They get a printed copy.

24 Q. So there is a handwritten signature on pages 2
25 and 3, correct?

1 A. On the work order and the customer form, yes.

2 Q. Did you perform this install personally?

3 A. No, ma'am.

4 Q. Did you personally prepare that Assignment of
5 Benefits language on Page 3?

6 A. The assignment was prepared by an attorney.

7 Q. Did you provide page three to your installer?

8 A. The second or the third document of the
9 customer form is the initial form that's filled out when
10 we're talking to the customers. If they call it in it's
11 filled out, you know, on the phone. And then it is --
12 no, the work order and a separate Assignment of Benefits
13 are taken to the -- taken out by the installer. So he
14 has the customer form.

15 Q. So is that Page 2 and 3 that are taken out for
16 the customer?

17 A. No. Pages 2 is what's taken out for the
18 customer.

19 Q. So none of the customer's signatures get on
20 Page 3?

21 A. That's done during the initial assessment of
22 the damage. That's the very first contact that we have
23 with the customer. After the damage has been located,
24 they -- this has got all of the information related to
25 the vehicle, the policy holder, the damage and it has an

1 Assignment of Benefits at the bottom.

2 Q. So is the Assignment of Benefits signed prior
3 to the work being completed?

4 A. Yes.

5 Q. So Page 2 and 3 would have had signatures on
6 separate dates, right?

7 A. That's correct.

8 Q. Who is responsible for getting Page 3 signed
9 by the customer?

10 A. That occurred at the initial contact. So the
11 safety inspector. The work order is -- that's typed up,
12 is the day of the install.

13 Q. Okay. So I'm just trying to get this
14 straight. So Page 3 with the Assignment of Benefits
15 language --

16 A. Yes.

17 Q. -- that is signed by the customer by one of
18 your employees in the field with the customer or at your
19 brick and mortar location?

20 A. That's right. Again, just to recap, Page
21 Number 3 is the very first document that is completed.
22 It's a kind of a worksheet. And that is done by the
23 safety inspector for the purpose of gathering all of the
24 information related to the claim. And this document
25 right here with the Assignment of Benefits is used to

1 generate all of the other documents. This is the first
2 document.

3 Q. So looking at this document, who was
4 responsible for getting the customer to sign this
5 document, Page 3?

6 A. The safety inspector?

7 Q. And what is that person's name?

8 A. Jimmy Ogondo (phonetic spelling), as indicated
9 on the form.

10 Q. And were you present when this signature
11 occurred?

12 A. I was not.

13 Q. Have you ever met Mr. Bazan?

14 A. Who.

15 Q. The customer?

16 A. Oh, no. No, I haven't. I don't believe so.

17 Q. And you testified that it's your business's
18 policy to explain the Assignment of Benefits to the
19 insured?

20 A. That is correct. The assignment is basically
21 how the insured pays us. So that would be signed during
22 the very initial meeting between the safety inspector
23 and the owner of car that has damage or the policy
24 holder.

25 Q. So the insured is signing over right to your

1 shop before they've ever received any sort of windshield
2 replacement work?

3 A. Yes.

4 Q. Do you know for sure that Mr. Ogondo explains
5 the Assignment of Benefits to the insured in that
6 particular case?

7 A. Jimmy probably did. He was the sales manager.
8 He was responsible for training people to explain the
9 Assignment of Benefits. So even through I wasn't there.
10 I would be almost certain that he did.

11 Q. Do you know if Mr. Ogondo checked the license
12 of the customer prior to allowing them to sign that
13 form?

14 A. Well, the form was only signed after we had
15 spoken with Geico. So Geico would have done -- would
16 have confirmed the person's identity when they called in
17 to -- do you see the referral number? There's a
18 referral number on the right-hand side, one, two, three,
19 four, five, six lines down. That number is given to us
20 by Geico, and prior to getting that number, Geico
21 verifies the identity of the policy holder.

22 Q. And I see that, Mr. Bailey, and I appreciate
23 that. But my question was if you knew if Mr. Ogondo
24 checked this persons licensed prior to allowing them to
25 sign Page 3 of Exhibit 1-A?

1 A. I don't know.

2 Q. And going back to Page 2, the -- I assume
3 there's supposed to be a signature at the bottom of that
4 page as well?

5 A. Yes.

6 Q. And then it's signed after the work is
7 completed?

8 A. Correct.

9 Q. And you weren't present for that signature
10 either?

11 A. No, ma'am.

12 Q. Moving on to Exhibit 2-A.

13 THE COURT: Is it going to be the same
14 questions also?

15 MS. HAMDAN: Yes, ma'am.

16 THE COURT: Is it going to be the same
17 responses, Mr. Koulianos.

18 MR. KOULIANOS: Yes, Your Honor.

19 THE COURT: All right. So make your
20 objection. I have what the responses would be. So
21 make your legal objection as to why these do not
22 qualify under the business record exception or any
23 other exceptions.

24 MS. HAMDAN: Yes, Your Honor. We would object
25 to all the pages in these exhibits that have

1 signature that were not witnessed by Mr. Bailey.

2 The first page with just the amount, I
3 believes is a business record. However, it's not a
4 business record of the insured's signature. And
5 it's not -- it's not an exception under the Hearsay
6 Rule because the Assignment of Benefits portion is
7 not a record made by Glassco. It's for the
8 execution by the insured. So the insured is the
9 only individual that would have to authenticate
10 that document, Your Honor.

11 We don't even have the witnesses that were
12 present with the insured when either of these two
13 documents were allegedly signed.

14 THE COURT: All right. Mr. Koulianos, if you
15 want to respond.

16 MR. KOULIANOS: Mr. Prieto will be handling
17 this specific argument, Your Honor.

18 THE COURT: Okay.

19 MR. PRIETO: Thank you, Your Honor. Attorney
20 Anthony Prieto.

21 Judge, the Rules of Evidence are quite clear.
22 In order to allow these documents into evidence,
23 pursuant to Florida Statute 90.8036(a), the
24 testimony of the custodian or the qualified
25 witness, that being Mr. John Bailey, has stated

1 that they were made at or near the time prior or
2 from information transmitted by personal knowledge;
3 two, they were kept in the course of the work; of
4 the regularly conducted business activity; and,
5 three, it was a regular practice of that business
6 activity to make such memorandum report record of
7 data compilation. That has been unequivocally
8 testified to in this case.

9 That Section 908036(a) goes on to explain that
10 those documents are admissibility unless there is
11 some showing of untrustworthiness, a lack of
12 trustworthiness, Judge, which is Geico's burden.

13 And they've yet to state any reason why these
14 documents in their entirety have any issues with
15 the trustworthiness of them.

16 It's presumed to exist in all the business
17 records, the trustworthiness, and it's their
18 burden, Judge.

19 It seems like they are agreeing to half of it
20 coming into evidence but only the portion with the
21 signature. So it appears that they are taking
22 issue with the fact that there's a signature on a
23 document of which this individual person did not
24 witness the actual signature being placed on the
25 document, but that's not the standard.

1 These documents have been properly
2 authenticated as a business record and there has
3 been no showing of untrustworthiness.

4 In fact, Judge, it's quite the opposite. We
5 know from the testimony thus far that these
6 signatures were sent in and Geico acted upon it.
7 In fact, they saw this document and they paid my
8 client directly, and that's prima facie case on
9 authenticity in and of itself.

10 And by forwarding coverage, they would waive
11 this argument as to the assignment, which is what
12 they are trying to block, I guess, as some sort of
13 standing. But they've offered no evidence at all
14 that the signatures on these documents are not
15 authentic. There is nothing to dispute the fact
16 that they are authentic.

17 But even if there was a question, Section --
18 Florida Section 90.90211 creates an exception to
19 the establishing of the authenticity of the
20 business record. And in there it says that,
21 "Extrinsic evidence of authenticity as a condition
22 precedent to the admissibility of a business record
23 is not required. For original or duplicate of
24 evidence that would be admissible under Section
25 90.8036, which is what I previously cited.

1 So, as we sit here right now, Judge, these
2 records are properly admitted into evidence. There
3 has been no showing of lack of trustworthiness.
4 There quite frankly can't be any showing of lack of
5 trustworthiness because they actually -- Geico
6 actually acted upon these documents as being
7 authentic.

8 If we get into it, Judge, or we have to go any
9 farther, you know, the testimony of Eberling in
10 this matter has stated that they don't even use his
11 signature in order to pay a work order or an
12 invoice. And many times, Judge, there are no
13 signatures that are even provided and with those
14 issued of payments.

15 So right now these documents are business
16 records. If they are going to make an argument as
17 to standing, Your Honor, I believe that we've
18 already addressed this in the Motion in Limine in
19 your ruling as to whether or not they had actually
20 raised standing as an issue, and I can get into
21 that, Judge, and I can refresh your recollection.

22 But as far as we have it right now, Judge,
23 these documents come into evidence as a business
24 record, and that Assignment of Benefits is thus
25 properly admitted, and there is no issue at all of

1 standing to be argued. However, if Your Honor
2 wishes me to get into the standing argument, I will
3 be more than happy to brief that right now, Your
4 Honor, regarding the Assignment of Benefits and the
5 Equitable Assignment of Benefits that my client
6 inherently has for simply doing the work.

7 THE COURT: Right. No further argument is
8 needed.

9 THE COURT REPORTER: I'm sorry. I'm not
10 hearing you, Judge.

11 THE COURT: Is that the Court Reporter?

12 THE COURT REPORTER: Yes, ma'am.

13 THE COURT: Do you want to take the
14 document -- go ahead and take the document off the
15 screen to make sure. Sometimes it's better for
16 them to see. Okay. Can every one see and hear me?

17 Okay. All right. I do find that the
18 records were properly introduced pursuant to
19 90.8036. So I am going to find that they are
20 admissible, and that the Plaintiff's 1-A through --
21 1 through 11 -- is that 11 or 10?

22 MR. KOULIANOS: Your Honor, the Exhibits are
23 1-A through 12-A with the exclusion of 5-A, Your
24 Honor.

25 THE COURT: With that exclusion Exhibit's 1-A

1 through 12-A --

2 MR. KOULIANOS: And the only reason that 5-A
3 is being excluded is because that case has been
4 settled.

5 THE COURT: Okay. All right. Continue.

6 DIRECT EXAMINATION (cont'd)

7 BY MR. KOULIANOS:

8 Q. Mr. Bailey, I'm going to turn your attention
9 back to Exhibit 1-A. That is the invoice for Mr. Adrius
10 Paza?

11 THE COURT: Turn it back on.

12 MR. KOULIANOS: I'm sorry, Your Honor. Oh,
13 okay. Thank you.

14 THE WITNESS: Okay. I have it.

15 BY MR. KOULIANOS:

16 Q. Can you walk us through the format and
17 contents of the invoice from top to bottom.

18 A. Yes. The top part of the invoice has the
19 information related to who put the data into GlassPac,
20 which is the name of the prescription software that we
21 use.

22 It has the insurance company that's being
23 billed, and on the right-hand side it's the name and
24 installation address. That's the address not
25 necessarily the residence of the person, the policy

1 holder, but where they wanted it -- where they wanted
2 the repair to occur.

3 Immediately below that, we have insurance
4 related information, Geico being the insurance company,
5 the Claim Number 799375, date of loss, and then the
6 insurance -- the phone number for the insurance company,
7 the policy number and the location of where the
8 installation occurred.

9 Below that you have vehicle information, and
10 this was for a 1995 Honda Accord. And the Vin Number is
11 what gives us all the specifics relating to the type of
12 windshield. The materials essentially are -- we get
13 those from the Vin Number.

14 So we put in the Vin Number and that populates
15 with the windshield, 2.3 hours, the kit, and then the
16 clips and molding.

17 And, then, at the bottom, they are -- it's the
18 total and -- and Assignment of Benefits.

19 Q. Thank you. Going back to the middle of the
20 document on the left-hand side where it says, "insurance
21 company, Geico insurance (Safelite)?

22 A. Right.

23 Q. Underneath that there is a Claim Number
24 799375; is that correct?

25 A. Yes.

1 Q. What does that -- what does Glassco receiving
2 that claim number mean?

3 A. Well, that means that the claim was set up by
4 Geico. So we called in and they took the information
5 and verified that the policy holder was who he said he
6 was, and then they issued that claim number as a record
7 as having set up the claim.

8 Q. Okay. And then moving to where the part
9 number descriptions and list prices are located, the
10 very first line item is a windshield part number
11 FW00753GBNN; is that correct?

12 A. Yes, it is.

13 Q. And it shows a list price of \$212.25; is that
14 correct?

15 A. Yes.

16 Q. What does the zero percent discount mean next
17 to that windshield park.

18 A. That means that this was billed at 100 percent
19 of NAGS with no discount, zero discount.

20 Q. And is that consistent with the usual and
21 customary prices for 2016 for Glassco?

22 A. Yes, it is.

23 Q. Below that we have \$90 per NAGS hour, (2.3
24 hours) for a total of \$207; is that correct?

25 A. I'm sorry. I was distracted.

1 Yes, \$207. Yes. That's the labor hours times
2 the price per hour.

3 Q. And the \$90 per NAGS hours is reflective of
4 Glassco usual and customary hours for windshield
5 replacement services in 2016?

6 A. Yes, it is.

7 Q. And the 2.3 hours, is that auto populated from
8 NAGS pursuant to your software?

9 A. Yes.

10 Q. Below that, there is another part number
11 corresponding to an adhesive 2.0 urethane dam primer; is
12 that correct?

13 A. Yes.

14 Q. And that is billed at \$94 even; is that
15 correct?

16 A. Correct.

17 Q. Is that consistent with Glassco's usual and
18 customary pricing for 2016 for windshield replacement
19 services performed in the State of Florida?

20 A. Yes, it is.

21 Q. Below that we have clips (22 piece), it looks
22 like. Is that what that means?

23 A. Yes.

24 Q. List price \$16.02; is that correct?

25 A. Yes.

1 Q. Is that consistent with Glassco's usual and
2 customary pricing for windshield replacement services
3 performed in Florida in the year 2016?

4 A. Yes, it is.

5 Q. And below that, which is the last line item
6 charged, is a molding (upper) upper for 26.99; is that
7 correct?

8 A. Yes.

9 Q. Is that consistent with Glassco's usual and
10 customary pricing for windshield replacement services
11 performed in the State of Florida for 2016?

12 A. Yes, it is.

13 Q. The subtotal listed at the bottom right-hand
14 corner is \$556.26. Is that a sum of the aforementioned
15 parts and usual and customary charges?

16 A. Yes, it is.

17 Q. Plus the packs of 38.94, does that bring us to
18 the total billed amount at \$595.20?

19 A. Yes, it does.

20 Q. So is that a total of the usual and customary
21 parts -- usual and customary charges for the parts and
22 services provide by Glassco for a windshield replacement
23 service performed in Florida in 2016?

24 A. Yes.

25 Q. Okay. Are each of the other 10 invoices that

1 we are here about today structured in the same manner?

2 A. Yes.

3 Q. Are each of the other 10 invoices that we are
4 here about to today displaying the same general
5 information categories?

6 A. Yes.

7 Q. And the prices charged by Glassco in this and
8 the other 10 cases were set in the same manner as you
9 previously testified?

10 A. Correct.

11 Q. Was the NAGS recommended labor hours used for
12 each of the other 10 windshield replacement services at
13 issue in this trial?

14 A. Yes, it was.

15 Q. Did Glassco software automatically populate
16 the usual and customary charges contained in the other
17 10 invoices at issue?

18 A. Yes, it did.

19 Q. Did Glassco use lifetime and quality parts to
20 conduct all 11 windshield replacement services that are
21 at issue here today?

22 A. Yes, we did.

23 Q. Where was the job identified in Exhibit --
24 Plaintiff's Exhibit 1-A performed? And, by job, I mean
25 windshield replacement service.

1 A. The installation was done at 4104 West Vine
2 Street in Kissimmee, Florida 34741 at the Wyndham Hotel.

3 Q. And based upon Glassco's practices and
4 procedures, how was that location selected for the job
5 identified as Plaintiff's Exhibit 1-A?

6 A. That would have been specified by the customer
7 based on what was convenient for them.

8 Q. And is that the same practices and procedures
9 that were used to perform the services in the other 10
10 invoices that we're here about today?

11 A. We go wherever they need us to. So, yes.

12 Q. What did Glassco do after the windshield
13 replacement service was performed and specifically
14 referencing Plaintiff's Exhibit 1-A.

15 A. Well, the installer would have returned to the
16 office with the -- or to the shop, actually, with the --
17 or with the signed work order. That work order was
18 scanned -- would be scanned and then used to generate an
19 invoice, which is assembled with the rest of the
20 paperwork, the customer form and the -- well, the faxed
21 confirmation would be after the fax. But yes, it would
22 be assembled and then submitted for payment.

23 Q. Was that same procedure followed for each of
24 the 10 windshield replacement services that we are here
25 about today?

1 A. Yes, it was.

2 Q. Did Glassco receive an Assignment of Benefits
3 in exchange for the 11 windshield replacement services
4 we are discussing today?

5 A. Yes, we did.

6 Q. Did Glassco receive payments for the
7 windshield replacement services -- for service performed
8 as identified in Exhibit 1-A?

9 A. We received partial payment for the 11
10 invoices.

11 Q. Did Glassco receive partial payment for the
12 other 10 windshield replacement services invoices that
13 we are here about today?

14 A. Yes.

15 Q. Is Glassco seeking the payment in the amount
16 of the difference between what was billed by Glassco and
17 what was paid by Geico in each of these 11 invoices?

18 A. Yes, we'd like to be paid in full.

19 Q. And you're familiar with the praising that was
20 established in each of these 11 cases; is that correct?

21 A. Yes, I am.

22 Q. Do you have the amounts owed for each of the
23 11 cases memorized?

24 A. I don't.

25 Q. Would a summary of this information refresh

1 your recollection of the amounts remaining due?

2 A. Yes, it would.

3 Q. Would a summary assist your testimony in
4 providing to the Court with information as to the
5 amounts owed for each of these cases?

6 A. Yes.

7 MR. KOULIANOS: Your Honor, at this time, I
8 would like to have the Court and the parties and
9 the witness reference the summary of evidence that
10 we've provided.

11 I believe Mr. Cavallaro already voiced that
12 Geico does not object to allow the witness to
13 provide to the Court the amounts being sought as
14 far as comprehensive collision insurance benefits.

15 THE COURT: Mr. Cavallaro --

16 MS. BUZA: Your Honor, for demonstrative
17 purposes, we don't have an objection if it will
18 help the witness refresh his recollection.

19 THE COURT: All right. Go ahead,
20 Mr. Koulianos, for just the demonstrative purposes.

21 BY MR. KOULIANOS:

22 Q. Mr. Bailey, can you see the document up on the
23 screen?

24 A. Yes, I can.

25 Q. For the first claim listed, Case Number

1 16CC26608, does it show that the amount billed was
2 \$595.20 and the amount paid was \$284.34?

3 A. Yes.

4 Q. And that amount remaining owed is \$310.86; is
5 that correct?

6 A. Yes, it is.

7 Q. For Case Number 16CC29301, we show that the
8 amount remaining owed is \$347.46; is that correct?

9 A. Yes, it is.

10 Q. For Case Number 16CC29315, showing \$451.47
11 cents remaining owed; is that correct?

12 A. Yes.

13 Q. Case Number 16CC31286, showing \$393.25
14 remaining owed; is that correct?

15 A. Yes.

16 Q. Again, skipping over Adkins because that
17 amount was paid.

18 Case Number 16CC64756 amount remaining owed is
19 \$353.44; is that correct?

20 A. Yes, it is.

21 Q. Case Number 16CC36273, amount remaining owed
22 is \$493.61; is that correct?

23 A. Yes.

24 Q. Case Number 16CC37057, amount remaining owed
25 is \$642.13; is that correct?

1 A. Yes, it is.

2 Q. Case Number 16CC37082, amount remaining owed
3 is \$379.54; is that correct?

4 A. Yes.

5 Q. Case Number 16CC37125, amount remaining owed
6 is \$364.17; is that correct?

7 A. Yes, it is.

8 Q. Case Number 16CC39072, amount remaining owed
9 \$378.75; is that correct?

10 A. Yes.

11 Q. Case Number 16CC000870, amount remaining owed
12 \$579.75; is that correct?

13 A. Yes.

14 Q. Are these amounts consistent with your
15 recollection and understanding in the amounts due for
16 each of the invoices at issues that we are here about
17 today?

18 A. Yes.

19 Q. And those are the amounts that Glassco is
20 seeking as far as comprehensive insurance benefits for
21 each of the these 11 cases?

22 A. Yes. I'm sorry. Can you repeat the question.
23 I was distracted.

24 Q. The amounts that we just reviewed and
25 identified as the amounts remaining owed, are those the

1 amounts that Glassco seeks as far as the comprehensive
2 insurance benefits for the 11 cases that we are here
3 about today?

4 A. Yes.

5 Q. Is the price -- we're going to go back to
6 Plaintiff's Exhibit 1-A.

7 A. Okay. Got it.

8 Q. Is the price listed in the invoice displayed
9 in Plaintiff's Exhibit 1-A Glassco's usual and customary
10 price for the parts provided and the services rendered
11 for the insured customer in the independent nonaffiliate
12 windshield replacement market in Florida?

13 A. Yes.

14 Q. Are each of the prices listed for each of the
15 other 10 Glassco invoices that we are here about today?

16 A. Glassco's usual and customary prices for the
17 parts provided and the services rendered to the insured
18 customers in the independent nonaffiliate windshield
19 replacement market in Florida?

20 A. Yes, they are our usual and customary prices.

21 Q. Mr. Bailey, if I can have you turn to
22 Plaintiff's Exhibit 12-A.

23 A. Okay.

24 Q. On this particular invoice, we show that there
25 is a windshield replacement part for \$463.65 with a zero

1 percent discount; is that correct?

2 A. That is correct.

3 Q. Does that mean that this invoice was billed at
4 100 percent of NAGS windshield replacement part?

5 A. Yes.

6 Q. And go down to the next line we showed \$90 per
7 NAGS hours (4 hours). Is that consistent with Glassco's
8 usual and customary prices for 2016?

9 A. Yes, it is.

10 Q. And you previously testified that there was --
11 that Glassco typically invoiced pursuant to it's usual
12 and customary prices \$94 per year; is that correct?

13 A. Yes.

14 Q. On this particular invoice, the adhesives were
15 billed 2.0 urethane dam primer high modulus as towards
16 the -- for the invoice for a total of \$150. Could
17 explain that.

18 A. The amount of adhesive used for an
19 installation is normally between one and a half and two
20 tubes, but some vehicles, for example, a bulletproof
21 limousine might take 92. So I suspect that additional
22 adhesive was used for this installation.

23 Q. So this \$150 for the adhesives is consistent
24 with Glassco's usual and customary prices for the parts
25 and services provided in this case?

1 A. Yes.

2 Q. Is the price listed in Plaintiff's Exhibit 1-A
3 a price that Geico could and did secure from Glassco?

4 MS. BUZA: Objection.

5 THE COURT: Let's look at 1-A. Hold on
6 counsel. And I want to hear the question. Which
7 exhibit are you looking at, the first page of
8 Exhibit A?

9 MR. KOULIANOS: Yes, Your Honor. I'm looking
10 at Plaintiff's Exhibit 1-A in its entirety, but for
11 the beginning of this inquiry, specifically the
12 invoice which is Page 1 of 1-A.

13 THE COURT: And what is the question.

14 BY MR. KOULIANOS:

15 Q. Is the price listed in Plaintiff's Exhibit
16 1-A, Page 1, a price that Geico could and did secure
17 from Glassco?

18 A. Yes.

19 MS. BUZA: Objection, Your Honor. Improper
20 opinion. Relevance.

21 MR. KOULIANOS: Your Honor, Geico's policy
22 language specifically states that it's a price that
23 we can secure.

24 Our exhibits that have already been admitted
25 into evidence, Page 4 of each of those exhibits,

1 specifically shows a successful fax transmission to
2 Geico. On top of that, Geico received and paid
3 their schedule of pricing acknowledging receipt of
4 each of those invoices. So it is not an opinion,
5 but instead a matter of fact, that every one of
6 these invoices or every one of the specific dollar
7 amount listed on those invoices was in fact secured
8 by Geico.

9 MS. BUZA: Your Honor, if I may.

10 THE COURT: All right. Ms. Buza.

11 MS. BUZA: This line of questioning goes
12 against the Cordaro opinion because Cordaro said
13 that the prevailing competitive price is not what
14 the Plaintiff decides to unilaterally charge.

15 I mean this is what the Plaintiff is
16 unilaterally charging and it cannot be consider
17 PCP. And that seems to be where the question is
18 going and not what Geico can secure. I mean this
19 witness has not knowledge base of the prices Geico
20 secured.

21 THE COURT: More importantly, it really calls
22 for speculation, what Geico can secure. So at this
23 time I sustain that question.

24 MR. KOULIANOS: Yes, Your Honor. And just to
25 be clear, the question asked whether the specific

1 invoice was indeed secured by Geico. This price
2 not any other price or any other invoice.

3 THE COURT: Whether this specific invoice was
4 secured my Geico?

5 MR. KOULIANOS: Yes, Your Honor.

6 THE COURT: All right. The same ruling.

7 BY MR. KOULIANOS:

8 Q. Mr. Bailey, did Geico receive each of the 11
9 invoices that are at issue here today?

10 A. Yes.

11 Q. Is the price listed on each of the 11 invoices
12 that we are here about today, the price, the usual and
13 customary price offered to Geico for payment for each of
14 the 11 windshield replacement services provided?

15 A. Yes.

16 Q. Would Glassco have accepted payment in the
17 amount that is shown on each of the 11 invoices as
18 satisfaction of each of the 11 invoices that we are here
19 about today?

20 A. Yes.

21 Q. Did Geico pay any of those 11 invoices in
22 full?

23 A. No.

24 Q. Turning back to Plaintiff's Exhibit 1-A. Was
25 the windshield replacement service provided to the

1 insured customer identified in Plaintiff's Exhibit 1-A
2 performed by a competent technician in a competent and
3 otherwise satisfactory manner?

4 A. Yes.

5 MS. BUZA: Objection. Calls for a conclusion,
6 Your Honor.

7 THE COURT: He's testified earlier on that
8 he's kind of guided his technicians and based upon
9 his experience, I'm going to allow it. His
10 testimony is that his technicians are independent
11 contractor responsibly trained. So, overruled.

12 BY MR. KOULIANOS:

13 Q. Was the windshield replacement service
14 provided to the insured customer, identified in
15 Plaintiff's Exhibit 1-A, performed by a competent
16 technician in a competent and otherwise satisfactory
17 manner?

18 A. Yes, it is.

19 Q. Were the windshield replacement services
20 provided to the insured customers identified in the
21 other 10 invoices performed by competent technicians in
22 a competent and otherwise satisfactory manner?

23 A. Yes.

24 Q. Did each of the 11 windshield replacement
25 services provided come with a lifetime warranty on all

1 parts and services?

2 A. All of them, yes.

3 Q. Based upon your personal experience and
4 personal knowledge in the independent nonaffiliated
5 windshield replacement services market and as an owner
6 of Glassco, does the total price listed on each of these
7 11 invoices reflect a competitive fair market,
8 reasonable and usual and customary price in the
9 geographic --

10 MS. BUZA: Objection. Improper opinion.

11 THE COURT: Okay. Let him finish the
12 question, please, Ms. Buza.

13 Allow him some time to finish the question so
14 that the record is perfected, pause for a second
15 before you answer, sir. Make the objection so that
16 it's clear, and then I will rule on it.

17 Okay. All right, go ahead and repeat it,
18 please.

19 Mr. Koulianos.

20 MR. KOULIANOS: Yes, Your Honor.

21 BY MR. KOULIANOS:

22 Q. Based upon your experience and knowledge, your
23 personal experience and personal knowledge in the
24 independent nonaffiliate windshield replacement services
25 market, and as the owner of Glassco, does the total

1 price listed on each of these 11 invoices reflect a
2 competitive price in the geographic area where the
3 services were provided for the year, make and model for
4 the vehicle listed there?

5 A. Absolutely.

6 MS. BUZA: Objection. Improper opinion.

7 THE COURT: Okay. I'm going to allow it.

8 It's his opinion, his company. He's testified as
9 it relates to his experience in the market.

10 Mr. Koulianos, do we need that exhibit? Are
11 we still going to reference it?

12 MR. KOULIANOS: Your Honor, I believe that I'm
13 finished with our questions.

14 THE COURT: Okay. Can you take them down.
15 Thank you.

16 MR. KOULIANOS: Based upon your personal
17 experience and personal knowledge in the
18 independent nonaffiliated windshield replacement
19 services market and as the owner of Glassco, does
20 the total prices listed on each of these 11
21 invoices reflect a fair market, reasonable and
22 usual and customary price in the geographic area
23 where the services were provided for the years --

24 MS. BUZA: Same objection.

25 THE COURT: He asked -- but please let him

1 finish his question before you make your objection.

2 MS. BUZA: I apologize, Your Honor. It's hard
3 to tell when the pauses are the end, but I'll wait
4 for a longer period of time, but I do apologize.
5 It's just hard to tell.

6 THE COURT: Watch the screen so that when you
7 know when he stops talking, it's highlighted.

8 MR. CAVALLARO: We can barely see Plaintiff's
9 counsel, Your Honor.

10 MR. PRIETO: I'm not sure if that has anything
11 to do with my question.

12 MR. CAVALLARO: To be able to see when you're
13 done speaking -- I'm sorry, but I mean, all of us
14 are face-to-face and I can barely make out
15 Plaintiff's counsel, vaguely.

16 THE COURT: But you have to speak -- it's like
17 the voices, the boxes are highlighted when someone
18 talks.

19 MR. CAVALLARO: I'll look at it.

20 THE COURT: So I'm referencing -- when you're
21 looking at the computer screen like mine is
22 highlight in yellow. That's a note that I --

23 MR. CAVALLARO: I'm okay.

24 THE COURT: If you're looking at the screen,
25 you're able ascertain who is talking. That's what

1 I'm referencing. It's going to be helpful when the
2 objections are made when the question comes to an
3 end --

4 MR. CAVALLARO: Thank you, Your Honor.

5 THE COURT: -- and then the witness can pause
6 for a second.

7 All right. So go ahead with the question,
8 pause, objection and then I will rule. Go ahead.

9 BY MR. KOULIANOS:

10 Q. Based upon your experience, your personal
11 experience and personal knowledge of the independent
12 nonaffiliated services market and your knowledge as the
13 owner of Glassco, does the total price listed on each of
14 the 11 invoices we are here about today reflect a fair
15 market, reasonable and usual and customary price in the
16 geographic area where the services were provided for the
17 year, make and model of the vehicle listed therein?

18 A. Yes. There is nothing unreasonable.

19 MS. BUZA: Objection.

20 THE COURT: Go ahead.

21 MS. BUZA: Improper opinion.

22 THE COURT: When there's an objection, sir,
23 just hang tight and just give us a moment so that I
24 can address that objection.

25 THE WITNESS: I'm sorry, Your Honor. I didn't

1 hear it.

2 THE COURT: It's okay. I understand. I don't
3 expect you to understand all the rules, as far as
4 it's difficult to control to be in Zoom.

5 All right. Your objection is noted.

6 Anything else, Ms. Buza? Improper opinion is
7 the basis of your objection?

8 MS. BUZA: Correct, Your Honor.

9 THE COURT: All right. Overruled.
10 You can answer.

11 THE WITNESS: Yes, there is nothing
12 unreasonable about these prices.

13 BY MR. KOULIANOS:

14 Q. Based upon your experience and knowledge,
15 personal experience and personal knowledge in the
16 independent nonaffiliated windshield replacement
17 services market, and your knowledge, training and
18 experience as the owner of Glassco, does each of the
19 component prices listed on each of the invoices at issue
20 today reflect competitive, fair market, reasonable,
21 usual and customary prices in the geographic area where
22 the services were provide for the year, make and model
23 of the vehicles listed therein?

24 MS. BUZA: Same objection.

25 THE COURT: Overruled. You can answer.

1 THE WITNESS: Yes, they are.

2 BY MR. KOULIANOS:

3 Q. Since 2016 has Glassco negotiated an increase
4 in usual and customary pricing structure?

5 A. Yes, we had one price increase.

6 MS. BUZA: Objection.

7 THE COURT: Okay. What's the basis of the
8 objection?

9 MS. BUZA: Objection. Relevance, Your Honor.
10 We're concerned about 2016 with these cases.

11 THE COURT: Well, that's the price increase.
12 I know you made the argument prior.

13 But go ahead and put on the record why you
14 believe this price increase is significant,
15 counsel.

16 MR. KOULIANOS: Yes, Your Honor. Again we're
17 dealing with competitive pricing and evidence of
18 how the market will fluctuate to adhere to increase
19 pricing and the fact that Glassco has been in
20 business since 2016, has undergone only one price
21 increase and continues to sustain a high percentage
22 of payments in full from the majority of insurance
23 companies that they deal with, the overwhelming
24 majority of insurance companies that they deal
25 with.

1 And, conversely, Geico has always been and
2 will remain at the bottom of the barrel as far as
3 reimbursement rates pursuant to Mr. Bailey's
4 knowledge, training and experience in the market.

5 THE COURT: All right. Anything else, Ms.
6 Buza?

7 MS. BUZA: No, Your Honor.

8 THE COURT: I'm going to allow it. It's based
9 upon what the prevailing competitive price and
10 continued pricing is in 2016 onward, and locked
11 into the market and that it remains.

12 BY MR. KOULIANOS:

13 Q. Mr. Bailey, you confirmed that since 2016,
14 Glassco has negotiated one increase in it's usual and
15 customary pricing structure?

16 A. Correct.

17 Q. And when did that come into effect?

18 A. Approximately last summer, summer of 2019.

19 Q. Did Glassco maintain the exact same pricing
20 structure from the time it opened until mid 2019?

21 A. Yes, we did.

22 Q. And you previous testified that those are the
23 same rates that are at issue in the 11 invoices that we
24 are here about today which is 100 percent NAGS, \$90 per
25 NAGS' labor hour and \$94 per kits?

1 A. That's correct.

2 Q. With the addition of usual and customary
3 pricing for the \$150 per kits charged on Marks paid case
4 we reviewed?

5 A. Yes.

6 Q. What was the -- what is the difference in the
7 pricing structure that Geico -- Glassco now charges from
8 2019 moving forward?

9 A. We increased our labor by \$30 an hour.

10 Q. So Glassco currently charges 100 percent of
11 NAGS for the windshield part, \$120 for the NAGS labor
12 hour and \$94 for the kits?

13 A. That's correct.

14 Q. You previously testified that Glassco billed
15 100 insurance companies per year for windshield
16 replacement services, correct?

17 A. Yes.

18 Q. Since implementing the increase pricing
19 structure, approximately how many of those insurance
20 companies paid Glassco's full invoice amounts for
21 windshield replacement services?

22 MS. BUZA: Objection. Leading.

23 THE COURT: Well, we're all breaking up.

24 Did you get it, Arthur, the question?

25 THE COURT REPORTER: Well, right when she said

1 objection at the end, I got most of it. But if you
2 could repeat it, that would be nice.

3 THE COURT: One more time. I know this is
4 becoming redundant but it's really hard when you
5 all are breaking up and when you all make
6 objections and I don't hear anything after that.
7 So if you don't mind repeating it and then I'll
8 address the objection.

9 MR. KOULIANOS: Your Honor. I'm sorry.
10 Repeat the question.

11 THE COURT: Yes.

12 MR. KOULIANOS: Okay. No problem.

13 BY MR. KOULIANOS:

14 Q. Currently, after the increase in the pricing
15 structure implemented in mid 2019, approximately how
16 many insurance companies that Glassco billed always paid
17 their full invoice amount for windshield replacement
18 services?

19 A. Approximately 95 percent.

20 MS. BUZA: And, Your Honor, I'm going to
21 object to relevance to pricing and any testimony of
22 what insurance companies may or may not have paid
23 after 2016. It's just not relevant for our
24 purposes.

25 THE COURT: All right. I find that it's not

1 relevant. Sustained. Move on. Next question.

2 BY MR. KOULIANOS:

3 Q. Since you've been in the windshield
4 replacement industry, what company pays -- what
5 insurance company pays the least amount out of all the
6 insurance companies that Glassco does business with?

7 A. Geico.

8 MS. BUZA: Same objection. Relevance.

9 THE COURT: All right. This was asked and
10 answered. Let's move on.

11 MR. KOULIANOS: If I could have just a brief
12 movement, Your Honor.

13 Your Honor, I apologize. I need to backtrack
14 just for a brief moment to the demonstrative or
15 summary evidence that had the witness reference as
16 far as the amount billed, the amounts paid and the
17 amounts owed.

18 THE COURT: Fine. Go ahead.

19 MR. KOULIANOS: Thank you, Your Honor.

20 BY MR. KOULIANOS:

21 Q. Mr. Bailey, you've reviewed this demonstrative
22 earlier for you to establish the amount that are
23 remaining owed for each of the 11 invoices that are at
24 issue today; is that correct?

25 A. Yes.

1 Q. I'm just going to briefly review the amounts
2 billed and the amounts paid by Geico, just so we're
3 clear.

4 A. Okay.

5 Q. The first Case 16CC26608, the billed amount
6 was \$595.20. The amount paid was \$284.34; is that
7 correct?

8 A. Yes.

9 Q. 16CC29301, the billed amount was \$652.48. The
10 amount paid was \$305.03; is that correct?

11 A. Yes, it is.

12 Q. 16CC29315. The amount billed was \$845.48.
13 The amount paid was \$394.01; is that correct?

14 A. Yes, it is.

15 Q. 16CC31286. The amount billed was \$757.57.
16 The amount paid was \$364.32; is that correct?

17 A. Yes.

18 Q. Skipping to the next one. Case Number
19 16CC34756. The amount billed was \$671.96. The amount
20 paid was \$318.52; is that correct?

21 A. Yes.

22 Q. Case Number 16CC36273. The amount billed was
23 \$894.94. The amount paid was \$401.33; is that correct?

24 A. Yes.

25 Q. Case Number 16CC37057. The amount billed is

1 \$1,149.04. Amount paid is \$506.91; is that correct?

