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### **GLASS COMPANIES GARNER SECOND MAJOR COURT VICTORY**

The Connecticut Supreme Court, in an opinion that will be officially released on August 25 (but is now available on the Court's web site), has held that the pricing communications sent by Safelite on behalf of Hanover Insurance Company did not bind the glass companies to Safelite's/Hanover's prices when the glass companies performed replacement services. In a series of consolidated cases brought by Auto Glass Express, Inc. and Ed Steben Glass Company, Inc. against Hanover, the insurer had argued that Safelite's pricing communications bound the glass companies to accepting the insurer's reimbursements on the theory that such communications constituted offers for unilateral contracts which were accepted by performing the work. The justices of the Connecticut Supreme Court unanimously disagreed.

Chief Justice Rogers wrote for the Court: "Nothing in the language of the pricing letters, either expressly or impliedly, suggests that the mere performance of glass repairs on automobiles insured by the defendant was sufficient to bind the plaintiffs to the defendant's prices." The Court further noted in a footnote that even if the letters had been interpreted differently, the insurer had still not established that the glass companies were bound by the terms contained in the letter even if they performed the work because the insurer would have to prove that the glass companies' conduct "objectively manifested acceptance of the defendant's offers." Chief Justice Rogers went on:

In the present case, the plaintiffs performed glass repairs and promptly sent the defendant invoices requesting payment in amounts greater than the amounts set forth in the pricing letters. Because the defendant received notice of the plaintiffs' requested reimbursement at the same time it received notice that the plaintiffs had rendered the requested performance, it was not objectively reasonable for defendant to conclude that its offer had been accepted.

The unilateral contract defense had been gaining in popularity by insurance companies facing growing challenges to their short payment of glass invoices. The thoughtful and thorough analysis of the Connecticut Supreme Court, combined with the similar analysis of United States District Judge Patrick Schiltz (who also firmly rejected the defense when raised by an insurer), should seriously inhibit the persuasiveness of the defense in future cases.

In the second part of the Court's opinion, the Court held that Hanover's policy language requiring the company to pay the amount necessary to repair or replace the damaged glass with other of like kind and quality to mean that Hanover is required to pay an amount that is reasonable in the market. This analysis mirrors the analysis of the Minnesota Court of Appeals from nearly a decade ago in a case between Glass

Service Company and Progressive. It means that insurers will be required to justify their reimbursements based on what glass companies are charging rather than what the insurer unilaterally chooses to pay.

IGA council Chuck Lloyd, a partner in the [Minneapolis law firm](#) of Livgard & Lloyd, was the attorney for the Connecticut glass companies. Following the Supreme Court's decision, he stated: "This opinion could not be better for glass companies in Connecticut and across the country. Insurance companies, when called to account for their short payments, typically try to avoid having to justify their reimbursements on the merits. Instead, they want to raise defenses that have nothing whatsoever to do with whether they have fulfilled their policy obligations. When they do get around to trying to justify their payments, they want to focus only on those payments and not what the glass company charged. The Connecticut Supreme Court, applying basic contract and insurance law that most states follow, made it clear that these defenses are misplaced and should not stand as a bar to a glass company pursuing reimbursements that are reasonable in the market."

Lloyd went on: "The glass companies in this case, like all the glass companies that I have represented, do not ask the insurers to pay one penny more than the insurance policy requires them to pay. Nor should they accept one penny less. No glass company should."

This is the second important legal victory achieved by glass companies this summer. In July, a group of [Minnesota glass companies](#) succeeded in persuading the Minnesota Supreme Court to re-affirm the validity of post-loss assignments of insurance proceeds as a means of granting the glass companies standing in court to pursuit of short payments. Insurers had challenged glass companies' ability to seek additional funds after being short paid.

The Connecticut case involved companies headed by individuals who should be very familiar to the independent segment of the auto glass market. Kurt Muller, president of Auto Glass Express, is a former president of the Independent Glass Association and was one of the very first advocates for shifting billing away from the glass and toward reasonable hourly rates for installation. Bob Steben, president of Ed Steben Glass, Inc., was formerly a member of the IGA Board of Directors and a frequent speaker at IGA conventions on issues involving short payments.

The case now returns to the trial court for a decision on the merits of the glass companies' claims.

The IGA is the only association dedicated to the needs of the independent glass companies in North America. Its members are also dedicated to the professional and ethical installation of glass in a safe and proper manner. IGA members are located in all 50 states and ten countries.