2 A. Yes.

3 Q. Case Number 16CC37082. Amount billed \$687.17.

4 Amount paid \$307.63; is that correct?

5 A. Yes.

6 Q. Case Number 16CC37125. Billed amount,

7 \$732.92. Paid \$349.75; is that correct?

8 A. Yes.

9 Q. Case Number 16CC39072. Amount billed \$693.31.

10 The amount paid \$314.56; is that correct?

11 A. Yes.

12 Q. Case Number 16CC000870. Amount billed is

13 \$1,041.81. Amount paid \$462.06; is that correct?

14 A. Yes.

15 MR. KOULIANOS: Your Honor, at this time, we

16 don't have anymore questions on director for the

17 witness.

18 I would ask pursuant to a pretrial stipulation

19 that we also move the respective policies into

20 evidence. Those are all located in Plaintiff's

21 Exhibit C.

22 MS. BUZA: That was a stipulation, Your Honor.

23 They are all certified copies.

24 THE COURT: All right. So C, Exhibit 1 --

25 MR. KOULIANOS: It would be Plaintiff's

1 Exhibit 1-C, 2-C, 3-C, etcetera, through 12-C, Your
2 Honor. Excluding 5-C, Your Honor.

3 THE COURT: They will be admitted, all into
4 evidence.

5 (Whereupon, Plaintiff's Exhibit's Numbers 1-C
6 through 12-C, excluding Exhibit 5-C, were admitted
7 into evidence.)

8 THE COURT: I'm just going to the clerk to
9 make sure she has these down.

10 Are you ready, Ms. Buza?

11 MS BUZA: Your Honor, can I have a brief
12 break?

13 THE COURT: Okay. What time is it now.

14 MS. BUZA: It's about 2:50.

15 THE COURT: Okay. About a 10 minute break?

16 MS. BUZA: Yes, ma'am. That would be great.
17 Thank you.

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. So the Plaintiff
20 introduced Plaintiff's 1, 2, 3, 4, 6, 7, 8, 9, 10,
21 11 and 12.

22 THE COURT: Are the Plaintiffs ready or not
23 ready.

24 MR. NALL: Your Honor, something happened with
25 the phone. We're dialing back in right now.

1 This is Mr. Joseph Nall, for the record.

2 THE COURT: Don't disconnect.

3 MR. NALL: We're putting the code in right
4 now.

5 THE COURT: Plaintiff's 1 through 11 minus
6 Number 5 for Adkins, are you moving those into
7 evidence?

8 MR. KOULIANOS: No. We've only moved into
9 evidence Exhibit's 1-A though 12-A, excluding 5.
10 And 1-C to 12-C, excluding 5.

11 THE COURT: All right. Are we ready to
12 proceed?

13 MS. BUZA: Yes, ma'am.

14 MR. KOULIANOS: Plaintiff's ready.

15 THE COURT: All right, Ms. Buza, you may
16 proceed with your cross.

17 MS. BUZA: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. BUZA:

20 Q. Good afternoon, Mr. Bailey.

21 A. Hi.

22 Q. You testified that Glassco's market is
23 throughout the entire State of Florida, correct?

24 A. Yes.

25 Q. And the vast majority of your business is

1 mobile replacements?

2 A. Correct.

3 Q. Does Glassco do repairs, too, or just
4 replacements?

5 A. Just replacements.

6 Q. In 2016 does Glassco have any employees, or
7 were they all independent contractors?

8 A. They were all independent contractors.

9 Q. And did those independent contractor do work
10 for any other glass shops, to your knowledge?

11 A. Not to my knowledge.

12 Q. Do you know if they did it or do you just not
13 know if they did or didn't?

14 A. I don't know. We have to give them enough
15 work or try too. But I don't believe that they did, no.

16 Q. Do you have any independent contractors that
17 were responsible for generating customers?

18 A. We have independent contractor that -- we call
19 them safety inspectors. And they find damage as does
20 everyone. As does I. You know, if I see a car with a
21 cracked windshield 12 midnight and I'm pumping gas, then
22 I will shine that person up.

23 Q. Okay. So they will go to like parking lots.
24 Do they go door to door? Is that what they do to
25 generate customers?

1 A. We do lease space. We had a keos in Sedano's
2 and a couple of other supermarkets where we paid them
3 rent monthly and were able to -- anywhere there are
4 cars, there's going to be damage.

5 Q. And I'm sorry, did you call them Safety
6 Inspectors?

7 A. Yes, ma'am.

8 Q. Okay. Are they told to tell any potential
9 customers that the windshield will be of no cost to them
10 if they had comprehension insurance coverage?

11 A. Yes.

12 Q. Do you know how many --

13 A. Zero deductible.

14 Q. I'm sorry.

15 A. Zero deductibles -- I'm sorry -- is the way
16 that it's explained.

17 Q. So does Glassco ever collect money from an
18 insured with comprehensive coverage for any reason?

19 A. No.

20 Q. Do you know how many glass shops operated in
21 the State of Florida in 2016?

22 A. No.

23 Q. Do you know how many windshield replacements
24 were done in the State of Florida in 2016?

25 A. No.

1 Q. How many windshield replacements does Glassco
2 do in 2016?

3 A. Approximately 2,500.

4 Q. For the 11 cases that we are here for today,
5 was your customer in those cases the Geico -- the Geico
6 insured?

7 A. I don't understand. Yes, the customer was the
8 Geico's insured. I'm sorry.

9 Q. Okay. And we are asking the Court to accept
10 that it was the insured person and not Geico that signed
11 the Assignment of Benefits, correct?

12 A. Yes.

13 Q. And that assignment was necessary because the
14 transaction was not directly with the insurance company,
15 correct?

16 MR. PRIETO: Objection, Your Honor. It's
17 Attorney Anthony Prieto. We've already been
18 through this with the standing argument, Your
19 Honor. They are get into standing again, and it
20 calls for a legal conclusion which has already been
21 decided. And by way of the Assignment of Benefits
22 that's already in evidence, this whole line of
23 questioning is irrelevant.

24 THE COURT: Ms. Buza, respond as to why it's
25 relevant.

1 MS. BUZA: Your Honor, I'm just trying to get
2 out the fact that the Assignment of Benefits is
3 between the shop and the insured and not between
4 the shop and Geico.

5 THE COURT: Then why don't you ask that
6 question.

7 MS. BUZA: Okay.

8 BY MS. BUZA:

9 Q. Mr. Bailey, the Assignment of Benefits at the
10 bottom of your work order, that is a contract between
11 you and the Geico insured, not you and Geico, correct?

12 A. As I understand it, there are three parties
13 involved. There's the insured that assigns their
14 benefits to us, and then the insurance company pays us
15 directly.

16 Q. But you don't deal with the insurance company
17 until after you've already had that signed with the
18 insured, correct?

19 A. Again, as I understand it, the insured -- our
20 insurance company is a party to the Assignment of
21 Benefits in that the Assignment of Benefits allows them
22 to pay us directly.

23 Q. Have you ever met any of the individuals
24 listed in Plaintiff's Exhibit 1-A through 12-A without
25 considering Exhibit 5-A?

1 MR. PRIETO: Objection, Your Honor. Attorney
2 Anthony Prieto. This has already been covered in
3 the voir dire that Geico did extensively. He did
4 not witness the signature and he was not there at
5 the time. This has already been asked and answered
6 extensively.

7 THE COURT: All right. Ms. Buza, we did go
8 over this in voir dire, so why is line of
9 questioning significant or relevant?

10 MS. BUZA: I can move on, Your Honor.

11 THE COURT: Thank you. The objection is
12 sustained.

13 BY MS. BUZA:

14 Q. Mr. Bailey, other than the payment --

15 MS. BUZA: I'm sorry, Your Honor.

16 THE COURT: Sustained, as to the objection so
17 that the record is clear.

18 BY MS. BUZA:

19 Q. Mr. Bailey, other than the payment that was
20 made my Geico in these 11 cases, has any other monies
21 been paid to this invoice either before or after it was
22 generated?

23 A. No.

24 Q. And that's true for all 11?

25 A. Correct.

1 Q. Hold on a second. I'm going to try to get
2 Exhibit 1-A on the screen share.

3 MR. GOAN: Melissa, this is Keith Goan.

4 Do you want me to share it for you?

5 MS. BUZA: Yes. If you could, that would be
6 great.

7 MR. GOAN: Not a problem.

8 MS. BUZA: I appreciate your professionalism.
9 It works when I practiced it, but now it looks
10 different now that I' actually doing it during
11 trial.

12 THE COURT: That's the way it always is.
13 Don't worry, we'll get it up.

14 MS. BUZA: I promise I practiced.

15 THE COURT: We have our expert resident.

16 MS. BUZA: We may hire you for some other
17 trials.

18 MR. GOAN: There we go.

19 MS. BUZA: Okay, great.

20 MS. BUZA:

21 Q. So we're looking at Exhibit 1-A, and you
22 recognize that, right, Mr. Bailey?

23 A. Yes.

24 Q. Do you see where it says the loss date on this
25 document?

1 A. The what date?

2 Q. The loss date.

3 A. Oh, the loss -- the date of loss, yes.

4 Q. Do you have any personal knowledge that that
5 loss date is correct?

6 A. When we're speaking to Geico, when the safety
7 inspector and the policy holder call into Geico, Geico
8 acts for the date of loss. And if the insured cannot
9 remember the date of loss --

10 Q. I'm sorry to cut you off. I don't want to
11 elicit any hearsay of your conversations with Geico.

12 I'm just asking if you have personal knowledge
13 of the accuracy of that loss date on this invoice.

14 MR. KOULIANOS: And, Judge, if she's going if
15 ask the question, we'd ask that she allow our
16 witness to answer the question. And then if he
17 answers the question that elicits hearsay, then
18 maybe Geico should rephrase their questions.

19 THE COURT: All right. He does need to
20 answer. Let him answer the question and we'll
21 determine whether or not it is based on hearsay.

22 MR. PRIETO: And then just -- and I apologize,
23 Judge. And just so we're clear, anything that
24 Geico say in this case is not hearsay. They are a
25 party opponent, Judge. So it's all admissible what

1 Geico has told my client, and what Geico says.

2 THE COURT: Let's find first what he's -- what
3 his answer is.

4 MR. PRIETO: Yes, ma'am.

5 THE COURT: Go ahead. You can answer.

6 THE WITNESS: This is not conjecture. This is
7 a statement of fact. When the insured cannot
8 remember the date of loss, Geico tells them to use
9 the date that it was called in. They say, "let's
10 just use today."

11 So presumably that date of loss was the date
12 that they called in and setup the claim. And they
13 put that date there based on the instructions that
14 they were given by Geico.

15 BY MS. BUZA:

16 Q. And who would have been privy to that
17 information? Is it Debbie, who it says, "taken by" at
18 the top?

19 A. Debbie is privy to that information? I don't
20 understand.

21 Q. That's what I'm asking is, would she be the
22 one to get this information that puts that in the system
23 that generates this invoice?

24 A. Oh, no. No. You probably don't remember, but
25 the sale's rep just below that above where it says,

1 "billed to," it was Jimmy Ogondo (spelling). As I
2 understand it "Abrir" is Spanish for Jimmy. And so
3 Jimmy was the safety inspector.

4 Q. So he would have gotten that information and
5 put it in the system?

6 A. He would have called in with Jesus Bazan and
7 set up the claim, and the date of loss would be given by
8 Geico if Jesus could not remember when the date of loss
9 occurred.

10 Q. But you were not part of that conversation,
11 correct?

12 A. Correct.

13 Q. This first page that we have pulled up right
14 now, Exhibit -- Plaintiff's Exhibit 1-A is the first
15 page of 1-A. If we could just scroll down just a little
16 bit. Is this the only page of Plaintiff's Exhibit 1-A
17 that has the amount charged the insurance company?

18 A. Yes.

19 Q. Does the insured ever see this page?

20 A. No.

21 Q. Is the insured ever told of the amount that
22 you intend on charging the insurance company when they
23 have comprehensive insurance coverage.

24 A. Well, at the time the claim is set up, we
25 wouldn't have a total amount. The invoice is generated

1 after the insulations is complete and then it's sent
2 directly to Geico. No one sees it except the person
3 faxing it and Geico.

4 Q. Now, the fact that this first page wasn't
5 shown to the insured, and it's the only page in Exhibit
6 A that has pricing information, is that the same for
7 Exhibit 2 through 12-A, as well?

8 A. Yes.

9 Q. So neither -- none of those insured ever saw
10 the page with pricing?

11 A. Correct.

12 Q. Do you see where it says the amount of labor
13 hours that this particular job took?

14 A. Yes.

15 Q. And that's 2.3; is that correct?

16 A. Yes.

17 Q. Have you ever done a windshield replacement
18 yourself?

19 A. No, ma'am.

20 Q. Do you have any former training in how to
21 conduct a windshield replacement?

22 A. I have been part of testing adhesive. We've
23 looked at several types of adhesive. I just haven't
24 been around it. They occasionally do replacement at the
25 shop there. So I've seen it done, you know, 100 times.

1 Q. And I think you testified to this on direct,
2 but just to clarify. You don't know if this particular
3 job took 2.3 hours, correct?

4 A. 2.3 hours was not -- is not the times that
5 is -- that is -- when the installer is replacing the
6 windshield, it includes the time to get materials,
7 everything involved, and that 2.3 hours is what is
8 specified as an average for that vehicle by NAGS.

9 Q. So that's -- and that's auto populated by your
10 software?

11 A. Correct.

12 Q. So what you just described should have taken
13 less than 2.3 hours, right?

14 A. No. What I described took more than 2.3
15 hours.

16 Q. But you don't know for sure?

17 A. Correct.

18 Q. Are you allowed to manipulate the values in
19 your software?

20 A. I'm sorry. Repeat the question, please.

21 Q. Are your allowed to manipulate any of the
22 values in the software when it generates an invoice like
23 this?

24 A. We would -- we would be able to put a discount
25 in there, if that's what you mean, the column

1 immediately to the right of unit pricing.

2 Q. Okay. But if you were -- if you were -- could
3 you adjust the 2.3 hours to like 1.3 hours, could you do
4 that and have it adjust the price?

5 A. I don't believe so. I don't know how to do
6 it.

7 Q. Do you have any experience with the software,
8 or is it someone else that inputs it in the system?

9 A. I have intimate experience with the software.

10 Q. So when it says the windshield list price as
11 far as the center of the document?

12 A. Um-hum. Yes.

13 Q. It estimated NAGS pricing for this particular
14 point in time?

15 A. I believe at that moment in time that was the
16 NAGS price.

17 Q. Could you up the check as NAGS update.

18 A. Occasionally we do. But the reason that we
19 pay for this -- we pay monthly for this subscription and
20 it's not cheap but we do that in order that they
21 maintain it for us.

22 Q. So you're relying on the software to properly
23 update as NAGS updates?

24 A. By in large.

25 Q. Do you know how many of the customers in the

1 cases we are here for today were structured by Glassco

2 MR. PRIETO: Objection, Your Honor.

3 Relevance. Attorney Anthony Prieto.

4 THE COURT: Sustained. Move on.

5 BY MS. BUZA:

6 Q. Do you ever receive a document via fax or
7 e-mail from Geico via Safelite?

8 A. No. But we get documents from Safelite all
9 the time.

10 Q. Do these documents have Geico information on
11 it?

12 A. Do you have an example of what you're talking
13 about? I can't find it in my exhibits.

14 Q. Sure. If I can get the screen share to work.
15 I mean, if I showed you a document, would it
16 help to refresh your recollection if you saw one?

17 A. Yes.

18 Q. One second. Let me see if I can --

19 MS. BUZA: I'm sorry, Your Honor, it's on my
20 desk top. I just don't know why the share screen
21 isn't recognizing what's on my desk top.

22 THE COURT: All right. Do you want to go to
23 the next question. You have two other attorneys
24 who can try to figure that out.

25 MS. BUZA: Yes, ma'am.

1 Okay. Thank you John?

2 BY MS. BUZA:

3 Q. Can you see that, Mr. Bailey?

4 A. Yes, I can see it.

5 Q. Does that document look familiar to you?

6 A. I've seen these types of documents before,
7 yes, it's from Safelite.

8 Q. Okay. And does it list any Geico information
9 on there?

10 A. If you're talking about the pricing, that's
11 not my pricing. That's Safelite's pricing.

12 Q. Right. I'm talking about the Geico pricing
13 towards the middle of the document where it says
14 "windshield list price."

15 A. No. This is the pricing that Safelite pays.
16 The give million of jobs a year. So I don't know what
17 their situation is with Geico, but this is not my
18 pricing.

19 Q. Do you receive these documents for Geico cases
20 that you have?

21 A. Yes.

22 Q. Do you receive these prior to completing the
23 work with insurance for Geico?

24 A. Not always. Oftentimes this document will
25 come two or three days after the installation.

1 Q. Do you not need the referral number at the top
2 before you began installation?

3 A. We already have the referral number. Is given
4 to us on the phone when the claim is set up.

5 Q. So is it your testimony that none of these 11
6 cases, you didn't receive this particular document prior
7 to completing the work?

8 A. No. That's not my testimony.

9 Q. Okay. So, in some of these cases, you
10 received this particular document prior to completing
11 the work, correct?

12 A. I don't know.

13 Q. When you receive this document, do you ever
14 call Geico to try an negotiate the charges?

15 A. Negotiate the pricing.

16 Q. Yes, sir.

17 A. Our pricing is negotiated when 95 percent of
18 the companies that I deal with are paying me.

19 Q. I'm referring specifically to Geico. Do you
20 ever reach out to Geico to try an negotiate this
21 particular payment amount?

22 A. I don't believe that this particular payment
23 amount was negotiated, no.

24 Q. And is that true for all 11 cases that we're
25 hear for today.

1 A. I believe so.

2 Q. And I'm sorry. I have to backtrack just a
3 little bit.

4 When you were talking about the software and
5 how all the hours autopopulate. I don't think I cleared
6 this up. But was your testimony relating to all of that
7 the same for all 11 cases?

8 A. I'm sorry. Can you repeat the question?

9 Q. Sure. I can be more specific.

10 So we discussed earlier about how for the
11 Bazan case, for example, you didn't know whether the job
12 actually took the 2.3 hours. It could have take
13 different amount but that's just where the system
14 autopopulate. Is that the same for the other 10 cases?

15 A. That's right. That number provide by FlatPac,
16 the software we used to do the invoicing.

17 Q. So you don't know how long any of these jobs
18 actually took that we're here for today.

19 A. The 2.3 -- and there's a lot more. As you I'm
20 sure know that, you know, filing a pleading is a lot
21 different than preparing a pleading. There's a lot more
22 that goes into it than just the time that's spent as
23 clients replacing the windshields. There's quite a bit
24 more that goes into it.

25 Q. Okay. I'm sorry. Was that a yes, that you

1 don't know how long any of these jobs actually took to
2 complete?

3 MR. PRIETO: Objection, Your Honor. Attorney
4 Prieto. Relevancy. Asked and answered.

5 THE COURT: It was answered. He answered it.
6 So the next question. Sustained as to asked and
7 answered.

8 MS. BUZA: I'm sorry, Your Honor. I just
9 didn't hear. I just wanted to make sure it was out
10 there.

11 Can we, Mr. Goan, if you don't mind, pull up
12 Exhibit 12-A.

13 Thank you.

14 BY MS. BUZA:

15 Q. Can you see that, Mr. Bailey?

16 A. Yes.

17 Q. Now, would this invoice be the highest amount
18 of all of the invoices?

19 A. 1,041. I need to look at the summary again.

20 MS. BUZA: If we could pull up the summary
21 just to refresh his recollection.

22 THE WITNESSSS: No, it is not.

23 BY MS. BUZA:

24 Q. I mean, it's one of the highest; is that
25 right?

1 A. Yes. One of the invoices for D. Matz is
2 \$1,149.04.

3 Q. Going back to 12-A. I think you testified
4 that this had a high modulus adhesive; is that correct?

5 A. Yes.

6 Q. And that's something that autopopulates as
7 well, right?

8 A. Yes.

9 Q. Do you know if a high modulus adhesive was
10 used in this particular job for sure?

11 A. Yes, it was. And that is our usual and
12 customary price for high modulus adhesive.

13 Q. Would you have provided that particular part
14 to the installer that did the job?

15 A. He would have used that. There are certain
16 things which are specific to certain vehicles. And he
17 would have used that adhesive based on what is required
18 for the vehicle.

19 Q. So you're trusting that the installer used
20 that particular part on that particular installation?

21 MR. PRIETO: Objection, Your Honor. Asked and
22 answered.

23 THE COURT: I think it was answered.

24 BY MS. BUZA:

25 Q. Mr. Bailey, you said you created Glassco in

1 2015; is that correct.

2 A. I formed the corporation, yes.

3 Q. Okay. What did you do prior to forming that
4 corporation in 2015?

5 A. Are you asking what -- what are you asking
6 specifically? Did I have a job before --

7 Q. Yes.

8 A. -- before Glassco?

9 Q. Yes.

10 A. Yes, I did. I was in the IT field.

11 Q. And that stands for Information Technology?

12 A. That's right.

13 Q. Did that have anything to do with windshield
14 replacement?

15 A. Part of how -- yes. I mean I did some work
16 for a glass company, yes.

17 Q. IT work?

18 A. Yes.

19 Q. What kind IT work?

20 A. Networking. Network administration.

21 Q. Could you explain that a little bit for me,
22 what that entails?

23 A. Yes.

24 MR. PRIETO: Your Honor, I'm going to object
25 to this line of questioning. It's highly

1 irrelevant. We're here about competitive pricing.

2 THE COURT: All right. Ms. Buza, how is his
3 prior line of work in IT related matters relevant?

4 MS. BUZA: Your Honor, I'm just trying to get
5 the background and knowledge based on what he's
6 testified on direct about how he came up with his
7 prices.

8 MR. PRIETO: That's another point, Your Honor.
9 It wasn't covered. Anything prior to him creating
10 Glassco was not covered during his direct. His
11 knowledge, training and experience points directly
12 to his creation, maintenance and operation and
13 ownership of Glassco.

14 THE COURT: All right. Ms. Buza, I'll let you
15 inquire on whether anything in his prior job,
16 anything that is really based on his knowledge in
17 formulating what he believes is their prevailing
18 competitive price. But it -- really you're in that
19 area boarding on what's really not relevant. So
20 one question depending on what that means.

21 BY MS. BUZA:

22 Q. Mr. Bailey, can you please describe your
23 experience prior to performing Glassco that informed you
24 about pricing related to windshields?

25 A. Prior to Glassco, I didn't have anything that

1 informed me of pricing -- that informed me of pricing.
2 I wasn't an IT technician. So I set up networks and
3 twitches and routers and that type of thing.

4 Q. Okay. You also -- you testified on direct
5 that you have an officer manager that previously worked
6 for other glass companies; is that correct?

7 A. Yes.

8 Q. Do you know what companies those were?

9 A. Offhand, no.

10 Q. I believe you also testified that in 2016 you
11 billed about 100 insurance companies; is that correct?

12 A. Approximately, yes.

13 Q. And that about 95 percent of those companies
14 paid your invoice in full in 2016; is that correct?

15 A. Yes.

16 Q. Of those 95 percent of companies that paid
17 your invoice in full in 2016, did those companies pay
18 your invoice in full 100 percent of the time?

19 A. Or close to it. Are you talking about the
20 ones that paid me on time other than Geico who didn't?

21 Q. The insurance companies that make up that 95
22 percent figure that you testified to, did they pay your
23 invoice in full and -- did they pay every single invoice
24 you submitted to them in full in 2016?

25 A. The vast majority of the time.

1 Q. So at least 50 percent of the time?

2 A. At least.

3 Q. But you don't have the documents in front of
4 you to be sure, correct?

5 A. Correct.

6 Q. Can you name some of those insurance companies
7 that paid your invoice in full in 2016?

8 A. Honestly, I -- there's a whole list of them.
9 There are about 100 of them, actually. So, other than
10 the ones that didn't pay me, and I mean that's a much
11 shorter list.

12 Q. So you said there are about 100 that pay your
13 invoice in full?

14 A. Yeah, that's an approximation.

15 Q. But I thought you said that you dealt with
16 approximately 100 insurance companies total in 2016?

17 A. Just to be clear, what I said was we dealt
18 with about 100 insurance companies of which 95 paid our
19 usual and customary pricing.

20 Q. But if the whole 100 paid your invoice in
21 full, wouldn't it be 100 percent of insurance companies
22 paid your invoice in full?

23 MR. PRIETO: Your Honor, objection.

24 Ms. Buza is now badgering the witness. He's
25 answered this question at least a handful of times

1 on direct and cross.

2 THE COURT: Ms. Buza, this is getting
3 argumentative. The testimony really speaks for
4 itself.

5 MS. BUZA: Yes, ma'am.

6 THE COURT: Next question.

7 MS. BUZA: Yes, ma'am. Could I have just a
8 few minutes with co-counsel, Your Honor?

9 MS. BUZA: We're ready, Your Honor.

10 THE COURT: Go ahead. Do you have any
11 additional questions.

12 MS. BUZA: Yes, ma'am, Your Honor, just a few.

13 THE COURT: Go ahead.

14 BY MS. BUZA:

15 Q. Mr. Bailey, you testified that in 2016, you
16 about 2,500 windshield replacements; is that correct?

17 A. That's approximately.

18 Q. And how much -- what percentage of that number
19 would you approximate had invoices paid in full?

20 A. I can't even begin to estimate. I don't have
21 the information.

22 Q. Okay. I believe on direct you testified that
23 you negotiated a price increase after 2016; is that
24 correct?

25 A. Yes.

1 Q. Who were you negotiating that with?

2 A. Again, to be clear, the negotiation was
3 completed when I got paid for the invoices that I sent
4 out.

5 Q. So your invoices being paid caused you to
6 increase your prices; is that correct?

7 A. If I go into a supermarket and I buy a gallon
8 of milk and I give the clerk \$5 and walk out the door
9 and he except it, a negotiation has been completed.

10 THE COURT: Okay. Answer the question,
11 please.

12 THE WITNESS: Could you please ask the
13 question again.

14 THE COURT: And don't ask counsel any
15 questions. I want you to answer the question
16 strictly without any retort. Go ahead.

17 THE WITNESS: Could you --

18 THE COURT: Ms. Buza, ask one more time, and
19 the witness will not direct any questions to any of
20 the attorneys.

21 Go ahead, Ms. Buza.

22 BY MS. BUZA:

23 Q. Did your invoices, being paid in full in 2015,
24 cause you to increase your prices after that?

25 A. The fact that the invoices were paid is the

1 negotiation for the price increase.

2 Q. Do you purchase the windshield glass for these
3 replacements that Glassco does?

4 A. Yes. Our business purchases them, Glassco.

5 Q. I mean, do you know how much they are
6 purchased for?

7 MR. PRIETO: Your Honor, I'm going to object
8 into this line of questioning before we even get
9 there. Geico looks to be going into costs again,
10 where Your Honor has already ruled that that's not
11 relevant.

12 The witness do not reply upon his costs and
13 he had said it was his usual and customary prices
14 in 2016 or the present. And moreover the
15 information is protected primary information for
16 the business.

17 THE COURT: All right. Ms. Buza, why is it
18 relevant now.

19 MS. BUZA: And, Your Honor, just for the
20 record, I have the same argument as the prior
21 witnesses. The Plaintiff in its brief talked about
22 the Broad Evidence Rule, and I believe these
23 questions are geared toward a subject covered under
24 the Broad Evidence Rule and the Plaintiff intends
25 to argue that in this case. I think I should be

1 able to go into questions related to that.

2 THE COURT: All right. I don't know what they
3 intend to argue once again -- that was again not
4 presented to the Court. You know, as it relates to
5 the cost and whether or not he took the cost into
6 consideration, because that would be in his pricing
7 in determining whether or not it's the prevailing
8 competitive price. So it's not relevant. So the
9 same ruling as before.

10 MS. BUZA: Thank you, Your Honor. I have no
11 further questions for this witness.

12 THE COURT: All right. Any redirect.

13 MR. KOULIANOS: Yes, Your Honor. If I may
14 have just a very, very quick moment.

15 THE COURT: Go ahead.

16 BY MR. KOULIANOS:

17 Q. Mr. Bailey, your usual and customary prices
18 was developed as a product of negotiating in the
19 competitive market; is that correct?

20 A. Correct.

21 Q. That does not mean that your prices aren't
22 negotiable, correct?

23 A. Correct.

24 Q. Ms. Buza referenced a Safelite work orders
25 with some pricing parameters on it. Notwithstanding

1 whether Glassco received that document for any
2 particular job, it doesn't mean that you're not
3 negotiating because you don't adhere to their pricing
4 schedule; is that correct?

5 A. Yes. I wouldn't negotiate with Safelite.

6 Q. In fact, you don't negotiate with any
7 insurance company; is that correct?

8 A. Correct.

9 Q. Your negotiation takes place in setting the
10 pricing; is that correct?

11 A. Yes.

12 Q. And your negotiations occur when you bill the
13 insurance companies on behalf of the insured customers
14 for comprehensive insurance benefits and in turn receive
15 payment in full of those usual and customary prices; is
16 that correct?

17 A. Yes, it is.

18 Q. Has Geico ever challenged the amount of NAGS
19 hours reflected on any invoice submitted by Glassco?

20 A. Never.

21 Q. And that is the same for 2016?

22 A. Yes.

23 Q. Did Geico challenge the amount of NAGS hours
24 for any of the 11 invoices that we're hear about today?

25 A. No.

1 Q. In fact, Geico pays the same amount of NAGS
2 hours but instead pays it's lower hourly rate; is that
3 correct?

4 A. Yes, it is.

5 Q. And you understand that hourly rate to be \$40
6 per hour?

7 A. At the time, I believe it was 35. It could
8 have been -- no, 35 I believe in 2016 but that's an
9 approximation.

10 MR. KOULIANOS: That's all from the Plaintiff,
11 Your Honor.

12 THE COURT: All right. Thank you, sir. You
13 may be --

14 MR. KOULIANOS: Your Honor, May Mr. Bailey be
15 excused?

16 THE COURT: Yes. You may be seated with your
17 attorney. You can go back to your seat.

18 Mr. Prieto, who do you have as your next
19 witness?

20 MR. PRIETO: Our next witness is Mr. Barrett
21 Smith. He's our expert.

22 THE COURT REPORT: Sorry, Judge. I can hear
23 you.

24 MR. PRIETO: Judge, I'm sorry, you broke up on
25 that one.

1 THE COURT: And then that will probably take a
2 couple of hours between direct and cross?

3 MR. PRIETO: I believe so, Your Honor. Yes.

4 THE COURT: Do you want to start Mr. Barrett
5 tomorrow. I don't want to start him today and then
6 have to finish tomorrow.

7 What are your thoughts?

8 MR. PRIETO: I agree with that, Your Honor.
9 Plaintiff agrees with that. We'd like to start and
10 finish all in the same time.

11 THE COURT: Ms. Buza.

12 MR. CAVALLARO: We'll leave it to the Court's
13 discretion.

14 THE COURT: All right. So we are going to
15 break for today. We're going to start again
16 tomorrow at 9:00 in the morning.

17 Is there anything we need to visit or discuss?

18 MR. KOULIANOS: Judge, you're breaking up.

19 THE COURT: Is there anything else that we
20 need to discuss?

21 MR. CALDEVILLA: Your Honor, Dave Caldevilla.
22 I just wanted to let you know that I have an oral
23 argument tomorrow morning. We're not asking for a
24 continuance or anything. I just want you to know
25 when you don't see my smiling face on the Hollywood

1 squares, that I will be zooming down the hall with
2 the Second DCA. I'll be back around 10:30 to join
3 you again.

4 MR. CAVALLARO: We have no objection to that.

5 MR. PRIETO: And, Judge, Attorney Prieto. For
6 purposes of timekeeping for tomorrow, do we have
7 any idea if Geico's going to be calling a witness
8 or not.

9 THE COURT: Geico.

10 MR. CAVALLARO: Your Honor, we may be calling
11 Susanna Eberling. It's not 100 percent, but I
12 would anticipate that there would be a little
13 questioning of Ms. Eberling.

14 THE COURT: So that's a yes?

15 MR. CAVALLARO: Yes.

16 THE COURT: And so does that answer your
17 question, Mr. Prieto?

18 MR. PRIETO: Yes, ma'am.

19 THE COURT: So we have Eberling and we have
20 your expert tomorrow?

21 MR. CAVALLARO: Yes, ma'am.

22 THE COURT: All right. Thank you all, and
23 we'll see you tomorrow morning at 9:00 in the
24 morning.

25 MR. CAVALLARO: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 MS. BUZA: Thank you, Your Honor.

3 MR. PRIETO: Thank you, Judge.

4 (Whereupon, the proceedings were recessed at
5 approximately 4:00 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 HILLSBOROUGH COUNTY)

4
5 I, Arthur Roberts, Court Reporter, hereby certify
6 that I was authorized to and did stenographically
7 report the foregoing proceedings, and that the
8 transcript, pages 4 through 245, is a true and correct
9 record of my stenographic notes.

10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties,
13 nor relative or employee of such attorney or counsel
14 connected with the action, nor am I financially
15 interested in the action.

16
17 Dated this 27th day of August, 2020.

18
19
20 Arthur Roberts
21 Arthur Roberts, Court Reporter
22 Notary Public
23
24
25

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

GLASSCO, INC., aao. J. Bazan,	Case Nos. 16-CC-026608
GLASSCO, INC., aao. I. Lamboy,	16-CC-031286
GLASSCO, INC., aao. R. Camagho,	16-CC-029315
GLASSCO, INC., aao. B. Barnett,	16-CC-029301
GLASSCO, INC., aao. S. Adkins,	16-CC-034403
GLASSCO, INC., aao. C. Beauford,	16-CC-034756
GLASSCO, INC., aao. D. Tanoo, et al,	16-CC-036273
GLASSCO, INC., aao. D. Matz,	16-CC-037057
GLASSCO, INC., aao. J. Kevins,	16-CC-037082
GLASSCO, INC., aao. N. Joseph,	16-CC-037125
GLASSCO, INC., aao. A. Maldonado, and	16-CC-039072
GLASSCO, INC., aao. C. Marks,	16-CC-000870

Plaintiff, Division: M

GEICO GENERAL INSURANCE COMPANY,

Defendant.

TRANSCRIPT OF PROCEEDINGS
(Volume 2 of 2)

TAKEN BEFORE: THE HONORABLE MIRIAM VALKENBURG

DATE TAKEN: August 18, 2020

TIME: 9:00 a.m. - 3:35 p.m.

PLACE: Zoom-Edgecomb Courthouse
800 East Twiggs Street
Tampa, Florida

REPORTED BY: Arthur J. Roberts
Official Court Reporter
Notary Public
State of Florida at Large

Anthem Reporting, LLG, Suite 101
101 S. Franklin St, Tampa, Florida 3360

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Are we ready to
3 proceed?

4 MR. CALKIN: Judge, Chris Calkin for the
5 record.

6 As a preiliminary matter, I know that you've
7 already ruled on the Daubert issues, and Mr.
8 Smith's background and his testimony today has
9 already been -- it should be addressed in your July
10 27th, 2020 Order on denying the Defendant's amended
11 motion to preclude Plaintiff's expert witness and
12 Memorandum of Law.

13 You went into pretty significant detail as to
14 Mr. Smith's qualification as an expert as well as
15 his -- the basis of his opinion.

16 So I didn't know if you needed me to go into
17 his background. If Defense counsel was willing to
18 stipulate to his background, so we could just enter
19 right into the opinion testimony.

20 THE COURT: That's my question. So why don't
21 you all think about that. I have a slight
22 emergency and I'll be right back.

23 MR. CALKIN: Thank you, Your Honor. We should
24 have a quick response.

25 THE COURT: Yes, go ahead and think about it,

1 talk about it. I'll be right back.

2 (Whereupon, a recess was taken.)

3 THE COURT: Do you stipulate to his
4 background? Anything from the Defense?

5 MR. CAVALLARO: Your Honor, we -- we're going
6 to start by saying that we understand the Court had
7 already at the June 17, 2020 Daubert hearing that
8 Mr. Smith is qualified as an expert in this case.
9 We, however, maintain those same objections to his
10 expertise that were raised at the hearing.

11 And if the Court would just take notice of
12 that June 17th hearing, then we're prepared to
13 reserve until cross as to the basis for his
14 opinion.

15 THE COURT: Okay. The Court will take notice
16 of your objection from June 17th at the Daubert
17 hearing as it relates to his qualifications and
18 expertise in the area of glass, glass replacement.

19 Let me look at -- let me find my Order just to
20 make sure I have them -- the brief correct.

21 MR. CAVALLARO: I believe, Judge, the end of
22 the transcript was ordered, too. And if need be,
23 we can order that transcript from hearing so it's
24 all there.

25 THE COURT: Okay. All right.

1 Anything else, Mr. Calkin, as it relates to
2 the expert witness?

3 MR. CALKIN: No. As long as his background
4 information is being stimulated to, the only thing
5 that we request is that Your Honor -- well, at this
6 point we will offer, the Plaintiff will offer
7 Mr. Smith as the expert in pricing and evaluation
8 of automobile repairs including windshield glass
9 replacement and installation. So if Your Honor
10 will accept him as that witness, we can move on to
11 his opinion testimony.

12 THE COURT: Yes, I previously did accept him,
13 his expertise in pricing and evaluation. So based
14 upon my prior finding -- is that okay,
15 Mr. Cavallaro?

16 MR. CAVALLARO: Just that we're not
17 stipulating to his expertise. Just so that word
18 doesn't trip us up. We have no objection to the
19 Court taking Notice of that Hearing and our
20 objections at that hearing. But just for the
21 record purposes.

22 THE COURT: No. No. We understand. There
23 are stipulations.

24 MR. CAVALLARO: Okay.

25 THE COURT: However, you don't have an

1 objection, yes, so --

2 MR. CAVALLARO: Thank you.

3 THE COURT: You're welcome and I understand
4 your concerns.

5 All right. Anything else that we need to put
6 on the record before we start?

7 MR. KOULIANOS: So, Judge, just to be clear,
8 you are qualifying Mr. Smith as an expert, correct?

9 THE COURT: Yes. I previously found that he
10 qualifies pursuant to the Daubert hearing as an
11 expert in pricing and evaluation of windshield
12 replacement -- windshield repair, yes. That is my
13 prior findings.

14 So he is qualified as an expert. The Defense
15 is not stipulating to it. I understand that. So
16 we don't need to go through his expertise.

17 MR. CALKIN: Okay, very well.

18 With him today, he has brought Exhibit --
19 Plaintiff's Exhibit 13. A, B and C are attached.

20 If Mr. Goan can hear my voice, I don't see him
21 on the screen, but to be able to have that
22 available for screen sharing.

23 THE COURT: And Plaintiff, I have it in front
24 of me. Plaintiff's 13-A.

25 All right. We need to place first the witness

1 under oath. And let's go back to a full screen,
2 and let's not forget that.

3 Before we begin, it's helpful if the parties
4 all once again introduce themselves for the benefit
5 of Mr. Roberts, the Court Reporter, just to make
6 sure that he knows who is present and who will be
7 speaking.

8 Also, just let us know who will be doing the
9 direct of the except.

10 MR. CALKIN: Your Honor, Chris Calkin on
11 behalf of Plaintiff will be directing the expert.

12 With me is Anthony Prieto, Mike Koulianos, the
13 Plaintiff representative, John Bailey, and the
14 witness Barrett Smith.

15 THE COURT: Thank you, Mr. Calkin.

16 Go ahead, Mr. Cavallaro.

17 MR. CAVALLARO: Your Honor, for Geico, I'll
18 be -- Nick Cavallaro will be doing the cross of
19 Mr. Smith.

20 And with me is Joseph Nall, Philistine Hamdan,
21 Melissa Buza, and Geico's Corporate Representative,
22 Susanna Eberling.

23 And there may be -- and sorry. That's who's
24 with us.

25 But just as far as the Exhibit 13, we'll refer

1 to the title of all the documents but we don't have
2 that Exhibit 13. So there may just be a different
3 order by which we address the documents.

4 THE COURT: Okay. Understand.

5 MR. CALKIN: Thank you.

6 THE COURT: You're welcome.

7 All right, Mr. Reed, if you could -- do you go
8 by Reed or Smith?

9 THE WITNESS: I go by Barrett Read Smith.

10 THE COURT: Barrett Read. All right, sir, if
11 you can raise your right hand, please.

12 Do you swear and affirm the testimony you will
13 give is the truth, the whole truth and nothing but
14 the truth?

15 THE WITNESS: Yes, ma'am, I do.

16 THE COURT: All right. Thank you.

17 Mr. Calkin, you may commence.

18 MR. CALKIN: Thank you.

19 Thereupon,

20 BARRETT REED SMITH,
21 a witness, called by the Plaintiffs, having been sworn
22 to tell the truth, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. CALKIN:

1 Q. Yes, Mr. Smith, would please state your name
2 for the record.

3 A. First name is Barrett, B-a-r-r-e-t-t. Last
4 name is Smith.

5 Q. Okay. The Judge has just qualified you and
6 accepted you as an expert in pricing and evaluation of
7 automotive repairs, including windshield glass
8 replacement and installation.

9 What did you bring with you today?

10 A. I brought the notebook entitled Volume 3,
11 Plaintiff's Exhibit Number 13, along with a copy of my
12 deposition transcript.

13 Q. Okay. In formulating your opinions in this
14 case, did you rely upon the same type of facts and data
15 that other experts in the filed of automotive repair
16 pricing and evaluation would reasonably rely upon.

17 A. Yes, sir.

18 Q. Are your opinions in this case based upon
19 sufficient facts and data?

20 A. Yes.

21 Q. Are your opinions in this case based upon
22 reliable principles and methods?

23 A. Yes.

24 Q. In formulating your opinions in this case, did
25 you apply the principles and methods in a reliable

1 manner to the facts of this case?

2 A. Yes.

3 Q. Please give us a general overview of how you
4 develop your opinions about windshield replacement
5 prices associated with these cases?

6 A. Well, to begin with, it would be my 40 plus
7 years of experience in the automotive repair industry
8 which included replacement of glass.

9 Also I did formal and informal surveys and put
10 the information together to determine what a fair and
11 reasonable price it was for a heavy market in that
12 period of time.

13 Q. And with regard to the Plaintiff's Exhibit 13
14 that you brought with you today, could you please
15 identify each of the documents that are identified
16 within Plaintiff's Exhibit 13 which includes 13-A, 13-B
17 and 13-C.

18 A. Yes. 13-A would be my CV, Curriculum Vitae.

19 And B would be the report that I did on this
20 case, my expert report.

21 And then behind that or within that same tab
22 is also a Excel Spreadsheet showing my findings from the
23 survey, a formal survey that was done in 2016.

24 And Tab C are copies. There's 12 copies of
25 the 11 cases at trial of the invoices from Glassco with

1 regards to services they performed.

2 Q. And there are 12 invoice. One of them is the
3 Adkins case that resolved, correct?

4 A. That's correct.

5 Q. And with regard to what you just testified,
6 specific to 2016, you conducted the surveys in 2018 and
7 then these are prices for 2016; is that correct?

8 A. Yes, sir. From December 30 -- oh, I'm
9 sorry -- January 1 through December 31st of 2016.

10 Q. And which cases were you here -- which cases
11 were you hired to testify about here today?

12 A. This is involving the Plaintiff Glassco.

13 Q. And what was the purpose of you drafting the
14 expert report identified within Plaintiff's Exhibit
15 13-B?

16 A. Again, in my expert report?

17 Q. Yes.

18 A. I was asked by your firm, the Christopher P.
19 Calkin Law, to perform research and provide an opinion
20 as to what the prevailing competitive pricing were for
21 glass services performed by nonaffiliated independent,
22 noncash transactions in the general Florida area.

23 Q. Now, as a point of clarification at the end of
24 the first page of your report, and I believe on the
25 second page as well, it states that the matters -- "the

1 matters at issue included 12 individual claims and
2 amounts relative to the same number of individual
3 billing invoices for services performed on dates of
4 installation between January 1st, 2016 through December
5 31st, 2017. Is that time frame accurate?

6 A. No, sir. It should have been December 2016,
7 December 31st.

8 Q. So it should have been from January 1st, 2016
9 through December 31st of 2016?

10 A. Yes, sir.

11 Q. Okay. Thank you for that clarification.

12 Could you please describe in detail the nature
13 of the prevailing competitive price dispute that you
14 evaluated for each of these 11 cases?

15 A. Well, basically, the dispute was due to the
16 service provider providing a service to their customers,
17 submitting their bills on behalf of the customer via
18 assignment of proceeds or assignment of benefits, and
19 whereas in return the insurance company paid them a
20 lesser amount of than what was due, and that's where the
21 conflict starts.

22 Q. In formulating your opinions in these cases,
23 what did you rely upon in order to properly evaluate the
24 facts and data regarding the windshield replacement,
25 pricing and evaluation?

1 A. Well, relied upon my -- again, my 40 plus
2 years of experience in the field of collision repair and
3 glass replacement, as well as being an insurance
4 adjuster, a claims adjuster, handling appraisals, an
5 umpire, dispute resolution issues with regards to glass
6 and my experience, training and knowledge.

7 Q. Are you familiar wholesale windshield glass
8 distributor pricing?

9 A. Yes, sir.

10 Q. And what is that?

11 A. Wholesale pricing is what a service provider
12 would purchase, their glass prices, and then they would
13 resale it to the customer.

14 Q. What are some of the companies that are
15 considered wholesale distributors or glass distributors?

16 A. Well, for glass component, it would be
17 Mygrant, Pilkington, PGW I think is in the local area
18 here.

19 THE COURT REPORTER: Could you say that again,
20 I'm sorry.

21 THE COURT: And can he speak up a little bit.
22 I'm having a hard time on my end hearing
23 everything. PGW --

24 THE WITNESS: Yes, ma'am. Yes, the three
25 distributors would be PGW, which is Pittsburgh

1 Glass Works, Mygrant and the Pilkington.

2 BY MR. CALKIN:

3 Q. In formulating your opinions in these cases,
4 did you rely upon any pricing information that you have
5 reviewed from wholesale glass distributors in the past?

6 A. Yes, sir.

7 Q. Okay. Which one?

8 A. Well, perhaps I misunderstood the question.
9 Repeat the question, please.

10 Q. Sure. In formulating your opinions in these
11 cases, did you rely upon the pricing information that
12 you've reviewed from wholesale windshield glass
13 distributors in the past?

14 A. Yes, in the past I've done research on all
15 three of those glass providers.

16 Q. And were you able to formulate an opinion
17 based up those prices?

18 A. Yes, sir.

19 Q. What are those prices?

20 A. Well, the prices are basically 100 percent of
21 NAGS. NAGS is the National Auto Glass Specification,
22 which kind of establishes part numbers through glass
23 component and the glass pricing.

24 Q. Do Pilkington, Mygrant and PGW have a baseline
25 of 100 percent of NAGS list price as one of their

1 prices?

2 A. Yes, sir.

3 Q. Does it go up 100 percent of NAGS' list price?

4 A. Some of them do, yes, sir. Pilkington
5 generally adopts the NAGS' pricing as their pricing.

6 Mygrant starts at the base price of 100
7 percent of NAGS, and they may be two -- 300 percent
8 higher in some of their pricing.

9 And then Pilkington, they can be 100 times
10 higher than NAGS.

11 Q. Pilkington or PGW?

12 A. I mean PGW.

13 Q. Are the suggested retail prices published by
14 these companies used and recognized by people in the
15 windshield replacement industry?

16 A. Yes, sir.

17 Q. Now, based on your 40 years experience in the
18 automobile repair industry, what do you know the term
19 "list price" to mean?

20 A. List price is generally the prices presented
21 to the end user or the consumer.

22 Q. In formulating your opinions in this case, you
23 created a summary of surveys from other glass shops
24 which is attached to your expert report; is that
25 correct?

1 A. Yes, sir.

2 Q. Would you please explain the summary to the
3 Court.

4 A. Yes, sir. The summary was that the survey
5 was --

6 MR. CALKIN: Hold on -- hold on one second.

7 Just so Your Honor and anybody who has the
8 tab, it's a yellow tab attached to his expert
9 report. We can also screen share it through
10 Mr. Goan.

11 THE COURT: Thank you.

12 MR. CALKIN: Okay. Perfect.

13 BY MR. CALKIN:

14 Q. All right. You can go ahead.

15 A. Well, I prepared a survey -- the surveys,
16 amongst other glass service providers, with the
17 parameter that the glass service providers were
18 independent, nonaffiliate in keeping with Judge
19 Berkowitz, the Honorable Judge Berkowitz' Order. And it
20 was distributed amongst -- I don't know how many
21 recipients received it. We received 24 respondents, and
22 the information received from that survey was put into
23 this Excel Spreadsheet.

24 Q. So what was the purpose of these surveys that
25 you conducted?

1 A. Well, the survey was to find out what the
2 prevailing competitive pricing was by other service
3 providers, glass installation and repair providers in
4 the general Tampa Bay and Florida area, the Florida
5 market, as to what their base charges were, their normal
6 and customary charges were for that service in both the
7 glass component, the labor to install that glass and
8 also the materials or adhesive kits, as they call them.

9 Q. And you've mentioned that there are 24
10 different respondents to the survey?

11 A. Yes, yes.

12 Q. Would you happen to have any idea what the
13 service areas of those 24 respondents or at least some
14 of them are?

15 A. According to their testimonies and
16 depositions, and also I checked a lot of -- I spoke
17 with some of them and checked their website, some of
18 them, and for the most part it was just the Florida
19 market.

20 Q. Okay. And so you just testified that the
21 surveys and the questionnaires were intended to find out
22 how much other competitors charged?

23 A. Well, competitors with the same standing as
24 the Plaintiff, as far as being an independent,
25 nonaffiliated. In other words, they didn't have any

1 former relationships or arrangements with insurance
2 companies.

3 Q. Okay. So if a survey shop or a surveyed shop
4 charged 50 percent of NAGS without formally or
5 informally agreeing to that rate with any insurance
6 company, would that information be disclosed on your
7 survey response spreadsheet?

8 A. It would have, yes, sir.

9 Q. Did you cherry-pick particular shops that only
10 charged prices that exceeded the prices that Geico would
11 pay?

12 A. No, sir.

13 Q. Did you place any limitations or restrictions
14 on which a nonaffiliated shop would or would not receive
15 the questionnaires?

16 A. No, sir. It was a blind survey. I had no
17 idea who was going to receive it.

18 Q. Did you throw out or destroy or reject any
19 questionnaire or responses?

20 A. No, sir. Every response was wanted, desired.

21 Q. Did you do anything to manipulate or influence
22 the survey results?

23 A. No, sir.

24 Q. What did you do with the data that was
25 collected from all 24 respondents?

1 A. As I said, it was placed into the Excel
2 Spreadsheet. The names of the respondents are at the
3 left-hand column, and then the information that they
4 provided is to the right.

5 Q. And what did you rely upon to know that the
6 survey responses are accurate and reliable?

7 A. Well, I had no reason to believe otherwise.
8 And looking -- and reading -- again, reading other the
9 deposition testimony. It was their sworn testimony that
10 the information was accurate, and in speaking to those
11 that I did speak to, there was no indication that they
12 were anything but honest and accurate.

13 Q. So at least some, if not all of the
14 respondents were subject to deposition about their
15 survey responses?

16 A. That was my understanding, yes, sir.

17 Q. And you read those deposition transcripts?

18 A. The ones that were available to me, yes, sir.

19 Q. And all of them testified under oath that the
20 amounts that were reflected on your spreadsheet are
21 their usual and customary rates?

22 A. That's correct.

23 Q. Okay. Let's take a look at the survey summary
24 spreadsheet that's attached to your report and it's
25 being screen shared right now.

1 In the left-hand column of the spreadsheet, it
2 identifies the company names listed 1 through 24; is
3 that correct?

4 A. That's correct.

5 Q. Now, at the top of that spreadsheet, there are
6 dates that reflect 2016 through '17. What does that
7 mean?

8 A. Well, that was the dates that I was looking
9 for as far as the services that were provided in the
10 year of 2016. And in a sense, it was from January 1,
11 2016 to one minute before midnight on the 16th.

12 Q. Of --

13 A. Of January -- or December 31st. Yes, I'm
14 sorry.

15 Q. Got you. All right. So this spreadsheet --
16 the Survey Spreadsheet Summary, that's attached as part
17 of your report, reflects the annual year of 2016?

18 A. That's correct.

19 Q. Or the calendar year, I should say.

20 A. For the calender, yes, sir. For the services
21 performed by the respondent at the left.

22 Q. And below the year, there are three separate
23 columns that reflect "windshields NAGS percent, labor
24 hour and kit prices." Is that correct?

25 A. Yes, sir.

1 Q. Did you create a separate spreadsheet for each
2 year per your surveys?

3 A. Yes, sir. Initially from 2013 through, I
4 think, August of 2018 was the original. It was prepared
5 for another case.

6 Q. And why did you only attach the 2016 survey
7 summary to your expert report in these cases?

8 A. The issues that's in the 11 cases here were
9 services all performed in 2016.

10 Q. Okay. And looking at the summary, the second
11 column says "windshield NAGS percent." What does that
12 mean?

13 A. Well, the windshield NAGS, that is the 100
14 percent pricing that NAGS publishes in their glass
15 pricing publication.

16 So having NAGS be the basis at 100 percent,
17 the respondents provided what percentage they charge in
18 their billing to their customers.

19 Q. So with regard to the windshield glass
20 component --

21 A. Yes, sir.

22 Q. -- the pricing is identified as a percentage
23 of the NAGS' list price; is that correct?

24 A. That's correct.

25 Q. So, looking at the first survey response

1 reflected in this summary, that was in business at least
2 in 2016, it looks like Safe Touch is the first company;
3 is that correct?

4 A. That was the first company that was providing
5 those services in 2016, yes, sir.

6 Q. Why does Patriot Auto Glass, why does that
7 have an N/A next to it?

8 A. They weren't in business at that particular
9 time.

10 Q. So, if there's an N/A identified in one of the
11 columns, it means that the company was not in business
12 for this particular calendar year?

13 A. That's correct. That was my understanding,
14 yes, sir.

15 Q. Okay. It looks like Safe Touch then is the
16 first one that was in business that was part of your
17 survey spreadsheet; is that correct?

18 A. Yes, sir.

19 Q. What does Safe Touch auto glass price of
20 100 percent NAGS need for the glass component for its
21 windshield replacement services?

22 A. That means that they charge 100 percent of
23 NAGS suggested pricing.

24 Q. In that one column over, it says "labor hour."
25 What does that mean?

1 A. That would be the labor hour that
2 NAGS publishes for -- that's their labor hour they
3 charge for the hours published by NAGS to do that --
4 that particular glass for their service. So that's
5 their hourly labor rate.

6 Q. Okay. So in 2016 what was Safe Touch Auto
7 Glass usual and customarily charged labor price that
8 they billed through insurance companies as a nonnetwork
9 nonaffiliated shop?

10 A. It would be \$90 per hour.

11 Q. Okay. The last column it says "kit price."
12 What does that mean?

13 A. Well, the kit is the adhesive components
14 that's used to install the glass, and that pricing is
15 what that particular Safe Touch Auto Glass charge per
16 installation.

17 Q. And how many urethane kits are typically used
18 for a windshield replacements job?

19 A. Generally two.

20 Q. Could it be more?

21 A. It could be two and a half. Maybe three in a
22 very large windshield.

23 Q. Okay. So in 2016, what was Safe Touch Auto
24 Glass' usual and customary total kit price that they
25 charged for a completed windshield replacement job that

1 they billed to insurance companies as a nonnetwork
2 nonaffiliate job?

3 A. \$94 per kit.

4 Q. And that's for the kit for the entire job; is
5 that correct?

6 A. Yes, sir.

7 Q. Now, even though we've only look at Safe Touch
8 as an example from your spreadsheet, was the data from
9 each survey inputted into the spreadsheet the same way
10 for each of the respondents?

11 A. Yes, sir.

12 Q. Okay. If you can turn --

13 MR. CALKIN: Okay. Mr. Goan, if you could go
14 to the last page of that spreadsheet. Perfect.
15 Thank you.

16 BY MR. CALKIN:

17 Q. Now, on this very last page -- Mr. Smith, have
18 you turned to it?

19 A. Yes, sir.

20 Q. Okay. On that very last page of that
21 spreadsheet at the very bottom it says, quote, "2016 to
22 2017 ranges high/low." Do you see that?

23 A. Yes, sir.

24 Q. What does that mean?

25 A. Well, that's the range again to 2016 --

1 through all of 2016 up to 2017, and that was the range
2 of what you see -- which you'll see below and to the
3 right.

4 Q. And so those ranges, once again, are for the
5 2016 calendar year?

6 A. That's correct. And it shows what the lowest
7 was and what the highest value was.

8 Q. With regard to the 2016 survey spreadsheet per
9 windshield prices as a percentage of NAGS, what is the
10 range of prices from low to high in 2016.

11 A. For the windshield, it was from 100 percent of
12 NAGS to 140 percent of NAGS.

13 Q. And do you have an opinion as to whether the
14 price range of 100 percent 140 percent of NAGS for the
15 glass components is reasonable and competitive for
16 services provided in 2016 by nonaffiliate shops?

17 A. Yes.

18 Q. In 2016 what was Glassco's glass component
19 price as a percentage of NAGS?

20 A. According to their survey, they are at 100
21 percent, which is at the base, the lowest -- the lowest
22 pricing.

23 Q. And what about the 11 cases that you are here
24 today to testify about?

25 A. They were found to be low, at the lower end of

1 the NAGS prices.

2 Q. And what is their prices -- what did they
3 charge as a price as a percentage of NAGS for the 11
4 cases that you're here testifying about today?

5 A. It was from 100 percent to 140 percent based
6 on the result.

7 Q. That was a bad question.

8 With regard to Glassco, what did Glassco
9 charge in these 11 cases as a percentage of NAGS?

10 A. Glassco's pricing was consistently 100 percent
11 of NAGS.

12 Q. Now let's look at the hourly rate for the year
13 2016. What is the range of hourly labor prices from low
14 to high in 2016?

15 A. Ranged from \$80 per hour to \$150 per hour.

16 Q. And do you have an opinion as to whether the
17 hourly labor price ranged from \$80 per 100 to \$150 per
18 hour is reasonable and competitive for services provided
19 in 2016?

20 A. Yes, sir. It was.

21 Q. Your opinion is, that it -- that range is
22 reasonable and competitive?

23 A. That range was found to be at lowest end of
24 the -- yes, sir, the range was reasonable and
25 competitive in the mark place at that particular time.

1 Q. And what are Glassco's labor prices charged in
2 2016 for all of these cases that you're here to testify
3 about today?

4 A. Glassco was at \$90 an hour per labor hour.

5 Q. Let's look at urethane kit prices for 2016.
6 What is the range of urethane kit prices from low to
7 high in 2016?

8 A. The kits range from \$28 per installation to
9 \$310 per installation.

10 Q. Do you have an opinion as to whether the
11 urethane kit price range from \$28 per job to \$310 per
12 job is reasonable and competitive --

13 A. Yes, sir.

14 Q. -- for services provided in 2016?

15 A. Yes, sir. Based on the results from the
16 survey, they were competitive.

17 Q. How do Glassco's total urethane kit prices for
18 these 11 cases fit into that range?

19 A. Glassco's labor -- or kit price at \$94 was
20 found to be at the lower end of that range.

21 Q. And based upon your analysis, what is your
22 opinion concerning the price -- or the price that
23 Glassco charged for the windshield replacement jobs
24 performed in all of these 11 case?

25 A. Glassco's pricing was consistently on all 12

1 or 11 of the cases of trial were found to be well below,
2 at the low end of the scale or the range.

3 Q. Were you able to reach an opinion about how
4 Glassco's prices in these 11 cases, compared to its
5 competitors' pricing of the glass component price, the
6 labor price and the kit price?

7 A. Yes. Glassco's price was very competitive
8 amongst its competitors.

9 Q. And you said that Glassco's prices are toward
10 the lower end of the ranges?

11 A. Yes. They consistently were found at the
12 lower end of the range, yes, sir.

13 Q. Now, with regard to only the glass component,
14 what is your conclusion regarding Glassco's glass prices
15 in these 11 cases compared to its competitors' pricing?

16 A. Glassco's pricing of 100 percent of NAGS was
17 consistent with their competitors.

18 MR. CAVALLARO: And we would just object to
19 relevance, Your Honor. I can give the basis for
20 the objection, if Your Honor would like.

21 THE COURT: Yes, please do.

22 MR. CAVALLARO: Under the Matthew Dick test
23 and this Court's Order on Defendant's Motion in
24 Limine, it's clear that the Court - that the orders
25 and the decision are only concerned with the

1 overall price of the glass replacement service.

2 So we haven't objected to this point. Going
3 into detail about how every component, how every
4 labor hour is in itself within a range, really has
5 no relevances to the Court's overall determination,
6 which is only based on the total price of the glass
7 replacement service.

8 So, if one may be very low and another
9 component may be very high, that really has no
10 relevance as long as the overall price that is
11 charged, and the overall price that Geico has paid,
12 really those are the only determinations. So
13 that's our objection.

14 THE COURT: All right. Overruled. Proceed.

15 BY MR. CALKIN:

16 Q. Let me state the question again. With regard
17 to only the glass component, what is your conclusion
18 regarding Glassco's glass prices in these 11 cases
19 compared to its competitors' price?

20 A. Glassco's pricing at 100 percent was consistent
21 with the -- with its competitors' pricing?

22 Q. Was it toward the lower end, middle or upper
23 end of the ranges of prevailing --

24 A. It was at the lower end with the range -- I'm
25 sorry.

1 Q. Let me finish my question, please.

2 Was it at the lower end, middle or upper end
3 of the prevailing competitive price range that you
4 determined for these cases?

5 A. Well, the range was 100 percent to 140
6 percent. Glassco was at 100 percent. So that would
7 place them at the very bottom.

8 Q. Thank you. Excuse me.

9 With regard to only the hourly labor rate,
10 what is your conclusion regarding Glassco's hourly labor
11 prices in these 11 cases compared to its competitors'
12 pricing?

13 A. Well, once again, the range was \$80 to \$150
14 and Glassco's pricing was \$90 per labor hour. So it
15 well below. At the very lowest -- just above \$80 at the
16 low end of the range.

17 Q. With regard to only the kit prices, what is
18 your conclusion regarding Glassco's kit prices in these
19 11 cases compared to its competitors' pricing?

20 A. The Glassco -- the range is \$28 per kit to
21 \$330 -- I'm sorry -- \$310 per kit, and Glassco's, it was
22 at \$94 per kit, which placed them at the lower end.

23 Q. Are your opinions based upon just the form of
24 surveys?

25 A. No. They also consisted with my knowledge,

1 training and experience in the field that I experience
2 as my career.

3 Q. And based upon your knowledge, training and
4 experience, are you able to provide an opinion as to
5 whether the amounts invoiced by the Plaintiff in these
6 matters for windshield glass at 100 percent of NAGS list
7 price exceeded the prevailing competitive price for the
8 windshield glass in these 11 cases?

9 A. Yes, I can render an opinion that they were at
10 the lower end.

11 Q. And can you render an opinion as to whether or
12 not these prices exceeded the prevailing competitive
13 price?

14 A. Yes, sir, I can. And I can say that they did
15 not.

16 Q. They did not what?

17 A. Exceed the competitive price.

18 Q. Based upon your knowledge, training and
19 experience, are you able to provide an opinion as to
20 whether the labor rate of \$90 per hour for these 11
21 cases exceeded the prevailing competitive price?

22 A. Yes, sir, I can. I can say that they did not
23 exceed the prevailing competitive price.

24 Q. Based upon your knowledge, training and
25 appearance, are you able to provide an opinion as to

1 whether the amounts invoiced by the Plaintiffs in these
2 11 matters for the adhesive urethane kits at \$94 total
3 for each case exceeded the prevailing competitive price?

4 A. Yes, sir. I can say that they did not exceed
5 the competitive price for the kit price.

6 Q. When determining that the prices for the
7 windshield glass, labor rates and kit prices were
8 prevailing competitive prices, how did you test that
9 theory to ensure it's accuracy?

10 A. Well, again, my experience and training as an
11 insurance adjuster, as a repairer and provider of such
12 services, as a appraiser who has been involved in -- and
13 an umpire who has been involved in dispute resolutions
14 in these matters, these prices were consistent with what
15 I had known before I even did the survey, and the are
16 also consistent with the materials and rates that I
17 received in my investigation on the prior case.

18 Q. Do you have an opinion as to whether the
19 prices charged by Glassco in these 11 cases reflect a
20 reasonable fair market value for the parts and services
21 provided to the 11 insured customers in these matters?

22 A. Yes, sir, I do. I believe pricing was very
23 competitive in the marketplace at that time.

24 Q. Does the technique that you used to determine
25 the prevailing competitive prices in this matter

1 generally require subjective or objective interpretation
2 among others in the field?

3 A. The materials are objective. They are all
4 based on printed materials, sworn testimony, and
5 published information from NAGS, as well as the glass
6 distributors. So it would be objective.

7 Q. And just really one quick follow-up. Do you
8 know or do you have an opinion as to whether or not the
9 total invoice prices by Glassco in all of these 11
10 cases, for each of the 11 invoice that you've reviewed
11 and are a part of your Plaintiff's Exhibit 13 here
12 today, do you have an opinion as to whether any of those
13 prices in any of those cases exceeded the prevailing
14 competitive price?

15 A. No, sir. The accumulated pricing per invoice
16 is found to be at the lower range and very competitive
17 in the marketplace at that particular time.

18 Q. Do you feel as if another person in your field
19 would have interpreted your technique in the same way
20 that you have?

21 A. If they had -- if a reasonable -- if it was a
22 reasonable and prudent person and they had my experience
23 and knowledge, yes, sir, I believe they would.

24 MR. CALKIN: Mr. Cavallaro, did you want to
25 object to that?

1 MR. CAVALLARO: No. I accidentally pushed the
2 button. Sorry.

3 MR. CALKIN: Thank you.

4 BY MR. CALKIN:

5 Q. Does the theory that you use to determine the
6 prevailing competitive prices for the windshield
7 replacements in these cases have a potential rate of
8 error?

9 A. I don't believe so. The materials are pretty
10 well factual. Again they are objective based on
11 testimony and the mathematics involved were just -- you
12 know, just determining a range.

13 Q. So the prices from the other shops are
14 objective?

15 A. Yes, sir.

16 Q. The prices from the wholesale distributors of
17 Pilkington, Mygrant and PGW are objective?

18 A. They are published, yes, sir, they are
19 objective, as well as NAGS prices.

20 Q. NAGS pricing is objective as well?

21 A. Yes, sir.

22 Q. Did you carefully consider alternative causes
23 or theories in evaluating how you might determine a
24 prevailing competitive price range for these cases?

25 A. I had before this in other efforts, and I

1 tried doing -- I tried canvassing. I tried calling
2 service providers and was generally unsuccessful.
3 Trying to extract the information was difficult and to
4 verify its veracity and that kind of thing.

5 Q. Have you -- I think you've testified that
6 you've done some informal surveys aside from these
7 formal surveys; is that correct?

8 A. That's correct.

9 Q. And what you just testified about and what
10 you've attempted to do in the past, did that include the
11 informal surveys?

12 A. Well, the informal surveys in this regard was
13 based on the knowledge that I already had and it more or
14 less validated it.

15 What I was speaking of before, in my efforts
16 before, were to call -- cold call, if you will, glass
17 service providers and they were very tentative about
18 giving any information over the phone and that kind of
19 thing. So it was a bit difficult and it wasn't -- I
20 didn't feel it was objective at that point in time. So
21 I didn't feel it was warranted to continue.

22 Q. Did I or any other lawyer involved in
23 representing the Plaintiff control you on how you go
24 about formulating your opinions in this case?

25 A. No, sir.

1 Q. Did I or any other lawyer working on behalf of
2 the Plaintiff control you as to what your opinions would
3 be.

4 A. No, sir.

5 Q. What about Mr. Bailey, did he control your
6 work or opinion?

7 A. No, sir.

8 Q. Please describe what my role was or the role
9 of my office was with respect to any of the work that
10 you may have performed as an expert witness in these
11 cases?

12 A. I want to --

13 MR. CAVALLARO: Objection. Sorry. We would
14 object in that it calls for speculation and
15 hearsay. A lot of that would be coming directly, I
16 assume, from what Mr. Calkin may have told
17 Mr. Smith. So any role that Plaintiff's counsel
18 themselves may have had would be speculation.

19 THE COURT: All right. Well, if he knows,
20 then he can testify if he knows what direct role
21 Calkin, Prieto, Koulianos or any of the attorneys
22 played.

23 I mean, if he hasn't answered, I can't really
24 determine whether it's speculation at this point.

25 So I'm just going to allow it. Overruled.

1 I have another -- Eric Estrada (phonetic
2 spelling) coming in, so that you all know, an
3 interested attorney, I'm assuming.

4 MR. CALKIN: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 So the objection is overruled. You can
7 answer, sir.

8 THE WITNESS: All right. Thank you.

9 BY MR. CALKIN:

10 Q. Do you want me to repeat the question?

11 A. No, sir. I think I understand it.

12 Basically, once you requested my assistance,
13 the only thing I asked in return was Scrivener services
14 and for Mr. Koulianos to help me enter this information
15 into Excel Spreadsheet, which I was not familiar with or
16 capable of doing on my own.

17 Q. Was this expert report and its attachments
18 prepared by you?

19 A. Yes, sir.

20 Q. And when I refer to the "expert report," I'm
21 referring to Plaintiff's Exhibit 13-B.

22 A. Yes, sir.

23 Q. Is this expert report and its attachments a
24 true, accurate and complete representation of the
25 information therein?

1 A. Yes, sir.

2 Q. Does this expert report and its attachments
3 include complete copies of the materials that you relied
4 upon to formulate your opinions in this case?

5 A. Yes, sir. I don't have -- in my report, I
6 don't have the actual survey responses. I think the
7 Court has those.

8 Q. And those were returned over for deposition,
9 correct?

10 A. That's correct.

11 Q. Does the expert report accurately state the
12 opinions you formulated in this case or these cases and
13 the basis of those opinions?

14 A. Yes, sir.

15 Q. And really quickly, I want to go back to the
16 question regarding the urethane kit prices.

17 We verified that the total amount that you
18 observed and opined upon with regard to the 11 invoices
19 in these cases, that none of those exceeded the
20 prevailing competitive price ranges.

21 But I need to ask you about the -- on Exhibit
22 C, the last invoice on Exhibit C --

23 MR. CALKIN: Mr. Goan, if we can screen share
24 that.

25 BY MR. CALKIN:

1 Q. It looks like the job that was performed on
2 behalf of Christine Marks. Do you see that?

3 A. I see that you're bringing it up. I know
4 which one you're referring to.

5 Q. And with regard to that particular invoice --

6 A. It has a High Modulus Adhesive kit, I believe.

7 Q. Right. And the amount?

8 A. It's \$150, which listed on here for the
9 urethane, and it's called High Modulus. And that price
10 was consistent and it was still well below the range of
11 pricing, which according to what we talked about
12 earlier, the kit pricing range was \$28 to \$310. So this
13 was still well below -- in the mid area. The lower area
14 and not the mid range.

15 Q. And so that price for the urethane kit for
16 that particular case doesn't affect your opinions?

17 A. No, not at all. If anything, it supports it.
18 Even it binging a High Modulus, it's still well below
19 mid range of the range of total range.

20 MR. CALKIN: All right. One moment, Your
21 Honor if I may?

22 THE COURT: Yes, you may.

23 MR. CALKIN: Okay, Your Honor, at this time,
24 the Plaintiffs moves Mr. Smith's expert report and
25 its attachments identified in Exhibit 13 into

1 evidence.

2 THE COURT: And that would be Plaintiff's 1, 2
3 and 3?

4 MR. CALKIN: Plaintiff's Exhibits 13-A, B and
5 C. Yes, Judge.

6 THE COURT: Plaintiff's 13-A, B and C. I'm
7 sorry.

8 All right. Mr. Cavallaro, Ms. Buza, any
9 objection as it relates Plaintiff's 13-A, B and C?

10 MR. CAVALLARO: Your Honor, I don't. Let's
11 see. And, Judge, can we read those off for the
12 record again, just what the, like title of those
13 documents would be since we don't have Plaintiff's
14 13.

15 THE COURT: The Plaintiff's --

16 MR. CALKIN: Yes, sure.

17 THE COURT: Go ahead, Mr. Calkin.

18 MR. CALKIN: I'm sorry, Judge.

19 THE COURT: No. That's okay. Go ahead.

20 MR. CALKIN: Okay, I will.

21 Plaintiff's Exhibit 13 comprises Exhibit 13-A,
22 which is A is Mr. Smith's CV, his Resume. B is his
23 expert report along with attached to that expert
24 report is this summary survey spreadsheet that he's
25 been testifying about.

1 And then Exhibit 13-C are the invoices that
2 are attached to these -- that are a part of these
3 particular cases, these 12 cases, I believe. There
4 are obviously only 11 cases here before the Judge,
5 but I think they are maybe the whole 12.

6 MR. CAVALLARO: I mean we would have no
7 objection to the items, except for the invoices
8 referenced.

9 And just for the purposes of Mr. Smith's
10 review, we would have no objection to the invoices,
11 but we still would maintain the objection that we
12 had to them coming in as evidence otherwise -- I'm
13 just trying to clarify that we do maintain our
14 objection to the Assignment of Benefits that may be
15 a part of that. But for the purpose of Mr. Smith's
16 review, we have no objection to them being admitted
17 as exhibits.

18 THE COURT: And they are previously admitted
19 as exhibits, all of the invoices, but just to
20 demonstrate, he believe those will help him in
21 formulating his opinion.

22 MR. CALKIN: Yes. That is correct, Your
23 Honor.

24 THE COURT: So Plaintiff's 13-A, B and C --
25 and I'm giving them to the clerk -- they will be

1 admitted into evidence.

2 (Whereupon, Plaintiff's Exhibit 13-A, B and C
3 were admitted into evidence.)

4 MR. CALKIN: We tender the witness, Judge.

5 THE COURT: All right. Mr. Cavallaro, are you
6 ready?

7 MR. CAVALLARO: Your Honor, if I can have five
8 minutes.

9 THE COURT: Yes, you may.

10 MR. CAVALLARO: Thank you, Your Honor.

11 (Whereupon, a recess was taken.)

12 THE COURT: Mr. Cavallaro, all right, do you
13 need a couple more minutes or are you ready to
14 proceed?

15 MR. CAVALLARO: Sorry, Your Honor, if we can
16 have like three more minutes.

17 THE COURT: I'll give you a couple more
18 minutes. Go ahead and mute yourself.

19 Are you ready Mr. Calkin, Mr. Prieto, Mr.
20 Koulianos, Mr. Cavallaro --

21 MR. CAVALLARO: Yes, we're ready.

22 THE COURT: All right. Go ahead,
23 Mr. Cavallaro.

24 CROSS EXAMINATION

25 BY MR. CAVALLARO:

1 Q. Good morning, Mr. Smith.

2 Do you have any other documents other than
3 what has been admitted as Plaintiff's Exhibit 13 with
4 you today?

5 A. No, sir.

6 Q. Have you made any changes to the report that
7 was admitted today from the report that would have been
8 provided prior to your deposition in this case?

9 A. I think the only correction was made on date
10 of 2000 -- I change 2017 to 2016.

11 Q. And you don't have -- sorry. Go ahead.

12 A. I was going to say, that correction was
13 submitted to the Court. The Court should have the
14 corrected version.

15 Q. Thank you. And we have no objection to that
16 correction.

17 You don't have electronic access to NAGS' list
18 pricing, do you?

19 A. No, sir, I don't.

20 Q. You don't receive a publication of NAGS' list
21 pricing in a paper format?

22 A. No, sir, I don't.

23 Q. How did you verify in NAGS the prices that
24 Glassco or that these other shops were charging? How
25 did you access NAGS for these cases?

1 A. The information received from NAGS was during
2 my investigation on a prior case. I believe it was
3 Gilder Robbins, and the information was provided by a
4 glass service provider who had that data for the periods
5 that we were looking at.

6 Q. And which glass service provider was that?

7 A. I don't know exactly, but I believe it was
8 Superior Glass of Tampa Bay -- Superior Tampa Bay or
9 something of that nature.

10 Q. And do you know Ms. Linda Rollinson?

11 A. Yes, sir.

12 Q. And what role does she have at Superior.

13 A. She's the owner and operator.

14 Q. Did you speak about these cases with
15 Ms. Rollinson?

16 A. I don't recall if I talked to her specifically
17 in these cases. I don't believe I have. I spoke with
18 her -- I interacted with her through some appraisal
19 clauses, and as collaboration on some other cases, I
20 believe. But in this particular case, I don't think
21 there was any communications.

22 Q. You don't work for a glass wholesale company,
23 do you?

24 A. No, sir. I don't.

25 Q. And you don't have any electronic access to

1 wholesale list pricing, do you?

2 A. No, sir. I don't.

3 Q. And did you also get access to that wholesale
4 list pricing from Superior?

5 A. It may have been the source. I don't recall
6 exactly.

7 Q. And could you -- if list -- is the list
8 wholesale pricing, that's -- that's not actually -- I
9 mean, to your knowledge, that's what these shops are
10 recommending be charged for the glass and it's not
11 actually what these shops are purchasing the glass for;
12 is that correct?

13 A. Their acquisition of the glass, their cost was
14 not part of -- not within the scope of my involvement.
15 So I can't answer that.

16 Q. Okay. And you don't work or own a glass
17 repair facility?

18 A. No, sir. I do not.

19 Q. Without seeing a price from NAGS, could you
20 provide what the prevailing competitive rate would be
21 for any windshield service on any vehicle of your
22 choosing?

23 Meaning -- so for instance, on a 2019 Toyota
24 Camry picking whatever windshield that may be the
25 cheapest windshield, the most expensive, whatever it may

1 be, could you provided a price for that replacement
2 service at this time?

3 A. As I sit here, no, sir.

4 Q. And why is that?

5 A. Because I don't have the information in front
6 of me which would enable me to do that.

7 Q. And would part of that information you need be
8 the NAGS' list price?

9 A. It may be.

10 Q. Do you know where Glassco purchased the glass
11 in these cases?

12 A. No, sir. That wasn't within the scope of my
13 involvement to know where they purchased.

14 Q. Do you know what Glassco paid for the glass in
15 these cases?

16 A. No. Again, counsel, my goal or my mission or
17 my scope of involvement wasn't to determine what their
18 wholesale price was. It was only to determine what the
19 retail or --

20 THE COURT REPORTER: I'm sorry. I didn't get
21 the last part of your answer.

22 BY MR. CAVALLARO:

23 Q. Have you spoken with anyone from NAGS about
24 these cases?

25 A. No, sir. I have not.

1 Q. Have you ever spoken with anyone from NAGS?

2 A. I don't believe so. No, sir.

3 Q. And were you aware you'd be called as an
4 expert in these cases at the time that you prepared
5 these surveys?

6 A. No, sir.

7 Q. Are you aware of any distinctions between this
8 Court's Order on Defendant's Motion to Exclude Evidence
9 versus you mentioned you prepared these surveys based
10 off of Judge Berkowitz' decision?

11 I'm just trying to see, do you know if those
12 would comport with the Court's decision in this case?

13 A. Sir, I'm not aware of what the Court's
14 decision was or the transcript of the court hearings or
15 anything of that nature.

16 My reasoning was because Judge Berkowitz on
17 the Cordaro matter and also Matthew Dick's issue kind of
18 outlined what the parameters were and that's what I used
19 in my survey.

20 Q. And you didn't change anything about these
21 surveys since that?

22 A. The only thing I did was delineate 2016. The
23 other survey, like we said, went from 2013 to August of
24 2018, I believe.

25 Q. But they were all completed in 2018. They

1 haven't been updated since 2018?

2 A. There is no reason to update them. They are
3 factual based on the history at the time that the
4 surveys were rendered.

5 THE COURT: All right hold on for one --

6 MR. CAVALLARO: Do you --

7 THE COURT: I'm sorry. Mr. Cavallaro --

8 THE COURT REPORTER: I couldn't hear you,
9 Judge.

10 THE COURT: I'm sorry. There were a bunch of
11 people walking into my courtroom. I didn't know
12 what they were going to do. We had a bunch of
13 deputies walking in. I was worried. I'm sorry
14 about that.

15 MR. CAVALLARO: Thank you, Your Honor.

16 BY MR. CAVALLARO:

17 Q. Did you testify from these surveys in a trial
18 with Judge Berkowitz?

19 A. Yes, sir, I did.

20 Q. And do you recall who the Plaintiff would have
21 been in that case?

22 A. I don't recall. I think the style was Gilbo
23 Robbins, but I don't recall to answer your question
24 correctly.

25 Q. Is it also your understanding -- and is it

1 also your understanding that every case that we are here
2 for today would have a 2016 date of loss and that is
3 also the same year all of the alleged work would have
4 been performed?

5 MR. CALKIN: Objection to form. It's not the
6 date of loss. It's the date of service in 2016
7 that was --

8 THE COURT REPORTER: I'm sorry. I'm not
9 hearing you, Judge.

10 (Audio sound was muffled.)

11 MR. CAVALLARO: I can ask those two questions
12 separately.

13 THE COURT: All right. Go ahead,
14 Mr. Cavallaro.

15 BY MR. CAVALLARO:

16 Q. Is it your understanding that the date of loss
17 on each of these invoices was included in the date from
18 2016.

19 A. Sir, I didn't pay attention to the actual date
20 of loss. It was the service date that I was more
21 concerned with because that was in keeping with the
22 Judge's Order as far as the timeframe when the service
23 was provided.

24 Q. And to about to Mr. Calkin's point. Is it
25 your understanding that the service -- the alleged

1 service provided was for 2016 in all of these cases?

2 A. That's my understanding. Yes, sir.

3 Q. And turning to the surveys themselves since
4 you have those in front of you.

5 A. I don't have the individual -- I don't have
6 the individual surveys. I have the spreadsheet.

7 Q. Oh, you don't have the individual surveys.
8 Okay. Let's see.

9 Actually, I can pull them up on the -- I can
10 pull those up on the share screen. So I'll do that.
11 I'll try to pull those up, and if Plaintiff's counsel
12 have the copy with them, you can look at those instead
13 of the screen, but I'll pull those up. I mean the
14 surveys themselves.

15 MR. CAVALLARO: We're just going to mute it
16 real quick while I try to get these surveys up,
17 Your Honor.

18 THE COURT: That's okay.

19 MR. CAVALLARO: Okay. Thank you, Your Honor.
20 I was finally about to pull the surveys up.

21 THE COURT: Okay. No problem.

22 MR. CAVALLARO: So we are looking at the
23 surveys that Mr. Smith would -- so I can go to the
24 survey and scroll as needed for Mr. Smith.

25 BY MR. CAVALLARO:

1 Q. Mr. Smith, is it your understanding that the
2 following shops did not include any 2016 data, and would
3 that be from Patriot Auto Glass, Certified Windshield
4 and Expert Windshield? And I don't know --

5 A. I'm looking.

6 Q. I'm sorry. Go ahead.

7 A. I don't see the signature on the one that
8 you're showing me. So I'm not sure as to who that --
9 the respondent is.

10 Q. Okay. It looks --

11 A. Yeah, I see it now, Patriot. It's also
12 consistent with the spreadsheet that I provided. I
13 talked about that earlier. The N/A is indicative that
14 there was no information or assumed that the company was
15 not in business at that time.

16 So, yes, it would have been -- Patriot Auto
17 Glass is -- there was no response to them through 2016.

18 Q. And is that the same for Certified Windshield?

19 A. That's correct.

20 Q. And is that the same for Expert Windshield
21 Glass?

22 A. Yes, sir.

23 Q. And going to the NPK Auto Glass survey. I see
24 in one area where it shows like -- I think it's 2015 to
25 2016 doesn't have a mark, but then 2016 to 2017 does

1 have a mark. So I guess theoretically 2016 -- I'm just
2 not sure how the shop would be interpreting that.

3 MR. CALKIN: Objection. That's outside of the
4 scope, Number 1.

5 Number 2, Mr. Smith has already clarified the
6 time period that was subject to his expert opinion
7 and the information that he used to develop that
8 opinion.

9 THE COURT: All right. I'm not sure what
10 you're asking, counsel, Mr. Cavallaro, so that I
11 can rule on it. Can you --

12 MR. CAVALLARO: Yes, Your Honor. Mr. Smith
13 testified that he had 2016 data from these shops.
14 And I'm just trying to seek clarification on one of
15 the surveys he received from NTK Auto Glass. I'm
16 scrolling to find it now.

17 And I'm trying to just make sure if he -- I'm
18 trying to really see -- there's a blank under one
19 of the spaces that indicates 2016. So how does he
20 know whether or not they had 2016 data? But I'm
21 scrolling to that now so that the Court can view it
22 with -- with Mr. Smith.

23 THE COURT: You're probably going too fast.

24 MR. CAVALLARO: Yes. I mean, I'm sorry.

25 There's a lot of these. There's 47 pages. I'm

1 just trying to scan the name at the bottom real
2 quick.

3 THE COURT: So as it relates to a question as
4 to what information he utilized in coming up with
5 the survey, specifically Exhibit 13-B, I will allow
6 it.

7 MR. CAVALLARO: Okay. So it says that -- and
8 is this an accurate copy of the survey that you
9 would have obtained from NTK Auto Glass.

10 THE COURT: Do you have the top --

11 MR. CAVALLARO: Yes, Your Honor.

12 THE COURT: -- of the survey that we can see
13 the top of what you're referencing?

14 All right. So you're looking at Auto Damage
15 Expert. Go down very slowly. You're asking the
16 witness to look at this.

17 MR. CAVALLARO: And it's page --

18 THE COURT: Okay. Go ahead.

19 BY MR. CAVALLARO:

20 Q. And do you have a paper copy of this with you,
21 Mr. Smith?

22 A. Sir, I don't have one, no.

23 MR. CAVALLARO: Does Plaintiff's counsel have
24 one available?

25 MR. CALKIN: No, we do not.

1 BY MR. CAVALLARO:

2 Q. So looking at this page -- and I'll scroll
3 down for the rest of it -- but is this an accurate copy
4 of what you would have received from NTK Auto Glass?

5 A. It appears to be, yes, sir.

6 Q. So this kind of shows what I was trying to
7 discuss. But it shows nothing marked under 2015 to
8 2016. It shows a blank space.

9 So do you know if they have any 2016 data or
10 do you know if the answer above that, it fully includes
11 2017 data?

12 MR. CALKIN: Your Honor, I will again object
13 to asked and answered. Mr. Barrett Smith clarified
14 it at the very beginning to the substance of his
15 report that 2016 and 2017 are the dates of service,
16 the calendar year that is reflective of January 1,
17 of 2016 through December 31st of 2016.

18 It's clearly written in his report, there are
19 no dates of service that are within the calendar
20 year of 2015, which would be the entry below that.
21 And then, moreover, he's now asking for speculation
22 as to a response from NTK that clearly has not been
23 provided.

24 MR. CAVALLARO: And, Your Honor, my response
25 to that would be that the shops understanding of

1 what to respond would, I assume, and what can only
2 be assumed, would be only what is on the survey
3 itself. Not from their report prepared after the
4 fact, not from Plaintiff's counsel's argument, but
5 it would be from the language on the survey.

6 So is there anything on this survey to
7 indicate that it is for a calendar year or anything
8 else, or that \$125 from 2016 to 2017 may only
9 include 2017 data.

10 THE COURT: All right. Hold on. Let me rule,
11 Mr. Cavallaro.

12 All right. As that relates -- we have a
13 couple of things. As that relates to the expert
14 responding on what was utilized in formulating his
15 expert opinion and the market surveys that were
16 done, and how the glass companies responding, he
17 can testify based upon his view of the -- of the
18 responses.

19 But any question that potentially will cause
20 or require the expert to formulate an opinion based
21 upon speculation is improper.

22 So his asking it again is self-explanatory
23 because he want to ask if it relates how he
24 formulated to develop his opinion in his report and
25 survey, that is admissible.

1 BY MR. CAVALLARO:

2 Q. Is there anything, Mr. Smith, on this survey
3 that indicates that this is for a calendar year to the
4 survey shop?

5 A. Sir, I think it somewhat self-explanatory that
6 any reasonable and prudent person is going to see that
7 the date start of 2013 through 2014 to 2014 through 2015
8 and so on.

9 And, again, I think -- I don't think I received
10 any question or comments from any glass providers with
11 that concern. And I guess it's valid since you brought
12 it up, but I haven't had any other issues with that.

13 Q. Did you -- and I think it was mentioned
14 earlier -- but did you rely on these surveys in
15 formulating your opinion for this case?

16 A. I relied upon the information provided by
17 the -- provided by the survey responses, yes, sir.

18 MR. CAVALLARO: Your Honor, at this time, we
19 would seek to admit these surveys as Defendant's
20 Exhibit 1. And I can scroll through the pages, if
21 the Court and this Plaintiff's counsel would like.

22 THE COURT: Mr. Cavallaro --

23 MR. CAVALLARO: Or we can just --

24 THE COURT: I'm sorry. Koulianos, Prieto,
25 Calkin.

1 MR. PRIETO: Yes, Your Honor. It's Attorney
2 Anthony Prieto. I'm unclear what the foundation is
3 for entering these documents into evidence. And of
4 course, this is not the Defendant's case-in-chief.
5 So it would be an improper time. If they want to
6 enter evidence into the record, they need to call
7 witnesses.

8 MR. CALKIN: May I respond to that, Your
9 Honor?

10 THE COURT: Well, why are you entering
11 evidence in the Plaintiff's case-in-chief, and we
12 still haven't established proper foundation.

13 But, yes, go ahead and respond.

14 MR. CAVALLARO: Thank you, Your Honor. There
15 is no case law that indicates that a party cannot
16 introduce evidence on another party's
17 case-in-chief. I don't believe there's been any
18 provided or that counsel is aware of.

19 The foundation for this is that Mr. Smith
20 testified that these surveys, he's summarized on a
21 spreadsheet and that spreadsheet has been admitted
22 into evidence. And if these surveys provide the
23 foundation for that summary, they should also be
24 admitted. So I cannot foresee any reason why it
25 would be improper to admit these.

1 THE COURT: Other then you're asking me to
2 admit evidence in Plaintiff's case-in-chief, which
3 is improper.

4 MR. CAVALLARO: Yes, Your Honor, we are asking
5 you to admit the evidence in Plaintiff's
6 case-in-chief.

7 THE COURT: So based upon that and the
8 handling of the evidence, at this time it's not
9 appropriate to admit evidence in their case. And
10 so the objection is sustained.

11 BY MR. CAVALLARO:

12 Q. Okay. We'll continue. Let's see.

13 Let's take -- let's scroll to the top, and
14 I'll try to find -- are all of the surveys that were
15 sent to shops, were they the same for everything shop?

16 A. Yes, sir.

17 Q. Okay. I'll try a clearer copy of the surveys
18 to refer to the language at the top of the surveys. So
19 I'm just going to scroll up. I believe some of them are
20 clearer than others. So, let's see. Here we go.
21 Here's a clear one. Then move the Zoom stuff out of the
22 way. Okay.

23 So if we can take a look at the language of
24 the survey's themselves, starting with the first
25 paragraph at the top. And if you can please let me know

1 if you can see that.

2 A. I see it, yes, sir.

3 Q. And the language reads: "During the time that
4 you have conducted business as an auto glass windshield
5 repair facility, what are your auto glass facility's
6 usual and customary prices charged in a competitive
7 nonaffiliated market" -- and then parentheses, do you
8 see where it says, "excluding cash only prices
9 previously agreed upon rates with insurance companies?"

10 A. Yes, sir. But you read it incorrectly.

11 Q. Can you read it correctly then?

12 A. Sure. "During the time that you have
13 conducted business as an auto glass windshield
14 replacement facility, what are your auto glass
15 facility's usual and customary prices charged in a
16 competitive nonaffiliated market." And then the
17 parenthesis, ("excluding cash-only prices and previously
18 agreed upon rates with insurance companies) end of
19 parenthesis.

20 Q. So the survey request charges only but not
21 what was paid to these shops, correct?

22 A. That's what we requested, yes, sir.

23 Q. Was Glassco one of the shops who responded to
24 this survey?

25 A. Yes, sir. They were.

1 Q. And for claims we're here for today, would you
2 agree that the amount lower than what was charged was
3 paid to Glassco?

4 A. It's my understanding, yes, sir, that Geico
5 reimbursed an amount less than what the billing was.

6 Q. So the charges on Glassco's survey would not
7 reflect what was paid 100 percent of the time; would you
8 agree with that?

9 A. That wasn't within the scope of my
10 involvement. I just -- again, the question
11 self-explanatory, counselor.

12 Q. There isn't anything on these surveys that say
13 what these shops are actually paid for their service?

14 A. Again, that wasn't within the scope of my
15 involvement. It was not the information that I was
16 seeking or what Judge Berkowitz has ordered in his
17 decision.

18 Q. Okay. And going to Judge Berkowitz' decision,
19 let's look at the survey language again where it
20 indicates in parenthesis to exclude cash-only prices.

21 Why was that not considered for these cases
22 where cash-only pricing may be considered?

23 A. You would have to ask Judge Berkowitz on that
24 question.

25 MR. CALKIN: Objection to that question. I

1 was going to object it calls for a legal
2 conclusion, but the witness answered it. So I'll
3 just preserve it for the record.

4 BY MR. CAVALLARO:

5 Q. I'm sorry. I missed what the answer was.

6 A. I said you'd have to ask Judge Berkowitz what
7 his intentions were.

8 Q. Do you believe -- did you consider changing
9 this survey for these cases to include cash-only prices?

10 A. No, sir, I did not.

11 Q. Why is that?

12 A. Once again, it wasn't within the scope of my
13 involvement. My goal was to determine what their
14 customary pricing charge in a competitive nonaffiliated
15 market without cash, you know, agreements or cash
16 transactions.

17 Q. And when you refer to the scope of your
18 involvement, are you referring to when you were retained
19 for the Judge Berkowitz cases?

20 A. Yes, sir.

21 Q. Would you agree that there is typically no
22 pricing agreement in place for a cash customer?

23 MR. CALKIN: Objection. Irrelevant.

24 THE COURT: Mr. Cavallaro, why is that
25 relevant at this point in time?

1 MR. CAVALLARO: Your Honor, the Court's Order,
2 I believe it excludes where there may be a pricing
3 agreement in place. So we would argue that cash
4 pricing would be part of the mark that could be
5 considered for this case. So we're just seeing if
6 there is typically a cash pricing agreement in
7 place with a cash customer or just if Mr. Smith
8 knows that information.

9 THE COURT: Well, he's testified that it was
10 outside of his scope of his agreement or I guess --
11 it wasn't included in his retention and in
12 developing the survey cash prices. And it says
13 that in the survey "excluding cash only prices."
14 So why is that relevant?

15 MR. CAVALLARO: And, Your Honor, this may be
16 from his experience or from -- I mean his knowledge
17 or the basis for his opinion is strictly limited to
18 these surveys, then that's okay.

19 But I'm just asking, if in his experience,
20 there is typically a pricing agreement in place
21 with cash customers.

22 THE COURT: Is that your questions, is there
23 any pricing agreement as it relates to those cash
24 customers.

25 MR. CAVALLARO: Is there typically a pricing

1 agreement in place with cash customers?

2 THE COURT: Okay. I'm going to -- based upon
3 my Order, Page 4, Paragraph 3, I'll let him
4 testify. If he knows, he know, and he can testify
5 accordingly.

6 THE WITNESS: Can you give the definition of
7 what you mean by agreement, counselor?

8 BY MR. CAVALLARO:

9 Q. So I can try to give you an example of where
10 an -- if a glass shop had an agreement with an insurance
11 company where they always had to be paid the same
12 amount, then would there be any agreement of that type
13 with a cash customer in your experience?

14 MR. CALKIN: Once again, objection. Calls for
15 speculation.

16 MR. CAVALLARO: And, Your Honor, if he doesn't
17 know, he doesn't know, but again, I believe he can
18 answer the question.

19 THE COURT: All right. So overruled. I'm
20 going to allow him to testify if he has any direct
21 knowledge as it relates to cash transaction.

22 THE WITNESS: I don't believe that insurance
23 companies pay in cash. So I don't know how
24 relevant that would be.

25 By MR. CAVALLARO:

1 Q. Mr. Smith, do you know when -- did you write
2 this survey?

3 A. Yes, sir.

4 Q. When you wrote "excluding cash-only prices."
5 What do you mean by cash-only prices?

6 A. That would be a situation where maybe a
7 consumer would be paying the glass service company in
8 cash, in dollars and cents, in currency.

9 Q. Okay. So that consumer and the glass shop, in
10 your experience, has there been a pricing agreement in
11 place with that one consumer and the glass shop?

12 MR. CALKIN: Judge, I'm going to object again
13 on the basis of relevancy, outside of the scope.
14 Not one minute has been spent during this entire
15 trial discussing cash jobs or cash agreements or
16 consumer to auto glass replacement facility
17 transactions.

18 We are here strictly on a basis of the
19 prevailing competitive price as it pertains to the
20 nonnetwork competitive market which entertains
21 transactions between windshield replacement
22 facilities and insurance companies pursuant to an
23 assignment of benefits. Mr. Smith has testified
24 tirelessly that that was the scope of his
25 employment and that was the scope of his testimony.

1 MR. CAVALLARO: Your Honor --

2 THE COURT: Okay. Hold on, both of you.

3 All right. So, again, as it relates to any
4 argument or any questions on speculation, that is
5 sustained.

6 However, the witness testified previously,
7 just a moment ago, as it relates to his opinion on
8 cash transactions. So it's asked and answered. So
9 let's move on.

10 MR. CAVALLARO: Your Honor, I believe he
11 testified -- okay. We maintain the objection, but
12 we'll move on.

13 BY MR. CAVALLARO:

14 Q. Do you have evidence, Mr. Smith, of what these
15 shops are paid for cash only jobs?

16 A. No, sir. I didn't inquire that and it wasn't
17 brought up in any of our discussions. So, no, sir, I
18 don't have that information.

19 Q. Other than knowing that the charged price was
20 not paid in the 11 cases at hand. Do you have any
21 specific evidence of these charged prices every being
22 paid in full?

23 A. Based on the testimony of the transcripts of
24 the deposition taken, there were indications or
25 statements made where full payment was received.

1 And I believe the record will show that
2 Glassco received full payment on their charges from most
3 all insurance carriers, except for two, and Geico being
4 one of them.

5 Also I also believe, going back to the last
6 question, that Glassco testified that they don't accept
7 cash price for -- maybe it wasn't Glassco but it was one
8 of the opponents that they didn't accept cash. That was
9 the only mention to cash.

10 Q. One. One of the deponents mentioned that they
11 don't accept cash pricing. You mean from the survey
12 depositions?

13 A. Sir, I don't know what deposition. It many
14 have been in conversation. But, yes, they said they
15 didn't accept cash transactions.

16 Q. To validate the results from the survey, did
17 you request invoices from these shops?

18 A. I recall the request for invoices. I think it
19 may have been during discovery they were retained, but I
20 don't have knowledge of that. No, sir.

21 Q. And discovery would be from maybe Plaintiff's
22 counsel. But did you personally or your company request
23 invoices from these shops?

24 A. No, sir. I don't recall requesting them.

25 Q. Did you request any documentation such as

1 receipts or anything to show what is paid to these
2 companies?

3 A. No, sir. The only thing I did see was the
4 billings and then the responses of whatever SGC or Geico
5 is willing to pay.

6 Q. And when you say "billing," are you referring
7 to what's indicated in your survey as the charged
8 amount?

9 A. No, sir. I'm referring to the invoice that I
10 received from Glassco or that was provided to me from
11 Glassco in this case.

12 Q. And you don't know how many of the -- you
13 don't know how many shops were sent to survey, do you?

14 A. I don't know how many received it. I just
15 know that we received 24 responses?

16 Q. And just to clarify, you don't know how many
17 shops were sent the survey, do you?

18 A. No, I don't, sir.

19 Q. So you don't know if more shops refused to
20 respond to the surveys than you received?

21 MR. CALKIN: Objection. Asked and answered.
22 Calls for speculation.

23 THE COURT: It calls for speculation.

24 Sustained.

25 BY MR. CAVALLARO:

1 Q. If a shop did not respond, then of course you
2 wouldn't know what their charges would be; is that
3 correct?

4 MR. CALKIN: The same objection.

5 THE COURT: Sustained.

6 MR. CAVALLARO: And, Your Honor, we would be
7 asking from -- again, I believe Plaintiff's counsel
8 indicated Mr. Smith has some experience outside of
9 these surveys.

10 BY MR. CAVALLARO:

11 Q. So, in his experience, outside of these
12 surveys, would you know what any other windshield
13 company would charge?

14 A. Can you rephrase the question, counselor.

15 Q. Yes. Outside of these shops surveyed, do you
16 know what any other windshield facility would charge?

17 A. Yes, sir.

18 MR. CALKIN: Objection. Outside of the scope.
19 Are we talking about 2016? Are we talking about
20 present day.

21 MR. CAVALLARO: Oh, 2016. Good point.

22 THE COURT: Mr. Cavallaro, so for
23 clarification, the time frame is 2016?

24 MR. Cavallaro: Yes, Your Honor.

25 THE WITNESS: I have talked to glass shops,

1 but in my own personal experience, and having my
2 own business and doing depositions -- I mean -- I'm
3 sorry -- appraisal clauses as the umpire, I know
4 that other shops charge 100 percent of NAGS as
5 their base pricing. But I don't know if those -- I
6 can't be specific as to what year that was, but it
7 was likely between the years 2013 to current,
8 basically.

9 BY MR. CAVALLARO:

10 Q. Could you provide the name of any one of the
11 shops not on these surveys?

12 A. Not as I sit here today.

13 Q. Can you --

14 A. I would probably find --

15 Q. Go ahead. I'm sorry.

16 A. I could probably research my files and find
17 something, but I don't have it here.

18 Q. And then you testified earlier that you've
19 been an adjuster; is that correct?

20 A. That's correct.

21 Q. How long ago was that?

22 A. It was -- I think it was in 1997 -- I don't
23 recall exactly. Its on my CV. I can tell you exactly
24 then.

25 Q. Okay. Yes, if you wouldn't mind just

1 refreshing your recollection.

2 THE COURT: Do we need the surveys. Do you
3 want to take them down or do you still need to
4 refer to something?

5 MR. CAVALLARO: Well, I'll generally be
6 referring to them. So if I can leave them up, if
7 that's -- well, I can take them down and just refer
8 to them later.

9 THE COURT: That's fine.

10 MR. CAVALLARO: Okay.

11 THE WITNESS: In response to your question.
12 It's from '79 to '84.

13 BY MR. CAVALLARO:

14 Q. Okay. So it's going to be over 35-years ago?

15 A. Yes, sir.

16 Q. Did you or did the Plaintiff's attorneys
17 decide who to distribute these surveys to?

18 A. No, sir. It was my understanding that the
19 surveys are distributed amongst 11 attorneys who
20 distributed them amongst those knew or had knowledge
21 that were in the business of glass replacement, and then
22 fit the criteria --

23 Q. Do you --

24 A. I'm sorry. And fit the criteria as far as
25 independent nonaffiliated service providers.

1 Q. Did you or did your company directly provide
2 those surveys to those 11 attorneys?

3 A. No, sir. They were provided to counsel.

4 Q. Okay. And when you say "counsel," are you
5 referring to Plaintiff's counsel at this trial?

6 A. That's correct.

7 Q. And specific -- well, did all of the
8 Plaintiff's attorneys assist in distributing these
9 surveys or can you provide the names of the attorneys
10 who provided the surveys?

11 A. My main point of contact was Mr. Calkin and
12 Mr. Koulianos. I don't know who it was distributed to
13 after that.

14 Q. So, as far as you know, it would have been Mr.
15 Calkin or Mr. Koulianos who was distributing those
16 surveys?

17 A. That's my understanding. Yes, sir.

18 Q. You don't know the names of the attorneys that
19 these surveys were distributed to?

20 A. I think the names were mentioned, but as I sit
21 here today, I don't have recollection.

22 Q. When you say that they were mentioned, where
23 would that information be?

24 A. I'm sorry. Where would what information be?

25 Q. Sorry. I thought you said that the names of

1 those 11 attorneys may be mentioned, I guess, somewhere
2 else that you don't have with you today; is that
3 correct?

4 A. No. It was just in consideration probably
5 during one of our meeting where maybe a name or two or
6 maybe a question was raised by that attorney, but again
7 I don't recall their names.

8 Q. So when you say that this was a blind survey,
9 do you mean that it was a blind survey in that you did
10 not know how they were distributed?

11 A. Well, me and everybody else other than those
12 who did distribute it.

13 Q. Okay. So survey distribution wouldn't be
14 blind to Mr. Calkin or Mr. Koulianos, would it?

15 A. I don't supposed so, but it was blind to me.
16 My intention was to have it distributed and receive
17 accurate information. That was my main concern.

18 Q. Would you agree that Plaintiff's counsel may
19 have some interest in how these cases are decided?

20 A. They may, but they are also officers of the
21 Court, and I would assume that they are going to conduct
22 themselves as such.

23 Q. Do you believe there could be a conflict of
24 interest in how they chose the shops to distribute these
25 surveys to?

1 A. I don't believe so. But again, I have no
2 control over that. My intent was to get accurate
3 information that I could use to make my decision, you
4 know, to make my assessment.

5 Q. Do you know why these shops had -- sorry, to
6 clarify. I think you would testify that these surveys
7 were provided to attorneys and then those provided were
8 provided to shops; is that correct?

9 A. That's my understanding. Yes, sir.

10 Q. Do you know why any of these shops or all of
11 them all had attorneys?

12 A. I don't know --

13 MR. KOULIANOS: Objection. Calls for
14 speculation.

15 THE WITNESS: Yeah, I don't know if they had
16 attorneys or if they were friends.

17 THE COURT: Mr. Barrett, freeze.

18 THE WITNESS: Yes.

19 THE COURT: When there's an objection, don't
20 answer.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Just pause for a minute. Let the
23 attorneys Prieto, Koulianos, Calkin make the
24 objection, pause and let me rule on it or hear the
25 argument.

1 THE WITNESS: Yes, ma'am. I apologize.

2 THE COURT: All right. Any response?

3 Mr. Cavallaro, how does that -- let me go back.

4 Who objected? Mr. Calkin, what was the basis
5 of the objection?

6 MR. KOULIANOS: Mr. Koulianos, Your Honor,
7 both on the basis of relevancy as well as calling
8 for speculation in asking why any shop provider
9 that responded to the survey would have counsel.

10 THE COURT: All right. Mr. Cavallaro, the way
11 that the question was framed calls for speculation.
12 So if you want to rephrase it.

13 MR. CAVALLARO: Yes, Your Honor.

14 BY MR. CAVALLARO:

15 Q. Would you agree it would be more favorable for
16 a Plaintiff's counsel to choose shops that may be at the
17 higher end of the market and not any that may be lower
18 than Glassco.

19 MR. CALKIN: Objection. Calls for
20 speculation. Mr. Cavallaro is asking a question
21 about what the attorney's intent is, and that's
22 impossible for Mr. Smith to define.

23 THE COURT: And it's also assuming facts not
24 in evidence, Mr. Cavallaro, that sets securely to
25 only set to those glass shops that charged at a

1 higher rate versus at a lower rate.

2 So what's your -- go ahead. I'll let you --

3 MR. CAVALLARO: I can rephrase.

4 THE COURT: All right. Sustained. Go ahead.

5 BY MR. CAVALLARO:

6 Q. Would it be more favorable for Plaintiff's
7 counsel to distribute shops who only charge what Glassco
8 charges or higher versus shops that would charge lower
9 than Glassco.

10 MR. CALKIN: Objection. Once again, available
11 to whom?

12 THE COURT: Mr. Cavallaro, rephrase the
13 question.

14 BY MR. CAVALLARO:

15 Q. To Plaintiff in this case and to -- to
16 Plaintiff in this case as far as being able to show that
17 the market is at a higher range than a lower range?

18 MR. CALKIN: Objection. Calls for
19 speculation.

20 MR. CAVALLARO: This is not as to his
21 acknowledge for specifically how these were
22 distributed. But it is, would it be more favorable
23 for Plaintiff's counsel to choose shops that would
24 make up a higher range than to include any shop
25 that would be lower than Glassco?

1 MR. CALKIN: Again, calls for speculation and
2 calls for facts not in evidence.

3 THE COURT: All right. Mr. Cavallaro, I'm
4 concerned that the question again is based upon
5 facts that are not in evidence or speculating the
6 assumption that you're making to try to derive at
7 is that these surveys were sent to companies that
8 would in turn only charge -- or only charge at
9 higher spectrum. So that's not in evidence. It
10 again calls for speculation. So I'm going to
11 sustain the objection.

12 BY MR. CAVALLARO:

13 Q. In your experience, Mr. Smith, if a shops is
14 routinely not paid their charge, isn't it more likely or
15 in your experience haven't those shops often retained
16 counsel?

17 A. I don't know that.

18 Q. Would you have a preferred to have had you or
19 your company distribute these surveys directly to the
20 glass shops versus go through Plaintiff's counsel than
21 go through another 11 attorneys and then to these shops?

22 A. No, sir. I believe the way it was handled was
23 appropriate.

24 Q. So as far as the accuracy or any bias, you
25 have no preference in how these were distributed?

1 A. I believe the information I received was
2 honest. I believe it was accurate. I believe it was
3 objective and factual. And also, as the record shows,
4 that all the respondents were at the base pricing.

5 I guess if anybody was going to manipulate the
6 factors, it would be at the higher end and it wasn't.
7 It was at the very lowest 100 NAGS pricing.

8 Q. Would you have changed the survey if provided
9 the opportunity for these cases?

10 A. I don't understand the question, counsel.

11 Q. So it was previously testified that there were
12 prepared according to some decision, I guess, from
13 Judge Berkowitz.

14 Understanding that we are not before
15 Judge Berkowitz, is there anything that you would have
16 changed about these surveys for these cases?

17 MR. CALKIN: Objection. Relevance. He didn't
18 do any other survey. He relied upon the survey
19 that was conducted in 2018.

20 THE COURT REPORTER: Who is objecting? I'm
21 sorry.

22 THE COURT: Are you trying to get to whether
23 he changed the survey because now it's in front of
24 me?

25 MR. CAVALLARO: Your Honor, he's saying that

1 he's relying on these surveys for his opinion. So
2 I'm just asking is there anything that he would
3 have changed in these surveys to make them more
4 accurate for the Court's Order in this case.

5 THE COURT: All right. I'm going sustain the
6 previous question. As it relates to the
7 modification in this question, go ahead and answer
8 that.

9 THE WITNESS: Can you re-ask the question,
10 counselor.

11 BY MR. CAVALLARO:

12 Q. Is there anything you would have changed about
13 these surveys to more accurately pertain to the cases at
14 hand versus what may have been prepared for
15 Judge Berkowitz?

16 MR. KOULIANOS: Objection. Assumes facts not
17 in evidence pertaining to the accuracy of the
18 survey. Mischaracterizes his previous testimony.

19 Mr. Smith clearly identified that he relied
20 both on Judge Berkowitz' opinion and the
21 controlling precedent identified in Matthew Dick.

22 MR. CAVALLARO: And, Your Honor, we would
23 argue that the the law of case and there cases
24 would also include the Court's Order. So that's
25 where the question is going.

1 MR. KOULIANOS: Well, the question calls for
2 speculation and the question also misinterprets the
3 Court's Order that relied upon Matthew Dick.

4 THE COURT: Gentlemen, cut it out.

5 THE COURT REPORTER: Who was that objecting,
6 Judge? I'm sorry.

7 THE COURT: Stop.

8 THE COURT REPORTER: Who was objecting.

9 THE COURT: Oh, Roberts, you can talk. Go
10 ahead.

11 THE COURT REPORTER: Who was objection, which
12 attorney?

13 MR. KOULIANOS: Mike Koulianos.

14 THE COURT REPORTER: Okay. Thank you.

15 THE COURT: All right. The testimony is what
16 it is. I mean he testified that the survey hasn't
17 been modified or changed and it was conducted back
18 in 2016. So I'm going to overrule the objection.
19 You either would modified it or wouldn't.

20 Would you change the survey in any form or
21 fashion?

22 THE WITNESS: As I sit here now, no, I don't
23 believe I would.

24 There was some discussion at one time that I
25 wish I had reworded something, but I don't even

1 recall what that is. But had I -- even if I did
2 modify them and performed the survey again today, I
3 believe the same information would be derived.

4 BY MR. CAVALLARO:

5 Q. Do you know how Mr. Calkin or Mr. Koulianos
6 decided which attorney to distribute this survey to?

7 A. No, sir.

8 Q. Do you know if those 11 attorneys would have
9 distributed it to only some of their clients and not
10 others?

11 MR. CALKIN: Objection. Calls for
12 speculation. That's Mr. Calkin.

13 THE COURT: Sustained.

14 MR. CAVALLARO: Oh, I'm sorry. You said
15 sustained, Your Honor?

16 THE COURT: Yes. Sustained.

17 BY MR. CAVALLARO:

18 Q. I'm sorry. It's throwing me again because it
19 says Caldevilla in front of your screen, Mr. Smith.

20 But, Mr. Smith, you don't know anything that Mr.
21 Calkin or Mr. Koulianos may have said to these
22 attorneys, do you?

23 A. No, sir.

24 THE COURT: I changed it for you, Mr.
25 Cavallaro.

1 MR. CAVALLARO: Oh, thank you.

2 THE COURT: Now it's just Smith.

3 BY MR. CAVALLARO:

4 Q. Mr. Smith, do you know if any of those 11
5 attorneys included Mr. Prieto, Mr. Calkin or
6 Mr. Koulianos in that count?

7 MR. CALKIN: Objection to form. I didn't
8 understand the question.

9 THE COURT: Okay. Repeat the question.

10 MR. CAVALLARO: Thank you, Your Honor.

11 BY MR. CAVALLARO:

12 Q. So there's mention in your testimony that
13 these surveys were distributed to these 11 attorneys who
14 in turn provided it to their client.

15 Were Mr. Calkin, Mr. Prieto or Mr. Koulianos
16 part of these 11 attorneys?

17 A. As recipients of the survey --

18 Q. Yes.

19 A. -- or involved in distributing the survey.

20 Q. As recipients?

21 A. Well, I know that Mr. Calkin and Mr. Koulianos
22 had possession of the survey. It was my understanding
23 it was they who were going to distribute it. I don't
24 know the involvement of Mr. Prieto.

25 Q. Do you know if Mr. Calkin or Mr. Koulianos

1 distributed it directly to any of their own clients?

2 A. Sir, I don't know that.

3 Q. Do you know how many glass shops make up the
4 market in Florida?

5 A. No, sir, I don't.

6 Q. And are you -- were you retained to provide an
7 opinion on what the prevailing competitive price would
8 be for the market in Florida?

9 A. No, sir. It was delineated to only those
10 shops that are not affiliated, independent shops that
11 have no such relationships with third-party
12 administrators or insurance companies for discounts and
13 concessions.

14 Q. And the -- so I understand that you have that
15 limited scope, but of that scope, what was the
16 geographic area for the market you were considering?

17 A. Primarily the Tampa Bay area but all of
18 Florida.

19 Q. But would the Tampa Bay area and all of
20 Florida, wouldn't those be considered two different
21 markets?

22 A. No. The primary locations of the respondents
23 from my understanding were primarily in the Tampa Bay
24 area and the surrounding areas, but they serve as all of
25 Florida.

1 Q. Okay. So wouldn't you say that those shops
2 would also be representative of prices in Miami?

3 A. They may, yes, sir.

4 Q. And wouldn't you say those shops may also be
5 representative of places in Jacksonville?

6 A. Perhaps. Yes, sir.

7 Q. But do you know, if any, of those surveyed
8 shops do business in Miami?

9 A. I can't say specifically Miami. I think the
10 general response was, if called upon, they would go out
11 of town or service all of Florida.

12 Q. And do you know whether or not any of those
13 shops have done business in Jacksonville?

14 MR. CALKIN: Objection to this line of
15 questioning as being asked and answered. I mean
16 he's testified repeatedly that these shops that
17 were surveyed serviced the entire lin State of
18 Florida. And is he said it probably three or four
19 times just during this line of questioning.

20 THE COURT: All right. Overruled.

21 MR. CAVALLARO: I'm sorry.

22 THE COURT: Overruled. Continue.

23 BY MR. CAVALLARO:

24 Q. I'm asking specifically, Mr. Smith, if you
25 know if these shops have done business in those

1 counties, not whether or not they theoretically would
2 travel though those counties?

3 A. I think the best way I can answer that,
4 counselor, is a lot of these shops or company owners
5 offer sublet or engage sublet services from other
6 providers. So they may be based in Tampa but they may
7 get a client in Jacksonville and they would engage the
8 services of the local Jacksonville service provider to
9 do the installation and then the primary company would
10 handle billing.

11 So the answer would be, yes, I think that
12 local Tampa Bay and surrounding shops would handle
13 Jacksonville and Miami, if called upon.

14 Q. Were you ever informed of the shops that -- of
15 the names of the shops who did not respond to the
16 survey?

17 A. No, sir. I presume that everybody, 100
18 percent responded, but I don't know.

19 Q. Okay. So it's your assumption there were 24
20 surveys sent out and there were 24 responses?

21 A. The only numbers that I have are respondents.
22 So I have to presume that 24 received it and 24
23 responded.

24 Q. And is that based on anything that was told to
25 you or is that just a assumption?

1 A. That's a presumption.

2 Q. Did you provide any instruction to Mr. Calkin
3 or Mr. Koulianos how they should distribute these
4 surveys?

5 A. No, sir.

6 Q. Did you provide any instruction on how many
7 surveys you would like for them to send out?

8 A. No, sir.

9 Q. So the fact that -- so would you agree it
10 would be up to their discretion to decide how many
11 surveys to send out?

12 A. I don't know if it would be up to discretion
13 or the opportunities. I can't answer that. I don't
14 know.

15 I'm sorry. I would assume -- my goal is to
16 get as many responses as possible and to be as accurate
17 as possible within my control.

18 Q. So I think you testified earlier you don't
19 know how many glass shops are in the State of Florida;
20 is that correct?

21 A. I think I -- I believe I testified I don't
22 know how many glass shops are in Florida that are
23 independent, unaffiliated and don't have arrangements
24 with insurance companies that are third-party
25 administrators for discounts and concessions.

1 Q. So just to clarify that, do you -- of that
2 kind category you provided, do you know how many glass
3 shops in Florida fit that category?

4 A. No, sir. I do not.

5 Q. And outside of that category, do you know how
6 many glass shops there are total -- actually, strike
7 that.

8 Do you know how many glass shops there are
9 total inclusive of that category?

10 A. No, sir. Not as I sit here.

11 Q. Would you be able to provide an estimate?

12 A. No, sir. Not an accurate estimate or a
13 guesstimate. I have no idea.

14 Q. Would you be able to provide the number of
15 shops -- and I think you -- did you mention the greater
16 Tampa Bay area? Sorry. Strike that. I mean that was a
17 kind of two-jointed question.

18 Did you say another area would be the greater
19 Tampa Bay area?

20 A. I'm sorry. Say that again.

21 Q. Did you say another market would be the
22 greater Tampa Bay area?

23 A. I believe I referenced that as a market. The
24 general market was the greater Tampa Bay area and it's
25 surrounding areas, which would include all of Florida.

1 Q. Do you know how many glass shops in total are
2 in the greater Tampa Bay area?

3 A. No, sir. And I wouldn't know how many were
4 active businesses in 2016 either.

5 Q. Your survey -- and sorry, I can pull it up
6 again if you would like or I can just reference -- you
7 may be familiar. But your survey says the nonaffiliated
8 market. What do you consider an affiliate shop to be?

9 A. That would be a company that has prearranged
10 arrangements or agreements with third-party
11 administrators, or insurance companies for discounts and
12 concessions and exchange for direct referrals of the
13 customer?

14 Q. If a shop does not have an agreement with
15 Geico, would you still consider them to be an affiliate
16 if they had an agreement with another insurance company?

17 A. I would consider them having the agreement.
18 However, if the pricing affected their responses, then I
19 would have to -- I would have to probably extract that
20 information, but that wasn't the case in any of our
21 respondents.

22 Q. And how do you know that was not the case with
23 any of the respondents?

24 A. Well, basically the question, the one you
25 referenced, kind of delineated what we were seeking.

1 Q. Would any shop that has an affiliation to an
2 insurance company, do you believe that should be
3 excluded from consideration?

4 A. I would have to understand what the
5 relationship was. If they were -- you know, each
6 situations is going to have its own merit, I suppose,
7 but the goal was to try to get clear accurate
8 information for a nonaffiliated transaction and their
9 cost and charges.

10 Q. Do you know which of the surveyed shops had
11 affiliations with insurance companies and which did not?

12 A. No, sir, I don't. I think there was some
13 respondents that said during such -- certain periods of
14 times, that they did have affiliated relationships but
15 they didn't provide their numbers for those times.

16 Q. And is that just coming from the survey
17 depositions or what is that opinion coming from?

18 A. Well, one of the examples that you showed
19 earlier on the screen of a survey result showed -- I
20 don't recall the name of the company, but it showed
21 where they didn't respond to those period of times
22 because they were a network shop.

23 Q. So outside of that, do you have any other
24 basis for knowing whether or not these shops would have
25 an affiliation with other insurance companies?

1 A. Do I have any other what, sir.

2 Q. Do you have any other basis than what may be
3 included on these survey responses for knowing whether
4 or not these glass shops have an affiliation with
5 another insurance company?

6 A. No, sir. That wasn't again within the scope
7 of my involvement. My involvement was to find out the
8 pricing for those periods of time from the nonaffiliated
9 independent shops other than cash transactions.

10 Q. To be an affiliate, do you believe there has
11 to be a -- can it be an informal basis where a shop can
12 consider whether or not they will accept pricing on an
13 ongoing basis, or do you believe that it has to be a
14 written binding agreement?

15 A. I guess whatever business transaction they
16 arrange between each other is infinite, I suppose. I
17 can't respond to that. I don't know.

18 Q. So in your definition of an affiliate glass
19 shop, would they be free to choose whose pricing they
20 will accept and whose pricing they will not accept?

21 MR. KOULIANOS: Objection, Your Honor. We've
22 have gone down this line of questioning for a
23 pretty long time and there's several points of
24 speculation that Mr. Smith has had to undergo. But
25 this question calls for speculation.

1 Mr. Smith has not opined as to different
2 affiliate relationships and doesn't have any
3 expert testimony with regard to an affiliate
4 relationships. He defined an affiliate
5 relationship, knows what it means, but now we're
6 talking specifics.

7 THE COURT: All right. Go ahead.

8 MR. CAVALLARO: Sorry. I'm just trying to
9 understand the nonaffiliated market that may have
10 been described in his survey.

11 THE COURT: Okay. That wasn't question. It
12 calls for speculation. Sustained.

13 Your next question.

14 MR. CAVALLARO:

15 Q. Do you believe that -- strike that.

16 Why do you not believe that an affiliate shop
17 would be part of the prevailing competitive price
18 market?

19 A. I didn't say I disbelieved that. I don't
20 believe I said that.

21 Q. Okay. And so would you agree that an
22 affiliate shops should be considered part of the market
23 that makes up -- strike that.

24 Would you agree that affiliate shops should be
25 considered part of the market?

1 MR. CALKIN: Objection. Calls for a legal
2 conclusion.

3 THE COURT: Mr. Cavallaro.

4 MR. CAVALLARO: I'll rephrase.

5 THE COURT: It will be sustained, the
6 objection.

7 BY MR. CAVALLARO:

8 Q. Does your opinion as to the prevailing
9 competitive price, would that also be reflective of the
10 price that affiliate shops have?

11 MR. CALKIN: Same objection. Chris Calkin is
12 objecting.

13 THE COURT: Mr. Cavallaro, your question is?
14 Go ahead.

15 MR. CAVALLARO: Yes, Your Honor. Right now
16 the surveys only sought, I guess, responses from a
17 nonaffiliated market. So I'm trying to see if --
18 is he only concerned with the nonaffiliated market
19 or would he be concerned with the entire market?
20 So I'm seeing if these services would be
21 representative of prices that include affiliate
22 shops.

23 MR. KOULIANOS: Your Honor, this Mike
24 Koulianos. May I expound upon our objection?

25 THE COURT: Go ahead.

1 MR. KOULIANOS: First and foremost, the
2 analysis of the affiliate market in direct
3 violation of the Matthews Dick opinion. And it
4 follows that it is in direct violation with Your
5 Honor's Order dated April 23rd of 2020 in Paragraph
6 5 where you clearly distinguish between the
7 affiliated and nonaffiliate markets.

8 So Mr. Cavallaro's line of questioning with
9 regard to the affiliate markets calls for a legal
10 conclusion and is in violation of those two
11 controlling standards.

12 On top of that, all of Mr. Smith's materials
13 speak for themselves. Mr. Cavallaro made him read
14 his question into the record with regard to those
15 surveys that clearly excluded the affiliate market.

16 MR. CAVALLARO: Your Honor, just in response,
17 I'm looking at the Court's Order entered. I can
18 try to pull the language that Mr. Koulianos may be
19 referring to. But I believe it's, "as such,
20 evidence of pricing that has been set by an
21 agreement between Geico and a particular provider
22 and pricing has been negotiated with no one as
23 excluded."

24 Is that what -- I mean, that's what's being
25 referred to. And it doesn't mention the word

1 affiliate or not. It mentions a agreement between
2 Geico and a particular provider.

3 Is the Court ruling that no affiliate shop may
4 be considered as part of the market?

5 THE COURT: All right. My Order speaks for
6 itself.

7 MR. CAVALLARO: Yes, Your Honor.

8 THE COURT: Give me the question one more
9 time. Let me hear it. Because a lot of this was
10 testified to, and we're really just talking in
11 circles. Give me the question.

12 BY MR. CAVALLARO:

13 Q. Would your opinion as to the prevailing
14 competitive price include affiliate shops?

15 THE COURT: Okay. And I believe he testified
16 that it was nonaffiliate market was surveyed,
17 correct?

18 MR. CAVALLARO: That's correct, Your Honor.

19 THE COURT: Okay.

20 MR. CAVALLARO: So my question -- yes, that is
21 who was surveyed, but I'm asking would his opinion
22 of the prevailing competitive price also include
23 affiliate shops, or the affiliate market, and maybe
24 it wouldn't or maybe it would. I'm trying to seek
25 that information.

1 THE COURT: All right. I'm going to allow it.
2 You can answer. Go ahead.

3 THE WITNESS: As far as the opinion as to my
4 assessment and my report, it was based on
5 Judge Berkowitz' Order. And my opinion was based
6 on nonaffiliated, nonparticipant shops that
7 responded to the survey.

8 BY MR. CAVALLARO:

9 Q. Do you know what probability sampling is?

10 A. No, sir.

11 Q. Do you know what quantitative data is?

12 A. I understand the verbiage, but as I sit here,
13 I couldn't probably give you an accurate definition.

14 MR. CALKIN: Your Honor, Chris Calkin. I'm
15 going to object to this line of questioning that I
16 see coming. This is all determined based upon the
17 Daubert motion, and all of these questions
18 pertaining to the type of survey that was done, the
19 blind survey, every argument that was pertaining to
20 the survey itself was argued by defense counsel in
21 the Daubert hearing, which has now been ruled upon
22 by Your Honor. So, you know, it's irrelevant at
23 this point.

24 THE COURT: Can we --

25 MR. CAVALLARO: Your Honor, if I could --

1 THE COURT: No, you can't. Let me speak. You
2 guys keep interrupting me.

3 Are you getting into the merits and how the
4 survey was conducted? Because at the Daubert
5 hearing, we did touch upon that. So answer that
6 question.

7 MR. CAVALLARO: Your Honor, yes, I mean and
8 the understanding is that he's been qualified to as
9 an expert to testify as to the ultimate issue in
10 this case, the prevailing competitive price.

11 As to his opinion on the prevailing
12 competitive price, we should be permitted to
13 cross-examine him. And the Court specifically
14 included in that order that the Court was arriving
15 at no conclusion of that opinion at that time, was
16 our understanding.

17 So this survey and the accuracy of the survey
18 would form part of the basis for his opinion. So
19 we should be permitted cross-examination as to
20 that.

21 I can expound upon that to show the
22 distinction between the Daubert hearing and what
23 we're trying to get out in the cross, Your Honor,
24 if the Court would like.

25 THE COURT: I'm just looking for my Order.

1 MR. CALKIN: Judge, it's your Order that's
2 dated July 27th, 2020, if that helps.

3 MR. CAVALLARO: And just in very simple terms,
4 too, the Daubert hearing would be for admissibility
5 and this cross would go to weight of his opinion
6 for the Court's consideration.

7 THE COURT: I understand that.

8 I know I signed it and we had the discussion.

9 MR. CALKIN: Yes, Your Honor.

10 THE COURT: Ms. Buza was asking for the
11 continuance, the Ore Tenus Motion and that's when
12 you brought it up that it wasn't signed. And for
13 some reason it was never docketed by the clerk.

14 MR. KOULIANOS: Yes, Your Honor's Order
15 deny --

16 THE COURT: Okay.

17 MR. KOULIANOS: Sorry, Judge. Your Order
18 denying Defendant's Amended Motion to Preclude
19 Plaintiff's Expert Witness and Memorandum of Law
20 was signed via JAWS, electronically conformed July
21 27th of 2020.

22 THE COURT: Under what case number?

23 MR. KOULIANOS: The case number listed --
24 well, all of them were listed, but the lead case
25 would be 26608. Let me see -- Your Honor, I can

1 e-mail it to your or your JA.

2 THE COURT: Yes, please. It's not documented,
3 any of those cases by the clerk. I would have
4 signed it and it would have gone through JAWS. I
5 don't know what's going on.

6 MR. KOULIANOS: I have it here, Your Honor,
7 and I will forward it to -- would it be shift--

8 THE COURT: Yes, but I need to know because it
9 was never attached to any of our cases. I know I
10 signed it.

11 MR. KOULIANOS: So we got it -- we received it
12 through JAWS.

13 THE COURT: Yes. Was it the 21st or 27th?

14 MR. KOULIANOS: 27th.

15 I think I got everybody on here. It's on its
16 way, Your Honor.

17 Mr. Goan, you were copied on it as well. So
18 once you receive it, you can screen share it, if
19 need be.

20 MR. CAVALLARO: Your Honor, this is Nick
21 Cavallaro, for the record. Are we back on the
22 record.

23 THE COURT: No. We're not back on the record.
24 We're just trying to.

25 MR. CALDEVILLA: Okay.

1 THE COURT: Mr. Cavallaro -- Mr. Roberts, we
2 can go back on the record.

3 Mr. Cavallaro, I'm going to need you to repeat
4 the question now that I have everything in front of
5 me.

6 MR. CAVALAROS: Okay. Let me see -- I don't
7 remember. I remember we were trying -- what was
8 the last question.

9 THE COURT: You were asking about quantitative
10 analysis.

11 MR. CAVALLARO: Yes, Your Honor. We can
12 actually -- if it would be okay, I can strike that
13 question and ask one more directly and get this
14 right before of the Court.

15 THE COURT: Let's do it.

16 MR. CAVALLARO: Okay.

17 MR. KOULIANOS: Your Honor, if I may -- this
18 is Mike Koulianos. It's kind of a bit of
19 housekeeping bit it's a concerned that has been
20 raised now that we are into two to three times the
21 amount of time that Mr. Calkin used to conduct the
22 direct examination of Mr. Smith.

23 It seems as though Geico is undergoing a
24 deposition style examination of Mr. Smith in an
25 attempt to perhaps elongate this trial.

1 Mr. Smith provided very direct testimony, very
2 short evidence to be assisted in his expert
3 opinion, and we just ask that, this being in your
4 direct -- the Court's discretion to perhaps put
5 parameters on the remainder of the
6 cross-examination or request that counsel gets
7 through it in a time certain.

8 MR. CAVALLARO: Your Honor, my response to
9 that would be that that is -- it's badgering. It's
10 improper. It's not a proper objection.

11 THE COURT: Let's cut it out. No response is
12 needed.

13 MR. CAVALLARO: I'm sorry. I can't hear you.

14 THE COURT: No response is needed. Stop
15 responding, please.

16 All right. We all have different styles of
17 the way that we litigate. So yes, it's been a
18 little bit longer than what cross or direct was. I
19 mean, I'm not going to dictate the amount of time
20 that they have on cross.

21 I will, however, direct you not to be
22 redundant, to stop asking questions that have been
23 previously answered so that we can expedite the
24 matters before us.

25 So within being redundant, without asking the

1 same questions over and over again, let's keep the
2 objection precise so that when you make the
3 objection, the arguments are short and precise, and
4 you're not repeating yourselves over and over
5 saying the same thing because it's not necessary.

6 I get what the arguments are.

7 So how many longer, Mr. Cavallaro, do you
8 think you have?

9 MR. CAVALLARO: Your Honor, perhaps an hour.

10 THE COURT: You have another hour?

11 MR. CAVALLARO: Yes, Your Honor.

12 THE COURT: All right. I'm understanding the
13 Plaintiff's objective.

14 Yes, Mr. Cavallaro.

15 MR. CAVALLARO: There's other -- there is one
16 other matter that I would just like the Court to
17 inquire about. It was apparent that Mr. Smith was
18 speaking with someone at length during the break.
19 And if the Court can inquire if he was speaking to
20 Plaintiff's counsel about these cases or his
21 testimony.

22 THE COURT: Mr. Smith, you are under oath. So
23 apparently at some point in time you were viewed on
24 the Zoom speaking to the attorneys.

25 At any time did they tell you how to respond

1 or direct you to respond in a different manner
2 other than you already have or how you have
3 testified?

4 THE WITNESS: No, ma'am. There was no
5 discussion against my testimony at all.

6 THE COURT: Okay. Was it you guys were
7 discussing other matters related or not related to
8 the case?

9 THE WITNESS: No, ma'am. We were talking just
10 personal conversation.

11 MR. CAVALLARO: Thank you, Your Honor.

12 THE COURT: All right. Mr. Cavallaro, can we
13 move on?

14 MR. CAVALLARO: Yes, Your Honor.

15 THE COURT: All right. Let's make sure the
16 questions are precise and that we're not repeating
17 ourselves. Go ahead.

18 BY MR. CAVALLARO:

19 Q. Do you know what the -- and this actually may
20 get back to what we were just addressing, but here's the
21 question. Do you know what an error rate is?

22 A. I would presume that that's a rate of error.

23 Q. And you testified that there was no error rate
24 in your surveys?

25 A. Based on the information I received, sworn

1 testimony collaborating that information, I don't.

2 And, again, as to the materials that were
3 printed, I don't see where there could be an error rate,
4 and if there was, it would be minimal.

5 Q. From these 24 surveys, how do you know for
6 sure that that represents the category that you were
7 looking for?

8 Meaning -- and just if there were even 100
9 glass shops in Florida, you don't know exactly what
10 their response would be, do you?

11 THE COURT: Sorry, counsel, that's a compound
12 question. You asked two different questions.

13 MR. CAVALLARO: Yes, Your Honor.

14 THE COURT: Again, let's keep it precise.
15 Question one. Question two.

16 MR. CAVALLARO: Yes, Your Honor.

17 THE COURT: Your first question?

18 MR. CAVALLARO:

19 Q. If there were 100 glass shops in Florida, you
20 would not know the exact price each of those glass shops
21 charges, would you?

22 A. No, sir, not until I did a survey of them.

23 Q. So would you agree that there could be some
24 error rate in the representative nature of these survey
25 responses for what the entire market would be?

1 MR. CALKIN: Objection. Asked and answered.

2 MR. CAVALLARO: Judge, we haven't received a
3 response to that question.

4 THE COURT: Overruled. Go ahead and answer.

5 THE WITNESS: The information received from
6 the 24 respondents, a representative of that class
7 of shops, in my opinion, I don't know how many
8 independent nonaffiliated shops there are in
9 Florida, but I do have a sampling of them, which
10 are all consistent with regards to the NAGS pricing
11 and such.

12 BY MR. CAVALLARO:

13 Q. And you mentioned that you -- I'm sorry, not
14 mentioned. But you testified that you reviewed the
15 depositions of the surveyed shops to support your
16 opinion?

17 A. I read some of them. Yes, sir.

18 Q. Do you know what percentage of the surveyed
19 shops -- and strike that.

20 Okay. So the surveys indicate a charged
21 amount. Do you know what percentage of the time these
22 shops were paid their charged amounts?

23 A. No, sir. I don't have -- I didn't have access
24 to all of their records and I wouldn't know that.

25 MR. CAVALLARO: If we could turn to the to

1 Auto Glass Pro's survey, and I will bring that up
2 on the share screen.

3 Is that it? No, that may be -- no, that's the
4 order. Stop sharing. Oh, yeah, Tab 6. He just
5 provided that. Cross of Barrett Smith. Survey.

6 And I guess if you guys can help too, just to see
7 if we can get to the Auto Glass Pros quicker.

8 THE COURT: Remember, we're ending about 3:15,
9 3:20.

10 MR. CAVALLARO: The Zoom format's also making
11 it take longer, Your Honor, under the fine
12 documents that I otherwise would have tabbed and
13 available in a paper format.

14 BY MR. CAVALLARO:

15 Q. Mr. Smith, can you see my screen.

16 A. I see your screen, sir, but it's your file
17 screen.

18 Q. Oh, I see. Thank you. It says -- can you see
19 the survey?

20 THE COURT: There is no survey, counsel. Put
21 the survey up. This is why you should have
22 practiced.

23 MR. CAVALLARO: Your Honor, I tried practicing
24 and I didn't have a Zoom account. As I previously
25 mentioned, I couldn't test the screen share option.

1 THE COURT: Are your listed in Word?

2 MR. CAVALLARO: Oh, I see. Is that the
3 argument?

4 THE COURT: Open the document and then hit
5 screen share.

6 MR. CAVALLARO: I have document opened and I
7 don't see the screen share.

8 Okay. Thank you, Your Honor.

9 THE COURT: You're welcome.

10 BY MR. CAVALLARO:

11 Q. Mr. Smith, I could scroll to the bottom so you
12 can verify.

13 Do you see where in 2016 that 100 percent of
14 NAGS was charged?

15 A. Yes, sir.

16 Q. Is it your understanding that Auto Glass Pros
17 charges this amount?

18 A. Yes, sir.

19 Q. Is it is your understanding this same amount
20 is paid to Auto Glass Pros?

21 MR. KOULIANOS: Objection. Asked and
22 answered. We've covered now a handful of times
23 that Mr. Smith is not opining as to the amount paid
24 but charges only.

25 MR. CAVALLARO: Okay. With that objection,

1 I'll move along.

2 THE COURT: Yes. Sustained.

3 THE COURT REPORTER: Who made the objection?

4 MR. KOULIANOS: Mike Koulianos.

5 THE COURT REPORTER: Thank you.

6 BY MR. CAVALLARO:

7 Q. Where it says \$85 an hour -- is it your
8 understanding that this is the amount charged by Auto
9 Glass Pros?

10 A. Yes, sir. During the year of 2016, yes, sir.

11 Q. And would that also -- would that also apply
12 to the other years of the survey?

13 A. It appears from a what I can see. I can only
14 see from 2017 to 2014.

15 Q. Oh, I'm sorry.

16 A. Now I see them all. And, yes, sir, they are
17 all complete in the same manner, it appears.

18 Q. And then where it says 56 to \$100 -- it
19 doesn't say dollars there. It says "56 to 180 per
20 adhesive urethane kit."

21 Is that -- I mean do you know if they are
22 saying that the price is \$56 for a urethane kit or \$180
23 for a urethane kit?

24 A. That appears to be 56 to \$180 per kit.

25 Q. And do you know what that difference would be

1 for?

2 A. One would probably -- the 56 would be for the
3 standard urethane kit and the 180 would be for High
4 Modulus.

5 Q. And earlier you testified you reviewed the
6 survey deposition shops. So if I could pull up the five
7 invoices that were attached to the Auto Glass Pros
8 deposition.

9 MR. CALKIN: Objection. Auto Glass Pros
10 deposition of what?

11 Auto Pros deposition that he underwent for --
12 as a respondent to the surveys or the filing that
13 you made on Saturday.

14 THE COURT: I'm confused. Can you clarify.
15 What are you asking to put up on the screen. I'm
16 confused.

17 MR. CAVALLARO: They are five Auto Glass Pros
18 invoices that were attached to the survey
19 deposition of Auto Glass Pros where Auto Glass Pros
20 is only charging 50 percent of NAGS as opposed to
21 100 percent as indicated on the survey. I'm trying
22 to go into that questioning.

23 THE COURT: Is this the deposition of the
24 Deponent.

25 MR. CAVALLARO: It was a deposition of Auto

1 Glass Pros Corporate Representative regarding his
2 survey response. It was filed by the Plaintiff in
3 this case.

4 THE COURT: All right. Mr. Koulianos.

5 MR. KOULIANOS: Your Honor, the Plaintiff
6 filed the -- all, I between, 23 or 24 shop
7 depositions conducted in the matter of Auto Glass
8 American, the assignee of David Perry versus Geico.
9 This is an entirely different matter. The
10 Plaintiff did not admit these depositions into
11 evidence. So similarly to the last time Geico
12 tried to inquire and on documents that not admitted
13 into evidence, we object.

14 THE COURT: So that --

15 MR. CAVALLARO: And, Your Honor -- I'm sorry.

16 THE COURT: So that deposition transcripts is
17 not taken for any of these 11 cases that are here
18 before us today?

19 MR. KOULIANOS: Can you say that again, Your
20 Honor.

21 THE COURT: The deposition transcript that
22 you're attempting to use was not taken on any --
23 for any of the 11 cases before us, correct. It's
24 an unrelated matter.

25 MR. CAVALLARO: It was taken regarding the

1 same surveys that Plaintiff is relying -- that the
2 expert is relying upon for his opinion today. I
3 mean just like his surveys weren't prepared for
4 this case, neither were those depositions taken in
5 this case. But he's considering stuff from prior
6 cases and regarding those same surveys we're
7 looking to discuss matters he's saying he has
8 reviewed in these depositions, and that would apply
9 to his surveys.

10 THE COURT: All right, Mr. Koulianos, anything
11 else?

12 MR. PRIETO: Your Honor, Attorney Anthony
13 Prieto.

14 The objection -- just so we're clear, Judge.
15 The objection is that they are trying to introduce
16 improper hearsay into evidence.

17 Even though we're doing this virtually, Judge,
18 have to prepare this and we have to at least close
19 our eyes and imagine that we're sitting in front of
20 Your Honor.

21 If they want to impeach this witness with
22 somebody's else's prior hearsay testimony in
23 another matter, there's a certain foundation they
24 have to lay. But at no point in time were they
25 allowed to unless the -- unless certain responses

1 are give, which I'm not disputing given -- they
2 can't show it to Your Honor.

3 THE COURT: Improper impeachment. It's
4 premature. They been trying to use his deposition
5 and I gather for type of impeachment purposes.

6 So at this time, don't put up the deposition
7 transcript. It would be improper impeachment.

8 MR. CAVALLARO: And, Your Honor, just to be
9 clear, for impeachment it doesn't have to be
10 admitted into evidence already, does it?

11 THE COURT: I understand that. You can use
12 anything to impeach someone, but at this point in
13 time it's premature.

14 Why don't you ask -- continued with the
15 inquiry.

16 MR. CAVALLARO: Thank you, Your Honor.

17 BY MR. CAVALLARO:

18 Q. Earlier you testified that you reviewed the
19 survey shop depositions.

20 Didn't you review the five invoices from Auto
21 Glass Pros that were attached to that deposition?

22 A. I don't recall if I -- if that was one of the
23 depositions that I read or the information that I
24 reviewed, counselor. I'm not sure.

25 Q. If those invoices reflect that Auto Glass Pros

1 charged 50 percent of NAGS on five cases, would that
2 change your opinion as to their charges in your survey?

3 A. No, sir.

4 Q. Why is that?

5 A. Well, the survey request usual and customary.
6 I have a sampling of five out of perhaps thousands. It
7 doesn't suggest that it's customary, in my opinion.

8 Q. Do you have any specific invoice that shows
9 where they charged 100 percent of NAGS?

10 A. Sir, as I sit here, I don't have invoices of
11 anything other than my spreadsheet, which speaks for
12 itself.

13 Q. Have you ever seen a invoice where Auto Glass
14 Pros charges 100 percent of NAGS?

15 A. I don't recall if I've seen one or not. I
16 relied upon the respondents, you know, and their
17 questions to respond to this survey.

18 MR. CAVALLARO: Okay, Your Honor, if I can
19 just have one minute.

20 THE COURT: Okay.

21 MR. CAVALLARO: Thank you, Your Honor.

22 BY MR. CAVALLARO:

23 Q. Do you know how many invoices Auto Glass Pros
24 sent out in 2016?

25 A. No, sir, I don't. That wasn't within scope of

1 my involvement.

2 Q. Going to the Blue Ribbon survey, and I can
3 pull that up. Where was the -- oh, here it is. It's
4 Page 22.

5 Mr. Smith, I'm sorry, I'm just looking at
6 something now that -- there's like a line going through
7 the middle of this document. Do you know what's like
8 written sideways beside those lower years?

9 A. It appears, from what I can tell here on the
10 right-hand side it says, "Shop under all network
11 agreements before pricing changed."

12 Q. And do you know at what point in 2016 -- I
13 mean do you know at what point in 2016 that agreement
14 would have ended?

15 A. No, sir. It wasn't within the scope of my
16 involvement to find that out.

17 I may also want to add in response to your
18 question before this, the other side says, "Agreements
19 with Safelite."

20 Q. It says -- oh, sorry. I can't see that. I've
21 got to move my -- okay.

22 Okay. So you don't know how much of 2016 they
23 may have been charging those rates?

24 MR. KOULIANOS: Objection, Your Honor. Again
25 this document speaks for itself with regards to

1 years at issue for the network response and
2 Mr. Cavallaro --

3 THE COURT: Sustained.

4 MR. KOULIANOS: -- is referencing the year
5 2015. Sorry Judge.

6 MR. CAVALLARO: I'm sorry. Did Your Honor say
7 something?

8 THE COURT: Yes. I said sustained. Next
9 question.

10 MR. CAVALLARO: Okay.

11 THE COURT: Apparently the document in front
12 of us clearly is annotated and it says "not
13 applicable."

14 MR. CAVALLARO: What says "not applicable?"

15 THE COURT: The 2015 and 2016 and then N/A.

16 MR. CAVALLARO: Oh, "N/A." Yeah, I mean,
17 there's -- I mean that could be for almost the
18 entirety of 2016 as far as we know, Your Honor.
19 But if the witness doesn't know how much of 2016
20 the agreement could have been in place for, I'll
21 move on.

22 THE COURT: Your next question.

23 MR. PRIETO: Judge, Attorney Anthony Prieto.

24 I won't to reiterate that these documents are
25 not in evidence. He's not asking questions on

1 these documents. He's not using the proper
2 impeachment. And he's mischaracterizing
3 consistently throughout this trial what the dates
4 mean.

5 It's very clear what the dates mean regarding
6 a fiscal year or a calendar year, but he keeps on
7 going down this path with some sort of
8 misunderstanding.

9 MR. CAVALLARO: Your Honor --

10 MR. PRIETO: Hold on. I'm not done yet. It's
11 improper to ask a question of a witness before
12 they've answered a question which could precipitate
13 showing this document.

14 He has not asked a single question that would
15 elicit showing a document that is not in evidence
16 to Your Honor or to anyone else, for that matter.

17 It's improper impeachment from the beginning.
18 We've allowed it go on, but we're going to be here
19 all night, Judge, if we keep on this path.

20 THE COURT: All right.

21 MR. CAVALLARO: May I respond, Your Honor?

22 THE COURT: Yeah. Quickly. I'm not going to
23 have this back and forth for the next two days or
24 day and a half.

25 MR. CAVALLARO: Your Honor, I understand that

1 counsel believes their testimony -- that they can
2 testify as to calendar dates. There is nothing
3 regarding a calendar date on this survey. So
4 counsel -- counsel can't provide testimony in this
5 case.

6 I'm just asking the witness if he knows if in
7 2016 how long that price show would apply it to.
8 And the answer both parties know is "I don't know."
9 That's the only answer that's being sought.

10 THE COURT: All right. Mr. Cavallaro, you're
11 talking in circles because you continue to ask
12 questions that have been answered.

13 So, with the following direction, only put
14 documents up that you are utilizing and asking
15 questions about or --

16 MR. CAVALLARO: I was asking question about --

17 THE COURT: Stop. Stop, Mr. Cavallaro. Stop
18 interrupting me. Stop it. I don't want commentary
19 from this point forward. I want you only to answer
20 when I ask for you to elaborate on basis when
21 there's an objection, and I don't want you
22 testifying.

23 Next question.

24 BY MR. CAVALLARO:

25 Q. Mr. Smith --

1 MR. CAVALLARO: I'm sorry. My computer is
2 loading up the images.

3 BY MR. CAVALLARO:

4 Q. Mr. Smith, in your review of the depositions,
5 did you see the Blue Ribbon invoice where they charged
6 50 percent of NAGS?

7 A. I don't have recollection of Blue Ribbon's
8 deposition.

9 Q. Okay. And, again, sir, you wouldn't know what
10 percentage of the time they charged the amount they've
11 indicated on their survey?

12 A. I take their survey as it was provided to me
13 and I use that information in my overall findings.

14 Q. And I can skip through a lot of questions with
15 this. Would that be regards to how many times they
16 charged a different amount then that they put on their
17 survey?

18 A. Sir, I just rely upon the response to their
19 survey, that their normal and customary pricing was what
20 response was, 100 percent of NAGS.

21 Q. And if they had 50 invoices that show that
22 they charged half of that, would that change your
23 opinion?

24 A. No, sir, because again -- once again, that
25 wasn't in my preview as a result, so I don't know how

1 many hundreds of thousands of transactions they conduct.

2 MR. CAVALLARO: Okay. And just for the -- I
3 know we're coming up on the lunch hour, but I only
4 have maybe 10 minutes left.

5 THE COURT: All right. Continue.

6 BY MR. CAVALLARO:

7 Q. Did you follow-up with these shops to confirm
8 that they charge -- to confirm that they are actually
9 charging this amount on every invoice, the amount that's
10 in their survey?

11 A. No, sir.

12 Q. If no shop was charged -- if no shop was paid
13 the price that it charged, would this change your
14 opinion as to prevailing competitive price?

15 A. No, sir.

16 Q. You testified at the beginning of your
17 testimony that PGW could be 100 times greater than the
18 NAGS' list price; is that correct?

19 A. Yes, sir.

20 Q. Are Mygrant, PGW and Pilkington the only
21 wholesalers to buy glass from in Florida?

22 A. I don't know that to be true or not, sir. I
23 was just concentrating on the three.

24 Q. Is there a reason why you chose those three?

25 A. They are the major ones that are generally

1 recognized as distributors in this area.

2 Q. Do you know if there may be any that charge
3 less than those list prices, those three?

4 A. No, sir, but there may be. They may offer a
5 lesser quantity of product.

6 Q. You testified that some of the prices charged
7 by Glassco were on the lower end of the range. What
8 would make Glassco's price a prevailing price?

9 A. A prevailing price is what they generally
10 charge in a noncompetitive environment.

11 Q. Did you say --

12 A. I mean a nonaffiliate -- a non-third-party
13 arrangement.

14 MR. CAVALLARO: Let me check. I don't know if
15 I have anything else, but let me just confer with
16 counsel real quick, if I may, Your Honor?

17 THE COURT: Yes. Go ahead.

18 MR. CAVALLARO: Thank you.

19 THE COURT: You're welcome.

20 MR. CAVALLARO: Thank you, Your Honor. I have
21 a couple of questions, specifically three
22 questions.

23 THE COURT: Okay. Go ahead.

24 BY MR. CAVALLARO:

25 Q. Do you know who owns Safe Touch?

1 A. No, sir.

2 Q. Do you know who owns Glassco?

3 A. I think the principle owner is John Bailey.

4 Q. Do you know if Andrew Victor is also an owner?

5 A. I don't know that. No, sir.

6 Q. Do you know if anyone at Glassco owns any
7 other glass shops?

8 A. No, sir. That wasn't in the scope of my
9 involvement to know that.

10 Q. Do you believe it could make a difference if
11 one of Glassco's owners owned one of the other survey
12 shops?

13 A. No, sir.

14 MR. CAVALLARO: That's all I have, Your Honor.

15 THE COURT: All right. Thank you.

16 Any redirect?

17 MR. CALKIN: No redirect, Your Honor.

18 THE COURT: May this witness be excused for
19 the day?

20 MR. CALKIN: Yes.

21 THE COURT: All right, Mr. Smith, you are free
22 to go. Thank you.

23 MR. CAVALLARO: Your Honor, we would --

24 THE WITNESS: Thank you, Judge.

25 MR. CAVALLARO: We would request to reserve

1 Mr. Smith to call him in our case-in-chief to the
2 extent we may need to.

3 MR. PRIETO: Your Honor, can I respond to
4 that?

5 THE COURT: Yes.

6 MR. PRIETO: Attorney Anthony Prieto.

7 That's fine, Judge, he's here. There's no
8 problem keeping him here, but as far as we're
9 concerned he's off our clock, Judge. And now he's
10 places on the timeframe for Geico and they need to
11 know that they are going to be paying his hourly
12 rate starting right now while they are reserving
13 him to stay. He's an expert witness, Your Honor.

14 MR. CAVALLARO: If I could just have a brief
15 moment to discuss that with co-counsel.

16 THE COURT: All right. You know the rules if
17 you call him as your witness.

18 MR. CAVALLARO: Yes, Your Honor. One moment.
19 One moment.

20 THE COURT: All right. Are we ready?

21 MR. CALKIN: The Plaintiff's ready.

22 THE COURT: Mr. Cavallaro.

23 MR. CAVALLARO: Yes, Your Honor. I'm sorry.
24 I'm just on the phone with co-counsel -- I mean
25 with the manager at the office to see if I have

1 approval to do that.

2 THE COURT: All right. Let's talk about lack
3 logistics. We're going to take about a half hour
4 lunch break.

5 And, Mr. Prieto, what other witness do you
6 have?

7 MR. PRIETO: The Plaintiff would be resting
8 after this witness.

9 THE COURT: All right. How many for the
10 Defendant.

11 MR. CAVALLARO: We will have Susanna Eberling.

12 And we would be requesting that Mr. Smith be
13 present to be called as a witness, but right now we
14 are only certainly going to be calling Susanna
15 Eberling.

16 THE COURT: How long will that take with your
17 direct, do you anticipate?

18 MR. CAVALLARO: I'll turn that over to
19 co-counsel. I'm not doing direction. It's Joseph
20 Nall.

21 MR. NALL: Joseph Nall, for the record, Your
22 Honor. I don't anticipate Susanna's direct taking
23 more than 45 minutes.

24 THE COURT: All right. Prieto, Koulianos,
25 Calkin, Caldevilla, et al, how long on the cross,

1 do you think?

2 I'm just trying to figure out the timing, if
3 we can finish Eberling today only because I'm under
4 constraints having to get over to the Supervisor of
5 Election no later than 4:00.

6 MR. PRIETO: Attorney Anthony Prieto, just
7 responding to your question, Your Honor. I believe
8 that if their cross -- if their direct takes up to
9 45 minutes to an hour, then we'll certainly be able
10 to get the cross before 3:00, Judge.

11 THE COURT: Okay. Before 3:15.

12 MR. PRIETO: Yes, ma'am.

13 THE COURT: I don't want to cut you off if you
14 need additional time. But I would like to try to
15 get it done today unless you don't have any
16 objections to continuing it to tomorrow.

17 MR. CAVALLARO: Your Honor, we, just for the
18 record, do have -- oh, sorry, Your Honor.

19 THE COURT: Mr. Prieto, that's going to give
20 you about an hour or an hour and half. Well, let's
21 say an hour because of the objections that take up
22 some time.

23 MR. PRIETO: That should be fine, Judge.

24 And just so that we're clear, Mr. Smith is on
25 Geico's clock. I'm I to understand that?

1 THE COURT: Mr. Cavallaro?

2 MR. CAVALLARO: Yes. That's correct.

3 THE COURT: All right. Mr. Smith, you get to
4 wait around. They will be paying you for your
5 time, is my understanding. Let the record reflect,
6 they want you to stay and they will be paying you
7 for your time, whatever that amount is.

8 MR. CAVALLARO: And, Your Honor, we -- I'm
9 sorry.

10 THE COURT: Go ahead.

11 MR. CAVALLARO: I would just note that once we
12 end for the day, the time will stop at that point.
13 I just want to make that clear.

14 THE COURT: Well, we're ending at 3:30.
15 Whether or not we'll get to Mr. Smith today, I'm
16 not sure.

17 MR. CAVALLARO: And another point was, I do
18 believe our Motion for Involuntary Dismissal could
19 take a significant amount of argument. And I know
20 that Plaintiff has kind of been looking to make
21 some argument throughout the case, so I anticipate
22 that they will also have a lengthy response. I
23 don't know how that works out as far as the timing
24 for today.

25 THE COURT: Well, I'm not addressing that now.

1 I haven't even seen your Motion for Dismissal.

2 Yes, a Motion for Involuntary Dismissal.

3 MR. CAVALLARO: We will be arguing -- we will
4 be giving that --

5 THE COURT: That's an oral argument.

6 MR. CAVALLARO: Yes, Your Honor.

7 THE COURT: I thought you might be at a Brady
8 Motion.

9 MR. CAVALLARO: Your Honor, we have brief memo
10 that we'll be providing in support for the -- to
11 the extent that the Court would like to reference
12 it later. And it would have been improper to
13 provide that prior to trial regarding the Motion
14 for Involuntary Dismissal as we cannot anticipate
15 what will come out.

16 But we will be doing an Ore Tenus Motion for
17 Involuntary Dismissal, and the Court -- we would
18 just request that the Court considers that to the
19 extent the motion is taken under advisement.

20 THE COURT: We'll address that at the
21 appropriate time. We'll be in recess until 1:00.
22 Make sure you all are back and ready without delay.
23 I'll see you all back at 1:00.

24 MR. CAVALLARO: Thank you, Judge.

25 THE COURT: You're welcome.

1 (Whereupon, a recess was taken.)

2 THE COURT: Good afternoon. Is everyone ready
3 to proceed?

4 MR. CAVALLARO: Yes, Your Honor. Just for the
5 record, I e-mailed over to Plaintiff's counsel a
6 memorandum in support of a Motion for Involuntary
7 Dismissal that he would like to address at this
8 time if Plaintiff has closed their case-in-chief.

9 THE COURT: Well, let's find out. Mr. Prieto.

10 MR. PRIETO: Yes, the Plaintiff rests at this
11 time, Your Honor.

12 THE COURT: For Directed Verdict or an
13 Involuntary Dismissal?

14 MR. CAVALLARO: For an Involuntary Dismissal,
15 Your Honor. If the Court can consider the
16 memorandum, I have a summary that is much shorter
17 that I can provide at this time of that.

18 THE COURT: All right. Just make your
19 argument. Go ahead.

20 MR. CAVALLARO: Okay. Plaintiff has filed a
21 trial brief and they have cited to a few Broward
22 County cases at the end of their trial brief, which
23 involved the same policy language at issue in this
24 case.

25 But every Hillsborough County Court, which is

1 bound by the Matthew Dick opinion, has to address
2 the same governing policy language and has ruled
3 that the burden of proof is with Plaintiff.

4 The Matthew Dick opinion provides the only
5 applicable binding test for determining what the
6 prevailing competitive price is in holding. The
7 test is what the service would cost in a
8 competitive market in a normal arm's length
9 noninsurance transaction.

10 Whatever price is arrived upon through
11 sufficient admissible evidence will be how a plea
12 establishes any breach from this prima facie
13 showing of the appropriate competitive price as
14 well as damages therefrom, and the limited
15 liability.

16 The test also provides the only admissible
17 evidence that may be considered. It does not
18 matter and it's only by a plan with the Plaintiff
19 trying to say, "well, we still have a prima facie
20 duty to establish damages, but we can try to use
21 the Broad Evidence Rule addressed in their trial
22 brief to get around what would clearly be
23 inadmissible evidence under the Matthew Dick test."

24 This Honorable Court's Order on Defendant's
25 Motion in Limine to exclude inadmissible evidence

1 also holds in part, pricing that has been
2 negotiated with no one is excluded, and insurance
3 transactions that reflect negotiation or
4 competition in price setting, and that do not fall
5 into the exclusions noted in the preceding
6 paragraph may be admitted.

7 Clearly the Broad Evidence Rule cannot be used
8 to then introduced changes for what this Court has
9 referred to as a position that has been negotiated
10 with no one.

11 There is no case law in Florida that says
12 binding case law can be set aside or disregarded
13 when Plaintiff is establishing a prima facie case
14 specifically for damages.

15 Plaintiff is just trying to interject the
16 Broad Evidence Rule, which they raise in the trial
17 brief, under the guise it will be okay to use
18 anything in support of a prima facie case versus
19 when it will be required to conclusively prove
20 their case.

21 It is still our position that noninsurance
22 transactions means not paid by insurance. But the
23 Plaintiff has still not met their burden under this
24 Court's Order on Defendant's Motion in Limine.

25 Under this Court's Order, there are three

1 types of admissible evidence. There are insurance
2 transactions that reflect negotiation.

3 Plaintiff has attempted to conflate* two
4 distinct categories of admissible evidence under
5 the Court's Order by eliciting testimony that the
6 shop would negotiate the market like one would the
7 high seas in setting your price that it is
8 competitive. While Plaintiff has painted a
9 nice picture, when it is broken down, it is clear
10 admissible evidence for neither negotiated prices
11 nor competition in price setting has been
12 presented.

13 The witnesses, including Glassco's Corporate
14 Representative, testified they have not actually
15 negotiated prices charged with another company or
16 the insurance companies to arrive at a price paid.

17 They've only offered evidence of the proposed
18 prices that are expressly excluded by this Court's
19 Order. In fact it was expressly testified that the
20 big five insurance companies, Geico, Allstate,
21 Progressive and State Farm, Progressive, State Farm
22 and USA -- although recently USA may not be
23 considered part of the big five, according to the
24 testimony -- didn't pay the charged amounts most of
25 the time, but that USA began to recently. So not

1 in 2016.

2 The next category of admissible evidence,
3 which has not been provided is the shops have
4 testified there is no competition in price setting
5 in the nonaffiliated insurance market and they have
6 not addressed the affiliate or cash markets, if you
7 will.

8 The shops have all testified the customer is
9 told the price is zero dollars and that there is no
10 deductible so they will not pay.

11 We have heard the work orders where the price
12 are not completed until after the work is done,
13 that the shops work order aren't. We have heard
14 the shops say that, on top of just being free to
15 the customer, they are even offered incentives like
16 cash gas vouchers and other incentives.

17 We have heard that a shop would not attract
18 more customers if they lower their charges as it is
19 already owed and it's free to the insured.

20 It can simply not be made any clearer that
21 there is no competition regarding price. If every
22 nonaffiliated shop is offering their services free,
23 there cannot be competition in price setting.

24 And then the third category of admissible
25 evidence would be cash prices. Well, cash prices

1 are not excluded by the Matthew Dick opinion or
2 Your Honor's Order on Defendant's Motion in Limine.
3 There has been no evidence offered regarding a cash
4 offer of any kind by Plaintiff.

5 And just a brief point on the Broad Evidence
6 Rule. This rule inapplicable and can't be used to
7 help meet Plaintiff's burden to put on its prima
8 facie case.

9 In addition to Plaintiff seeking to use the
10 Broad Evidence Rule to introduce otherwise
11 inadmissible evidence of proposed pricing, the
12 Broad Evidence Rule is only to be used to determine
13 the actual cash value of property where it is
14 otherwise undefined in an insurance policy and
15 where no market of like goods exist.

16 Even Geico's own policy has the undefined term
17 "actual cash value," but that is clearly not what
18 we are here for today pursuant to Matthew Dick.

19 We are here under the distinct term,
20 prevailing competitive price, which they have
21 provided the test for.

22 In fact, co-counsel will establish Plaintiff
23 did not want to consider only evidence for which
24 the Broad Evidence Rule may apply, which is the
25 wholesale cost to replace damaged property.

1 Every time counsel asked, Plaintiff objected
2 that it was not relevant under Matthew Dick. But
3 they are going to use the Broad Evidence Rule or
4 try to use the Broad Evidence Rule to introduced
5 proposed rates only that they are unequivocally not
6 admissible -- only they are unequivocally not
7 admissible under Matthew Dick.

8 This is a windshield service the Plaintiff is
9 suing for. They are clearly not seeking to recover
10 the cost or the windshield itself or what they
11 purchased it for.

12 Plaintiff has additionally not established
13 standing in this case. Your Honor has the entirety
14 of Plaintiff's invoice, work order, and Assignment
15 of Benefits included within these -- with these
16 documents under Florida Statute Section 90.803,
17 Subsection C, under the Business Records Exception.

18 Plaintiff's argument fails for a couple of
19 reasons pursuant to the Business Records Exception.
20 Plaintiff's counsel skipped to the last step and
21 says that a signatures is prima facie evidence of
22 what it purports to be.

23 While not necessary for our argument, just to
24 highlight the point, Plaintiff never even had their
25 Corporate Representative say whose signature at the

1 scribbly line at the bottom of each of those
2 invoice was.

3 The Court cannot assume that it is the alleged
4 insured's versus a family member, a friend, someone
5 else they authorize or perhaps someone else that
6 was not authorized to sign.

7 The point being, there is no prima facie
8 evidence, not even a printed name beside the
9 scribbly line to connect the two dots.

10 The second point for why it's inadmissible
11 under the business record's exception, the
12 significant or the Assignment of Benefits is, there
13 nothing from the Business Records Statute that
14 Plaintiff has relied upon that states just -- first
15 by just assuming that everything on that document
16 is prima facie evidence. Instead the starting
17 point is that every statement on the document is
18 hearsay. So the business record's exception to
19 hearsay is to overcome this obstacle.

20 Another key point that has been glossed over
21 is the assumption that if part of the document was
22 created by a business, then any hearsay that would
23 otherwise be admissible on the document would also
24 qualify under the Business Records Exception.

25 The alleged signature of some person that

1 perhaps signed this squiggly line is hearsay within
2 hearsay pursuant to Florida Statute 90.805, and it
3 would apply in this case.

4 And the statute states, "hearsay within
5 hearsay is not excluded under 90.802 provided each
6 part of the combined statements conforms with an
7 exception to the Hearsay Rule as provided in 90.803
8 or 90.804. We would request requirements* of
9 Florida Statute 90.805.

10 Even if the clerk -- sorry. Even if the
11 document created by Glass Works meets the Business
12 Records Exception, there is no dispute that Glass
13 Works did not create the signature on that
14 document. Therefore it remains a part -- therefore
15 it remains a part of this statement that it's still
16 hearsay within hearsay, and it does not qualify
17 under the Business Records Exception.

18 To highlight the point, the Court would not
19 find that any statement written by another party,
20 not Glassco, would also be admissible pursuant to
21 the Business Records Exception, and there is no
22 distinction that just because it's a significant
23 that they need that it qualifies otherwise.

24 Glassco's Corporate Representative was
25 straightforward with his answers. He was not

1 present for whoever -- whenever that document may
2 have been signed. He did not do the installation.

3 And every Hillsborough County windshield case
4 requires that the insured be a witness to
5 authenticate that document. There has not been a
6 time before where it's been found in Hillsborough
7 County that standing has been waived because of a
8 payment.

9 And as far as the waiver argument that
10 Plaintiff briefly touched on in the trial, this is
11 simple, and Plaintiff failed to establish a waiver
12 of Plaintiff's standing due to Geico's payment.

13 For there to be a waiver, there has to be the
14 existence of some right that a party would be
15 wavering, which would be Geico's right to contest
16 standing, the actual or constructive knowledge of
17 that right, and it would be hard for Geico to
18 dispute it did not know of that right, and most
19 importantly the intention to relinquish that right.

20 Plaintiff's counsel every announced for a
21 moment they could call Geico's Corporate
22 Representative to establish waiver, and presumably
23 try and establish Geico's intention to relinquish
24 the right. However, Plaintiff did not, and they
25 have no other evidence of Geico's intention to

1 relinquish any legal right. Their only proffered
2 evidence is that Geico made a timely payment to
3 Glassco.

4 If Plaintiff's argument were logical and if
5 Geico made a payment, it would never -- Geico would
6 never be able to contest and assert an action for
7 fraud that if the signature is not what it purports
8 to be and was not authorized, then that would be a
9 fraudulent claim.

10 For fraud, a party must be induced to do
11 something, make a payment, and if Plaintiff's
12 argument is carried to its logical conclusion, if
13 Geico made a payment, there could never be that
14 action for fraud.

15 And, in addition, Geico's policy of making
16 timely payments, as was done in all 11 cases we are
17 here for today, is good public policy. And after
18 the prevailing competitive price, not one of
19 Plaintiff's witnesses or even expert could testify
20 as to how many shops were in any market in the
21 greater Tampa Bay market, in Florida.

22 If prevailing and predominant right rates as
23 to what would be the most common price paid in the
24 market, here's what we know: Plaintiff selected a
25 few shops who were know to be in litigation with

1 Geico and did not consider any cash market, or for
2 that matter, affiliate relationship -- affiliate
3 shops.

4 The selection of shops was vaguely bias, only
5 included proposed rates, and there is no estimate
6 of even what portion of the market it would have
7 met.

8 There is no way for the Court to extrapolate
9 and say that, yes, this is sufficient to show the
10 prevailing price was paid in Florida or any other
11 market because there -- it can't be representative
12 if you can even estimate what that market would be.

13 None of Plaintiff's witnesses could even
14 estimate what percentage of their invoices were
15 paid in full. And that was asked to the lay
16 witnesses and that was asked to the expert if he
17 knew what amount of the time their charges were
18 paid in full.

19 And that does conclude the summary of the
20 argument contained in the memo, Your Honor.

21 I would say that the memo shouldn't be
22 considered by Your Honor, if you will, because they
23 did not properly file that prior to it being ripe,
24 which is when Plaintiff would be closing their
25 case-in-chief.

1 And just to make sure it is a part of the
2 record that can be considered for Your Honor at a
3 later time for the consideration or under
4 advisement in that Plaintiff has also filed a trial
5 brief after the Motion deadline, but again this
6 could not be ripe or filed until Plaintiffs closed
7 their case-in-chief.

8 THE COURT: Thank you, counsel.

9 All right, Mr. Prieto, who is going argue for
10 the Plaintiff?

11 MR. CALDEVILLA: Your Honor, may it please the
12 Court, Dave Caldevilla. I will be arguing this
13 Motion for Involuntary Dismissal.

14 I just want to clarify a procedural point that
15 counsel just concluded with.

16 So on Friday Geico filed a Notice of Filing
17 concerning Plaintiff's burden of proof. Attached
18 to it was a decision by Judge Berkowitz, which is
19 called the Cordaro decision in which Judge
20 Berkowitz held in a County Court trial level case
21 that the Plaintiff in a windshield case will have
22 the burden of proving that its price did not exceed
23 the prevailing competitive price. And he went
24 about in that Order explaining how the Plaintiff
25 could meet that burden according to -- and so Geico

1 likes that decision. They love it, in fact. They
2 filed it. They rely on Cordaro, which we'll get
3 to.

4 So that notice came across our screens Friday
5 afternoon. We had argued this issue in another
6 case, had a trial brief on the issue. So we were
7 unable to respond to it -- respond to their notice
8 with our trial brief knowing that this was going to
9 be an issue that they were going to raise, and that
10 they, in fact, decided to file something with the
11 Court.

12 So we decided to respond to that filing that
13 they did with our trial brief concerning the burden
14 of proof. That's how the sequence of events came
15 about. We didn't file a motion. It's merely a
16 memorandum of law that may help Your Honor.

17 So, with that said, let me respond to their
18 motion.

19 Judge, a Motion for an Involuntary Dismissal
20 is a non-jury trial corollary to a Motion for
21 Directed Verdict in a jury trial.

22 We heard a lot of argument today but we didn't
23 really hear what the standard is. And the
24 standard, as I'm sure Your Honor knows, is that on
25 a Motion for Involuntary Dismissal, the Court is

1 required to take all of the evidence that's been
2 presented by the Plaintiff, all of the admissible
3 evidence, all of the evidence admitted into
4 evidence, and view that evidence in the light most
5 favorable to the Plaintiff, and then determined has
6 the Plaintiff failed to provide a scintilla of
7 evidence on a particular element of our case.

8 I didn't hear what element we missed, but let
9 me go through what the evidence was.

10 Counsel argued a lot about this inadmissible
11 evidence, but the inadmissible evidence didn't come
12 in. Your Honor ruled own all of the evidence, so
13 all of the evidence that's in is admissible.

14 In fact, there's a lot of evidence that came
15 in that Geico didn't even object to, which I'll get
16 to. The un-objected to evidence is admissible,
17 regardless if it's hearsay or whatever it is. If
18 you let evidence in and your don't object to it,
19 it's admissible and it's just as reliable as any
20 other evidence. That's why we have objections.

21 Sometimes you raise an objection because
22 you think it will never come in. And sometimes you
23 don't object because you know, well, you can just
24 rephrase the question and it will come in anyway,
25 or if just for whatever tactical reason you decide

1 you're not going to object to something. Either
2 way, in any of those situations, the evidences is
3 admitted and it's admissible. And the Court can
4 rely on it especial for purposes of an Involuntary
5 Dismissal Motion where you have to, where the Court
6 must review that evidence in the light most
7 favorable to us, and review every inference, every
8 reasonable inference that can be drawn from that
9 evidence in favor of us.

10 So, with that, what was our burden of proof?

11 Well, first of all, we had a burden to prove
12 standing. What is standing?

13 Standing is when a plaintiff has a beef,
14 really, with a defendant. We think you -- I think
15 you did me wrong. I think you breached my
16 contract. I think you ran into me. I think you
17 hit me, etcetera. That's where we have a standing,
18 where we have a bona fide dispute among us.

19 In this case we presented evidence that we
20 sent -- that we had a customer, 11 of them, who
21 were insured by Geico. Each one of those customers
22 signed an Assignment of Benefits Form. Every one
23 of them came into evidence, every one of them.
24 That's -- and from there we sent our bills to Geico
25 and Geico paid less than half of every single one

1 of them.

2 If you go through that Summary, Judge, you'll
3 see that the last two columns -- the last column is
4 less than the column right before it. I'm sorry.
5 It's greater. The second to last column is lower
6 than the amount that they still owed, which means
7 they paid less than half of every single invoice.
8 That creates standing, Judge. We sent them a bill.
9 They underpaid it. We claim they underpaid it.
10 They dispute it. That means we have standing to
11 sue them. It's a plan and simple as that.

12 They are arguing, "well, whose signature was
13 it? Can we really know whose signature it was?"

14 You know, Judge, this really surprises me
15 because Geico has files and files and files of
16 people's signatures. When people go and buy
17 insurance from Geico, they have to sign things.
18 And every month when Geico turns new premium, you
19 have to send them a check, and a lot of times you
20 sign that check.

21 Geico has lots of signatures, but then they
22 come forward with anybody saying, "you know, we
23 suspect this signature is a fraud. We would like
24 to sue the Plaintiff for fraud." You've heard
25 that. "If you accept these into evidence, you're

1 preventing Geico from suing us for fraud." Well,
2 that's called a counterclaim.

3 If you think that we're defrauding you, that's
4 what's called a compulsory counterclaim. They
5 didn't do that because there is fraud.

6 In fact, Geico got these Assignment of
7 Benefits, examined them, and what did they do?
8 They sent us money.

9 If they thought that these checks were fraud,
10 do you think that Geico would be paying us money
11 for them. They hardly pay even when there is no
12 fraud. They are the lowest, the lowest, is what
13 the undisputed evidence is so far, of all the
14 insurance companies in the State of Florida, and
15 there are about 100 of them that operate in the
16 State of Florida on windshield claims, Geico's
17 consistently pays the lowest amount, and that is
18 undisputed evidence, undisputed.

19 But let's say -- let's say even we give you an
20 Assignment of Benefits that's not even signed,
21 Judge -- well, let me backup -- let me backup.

22 The law in Florida is, when you get something
23 that's signed by your opposing party and you act on
24 it, you pay them money based on that signature,
25 that is prima facie evidence and the signature is

1 valid.

2 I cite to the Court a case called ITT Real
3 Estate Equities versus Chandler Insurance Agency,
4 Incorporated. It's at 617 So.2d, 750. It's a
5 Florida Fourth DCA decision, 1993.

6 The holding of that decision is, "when a
7 writing is offered against a party, it is
8 authenticated and presumed to be genuine by proof
9 that the party against whom the document is offered
10 has acted upon it as being genuine. And evidence
11 that a party acted on a document as being genuine
12 can be proved both through the testimony of the
13 party and through the admission of a third-party.

14 And authentication by circumstantial evidence
15 is permissible. That's what that case stands for,
16 and that's exactly what we have here, Your Honor.

17 Lisa signed documents for Geico. They look at
18 her and they paid. They underpaid, but they sent
19 us money. They acted on it. And so that is
20 circumstantial evidence at the very least that
21 we've got an assignment of benefits.

22 But let's say, we don't. Let's say we don't
23 even have an assignment of benefits.

24 There's is a doctrine in Florida called
25 Equitable Assignment. And the Equitable Assignment

1 is a doctrine basically that says that we're going
2 to look at the situation, a Court is going to look
3 at the situation and we're going to apply equity.

4 Does this make sense, Judge, that we would get
5 a customer and know -- do we have a ESP to know
6 that Geico is their insurance company? Do we have
7 ESP to know what their policy number is? Somebody
8 gave us that information. Somebody gave Mr.
9 Bailey's company that information. And then we
10 sent the bill and Geico paid for it.

11 We do the work. Somebody wanted Geico to pay
12 for it. The customer wanted Geico's to pay for it
13 or they wouldn't have given us the insurance policy
14 number.

15 Geico hasn't come forward to say, "you know,
16 somebody else is trying to collect this same bill.
17 You know, Judge, something is wrong here. The
18 customer said that he paid the bill and so we paid
19 the customer." That doesn't happen. We're the
20 only ones, the only ones coming forth saying, our
21 bill is not paid.

22 There's a lot of law on it. But assignments
23 in Florida do not have to be in writing. It can be
24 expressed or it can be implied by the
25 circumstances. Now that's out of the case of

1 Magnum versus plague Sulzer (phonetic spelling), a
2 First DCA case in 2000. For an equitable
3 assignment, no particular words at the end of the
4 instrument are necessary to create one as long
5 there is evidence of intention to assign and
6 corresponding intention to receive.

7 Well, again, we got a customer from Geico that
8 comes to us and says he wants a windshield and he'd
9 rather not pay for it himself, he'd rather Geico
10 pay for it because he bought insurance for that.
11 That's how we figured out that Geico should be
12 responsible because the customer told us.

13 The former requisite of an assignment are not
14 prescribed by statute, Judge. It can be
15 established by Parole Evidence, by instrument in
16 writing or any mold that may demonstrate an intent
17 to transfer an acceptance of the transfer.

18 That's Boulevard National Bank of Miami versus
19 Air Metal Industries. It's 176 So.2d, 94. That's
20 a Florida Supreme Court case, Judge.

21 Florida law recognizes the general right to
22 assign any contractual right unless the statute
23 says otherwise. There's no statute that says we
24 cannot assign the right to a windshield insurance
25 coverage. In fact, insurance claims are generally

1 assigned. Well, it happens all the time, as Your
2 Honor knows, in PIP, it happens all the time.

3 So could you imagine, Judge, in a PIP case, or
4 a mortgage foreclose case, a credit card dispute,
5 that now according to Geico, you can't just rely on
6 a signature and people acting on that signature.
7 You now have to call in, the people who sign the
8 mortgage, you have to call in to the person who
9 signed the credit card at the restaurant or what
10 have you. This is just not the law, Judge. It's
11 not the law.

12 In any event, there is evidence in the record
13 which I believes is not objected to. Exhibit's 1-A
14 through 12 when we moved them into evidence, I
15 don't remember Geico saying that "they are
16 inadmissible. I'm objecting to it." Maybe they
17 did. Maybe I missed that. But anyway, they are in
18 evidence and you're required, at least at this
19 stage, to view those in the light most favorable to
20 us.

21 Okay. So we got standing down. I think we
22 got a little bit of evidence on standing.

23 The next thing is this is a Breach of Contract
24 action. So in a Breach of Contract action, we all
25 know the elements of that. We have to show that

1 there was a contract, what does the contract say,
2 what was promised, and was there breach of that
3 promise and is there damages.

4 Okay. So we all know that all of the
5 insurance policies are in evidence. All of those
6 insurance policies, everyone of them say under the
7 section three, physical damage coverage. They say,
8 paragraph Number 1, "We will pay for each loss,
9 less the applicable deductible, caused by other
10 than collusion to the owned or non-owned vehicle.
11 This includes glass breakage." And then it say,
12 "no deductible will apply for windshield glass."

13 Okay. And then under the collision section it
14 says under paragraph 1, "We will pay for collision
15 loss to the owned auto for the amount of each loss,
16 less the applicable deductible." And, again,
17 there's no deductible in windshield.

18 Okay. So we have a problem in Geico's policy
19 that says, "We will pay for your loss." That's the
20 promise we contend they breached.

21 Now, we present evidence from the amount of
22 our bill, the amount that Geico paid, and the
23 amount of the under payment, every one of those.

24 And we also -- and I'll get to, I guess, the
25 prices and how that, you know, it applies. But

1 just for the general Breach of Contract stuff
2 elements, we've proved that there's a contract,
3 we've proved what it says, they didn't fulfill
4 their promise in there and how much -- that there
5 was damage. There were some damages.

6 So then here is the argument about whose
7 burden is what, Judge.

8 In their policy, after they promise to pay,
9 they have what's called a Limitation of Liability
10 Provision. And it says, "Well, you know when we
11 say that we were going to pay this, really and
12 truly we're not going to pay the whole thing.
13 We're going to limit it. We're little going to
14 limit it to the prevailing competitive price and
15 here's what that is and we're not going to pay one
16 penny more than that."

17 That is an affirmative defense, despite what
18 the Cordaro case -- which is a County Court
19 decision that Geico is relying upon.

20 And every Appellate decision starting, you
21 know, with the Supreme Court holds that whenever --
22 whenever you're trying to cap the amount of
23 damages, Limited Liability, in other words, either
24 by a statute or a contract, that is an affirmative
25 defense.

1 Our memo -- I'm just guessing, Judge, but I
2 bet I cite 20 cases to you, Appellate decisions,
3 not just in Florida but everywhere, everywhere.

4 The main case that we rely on is called
5 St. Paul Mercury versus Coucher, which is a Fifth
6 decision case. And it says that, "An affirmative
7 defense is a defense which admits the cause of
8 action but avoids liability in whole or in part by
9 alleging an excuse, justification or any other
10 matter negating or limiting liability. Ordinarily
11 an insured's defense based on an exclusion in the
12 policy should be raised as an affirmative defense."

13
14 Now, this is not an exclusion. This is an
15 affirmative -- this is a limitation of liability.
16 An exclusion is when they said, "We don't cover
17 windshield glass, period. It's a limitation that
18 says, "We're not going to pay anymore than this."
19 That's a limitation of liability.

20 That St. Paul versus Coucher, the Florida
21 Supreme Court quoted an adopted Coucher for this
22 proposition: "An affirmative defense is a defense
23 which admits the cause of action but avoids
24 liability in whole or in part by alleging an
25 excuse, justification for other matters negating or

1 limiting liability." And that's the Curran case,
2 C-u-r-r-a-n, "State Farm versus Curran, 135 So.3d
3 1071. There are other Appellate decisions in
4 Florida and everywhere that adopt this standard.

5 In the Cordaro case, Judge Berkowitz, who we
6 have a great deal of respect for, disagreed with
7 that, but it's well briefed.

8 So every time there's a statute, Judge, or a
9 contract, in fact, that say they are going to limit
10 my liability. Like for example, sovereign
11 immunity, well, you waive sovereign immunity up to
12 \$200,000 in liability in Florida, whatever that
13 number is, I forget, but the capping of the damages
14 is the affirmative defense. That's what they are
15 doing there.

16 So this is not our burden but you know what,
17 because of the Cordaro decision and out of respect
18 for that decision, we have gone ahead and -- I'm
19 not going to say we accepted it, but we have gone
20 ahead and presented evidence to satisfy the burden
21 to disprove the affirmative defenses that Geico is
22 not even presenting.

23 We have presented evidence, admissible
24 evidence and it's unobjected to evidence, by two
25 shop owners, our own client, an expert witness, all

1 of whom have testified that the prices that my
2 client charge in this case did not exceed the
3 prevailing competitive price.

4 In fact, the expert report that Mr. Barrett
5 Smith wrote -- I wasn't here. I was arguing
6 another case, but I heard that that exhibit went
7 into evidence without objection.

8 So remember when I said, when documents come
9 into evidence without objection, they are
10 admissible, and they are just as good as any other
11 evidence.

12 That report specifically says that our prices
13 do not exceed the prevailing noncompetitive price.

14 So it's not our burden, but we went ahead and
15 disproved the affirmative defense that Geico is
16 never going to be able to prove. They are never
17 going to be able to prove it because they have no
18 evidence to show that any other -- any other glass
19 shops in the competitive market were ready, willing
20 and able to fix those windshields, these 11
21 windshields for less than the price -- well,
22 actually, for the price that they paid us, for less
23 than half of what we charge, the prices that they
24 paid, that they could secure those on the dates
25 that those customers wanted their windshields

1 repaired.

2 Remember it had to be conveniently located and
3 available, etcetera, to provide lifetime materials
4 and parts, etcetera. They can't prove that.
5 That's their burden. So they want to shift that
6 burden to us. We're fine with it. We proved it
7 three different ways.

8 In fact, Cordaro decision, which they love so
9 much it typically said that that's how we could do
10 it. The Cordaro decision in paragraph 22
11 specifically says how we can meet our burden of
12 proof.

13 Judge Berkowitz said, and he's basing -- he
14 based that decision on Matthew Dick because the
15 Matthew Dick decision sets out neither a herculiant
16 nor a susychthian (phonetic spelling) task for
17 Plaintiff.

18 According to Mr. Ivory's* testimony, his
19 company -- this is the windshield owner in that
20 case -- his testimony -- his company has a
21 significant percentage of the noninsurance
22 affiliated market because convenience is one of the
23 basis in determining coverage or exclusion of
24 coverage -- here's where we -- "there are obviously
25 competitors in this area who are available to

1 testify as to their charges pursuing a job."

2 It didn't say the prices that the collect
3 because the charging that they make for other jobs.

4 Then he says, "generally appropriately
5 *credential expert testimony can also be used to
6 establish a proper market in a range of competitive
7 prices for similar jobs. Such testimony could
8 establish a prima facie competitive market price
9 which would then shift the burden to the Defendant
10 to affirmatively establish its position regarding
11 the proper market price range."

12 So that's the case that they rely on. We did
13 exactly what Berkowitz suggested we should do.

14 So they relied on this sentence in Matthew
15 Dick that says, "Well, you can't rely on a price
16 that's been negotiated with no one."

17 First of all, let's remember the context of
18 the Matthew Dick appeal. In that case, Your Honor,
19 the Plaintiff's position was, "Look, whatever we
20 charge Geico, you have to pay because your policy
21 says that conveniently located and you can hit the
22 price you can secure from somebody. You can secure
23 this price from us, and it doesn't matter the
24 amount, you have to pay it."

25 Geico on the other hand was saying, "Oh, no,

1 we don't have do that. We can base our prices on
2 the Safelite prices, a secret deal that we have
3 with these groups of affiliated companies, and we
4 can set our price with that."

5 Well, the Appellate Court rejected most of
6 those arguments. It said to Geico, "look, you
7 can't prove the prevailing competitive price based
8 on a price that only Geico can secure through some
9 private agreement that no one else can get."

10 And then he turns to Plaintiff and he says,
11 "And you, Plaintiff, can't rely on a price that's
12 been negotiated with no one."

13 All right. Geico takes that and think that
14 the word "negotiate" means the same thing as
15 "haggle." It doesn't mean the same thing as
16 haggle. There's no haggling.

17 It's like CarMax, you know, some car lots have
18 a way and you can haggle on the prices. Other car
19 lots, you know, there's no haggling. It doesn't
20 mean that you're not negotiating. You are
21 negotiating. "I want to buy that car over there."
22 Okay, "well, the price is \$20,000." "You want it
23 or don't you?" "Yes, I would like that car."
24 Okay. A negotiation just took place, Judge. The
25 car has been sold for \$20,000. There was no

1 haggling but there was a negotiation. And that's
2 what happened here. It happens in most
3 transactions, in fact.

4 I mean, we don't walk into a restaurant and
5 order steak and say, "Your know, I got this bill,
6 and I've got to tell you, I'm just going to pay
7 half because I'm Geico and I can secure the same
8 steak over at tender -- at the Ponderosa down the
9 street, and I'm not going to pay for this full
10 steak." That's just not the way it works. That is
11 not negotiation. That's haggling.

12 And so Geico is confused about what its burden
13 is. It's confused about what the evidence was in
14 this case.

15 The evidence is overwhelming that Geico
16 breached this contract and they caused these
17 damages and that we have standing.

18 For these reasons, Judge, and the reasons in
19 our trial brief, unless you have any other
20 questions, we respectfully request that you deny
21 their Motion for Involuntarily Dismissal.

22 Thank you.

23 THE COURT: Thank you, Mr. Caldevilla.

24 All right. In reviewing the evidence in the
25 light most favorable to the Plaintiff, pursuant to

1 the Small Claims Rule 7.110.

2 MR. CAVALLARO: May I respond, Your Honor, to
3 Plaintiff's argument?

4 THE COURT: No. To the Geico's Ore Tenus
5 Motion granting Involuntary Dismissal is denied.

6 All right.

7 MR. CAVALLARO: Is the Court considering the
8 memo that was filed by Geico?

9 THE COURT: Well, I briefly reviewed it again.
10 And you filing things five minutes before the Court
11 takes the bench is not sufficient notice, but I did
12 review it as you were speaking, but it was a very
13 brief review.

14 And I did take into consideration your lengthy
15 argument that relates to the basis for this
16 dismissal. I also took into consideration the
17 Plaintiff's argument, and at this time, it's
18 denied.

19 You may call your first witness.

20 MR. CAVALLARO: Your Honor, as long as the
21 brief was considered, we will move on -- we will
22 call our next witness, and that will be from Joseph
23 Nall.

24 MR. NALL: All right. So for, Mr. Court
25 Reporter, it will be me unless otherwise for the

1 Defense, just to make it a little easier.

2 So, at this time, Judge, the Defense would
3 call Mr. Barrett Smith.

4 THE COURT: I'm sorry. Who is the witness?

5 MR. NALL: Mr. Smith.

6 THE COURT: Oh, Barrett Smith. Okay.

7 MR. NALL: Yes, Your Honor. I need to move
8 the mic -- I'm sorry. I haven't spoken at all yet,
9 so I need to move the mic a little closer.

10 THE COURT: Where is Mr. Smith.

11 Mr. Prieto.

12 MR. PRIETO: Yes, Your Honor. I'm sorry. Was
13 there a question?

14 THE COURT: Yes. Where is Mr. Smith. They
15 are calling Barrett Smith.

16 MR. PRIETO: He's here walking into the
17 Court's view, and he's right there.

18 THE COURT: All right. Thank you.

19 Good afternoon, Mr. Smith. You are still
20 under oath.

21 Counsel for the defense may proceed.

22 MR. NALL: I'm sorry. I didn't hear you, Your
23 Honor.

24 THE COURT: Oh, counsel for the defense may
25 proceed.

1 MR. NALL: Thank you, Your Honor.

2 Thereupon,

3 BARRETT REED SMITH,

4 a witness, called by the Defendant, having been
5 previously sworn to tell the truth, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. NALL:

9 Q. Mr. Smith, the testimony you gave in the
10 Plaintiff's case-in-chief, you stated that you relied on
11 some surveys, right?

12 A. Yes, sir.

13 Q. Okay.

14 MR. NALL: Your Honor, this would be the time
15 I would normally show the witness a document I
16 would try to lay the foundation for to see if he
17 recognize it and things like that.

18 And I filed the document just a moment ago.
19 That was the surveys we were referencing earlier.
20 I'm not sure if that's -- I guess I'll try to get
21 it in the normal way then.

22 THE COURT: You don't file with the
23 expectation that they are going to appear on JAWS
24 simultaneous. There's a delay.

25 So if you just -- did you just file it with

1 the Court?

2 MR. Nall: Yes, Your Honor. These were the
3 surveys that we were attempting to get in evidence
4 earlier in Plaintiff's --

5 THE COURT: Okay. Well, that's not how it
6 works. And, as expressed earlier today, there's a
7 delay in any filing. So I don't have it.

8 Is there a stipulation as to these?

9 MR. NALL: Well, I'll pull this up on my
10 screen and see if the witness recognizes it, see if
11 he knows what it is.

12 If counsel would like, I could send it to
13 opposing counsel so it's a little easier to scroll
14 down. And that's my only purpose for calling.

15 THE COURT: Is the proper foundation --

16 MR. PRIETO: Judge, if I may?

17 THE COURT: Yes.

18 MR. PRIETO: If I may, Judge. One of
19 the things I raise is, they are starting off with
20 leading questions here with their direct
21 examination.

22 However, Your Honor was very specific on an
23 exhibit exchange that took place between the
24 parties, and these were not part of their exhibits,
25 nor were they part of our exhibits.

1 So, to the extent that they are trying to put
2 in evidence, documents that were not part of the
3 exhibit exchange, or put us on notice that they
4 were going to attempt this, it's highly improper
5 and it rubs against Your Honor's Order, and they
6 are, quite frankly, untimely.

7 THE COURT: All right. So let's all turn to
8 the pretrial conference orders.

9 And if you attempt to get these in, were they,
10 one, provided and when were they provided, and if
11 not, why not?

12 MR. NALL: Your Honor, they were filed in
13 anticipation of the Daubert motion back in -- I can
14 get the exact date in just a moment, but these
15 document were --

16 THE COURT: Were they provided at the exhibit
17 exchange and were they listed as exhibits?

18 MR. NALL: No, Your Honor, they were not. But
19 they were filed and the opposing counsel did
20 receive copies of those when they were filed in
21 there.

22 THE COURT: Well, filing something and now
23 relying upon it in the middle of trial -- so is
24 that a little bit different?

25 All right, Mr. Prieto, respond as it relates

1 to those documents.

2 MR. PRIETO: Judge, the response is inherent
3 in Your Honor's Order. There's a violation of Your
4 Honor's Order.

5 They were directed, and it was mandated by
6 this Court to have a fair trial, which is inherent
7 in every case. So this nothing short of trial by
8 ambush and gamesmanship at this point, Judge.

9 Your Honor is very clear, there was an exhibit
10 exchanged to be had. Your Honor mandated it. It
11 was almost a point of contention where I believe
12 this actually had to happen in person, and Mr.
13 Koulianos was hanging around the courthouse to have
14 this done.

15 These exhibits were exchanged physically and
16 we were not provided these exhibits, nor have they
17 been made a part of any of the record.

18 So, at the end of the day, Judge, it's just
19 not proper and it's a violation of this Court's
20 Order, and they should not be allowed to introduce
21 evidence that was otherwise not disclosed to anyone
22 in this case pursuant to Your Honor's Pretrial
23 Order.

24 Just filing a document pursuant to a motion
25 doesn't make it a trial exhibit, Your Honor.

1 THE COURT: I understand.

2 MR. NALL: Your Honor, if I may respond.

3 He is an expert and he's testified that he
4 relied on these documents. For example, he
5 testified that he relied on something --

6 THE COURT: You're trying to introduce them
7 and now use them as an exhibits.

8 I want to hear why they weren't previously
9 provided in May when I ordered the exchanged of the
10 documents.

11 MR. HALL: They were provided.

12 THE COURT: And why now this expectation that
13 they are going to become a part of court file?

14 MR. NALL: They were provided in May in
15 anticipation of the Daubert hearing. So they were
16 provided to opposing counsel at the time. And we
17 did not anticipate --

18 THE COURT: You're not actually answering my
19 question. My question to you is why were they not
20 provided during the exchange of the exhibits? Nor
21 were they listed on your exhibit list.

22 Why would it be prudent and appropriate during
23 trial to allow these documents to come in?

24 MR. NALL: Well, because they were in
25 Plaintiff's possession. And second of all, because

1 the expert testified he relied on it. And if he
2 relied on it, I believe that should then be fair
3 game in our case-in-chief, Your Honor.

4 THE COURT: You can ask questions about them.
5 You certainly have been inquiring during your
6 cross.

7 So the distinction is having them admitted
8 into evidence at this point in time is a violation
9 of my Court Order.

10 And you didn't put the Plaintiff on notice
11 that your intent was to, one, rely upon them and
12 two, introduce them into evidence. That's the
13 primary concern of the Court.

14 Understanding that you may have filed them at
15 some point in time and that they may have been in
16 the Plaintiff's possession, but the fact that this
17 is in conflict and contrary to what the Pretrial Order
18 requires and notice requires.

19 MR. NALL: Understood, Your Honor.

20 THE COURT: Those are the issues.

21 MR. NALL: Understood, Your Honor.

22 So, if I'm understanding the Court's Order
23 correctly, because it is that it was a violation of
24 the Pretrial Order, I will not be allowed to admit
25 this into evidence; is that correct?

1 THE COURT: That's correct. They were not
2 provided nor listed as part of your exhibit list.
3 You didn't put the Plaintiff on notice of your
4 intent to use them at trial.

5 MR. NALL: Okay. Thank you, Your Honor.

6 THE COURT: You can certainly inquire and
7 continue with questions as it relate to those
8 documents, but the introduction of those, the
9 objection will be sustained.

10 MR. NALL: Thank you, Your Honor.

11 May I have just one brief moment to confer
12 with counsel?

13 THE COURT: You may.

14 All right, gentlemen, are you ready?

15 MR. HALL: Yes, Your Honor. And I guess,
16 based on Your Honor's ruling, we will release the
17 witness.

18 THE COURT: All right, Mr. Bailey you're being
19 released.

20 THE WITNESS: So I'm free to go?

21 THE COURT: You're free to go.

22 THE WITNESS: Thank you, ma'am. All you
23 gentlemen, have a great day.

24 THE COURT: All right. Counsel, call your
25 next witness.

1 MR. NALL: Yes, Your Honor. At this time -- I
2 almost said the State. At this time, the Defense
3 will call Susanna Eberling.

4 THE COURT: Or the State.

5 MR. KOULIANOS: Not the State, no. Nobody
6 from the State today, I hope.

7 THE COURT: All right, Madam, your full name,
8 please?

9 THE WITNESS: Susanna Eberling.

10 THE COURT: I want to make sure I can hear
11 you. So place the microphone a little bit closer,
12 and speak up, please.

13 THE WITNESS: Just one moment, Your Honor.
14 We're moving the microphone.

15 THE COURT: That's fine.

16 THE WITNESS: Does that sound better, Your
17 Honor.

18 THE COURT: That sounds much better.

19 Madam, raise your right hand for me.

20 Do you swear and affirm the testimony you will
21 give is the truth, the whole truth and nothing but
22 the truth?

23 THE WITNESS: Yes, I do.

24 THE COURT: Thank you, ma'am.

25 All right. You may proceed, counsel.

1 MR. NALL: May it please the Court.

2 Thereupon,

3 SUSANNA EBERLING,

4 a witness, called by the Defendant, having been sworn to
5 tell the truth, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. NALL:

8 Q. Good morning. Could you please state your
9 name for the Court.

10 A. Susanna Eberling.

11 Q. And who do you work for?

12 A. For Geico.

13 Q. How long have you been working for Geico?

14 A. I've worked for Geico for 20 years now.

15 Q. What is your current position with Geico?

16 A. I'm a Continuing Unit Examiner.

17 Q. What are your responsibilities in that
18 position?

19 A. Currently my responsibilities involve serving
20 as the liaison between claims department and the Defense
21 counsel with regard to our glass litigation claim.

22 Q. And have you been designated as the Corporate
23 Representative for Geico for the 11 cases we're here for
24 today?

25 A. Yes.

1 Q. In your role as Corporate Representative, do
2 you have access to the invoices Geico receives or
3 received, rather, for glass claims in the year 2016?

4 A. Yes. I have access to that information. The
5 vast majority of our invoices are actually submitted
6 electronically. So it's more the information, but to
7 the extent that we receive a physical invoice, I would
8 have access to that.

9 Q. And do you have access to see which glass shop
10 has filed suit against Geico?

11 A. Yes.

12 Q. Do you have access to payments made by Geico
13 for glass replacement to repairs?

14 A. Yes.

15 Q. Mr. Eberling, what is an affiliated shop?

16 A. An affiliated shop is a shop that is a member
17 of the SGC Network, and that's S like Sam, G like gym
18 and C like Cat. They are part of the SGC Network, and
19 there are shops who have made the decision to be an
20 affiliated to them.

21 Q. Okay. And let me ask --

22 THE COURT: And what does that stand for? I'm
23 sorry. There was an SGC.

24 THE WITNESS: It's SGC. And, Your Honor, I
25 don't actually know what that acronym stand for,

1 for certain. But it is SGC.

2 THE COURT: You keep breaking up. SGC for
3 Sam, George, Curly, is that --

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right. Thank you.

6 BY MR. NALL:

7 Q. And I suppose I should back up a little bit.
8 When I asked you what is an affiliated shop, I was
9 asking what is an affiliate shop to Geico, and that was
10 your understanding, correct?

11 A. Yes. That's correct.

12 Q. Can a shop be an affiliated with SGC but not
13 Geico?

14 A. A shop can be in the SGC court and not be an
15 affiliated to Geico.

16 Q. Do affiliates of Geico have an agreement with
17 Geico?

18 A. No.

19 Q. Are affiliates obligated to accept a Geico
20 customer?

21 A. No.

22 THE COURT REPORTER: I'm sorry. Can you ask
23 that question again.

24 MR. PRIETO: Objection, Your Honor.

25 THE COURT: Okay. Hold on. Time out.

1 Mr. Nall, I didn't catch your question. You
2 broke up. Mr. Roberts didn't catch it, and then
3 there was an objection. So repeat it. And then
4 I'll hear the objection. Mr. Roberts is nodding
5 that he didn't hear it.

6 Go ahead. One more time.

7 BY MR. NALL:

8 Q. Are affiliates obligated to accept a Geico
9 customer?

10 MR. PRIETO: Objection. Lack of foundation.
11 Calls for hearsay.

12 THE COURT: Okay. Go ahead, Mr. Nall,
13 respond. Let me start with.

14 MR. NALL: She's already testified what
15 affiliates are as it relates to Geico, and that the
16 affiliate can be an affiliate of Geico.

17 She would have knowledge of an affiliate,
18 whether or not they have to accept a Geico
19 customer. And she's a Geico Corporate
20 Representative. She has knowledge about --

21 THE COURT: All right. Mr. Nall, why don't
22 you set the proper foundation on that question. So
23 that as it relates to just the necessity of sitting
24 the proper foundation for that, I'm going to allow
25 you to do that.

1 It is at this point in time -- I'm going to
2 sustained it but I'm going to allow you if you want
3 to kind of set forth some questions to establish a
4 foundation at this time.

5 BY MR. NALL:

6 Q. Ms. Eberling, in your role as Geico's -- in
7 your role as Continuing Unit Examiner for Geico, do you
8 have to have knowledge of the differences with being
9 affiliated and nonaffiliate shops?

10 A. Yes.

11 Q. And in your employment as a Continuing Unit
12 Examiner, do you have to have knowledge of the
13 relationship between affiliate shops and Geico?

14 A. Yes.

15 Q. Okay. So, with that knowledge, are affiliates
16 obligated to accept Geico's customers?

17 MR. PRIETO: Objection, Your Honor. Lack of
18 foundation.

19 She already testified that the affiliates do
20 not have a contact with Geico specifically. So
21 unless she's going to testify as to what that
22 contract says and she's seen and read it or she's
23 going to show it to us, that is an agreement
24 between the SGC Network, of which she doesn't even
25 know what the acronym means, and the affiliate

1 shop. Therefore, she lacks the knowledge to speak
2 to the terms of that contract, a contract of which
3 is not before this Court.

4 THE COURT: All right.

5 MR. NALL: If I may respond, Your Honor. The
6 question I am asking is about affiliate and Geico.
7 It has nothing to do with the SGC Network. It is
8 an affiliate of Geico.

9 THE COURT: So those affiliate shops are
10 members of that SGC Network?

11 MR. NALL: Correct. I'm specifically
12 inquiring is a Geico affiliate, not SGC affiliate,
13 if Geico affiliate shops are obligated to accept a
14 Geico customer. I'm not asking about SGC or
15 anything like that.

16 THE COURT: All right.

17 MR. PRIETO: If I may, Your Honor.

18 THE COURT: Go ahead.

19 MR. PRIETO: Judge, if I may.

20 THE COURT: Go ahead.

21 MR. PRIETO: The testimony is clear, in order
22 to be a Geico affiliate, that affiliate has to be
23 an affiliate of SGC Network. They cannot be a
24 Geico affiliate.

25 There is no agreement between Geico and any

1 shop that is an affiliate shop. Geico does not
2 have an agreement with an affiliate shop.

3 THE COURT: Let me get an interpretation on
4 that from the witness.

5 Ms. Eberling, is there any other affiliate
6 shop that are not part of that SGC Network? I
7 didn't catch that testimony.

8 THE WITNESS: No, ma'am. The affiliate shops
9 to Geico are members of the SGC Network.

10 THE COURT: All right. So, sustained.

11 BY MR. NALL:

12 Q. So, can a shop be an affiliate to the SGC
13 Network but not an affiliate to Geico?

14 A. So a shop can be in the SGC Network but not
15 necessarily be an affiliate to Geico.

16 Q. So if a shop is -- I'll scratch that.

17 Is there a contract between affiliate shop and
18 Geico?

19 A. No.

20 Q. What is a nonaffiliate shop?

21 A. A nonaffiliate shop would be a shop who they
22 may not necessarily be a member of the SGC Network, but
23 even if they are, they haven't necessarily taken that
24 step to decide to be an affiliate with Geico.

25 THE COURT: All right. So it's not a member

1 of this SGC, but -- what was the last part?

2 THE WITNESS: They could be a member of the
3 SGC Network, but they haven't necessarily taken
4 that step to be an affiliate with Geico.

5 THE COURT: Okay. You're just breaking up on
6 my end.

7 You can continue. I'm sorry, counsel.

8 BY MR. NALL:

9 Q. If Geico were to refer a customer to an
10 affiliate shop, would that affiliate shop be obligated
11 to accept that Geico customer?

12 MR. PRIETO: Objection, Your Honor. Calls for
13 hearsay, speculation. Lack of foundation again.

14 MR. NALL: Your Honor, she's demonstrated
15 knowledge of the relationships between those
16 entities. And it's not calling for speculation.
17 It's to ask what would happen. If she knows what
18 it is, then it's not speculation.

19 I'm not asking her to speculate. I'm asking
20 her what would happened, and if she knows, she
21 knows.

22 THE COURT: All right. What's the -- the
23 question one more time.

24 MR. HALL: Certainly, Your Honor.

25 BY MR. HALL:

1 Q. If Geico were to refer a customer to an
2 affiliate shop, would that affiliate shop be obligated
3 to accept that Geico customer?

4 THE COURT: All right. Sustained on
5 speculation. You can probably rephrase that, but
6 the way that you -- that the question was asked,
7 calls for speculation.

8 BY MR. NALL:

9 Q. If Geico were to refer a customer to an
10 affiliate shop, and that affiliate shop refused service
11 to that Geico customer, would that breach any sort of
12 contract?

13 MR. PRIETO: Objection, Your Honor. Calls for
14 improper hypothetical. She's not an expert. Once
15 again, lack of foundation.

16 She does not have the knowledge of the
17 contract between the affiliate shop's obligation to
18 the network affiliates, because that is a contract
19 that is only held between the network affiliates or
20 the nonaffiliates or Geico. Geico is not part of
21 that contract. So they have no knowledge of what
22 these affiliate shops are obligated to do to the
23 SGC Network.

24 Judge, just to be clear, unless it -- if Geico
25 is going to be calling someone from the SGC Network

1 to trial, Judge, which I didn't see on the witness
2 list, then maybe I'd let it go. But to speak of
3 terms between two parties that aren't going to be
4 here to testify in the form of a hypotheticals is
5 not proper.

6 MR. NALL: Your Honor.

7 THE COURT: She can testify to what Geico's
8 policies and procedures and the relationship that
9 Geico had that she knows of, but these questions
10 are as to the SGC. And, again, not even knowing
11 what it stands for.

12 I don't even know what SGC is. I'm unclear at
13 this point. So certainly she can't testified as to
14 anything that this SGC Network does or doesn't do,
15 or you're asking questions in the hypothetical.

16 MR. NALL: Your Honor, to be clear, my
17 question did not reference SGC. It was opposing
18 counsel who interjected SGC into the question.

19 THE COURT: All right. So, sustained.

20 Next question.

21 BY MR. NALL:

22 Q. Ms. Eberling, you heard testimony from Barrett
23 Smith about a survey of 24 glass shops; is that correct?

24 A. Yes.

25 Q. Have those 24 shops filed suit against Geico?

1 A. Yes. All of them.

2 Q. How many lawsuits have those glass shops filed
3 against Geico?

4 A. Those are 23,000 combined.

5 Q. Would that number amount to over half of all
6 of the Glassco lawsuits ever filed against Geico?

7 A. Yes.

8 Q. And is that figure as of Sunday morning?

9 A. Yes, it was.

10 Q. Being two days ago?

11 A. Yes.

12 Q. All right. When an insured calls Geico and
13 does not have a glass shop in mind, what does Geico do?

14 A. If they ask us for a recommendation, we will
15 go through a list of shops with them to offer them a
16 competent and convenient repair facility.

17 Q. And how does Geico insure that it's providing
18 a conveniently located shop?

19 A. We would discuss that with the insured and it
20 would be based on their needs. So, if they wanted
21 something close to their home, we would search for shops
22 that are near their home or would have a mobile unit
23 that would dispatch to their location.

24 THE COURT: Ms. Eberling, are you reading
25 something?

1 THE WITNESS: No, ma'am. I'm sorry. There's
2 a piece of paper on the -- like a ball of paper.
3 There's nothing like that in my -- looking at the
4 screen is kind of distracting for me.

5 MR. PRIETO: I can hold the sheet up. It
6 doesn't have anything on it.

7 THE WITNESS: There's a piece of paper -- like
8 a sleeve underneath the -- underneath the thing.

9 MR. PRIETO: There nothing on that.

10 THE WITNESS: But, no, I'm not read nothing.

11 MR. PRIETO: I was just something by Melissa's
12 desk.

13 THE COURT: That's fine. I believe you all.

14 BY MR. NALL:

15 Q. For a affiliate shop, are there any sort of --
16 I'll rephrase.

17 Are there any sort of requirements for shops
18 to be affiliates with Geico?

19 MR. PRIETO: Objection, Your Honor. Calls for
20 speculation. They come apart -- when they come in
21 a affiliate shop, as Ms. Eberling testified, that
22 shop has to become a part of this SGC Network,
23 which we're not sure what that means. And those
24 requirements would be between the SGC network and
25 the affiliate shop of which Geico is not a party to

1 or privy to that contract.

2 MR. NALL: Your Honor, if she has personal
3 knowledge of it, it's not speculation. It's based
4 on her experience with these shops --

5 THE COURT: Overruled. If she has knowledge
6 of any affiliate shops.

7 MR. PRIETO: Yes, Your Honor, just for the
8 record --

9 THE COURT: -- and not the --

10 MR. PRIETO: I'm sorry.

11 THE COURT: What was that?

12 MR. PRIETO: If I may just may perfect my
13 objection. Any knowledge of a contract that she's
14 read or that has a requirement to become part of
15 it, that also would be hearsay, Your Honor, hearsay
16 without exception, quite frankly.

17 THE COURT: Okay. Go ahead, counsel.

18 MR. NALL: Okay. Should I repeat the
19 question?

20 BY MR. NALL:

21 Q. Do these -- do affiliate shops have certain
22 requirements?

23 A. Yes.

24 Q. Okay. What are those requirements?

25 A. They have to maintain a certain level of

1 liability insurance. They are required to provide
2 evidence of compliance with ANSI Standards. And that's
3 the American National Standards Institute. They are
4 required to provide employee background checks. They
5 are required to maintain a certain level of customer
6 service satisfaction.

7 They are required to provide the photos of
8 professional signage on their storefront, should they
9 have a storefront, or their vehicle. So their mobile
10 unit.

11 Those are among the requirements that I can
12 just recall.

13 Q. In 2016, how many affiliate and nonaffiliate
14 shops in the State of Florida billed Geico for
15 windshield replacements?

16 A. That was -- it was around 736. So more than
17 730.

18 Q. And did Geico pay those shops in accordance
19 with its prevailing competitive price?

20 A. Yes.

21 Q. How many shops in the State of Florida, to
22 include all glass shops, have sued Geico since January
23 1, 2016 for windshield replacement?

24 A. I'm sorry. Can you repeat the question.

25 Q. Sure. Sure. How many shops in the State of

1 Florida have sued Geico over windshield replacements
2 since 2016 -- since the start of 2016?

3 A. I'm sorry. Do you mean shops that had
4 invoiced us in 2016 and have later filed suits.

5 Q. Yes. Okay. I'll rephrase. I apologize.

6 So, in the State of Florida, how many shops
7 both invoiced Geico in the calendar year 2016 and also
8 filed suit against Geico, period.

9 MR. PRIETO: Objection. Compound.

10 THE COURT: All right.

11 MR. PRIETO: Also, Judge, I'm assuming that
12 this is coming from the predicate that she had
13 access to the documents to where she's deriving
14 this information, but yet, isn't -- those would be
15 Geico business records, I guess, of which we're not
16 privy to see. So this is hearsay, Judge.

17 MR. NALL: And, Your Honor, if I may respond?
18 Payments and bills received from all of Plaintiff's
19 witnesses, both that requested prior to discovery
20 and did not receive, yet he was able to testify to
21 every single payment they got and paid what. So
22 we're just asking them if we will be afforded the
23 opportunity.

24 THE COURT: All right. So as to compound
25 question, rephrase it. You asked two questions:

1 In Florida how many shops invoiced Geico and/or
2 sued. So that's compound.

3 Let me hear the answer for the first part, in
4 Florida how many shops invoiced Geico in 2016?

5 THE WITNESS: There was 736, Your Honor.

6 MR. NALL: May I proceed?

7 THE COURT: I'm sorry. What was that?

8 MR. NALL: I was just asking if I may proceed?

9 THE COURT: Okay. So, what's the second part
10 of the question.

11 BY MR. NALL:

12 Q. So, of those 736 shops, how many have sued
13 Geico from February 1, 2016 to present?

14 A. Eighty-five.

15 MR. PRIETO: I'm sorry. I didn't hear the
16 question, Your Honor.

17 THE COURT: Repeat it, counsel.

18 BY MR. NALL:

19 Q. So, of those 736 shops, how many have sued
20 Geico from January 1, 2016 to the present?

21 A. Eighty-five.

22 MR. NALL: May I have just a brief moment to
23 review my notes, Your Honor.

24 THE COURT: Yes. Okay. That's fine.

25 MR. HALL: I'm sorry.

1 THE COURT: No, that's okay.

2 Counsel, are you ready?

3 MR. NALL: Yes, Your Honor. I tender the
4 witness. I told you I'd be quick.

5 THE COURT: Okay. Mr. Prieto, Calkin,
6 Koulianos, Caldevilla.

7 MR. PRIETO: It will be Mr. Prieto, Your
8 Honor. Thank you.

9 THE COURT: I keep naming. There's so many of
10 you in that conference room.

11 Mr. Prieto.

12 MR. PRIETO: Yes, ma'am. Thank you.

13 CROSS EXAMINATION

14 BY MR. PRIETO:

15 Q. Ms. Eberling, you stated that Geico -- that
16 you had knowledge that Geico was sued 23,000 times; is
17 that correct?

18 A. Yes, Mr. Prieto. We didn't mention that
19 number.

20 Q. What number did you mention when you talked
21 about the lawsuits that were filed?

22 A. I'm sorry. I was confirming it, yes, we did
23 speak about 23,000.

24 Q. And of those 23,000 lawsuits, isn't it true
25 that Geico, in fact, have paid a majority of those

1 lawsuits out in full and settled with those individual
2 shops?

3 MR. NALL: Objection, Your Honor. Those are
4 suits that either Geico may have settled, you know,
5 for litigation purposes or may be subject to
6 confidential trade agreements. I object to any
7 question about resolution of those cases. All I
8 asked is how many sued.

9 THE COURT: All right. Mr. Prieto, can you
10 repeat the question because you're breaking up.

11 MR. PRIETO: I will repeat the statement
12 that's more or less a question. The question to
13 point of a leading question was, "isn't it true
14 that Geico had settled the majority of those 23,000
15 lawsuits that she referenced in her direct
16 examination and payment in full.

17 MR. NALL: And I would object, Your Honor,
18 especially about the payment in full. We're
19 talking about cases that have been maybe paid,
20 maybe not paid, maybe just -- but to the extent
21 that we're talking about resolution of cases, those
22 may be subject to a Confidentially Agreement.

23 If you want to ask how many are still open,
24 that's fine. But I don't believe we are allowed to
25 get into the details of what happened to those

1 underline cases as they are not relevant at this
2 point.

3 THE COURT: I have several issues. All right.
4 Now, isn't it true that Geico resolved, I believe,
5 up to 23,000?

6 So I'm going to allow her to testify. They
7 either did resolve them or didn't. That doesn't
8 call for any trade secret or any confidentiality
9 breach, answering whether or not they were
10 resolved, and then we'll get to the second part of
11 that.

12 THE WITNESS: Your Honor, I don't know many of
13 that 23,000 have actually resolved. We do still
14 have quite of few of these glass litigation cases
15 pending.

16 THE COURT: All right. Mr. Prieto, do you
17 want to do follow-up on that one?

18 MR. PRIETO: Sure.

19 BY MR. PRIETO:

20 Q. Ma'am, you are aware that Auto Glass American,
21 as of late -- a year-and-a-half, inclusive of that
22 23,000 lawsuits, had 13,000 lawsuits that were settled
23 for payment in full with Geico under a settlement,
24 correct?

25 MR. NALL: Objection, Your Honor. I would

1 object to the -- especially to the part about
2 settling in full, or any part about payment.
3 Again, that could be subject to a confidential
4 settlement agreement. There could be other reasons
5 for paying those. Maybe they were paid. Maybe
6 they weren't.

7 If you want to ask whether they -- you know,
8 are they still active, that's fine. But we can't
9 get into details of settled cases.

10 THE COURT: Sustained. Just ask, are you
11 aware whether or not those 23,000 were settled.

12 Auto Glass cases correct, Mr. Prieto?

13 MR. PRIETO: The question was whether or not
14 she aware that they settled -- that Geico willing
15 settled for payment in full with a shop name Auto
16 Glass American for 13,000 of the 23,000 lawsuits
17 that she referenced, that they elicited, and that
18 they opened the door to, Your Honor.

19 If they don't want to speak a about privileged
20 information, then they shouldn't bring it up. And
21 if it's going to remain privilege, then I'm asking
22 the Court to strike her testimony.

23 THE COURT: Mr. Nall, you did open up the
24 door. You're the one that asked how about "how
25 many lawsuits are in the State of Florida? How

1 many glass shops did you do?"

2 MR. NALL: Right.

3 THE COURT: Now, you opened that door. So how
4 is this now it confidential information.

5 MR. NALL: I didn't -- Your Honor, I didn't
6 open the door for any resolutions, any details of
7 those resolutions.

8 I simply asked how many lawsuits did they
9 file. So if he wants to say, well, 13,000 of those
10 are gone, that's what the door was opened up to,
11 not the detail of the resolution of what was paid.
12 Just, okay, well -- okay, 12,000 of them are
13 closed. They were closed last year. They were
14 closed this year. Not the underlying details.

15 MR. PRIETO: Can I respond, Judge.

16 THE COURT: Yes.

17 MR. PRIETO: There was a line of questions and
18 Ms. Eberling surprisingly was very, very precise
19 about 736 shops have sued Geico, and a total of 85
20 have sued them since 2016, and over 23,000 lawsuits
21 have been filed and those are some of the surveyed
22 shops.

23 It's pretty clear that they were trying to use
24 this to show some sort of credibility issue or show
25 some bias for the surveys that were taken, and then

1 of course impeach Mr. Barrett Smith, so by doing
2 that, Your Honor, and being so precise. There
3 wasn't any question at all relevant to any to any
4 of those lawsuit and any of those shops.

5 We have tried to block it in this entire
6 trial. We've tried to keep it out and they
7 persist. They keep on this path of what is, quite
8 frankly, irrelevant. But now that they've opened
9 the door, she needs to answer the question so the
10 Court gets a full understanding in what its
11 supposed to in search of the truth and not some
12 sort of gamesmanship and smoke show.

13 MR. NALL: Your Honor, none of that still
14 opens the door to the underlying, I guess, details
15 of settlements, of settled cases.

16 All I ask was how many lawsuits are filed?
17 Anybody can go on Hover and look. I mean it's
18 public record.

19 THE COURT: Without getting into any type of
20 confidentiality, any type of settlement, so that it
21 violates so that it violates any of the mediation
22 rules, I don't want that. I don't think that that
23 is eliciting that testimony.

24 But the question again or the previous inquiry
25 from the witness was the number of glass shops that

1 they have sued Geico, that was 84, the number of
2 lawsuits brought to Florida 23,000. And there were
3 other follow-up questions as it relates to those
4 pending suits.

5 Now as to answering the question "are you
6 aware whether or not Auto Glass has settled,"
7 without going into any privilege or settlement or
8 testimony, she can answer that.

9 Is she aware that 13,000 of those 23,000 cases
10 settled?

11 THE WITNESS: Your Honor, I don't know that
12 there's -- that there was 13,000 Auto Grass
13 American cases. I do know that we have no longer
14 have litigation cases with Auto Glass America.

15 BY MR. PRIETO:

16 Q. And, Ms. Eberling, isn't it true that you no
17 longer have litigation cases with Quality Counts Auto
18 Glass that would comprise somewhere of those 23,000
19 lawsuits that you mentioned?

20 A. I believe that's right, Mr. Prieto.

21 Q. Great. And isn't it true that Geico no longer
22 have litigation cases with Lloyds of Shelton Auto Glass
23 which comprise those 23,000 lawsuits that you referenced
24 in your direct examination.

25 A. Yes. That's correct. I believe there are no

1 longer litigation cases with them.

2 Q. And isn't it true that Geico no longer have
3 litigation cases with Glass Medics Auto Glass, which was
4 comprising of lawsuits within that 23,000 lawsuits that
5 you mentioned in your direct examination?

6 A. I believe that's right, too.

7 Q. Just so that we're clear, you have never seen
8 the contract between the SGC Network and Geico's
9 affiliate shops, correct?

10 MR. NALL: I would object as that calls for
11 information about a third-party. I don't believe I
12 asked about a contract between those other two
13 parties --

14 THE COURT: Right.

15 MR. NALL: -- between Geico and SGC.

16 THE COURT: Right. He asked questions about
17 the affiliate shop. Sustained.

18 MR. PRIETO: I'm sorry, Judge. I did not hear
19 your response.

20 THE COURT: My response?

21 MR. PRIETO: I didn't hear any response. I
22 asked the question that Ms. Eberling has not been
23 privy to or have seen the contract between the
24 affiliate shops and the SGC Network, and then there
25 was an objection by Mr. Nall, and I didn't hear the

1 Court respond to that objection.

2 THE COURT: Sustained. Am I coming through?

3 MR. PRIETO: Yes, ma'am.

4 BY MR. PRIETO:

5 Q. Ms. Eberling, you testified that in order for
6 a shop to be an affiliate shop with the SGC Network,
7 they have to carry insurance of a certain amount; is
8 that correct?

9 A. Yes. So that was just to be in network and
10 then be an affiliate with Geico.

11 Q. How much insurance do they need to carry with
12 them to be an affiliate shop with the SGC Network?

13 A. I don't recall that specific amount.

14 Q. In order to be compliant with, I believe you
15 said the acronym was ANSI, A-N-S-I. What does it take
16 for an affiliate shop to be compliant with the ANSI
17 standards?

18 A. I don't know that I can speak to everything
19 that they have to show to be compliant with the ANSI
20 standards.

21 Q. As far as the affiliate shop goes, have you
22 ever personally witnessed a signage on an affiliate
23 shop's van or a store frontage?

24 A. I have seen -- not -- no, I have seen store
25 fronts and I have seen vehicles for affiliate shops.

1 Q. Can you name two affiliate shops that you've
2 seen their vehicles for?

3 A. Not right off the top of my head, Mr. Prieto.
4 I apologize. I have seen them doing work around the
5 Lakeland area.

6 Q. Ms. Eberling, you do not contest that Glassco
7 was a competent and repair facility at the time of loss
8 for the shops or for the jobs that we're here for today,
9 correct?

10 A. I wouldn't have an opinion as to whether they
11 are competent or not, Mr. Prieto.

12 Q. What about conveniently located? Does Geico
13 have an opinion as to whether or not my client was
14 conveniently located for the 11 jobs that we're here for
15 today?

16 A. No.

17 Q. Geico doesn't have any evidence of any fraud
18 as it relates to the signatures found on the invoices
19 for the 11 jobs that we're here for today, correct?

20 MR. NALL: Your Honor, I would object to
21 outside the scope of direct.

22 THE COURT: I'm go to allow it. You can
23 answer.

24 THE WITNESS: As I sit here today, I am not
25 aware of any specific facts involving fraud in

1 these 11 cases.

2 BY MR. PRIETO:

3 Q. Ma'am, isn't it true that Safelite Solutions
4 or the SGC Network is actually the administrator for
5 Glassco's program?

6 MR. NALL: Objection to outside scope and
7 relevance.

8 MR. PRIETO: It goes to the basis of her
9 knowledge, Judge, that she testified to. I'd like
10 to get into what the term "access to these
11 documents" means and who actually is in control of
12 the SGC Network that they brought up in their
13 direct examination.

14 THE COURT: Does anyone know what SGC stands
15 for?

16 MR. PRIETO: I do, Your Honor, but that's
17 not --

18 THE COURT: Okay.

19 MR. PRIETO: Quite frankly, they brought it
20 up.

21 THE COURT: Mr. Prieto, your question is, SGC
22 is administrator to Geico?

23 MR. PRIETO: Isn't it true that SGC Network
24 administers Geico's entire glass program?

25 MR. Nall: And I objected to beyond the scope,

1 Your Honor, and relevance.

2 THE COURT: It is relevant since she's brought
3 it up as the affiliate in her relationship. So I'm
4 going to allow it.

5 Ma'am, you can answer.

6 BY MR. PRIETO:

7 Q. Ms. Eberling, you can answer -- you can answer
8 the question, Ms. Eberling.

9 A. So Safelite Solutions facilitates payments on
10 our glass lines, but no one administered the entire*
11 glass program except Geico.

12 Q. Isn't it true that Geico has stated previously
13 in correspondence that the SGC Network is administering
14 their glass program?

15 MR. NALL: Objection again to outside the
16 scope of direct and relevance. I don't believe I
17 brought up SGC at all in my direct.

18 THE COURT: Let me go back in my notes. But
19 go ahead. Do you want to respond, Prieto?

20 MR. PRIETO: Sure, Judge. The only reason why
21 the SGC Network has been brought up in this lawsuit
22 or this trial is because Ms. Eberling testified to
23 it. And, in fact, Your Honor asked her what the
24 SGC Network means and she said that she didn't know
25 what the acronym meant, however, they brought it

1 up, Judge.

2 MR. Nall: And I only ask as to affiliation,
3 nothing about payments, about the facilitating of
4 claims, about how any internal procedures worked.
5 It was a simple question.

6 THE COURT: There were several question with
7 this SGC that I was interested in knowing. First
8 it started with can an affiliate shop be a member
9 of the SGC Network.

10 Then there were questions asked, can you shop
11 be and affiliate to SGC but not to Geico related to
12 the contract.

13 And then, if they are nonaffiliate that is not
14 a member -- is there any nonaffiliate that is not a
15 member of an SGC that has taken steps to become and
16 affiliated with Geico?

17 So I'm going through my questions and answers
18 that I have as it relates to your questioning of
19 Ms. Eberling.

20 So based upon the line of questioning, I find
21 that it's appropriate in cross. You were inquiring
22 and a number of your questions went to this SGC
23 Network and its relationship between SGC and Geico.

24 So go ahead, Counsel Prieto.

25 BY MR. PRIETO:

1 Q. Yes. The question was, isn't it true that the
2 SGC Network administers Geico's glass program?

3 A. No. That is not true.

4 Q. Isn't it true that Geico themselves has stated
5 that the SGC Network administers their glass program?

6 A. Not to my knowledge, Mr. Prieto.

7 Q. Okay. I'm going to show you a letter dated
8 January 31st, 2012.

9 MR. PRIETO: If Mr. Goan can please put that
10 up on the screen and show it to the witness.

11 MR. NALL: And, Your Honor, I would object to
12 the time frame of what -- did he say it was 2012.

13 MR. PRIETO: It's a letter dated 2012, but it
14 will be within the reference, time frame reference.

15 MR. NALL: And, Your Honor, we're here for a
16 2016 claim. So I do not see the relevance of a
17 document that was made in 2012, four years prior to
18 all of these claims.

19 THE COURT: All right. So, Mr. Prieto what is
20 the significance of the letter? And it predates
21 the lawsuit. So why is that appropriate? If you
22 could just connect the dots.

23 MR. PRIETO: Sure, Your Honor. This is a
24 letter that was sent back in January 31st of 2012,
25 that is referencing Geico's glass pricing agreement

1 which is now in place for today, as of 2012 to
2 today. So it is relevant to 2016.

3 It also states who their administrators are
4 for the glass program, Judge. So I'd like Ms.
5 Eberling to look at it. This is not hearsay. It's
6 an admission by party opponent. It is a Geico
7 document. I'd like her to look at it and maybe
8 refresh her memory as to whether or not Geico has
9 ever said or Geico has actually does in fact use
10 the SGC Network as their glass administrators.

11 It goes to her veracity to tell the truth, and
12 it also goes to her memory, Judge.

13 She's very specific when it comes to certain
14 questions, but when it comes to the important
15 question, she has a little bit of a lapse of
16 memory, Judge.

17 THE COURT: All right. Mr. Nall, anything
18 else?

19 MR. NALL: Yes, Your Honor, it's been asserted
20 that there is a Geico document. Obviously we
21 haven't seen it to know who the document comes
22 from, what that document's history is. And, again,
23 it's something that's four years old, and there has
24 been no testimony -- testimony to show that it has
25 any relevance to 2016.

1 THE COURT: All right. So let's do that,
2 let's go ahead and put it up. You guys can look at
3 it.

4 MR. GOAN: Your Honor, I'm sorry. Keep going.
5 We're disabled again from showing the documents.
6 Thank you, Judge.

7 THE COURT: The courthouse security is getting
8 very cautious on these documents to make sure we're
9 not seeing something that we're not supposed to.

10 All right. So take a look at that, counsel.

11 All right, Mr. Nall, did you have the
12 opportunity to take a look at that?

13 MR. NALL: Yes, Your Honor. I would still
14 renew my objection that this is a document that is
15 dated 2012. It's kind of hard to read. But
16 additionally, it's well beyond the scope of any
17 sort of direct examination that I did.

18 I didn't go into pricing at all. And it has
19 all shorts of pricing information.

20 The only thing they are trying to admit this
21 entire document for is one sentence that says SGC
22 is administering, you know, glass claims. Yet it
23 has a bunch -- a lot of other information. It's
24 one sentence, just one sentence on a piece of paper
25 from four years ago that I just don't see the

1 relevance.

2 THE COURT: I think their -- the intent, it's
3 not being introduce is my understanding at this
4 point, Mr. Prieto. You're just using it to refresh
5 her recollection on her last response.

6 MR. PRIETO: Yes, Your Honor. It's being used
7 to refresh her recollection as well as impeachment,
8 Judge, as you're aware of, Judge, well aware. I
9 mean credibility is always an issue for any witness
10 as well as the standard jury instruction.

11 Your Honor is to evaluate whether or not these
12 witnesses have the actual background and knowledge
13 that they say they have and the ability to
14 recollect to which they say that they know.

15 THE COURT: All right.

16 MR. PRIETO: Ms. Eberling is a Corporate
17 Representative.

18 THE COURT: All right. I'm going to allow it.
19 It goes to impeachment and the credibility of this
20 witness in any potential inconsistent statement
21 that has been made.

22 BY MR. PRIETO:

23 Q. Ms. Eberling, have you had A chance to look at
24 this document?

25 A. No. I was just waiting for you all to finish

1 looking at it. So I'm looking at it now.

2 Q. Okay. Do you recognize this document?

3 A. I have seen it before, yes.

4 Q. Okay. So then you know that this document is
5 a document that establishes, is when Geico has
6 established their -- their current pricing and
7 reimbursements for windshield glass replacements within
8 the State of Florida, correct?

9 MR. NALL: Again, object to beyond the scope
10 and being used for impeachment. We should stick to
11 what is being impeached.

12 THE COURT: All right.

13 MR. PRIETO: I'm just trying to put it in a
14 time reference.

15 THE COURT: All right. I understand that. So
16 I'm going to allow it based upon where you're
17 headed with that.

18 So let him finish the inquiry and then you can
19 give me any further objections.

20 Go ahead.

21 BY MR. PRIETO:

22 Q. Ms. Eberling, you can answer the question.
23 Would you like for me to rephrase it or re-ask it?

24 A. Will you please re-ask it.

25 Q. Yes. This is Geico's notice to the glass

1 shops of their new glass pricing agreement, correct?

2 A. Mr. Prieto, I don't -- I haven't read this
3 full document. I mean it says whatever it says. And I
4 apologize. I don't -- haven't reviewed this many times.
5 I think you've showed it to me a handful of times at
6 trial or deposition, but I don't remember everything it
7 says.

8 Q. But you and I have gone over this before,
9 correct?

10 A. Well, you've put it in front of me and asked
11 me some questions about it, but I don't know that we've
12 gone over it. I don't think I'd phrase it that way.

13 Q. Ma'am, haven't you previously testified that
14 currently to date Geico's pricing structures were put in
15 place back in January of 2012 pursuant to this letter?

16 MR. NALL: Objection, Your Honor. Again,
17 we're getting into pricing based off of something
18 that's being used to impeach when I didn't go into
19 pricing at all in my direct. So he's using this to
20 impeach on a small point, and then asking other
21 additional questions into area of inquiry that I
22 did not go into at all.

23 THE COURT: All right. Overruled.

24 THE WITNESS: And, I'm sorry, Mr. Prieto.

25 What was your question?

1 BY MR. PRIETO:

2 Q. My question is, isn't this the pricing
3 structure that's been in place since 2012 when Geico
4 first sent out these letter to the shops regarding their
5 new Geico glass pricing agreement?

6 A. This the pricing structure that's been in
7 place since 2012.

8 Q. Okay. And so, likewise, it was in place in
9 2016, correct?

10 A. I sorry. I missed the first part of your
11 question.

12 Q. And, likewise, it was in place in 2016,
13 correct?

14 A. Yes. That is correct.

15 Q. Okay. And this letter on that third to the
16 last paragraph, it says, "The SGC Network is
17 administering Geico's glass program," correct?

18 A. That is what that says.

19 Q. Thank you. And John Little was the Assistant
20 Vice-President for Geico at that time, correct? You
21 know who that is?

22 MR. NALL: Objection to relevance, Your Honor.

23 THE COURT: She a Corporate Representative.

24 She can testify as to whether or not she knows who
25 he is or not, or familiar with the name.

1 THE WITNESS: I know John Little.

2 BY MR. PRIETO:

3 Q. John Little is the Assistant Vice-President
4 for Geico still?

5 A. Yes. He's the Assistant Vice-President for
6 Geico.

7 Q. Okay.

8 A. He's one of them.

9 Q. Sure. And your job duties as the Continuing
10 Unit Examiner, you would agree that John Little has a
11 higher ranking amongst the ranking of employees at Geico,
12 correct, than you do?

13 MR. NALL: Objection, Your Honor. Relevance.
14 I don't know why we're getting into the corporate
15 structure of Geico here.

16 THE COURT: All right. Mr. Prieto, why is
17 this relevant at this point in time.

18 MR. PRIETO: I'm just trying to establish that
19 Geico does in fact use the SGC Network as their
20 glass administrator for their glass program. If
21 Ms. Eberling doesn't know, I believe she has to
22 show difference to her boss.

23 THE COURT: I'm going to let her answer only
24 because the letter was signed by John Little and
25 she testified that he is and remains Vice-President

1 or Assistant Vice-President of Geico.

2 Go ahead, Ms. Eberling.

3 THE WITNESS: I'm sorry, Your Honor. I forgot
4 what the question was.

5 BY MR. PRIETO:

6 Q. I can rephrase it. John Little has a higher
7 ranking amongst the employees at Geico than you do as a
8 Continuing Unit Examiner, correct?

9 A. Oh, yes. Yes.

10 Q. So if John Little said that the SGC Network is
11 administering Geico's glass program, do you disagree
12 with that?

13 MR. NALL: Objection. I think we've belabored
14 the point and we just need to move on.

15 THE COURT: All right. Sustained.

16 BY MR. PRIETO:

17 Q. Let me ask you again, Ms. Eberling, for the
18 record. Does the SGC Network administer Geico's glass
19 program now that you've seen this letter and you've
20 taken everything else into consideration?

21 A. Safelite Solutions facilitate payments to
22 glass vendors on behalf of Geico for our glass only
23 claims.

24 Q. I appreciate that unsolicited response, but my
25 question was as to the SGC Network, and it's been that

1 question for the last ten questions. So I'm going to
2 ask it again.

3 Isn't it true that the SGC Network administers
4 Geico's glass program?

5 A. Mr. Prieto, what I'm telling you is --

6 THE COURT: Madam, I want you to answer the
7 question only. No response. No questions to
8 counsel. It's a yes or no.

9 Does SGC Network administer Geico's glass
10 cases?

11 THE WITNESS: No. Safelite Solutions
12 facilitates payments on our behalf.

13 MR. PRIETO: Judge, I'd ask you to rerun --
14 I'd ask again for the Court to instruct the witness
15 to answer the question as posed, and let me say it
16 again.

17 BY MR. PRIETO:

18 Q. Does the SGC Network administer Geico's glass
19 program as stated in the January 31st, 2012 letter
20 regarding Geico's glass pricing agreement?

21 MR. NALL: Your Honor, I believe she answered
22 the question. I would object to asked and
23 answered. She stated no.

24 THE COURT: I didn't hear that. So overruled.

25 THE WITNESS: No.

1 BY MR. PRIETO:

2 Q. No, the SGC does not administer Geico's glass
3 program?

4 MR. NALL: Asked and answered. This is the
5 third time, Your Honor.

6 THE COURT: All right, Counsel Prieto, she
7 responded and her answer was no.

8 MR. PRIETO: Okay. I have no further
9 questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. NALL: Yes, Your Honor. If I may have
12 just one moment to confer with counsel.

13 THE COURT: Yes.

14 MR. NALL: Just for the record, I'm having the
15 witness step out while we discuss things. I
16 apologize. I just wanted to make that clear.

17 (Thereupon, a recess was taken.)

18 THE COURT: Okay. Is everyone back?

19 MR. NALL: Yes, Your Honor.

20 THE COURT: Are we ready?

21 MR. PRIETO: Yes, Your Honor. The Plaintiff
22 is here.

23 MR. NALL: And I believe -- may I proceed?

24 THE COURT: I'm sorry?

25 MR. NALL: May I proceed, Your Honor?

1 THE COURT: Yes, you may.

2 REDIRECT EXAMINATION

3 BY MR. NALL:

4 Q. Ms. Eberling, does Geico or Safelite decide
5 how much Geico reimburses for windshields?

6 A. Geico.

7 Q. And when Geico pays a windshield claim, is
8 Geico physically writing out a check or do they do some
9 other method?

10 A. Well, we don't typically write out a check.
11 It's computerized.

12 Q. And does Geico utilize Safelite Solutions to
13 send those payments?

14 A. Yes.

15 MR. NALL: No further questions, Your Honor.

16 MR. PRIETO: Your Honor, just one follow-up.

17 RECROSS EXAMINATION

18 BY MR. PRIETO:

19 Q. Ms. Eberling, isn't it true that Safelite
20 Solutions is a subsidiary of SGC Network?

21 MR. NALL: Your Honor, I would object to
22 recross.

23 THE COURT: I didn't even hear it. It was
24 really mumbled on my end.

25 MR. PRIETO: Judge, the question was -- they

1 have elicited testimony that Safelite Solutions
2 pays for the glass claims or pays on behalf of
3 Geico.

4 And my question is simple because it seems as
5 if Ms. Eberling is trying to direct the Court's
6 attention to Safelite Solutions.

7 So the question is isn't it true that Safelite
8 Solutions is a subsidiary of SGC Network?

9 MR. NALL: And I would object to recross and
10 move to strike.

11 THE COURT: I'm just going to allow this one
12 question based upon your last couple of questions.

13 Isn't it true that Safelite is a subsidiary.

14 THE WITNESS: It's my understanding, Your
15 Honor, that the SGC Network is a division of
16 Safelite Solutions.

17 THE COURT: All right. Thank you.

18 Mr. Nall, Cavallaro, you may call your next
19 witness. Well, it's 3:00.

20 MR. NALL: Your Honor, we're going to rest.
21 And again, this is criminal me talking.

22 I guess we review the Motion for Involuntary
23 Dismissal. I know we do in criminal. Admittedly,
24 I haven't had a lot of these civil ones.

25 THE COURT: I know the motion. It's fine.

1 MR. NALL: Okay. We will renew the motion for
2 Involuntary Dismissal, and no more oral argument.

3 THE COURT: Okay. All previous rulings refer
4 remain.

5 All right, unless we have -- so we could do --
6 unless you can do closings, each of you, in less
7 than 10 minutes.

8 What do you think, Prieto, Calkin, Koulianos,
9 do you want to try to finish today?

10 MR. KOULIANOS: Absolutely, Your Honor.

11 THE COURT: 10 minutes each.

12 MR. NALL: Your Honor, I would request that we
13 finish tomorrow. I would like to have a chance
14 to -- because we've had so much testimony today, to
15 kind of gather our thoughts. Come back here at
16 9:00, knock it out real quick. There has been a
17 lot of testimony. We have a lot of notes and just
18 to fully represent my client --

19 THE COURT: I just want to see how much time
20 you guys said you needed in the pretrial
21 memorandum. How much time exactly did you guys
22 requested, all agree on?

23 How much time did you guys ask for opening and
24 closing in your pretrial memorandum?

25 MR. CALDEVILLA: We're pulling that up now,

1 Your Honor.

2 MR. KOULIANOS: Your Honor, the Plaintiff
3 identified 15 minutes. But as we stated before,
4 we're willing to do the 10 to accommodate Your
5 Honor's calendar.

6 THE COURT: Is that 15 minutes for each party.

7 MR. NALL: I don't have it in front of me,
8 Your Honor. We're trying to find it right now. If
9 Plaintiff sees one and they can share, that would
10 be fantastic, but I don't -- I don't see one.

11 THE COURT: Well, it was filed back in May.

12 MS. BUZA: Your Honor, I don't recall. I
13 don't recall that we notated a specific time for
14 closing. I do recall -- but I don't see that.

15 THE COURT: You didn't file. I have the
16 Plaintiff's notice that confines with paragraph 7
17 as the Fourth Amended Pretrial, which again is set
18 forth in there.

19 So time allowed for opening and closing, it's
20 10 minutes for opening and 15 minutes for closing.
21 I don't see that Geico filed one.

22 All right. So it is 3:01.

23 Let's take about a 5 minute break, gather our
24 thoughts. The Plaintiff will have 10 minutes.

25 I'll give the Defendant 15 minutes. That will

1 bring us to 3:30 exactly. Okay?

2 MR. NALL: Thank you, Your Honor.

3 THE COURT: All right, gentlemen.

4 MR. CALDEVILLA: I'm ready, Your Honor,
5 whenever you are.

6 Your Honor, just for clarification, the 10
7 minutes that I have, does that include any rebuttal
8 if I have time left or I have to do all 10.

9 THE COURT: No, 10, they have 15. You have 5
10 minutes rebuttal. Fifteen each.

11 MR. CALDEVILLA: Okay. Thank you, Judge.

12 THE COURT: Because I'm giving each of you 15.

13 MR. CALDEVILLA: Okay. Thank you, Judge.

14 THE COURT: Because I'm giving each of you 15.

15 MR. CALDEVILLA: Thank you, Your Honor. May
16 please the Court.

17 Dave Caldevilla for the Plaintiff.

18 Your Honor, I gave an extensive argument at
19 the time that Geico moved for a directed verdict,
20 and at that point I told you that the standard that
21 you have to be judged by is whether or not we
22 provided any evidence on each element, and that you
23 had to review that evidence in the light most
24 favorable to us as the non-moving party. So that
25 standard has changed now.

1 You still have to determine whether we
2 presented evidence on each element of element of
3 our case, which we did. But now you have to
4 determine who presented the greater weight of the
5 evidence, who presented the most credible evidence,
6 who present the most compelling evidence.

7 And I have to submit to you, respectfully,
8 that the Plaintiff's evidence was extremely
9 compelling, was overabundant, and nailed every
10 single element possible.

11 Not only did we prove our case, which was to
12 prove standing, to prove that there was a contract,
13 to prove what the terms of that contract was, to
14 prove that Geico breached the terms of that
15 contract, and to prove that there was a loss.

16 Not only did we prove that, but we also
17 disproved the affirmative defense. We took that
18 burden and let it be shifted upon us, put on our
19 shoulders to prove that Geico's payment was less
20 than the prevailing competitive price and that the
21 price that our clients charged did not exceed the
22 prevailing competitive price.

23 I mentioned to you Geico even allowed that
24 extra report to come into evidence without
25 objection. That evidence is un-rebutted.

1 Everybody, expert testimony through Barrett Smith
2 that our prices, which are on that summary sheet
3 that was used as a demonstrative, none of them
4 exceeded the prevailing competitive price.

5 Now Geico put on their own case and the burden
6 shifted to them. Even if the test that they stand
7 by the Corvaro case, even if that -- if the test
8 applied, that test says that once we present prima
9 facie evidence of prevailing competitive price, the
10 burden shifts to Geico.

11 Geico presented nothing about the prevailing
12 competitive price during their case-in-chief.
13 Their testimony was focused solely at trying to
14 cast doubt on the testimony of Barrett Smith and
15 the surveys. And, quite frankly, that test failed
16 measurably.

17 Ms. Eberling, with all due respect, has no
18 credibility. She stuttered, stammered, was red
19 face. Her eyes were all over the place.

20 MR. KOULIANOS: Objection, Your Honor, to the
21 characterization here.

22 THE COURT: As to characterization, sustained.
23 Just as to that.

24 MR. CALDEVILLA: She could not answer
25 questions. You had to direct her to answer

1 questions.

2 Who had the most credibility? That's a
3 question for Your Honor.

4 Your Honor, the overwhelming weight of the
5 evidence showed that Geico underpaid each of these
6 claims in the amount listed in the Plaintiff's
7 summary of claims, demonstrative evidence, which
8 was testified all clients. And we request that you
9 award damages in each of those amounts. We request
10 that you rule that today, and if so, we'll be happy
11 to draft up a proposed order.

12 I'll reserve the rest of my time. Thank you.

13 THE COURT: It's about 2:40 for the Plaintiff.

14 MR. NALL: And, Your Honor, given the
15 instructions earlier, I would object to any
16 rebuttal past the 5 minutes allotted.

17 But I guess what I have to say is that the
18 burden of proof here was on the Plaintiff to prove
19 a breached of contract action. They had to prove
20 that Geico did not breach the prevailing
21 competitive price.

22 So the simple answer to what had to be proven
23 today is, one, that there was a contract, two, that
24 it was breached and three, Plaintiff suffered
25 damages. I mean that's elementary.

1 We know that there's Number 1. We stipulated
2 to the policy.

3 Two and three are kind of inextric --
4 inextricably intertwined -- a tough word to say --
5 in that, in order to prove breach, they have to
6 prove that we didn't pay the prevailing competitive
7 price, thus prove damages. It's kind of a two in
8 one thing.

9 So Plaintiff had to used admissible evidence
10 to show that Geico did not pay the prevailing
11 competitive price, which is, and I quote Matthew
12 Dick, "what the service would cost in a competitive
13 market in a normal arm's length noninsurance
14 transaction."

15 So this price must be prevailing and
16 competitive. Those are the key words. Those are
17 the key words where Matthew Dick comes in -- homes
18 in on.

19 Your Honor had issued the order on the Motion
20 in Limine that fit the pricing that has been
21 negotiated with no one. It is inadmissible. An
22 insurance transaction that reflects negotiation or
23 competition in price setting may be admitted.

24 So to the extent that we did not object to
25 certain evidence coming in, if it conflicted with

1 the Motion in Limine Order, binding case law says
2 that we don't have to object when there's a Motion
3 in Limine on the record. That's what Motions in
4 Limine are for to prevent objection, objection,
5 objection, objection. So, if it didn't comply with
6 that Motion in Limine Order, it should not be
7 considered.

8 So their evidence must have three components
9 when we look at the Motion in Limine combined with
10 Matthew Dick. That first component is negotiated
11 transaction.

12 What does it mean to negotiate?

13 Well, as we put in our Involuntary Dismissal
14 brief, Florida Statute 287.055, it's defined to
15 negotiate as to conduct legitimate arm's length
16 discussions and conferences to an agreement on the
17 terms or price.

18 None of Plaintiff's witnesses here today
19 testified to any negotiated transaction, as was
20 required by the Motion in Limine Order.

21 Mr. Slaman testified that he always billed 100
22 percent of NAGS, \$90 per NAGS hours, \$25 a kit, and
23 those were his rates. He said he never billed
24 lower.

25 Without producing evidence of any transaction,

1 he stated that 90 to 95 of insurance companies paid
2 those bills in 2016.

3 Was there any evidence, even from Mr. Slaman,
4 that there was ever discussion about pricing with
5 one insurance company? No. With one customer?
6 No.

7 He did say that he called Geico one time to
8 see if Geico would negotiate pricing, and according
9 to him, they said no. But where is the evidence of
10 negotiation with any of these other transactions
11 that he talked about? Where is evidence of the
12 transaction themselves? There wasn't any. It was
13 just him saying, "Well, post people would accept my
14 non-negotiated price method," because that's
15 exactly what it was, non-negotiated.

16 He didn't bring anything to the table that
17 showed a legitimate arm's length discussion or
18 conference to reach an agreement on term or price.

19 He also didn't produce any bills or payments
20 that would have shown the completed transaction.
21 We're just supposed to take his word for it.

22 If it's true, factually true, that a large
23 percentage of insurance companies paid 100 percent
24 of his price, why not produce the invoice? Why not
25 show the payment to show that that's true.

1 Mr. Rodebaugh's testimony was more of the same
2 of the same. The only evidence in negotiations was
3 between him and State Farm, and that was an
4 agreement for State Farm to receive a price that
5 was lower than 100 percent of NAGS, and in
6 exchange, he would get referrals and faster
7 payment. And that's exactly the sort of thing that
8 Your Honor's Motion in Limine excluded, an
9 agreement between that shop and an insurance
10 company to accept pricing. Other than that, there
11 wasn't a single instance of a negotiated
12 transaction.

13 His testimony about how 95 percent of
14 insurance companies paid him in full was
15 unsubstantiated by anything tangible and reflected
16 no evidence of being a negotiated transaction.

17 Mr. Bailey testified somewhat about this word
18 "negotiation." He was the only one that kind of
19 expounded upon it. He said he does not negotiate
20 with insurance companies. And that is a direct
21 quote, "does not negotiate with insurance
22 companies."

23 He said his usual and customary prices were
24 developed by negotiating the competitive market.
25 How can he negotiate, which is to conduct a

1 legitimate arm's length discussion or conferences
2 to reach an agreement on term or price if he's not
3 negotiating with the one paying the bill?

4 Of course he can't negotiate the prices of
5 insureds since he and two other witness testified
6 they don't even throw the insureds price. You
7 can't negotiate between zero and zero. It's
8 impossible.

9 So if the other party at the negotiation isn't
10 the insured or the insurance, who is it?

11 We were -- once again, we were asked to take
12 his word that a large amount of insurance companies
13 paid his bill in full and we saw no tangible
14 evidence to support his claim.

15 The only evidence of negotiation was just --
16 it wasn't the same. Yes, they negotiated, but
17 that's contrary to the Motion in Limine. It's the
18 negotiated transaction, not just an empty statement
19 saying they negotiated.

20 His survey also doesn't address negotiation at
21 all. His survey question which -- I understand the
22 surveys aren't in evidence; however, the phrasing
23 of this survey and the survey question that were
24 asked are in evidence, and they ask one thing and
25 one thing only, "how much did your shop charge?"

1 He even testified that, "No, I don't have
2 evidence of payment. I don't know of evidence of
3 payment. He just knew how much they charged
4 according to them, according to their usual and
5 customary prices.

6 And interestingly enough, he testified that he
7 doesn't know if there's maybe 50 invoices by -- by
8 one glass shop where they charge well less. He has
9 no idea, and frankly he doesn't care. He just
10 stated that, "That's what they put on the piece of
11 paper," and he took it as gospel and then just --
12 that isn't important.

13 As far as -- okay, so that's how we -- that's
14 the negotiated transaction aspect of it. But the
15 Plaintiff also had to show that the prices were
16 competitive.

17 Matthew Dick and Your Honor's Motion in Limine
18 Order -- Motion in Limine Order -- I apologize.
19 I'm talking fast for the Court Reporter. I'll try
20 to slow down. They address the concept of
21 competition driving the price.

22 All three fact witnesses testified that the
23 insured isn't shown the prices on the invoices but
24 they are submitted -- that they are submitted to
25 the insurance company.

1 Mr. Slaman said the insureds are shown the
2 price only "if they ask."

3 In fact, Mr. Slaman said it, and I quote,
4 "Price doesn't affect the full customers," and this
5 is logical because the price of zero can never be
6 less or more appealing than a price of zero to an
7 insured. They are one in the same. That's not
8 competition in pricing.

9 Competition is not pulling the price in these
10 cases. None of the prices, either those witness
11 here today or those in Mr. Smith's survey, can be
12 said to be born from competition. Nothing about
13 Bond Auto Glass' prices would cause and insured to
14 say, "oh, maybe not," and go now the road to call
15 Glassco, because the insured pays zero. So there's
16 simply nothing competitive about price.

17 Plaintiff's witnesses testified that they
18 compete with each other, and that they compete with
19 other nonaffiliate shops. But the biggest thing
20 that they compete on is who's going to get to a
21 broken windshield first.

22 Plaintiff's witnesses are attempting to
23 redefine the concept of competition in prices.
24 Honor the price that would be more competitive with
25 others. So that's going to say "rivalry," to try

1 to beat your competitor on price. You know, maybe
2 you can get a cheaper part by buying in bulk or
3 maybe you can do things to use less adhesive.

4 None of that matters in this market as
5 presented by the Plaintiff. It's not a factor at
6 all to get those prices lower, rather, they are
7 redefining the concept of being competitive because
8 they are in line with others.

9 And our Involuntary Dismissal memo covers this
10 line of thinking, but I covers this: Market
11 participant looking only to themselves to set
12 pricing, rather than trying to be more competitive
13 in order to gain market share is actually
14 anti-competitive. We fight multiple cases for this
15 concept.

16 In a normal capitalist society, when a
17 competitor drops prices, they are doing so to lour
18 customers. That is how a competitive price is
19 reached in the market.

20 When Gamestop drops the price of their new
21 Pokemon game, they are trying to get me to buy it
22 there and not Amazon. That's how a normal arm's
23 length transaction works, but that's not how this
24 market works. And that is why we have argued in
25 thee past, that the cash market is the only

1 competitive market.

2 So that's the competitive market that's made
3 up of those normal transactions that lures
4 customers by price.

5 We heard lots of testimony about warranties,
6 vague opinions about quantity and parts and
7 opinions about quantity of service, but we are here
8 about one competitive component, one component
9 that's mentioned in the policy and in Matthew Dick
10 and that's competitive price.

11 It doesn't matter that they may be installing,
12 you know, I don't know, aircraft quality glass and
13 they are saying, "hey, it doesn't matter about the
14 quality. It's about prevailing competitive price."
15 That is what Geico is obligated to pay under the
16 policy, not prevailing competitive quality, not the
17 best quality, not the best service that give you a
18 handshake and a smile, though I hope the other
19 shops do that, it's prevailing competitive price.
20 And that's the evidence that's relevant.

21 And also in addition to being competitive in
22 the data of negotiated transactions, they must be
23 prevailing in the applicable market.

24 What does it mean to be prevailing, it's the
25 price occurring most often in a given market. And

1 that definition is cited in our Motion for
2 Involuntary Dismissal as well.

3 So what does that mean that Plaintiff has to
4 show in this case?

5 First they should show that they have to have
6 an understanding of what that market is, what that
7 market is to be to competitive or to be prevailing.

8 They've stated that the market is just only
9 the nonaffiliated market. That's all we heard from
10 them, was nonaffiliated market. Although I'll get
11 to that more in a moment.

12 But that's something that the black and white
13 letter that Matthew Dick disagrees with. It's not
14 the time to rehash those arguments. But even
15 according to Your Honor's Motion in Limine, as long
16 as there's not a contract between the insurance
17 company and the glass shop itself to accept an
18 actual price, then it should be admissible.

19 And as we heard from Ms. Eberling, the
20 affiliate shops, at least the ones in the numbers
21 she used, don't have a contract with Geico.
22 There's no contract. There's no -- if there's no
23 contract, logically there's no breach of contract
24 if they don't perform at the -- at the price that
25 Geico wants them to. That's just a logical

1 deduction. In there is no contract, then there can
2 be no breach of contract if, you know, the shop
3 tries to charge you more or something like that, or
4 turns away a customer.

5 So when we look at market, only -- I guess
6 I'll see what evidence they actually produced. All
7 of them testified that they operated throughout the
8 State of Florida, all of them did. They said,
9 okay, maybe we work more in certain counties, but
10 even Barrett Smith testified that according to him,
11 all of the glass shops could have -- could have
12 done business in the State of Florida. So that's
13 what he is considering.

14 But how do we show or how does Plaintiff show
15 that the price is prevailing, occurring most often?

16 In order to establish this, Plaintiff
17 presented a survey by Veratech. And the problems
18 with this survey should be -- should be evident.

19 These surveys were sent out to shops, not
20 randomly, but just selected by the attorneys.

21 And I'll use the most common example about
22 surveys that everyone is familiar with, and that's
23 the presidential election.

24 If I were to pool 1,000 members of the
25 libertarian party to see who our next president is

1 going be, I'd absolutely find that the answer is
2 going to be Jill Jorgenson. That's who it's going
3 to be. She's the libertarian nominee, in case you
4 don't know.

5 Would that survey have any evidentiary value?
6 Of the course not, because I handpicked exactly who
7 I was going to survey, and that's exactly what
8 happens here.

9 Additionally, we have the population side of
10 only 24 shops that were surveyed and then four
11 shops that we heard evidence from here. Less than
12 30 shops.

13 And Susanna testified that 736 shops billed
14 Geico in 2016. So at least 736 that Geico is aware
15 of billed them. So how can than this less than 30
16 shops be representative when, A, they are hand
17 selected by attorneys, and, B, such a small sample.

18 Barrett Smith in his testimony testified that
19 he has no idea what sample would be appropriate for
20 a population that he doesn't know the size of.

21 Susanna was able to get actual numbers of 736,
22 85 of them through Geico from January 1, 2016 to
23 now. That's a little less than 90 percent that
24 even filed suit.

25 Okay. I'm not -- I don't even care about the

1 number of the suits or anything like that. We
2 have -- if we could secure -- Geico could then
3 secure that price from -- what is 736 minus 85? I
4 don't know math. Regardless, that's in evidence.
5 That's almost 90 percent of the shop. They did not
6 sue Geico, even though they billed them in 2016.

7 So, I guess, in closing -- in closing -- am I
8 almost out of time? If I am, I apologize. I could
9 go on but I don't want to overstep my boundary.

10 Oh, I apologize, Your Honor. I believe you're
11 muted.

12 THE COURT: No, you're fine. You have a
13 minute.

14 MR. NALL: Let me see here.

15 We also heard testimony about fair market
16 value, fair and reasonable prices. None of that is
17 relevant. We're here about the prevailing
18 competitive price.

19 Plaintiff has not shown that the prices are
20 prevailing. I mean they've listed less than 30
21 shops in a market that is at less 736 shops at
22 least -- at least. There could be more. That's
23 just what Geico knows about.

24 They have presented no evidence about how
25 competitions drove the prices because, frankly, in

1 this market, it doesn't. We've heard from the
2 Plaintiff's witness who said it doesn't. So their
3 price can be said to be competitive or form some
4 competition. And we've also not seen any evidence
5 of negotiated transactions.

6 And that's it. I yield for whatever the Court
7 has to say. You have my time.

8 THE COURT: And now everything is negotiated
9 transaction. Okay. Thank you. All right. Thank
10 you, counsel.

11 Counsel Caldevilla.

12 MR. CALDEVILLA: Thank you, Your Honor. How
13 much time do I have, 5 minutes?

14 THE COURT: Yes.

15 MR. CALDEVILLA: Okay. Your Honor, just very
16 briefly, the the overwhelming evidence in this case
17 establishes, it's undisputed, actually, that we --
18 that our price in this list did not exceed the
19 Prevailing competitive price.

20 Now, I've been in a lot of litigation against
21 insurance companies when they disagree over a
22 price. And almost every time the insurance company
23 comes forward and then they explain how much they
24 gain -- how they came up with the price that they
25 paid to the insured, "this is how we came up with

1 it." Where is that evidence in their case?

2 According to their policy, the Prevailing
3 competitive price is the price that they can
4 secure -- not me -- Geico can secure from a
5 competent conveniently located repair facility.

6 They are complaining that we came forward with
7 30 shops in a survey, that we had two witnesses,
8 two independent competitive shops. We had an
9 expert witness. They are complaining about us and
10 we still do not know --

11 THE COURT REPORTER: I can't hear anything.

12 THEE COURT: We lost you there. That's why
13 I'm signing. Mr. Caldevilla.

14 MR. CALDEVILLA: Yes, ma'am. I'm sorry. Can
15 you hear me now, Judge.

16 THE COURT: Yes.

17 MR. CALDEVILLA: Okay. So we have no evidence
18 in this case on how Geico came up with the numbers
19 that they paid. They claim that they paid the
20 prevailing competitive prices. They did not
21 identify one shop, one shop that would accept the
22 prices that they paid, or they were paid -- they
23 were billed 50 percent of NAGS when everybody else,
24 all the evidence, the undisputed evidence, all the
25 competitive shops in the NAGS affiliate market paid

1 100 percent.

2 Again, Judge, I mentioned that in our motion
3 that -- that they are confusing the word
4 "negotiate" with "haggle." It's not the same
5 thing.

6 When we negotiate a transaction, it's "I would
7 like buy that." "Would you like to buy it? This
8 is the price." "Okay, I accept that price." That
9 is negotiation, Judge. That's a negotiation.

10 When you disagree about the price and accept
11 some alternate price, that is called haggling.

12 Just like when Geico sends the insured their
13 premium bill each month, try to pay -- and if
14 you're insured by Geico, try to pay their bill and
15 see what happens. You won't be a Geico insured
16 very long. But that's a negotiation. It's not
17 haggling, though. There's no haggling involved.

18 Your Honor's Order in April 23rd, 2020 told us
19 to track the evidence allowed in this case, just
20 the insurance transaction that reflect negotiation
21 or competition in price setting, and then do they
22 not fall within the exceptions noted in the
23 previous preceding paragraph may be admitted.
24 That's what we presented.

25 And the same thing, we followed to a tee the

1 Cordaro decision, even though we contend that is
2 not the standard, we went ahead and proved it. And
3 Geico presented nothing, nothing.

4 So, Judge, for those reasons, the overwhelming
5 weight of the credible evidence does not -- the
6 undisputed evidence demonstrates that Geico
7 breached the policies in these 11 cases, and that
8 the amount of damage are set forward in the
9 demonstrative document that was presented on the
10 first day of trial call Plaintiff's Summary of
11 Claims.

12 The prejudgment interest should run from the
13 day of the invoice, which is also listed in that
14 chart and is in the evidence in the way of our
15 exhibits.

16 So, with that Judge, we request a judgement in
17 our favor. And we'll be happy to draft it, if you
18 like.

19 THE COURT: All right. Thank you both. All
20 right. We are done.

21 MR. NALL: We did it.

22 THE COURT: I'm reserving ruling. I will
23 prepare an order.

24 Thank you all for your professionalism. We
25 got through it in two days.

1 Thank you, Mr. Roberts. We made it, even
2 though we had some hiccups trying to work through
3 the Zoom and technology. Everyone did great under
4 the circumstances of it being electronic.

5 All right. Make sure you go out and vote.

6 MS. BUZA: Thank you, Your Honor.

7 MR. PRIETO: Thank you, Judge.

8 (Whereupon, the proceedings were recessed at
9 approximately 3:35.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 HILLSBOROUGH COUNTY)
4

5 I, Arthur Roberts, Court Reporter, hereby certify
6 that I was authorized to and did stenographically
7 report the foregoing proceedings, and that the
8 transcript, pages 276 through 508, is a true and correct
9 record of my stenographic notes.

10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties,
13 nor relative or employee of such attorney or counsel
14 connected with the action, nor am I financially
15 interested in the action.

16
17 Dated this 27th day of August, 202020.
18
19

20 Arthur Roberts
21 Arthur Roberts, Court Reporter
22 Notary Public
23
24
25