

Nos. A07-216, A07-217, A07-830 and A07-972

State of Minnesota
In Supreme Court

Star Windshield Repair, Inc., as Assignee for Aaron Helget,
Appellant (A07-216),

vs.

Western National Insurance Co.,

Respondent (A07-216),

AND

Glass Network,

Claimant,

Auto Glass Express, as assignee for Kathy Heglos,

Appellant (A07-217),

vs.

Austin Mutual Insurance Company,

Respondent (A07-217),

AND

State Farm Mutual Automobile Insurance Company,

Respondent (A07-830),

vs.

Archer Auto Glass, as assignee for Ronald Hornberg,

Appellant (A07-830),

AND

Auto Owners Insurance Co.,

Respondent (A07-972),

vs.

Star Windshield Repair, Inc., as Intended Assignee of
 A&E Construction Supply, Inc., et al.,

Appellant (A07-972).

**BRIEF OF AMICI CURIAE
 THE INSURANCE FEDERATION OF MINNESOTA AND
 THE PROPERTY AND CASUALTY INSURERS ASSOCIATION OF AMERICA**

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STATEMENT OF THE ISSUE

I. Are Assignments of Undetermined Amounts of Property Insurance Proceeds Valid When an Anti-Assignment Clause is Included in the Policy?

The court of appeals held assignments of post-loss proceeds are invalid where the assignee has control over the amount of the purportedly assigned proceeds.

Apposite authority: *Travertine Corp v. Lexington-Silverwood*, 683 N.W.2d 267 (Minn. 2004); *Vetter v. Sec. Cont'l Ins. Co.*, 567 N.W.2d 516 (Minn. 1997); *Liberty Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 463 N.W.2d 750 (Minn. 1990); *Wilkie v. Becker*, 128 N.W.2d 704 (Minn. 1964).

INTRODUCTION OF AMICI PARTIES

1. The Insurance Federation of Minnesota.

The Insurance Federation of Minnesota (“The Insurance Federation”) was founded in 1914. Its members sell all lines of insurance – property, casualty, life, and health. They include stock companies, mutual companies and co-ops. The Insurance Federation’s mission is to promote a positive political and regulatory climate in which member companies may conduct business, responsibly serve the needs of Minnesota consumers, and grow and prosper in a highly competitive, global insurance market.

2. The Property Casualty Insurers Association of America.

The Property Casualty Insurers Association of America (“PCI”) is a trade group representing the more than 1,000 property/casualty insurance companies who are members of PCI. PCI members are domiciled in and transact business in all 50 states as well as the District of Columbia and Puerto Rico. Its member companies write \$173.6 billion in annual

premiums, nearly 40 percent of all the property/casualty insurance written in the United States. PCI members write 49.5 percent of the nation's auto insurance.

PCI member companies include all types of insurers, including large national insurance companies, mid-size regional writers, insurers doing business in a single state and specialty companies that serve specific niche markets. PCI member companies include stocks, mutuals, and companies that write on a non-admitted basis. The PCI membership is literally a cross-section of the United States property and casualty insurance industry. In 2006, PCI members accounted for 53.0% of the personal automobile insurance policies issued in Minnesota. Six PCI members are domiciled in Minnesota.

ARGUMENT

I. Introduction.

These consolidated appeals involve the straightforward legal issue of whether assignments of property insurance claims of undetermined amounts are valid when an anti-assignment clause is included in the policy. However, broader issues involving the economics of the insurance industry as a whole – including the insurance premiums paid by every person who drives a motor vehicle in this state – are also implicated by this appeal. The Insurance Federation and PCI respectfully submit that law and public policy will best be served by affirming the court of appeals in each consolidated case, and in so doing enforcing the rights of parties to contract, as well as the intent of the legislature that insurers

pay glass shops “a competitive price that is fair and reasonable within the local industry at large.” Minn. Stat. § 72A.201, subd. 6(14).

II. The Economics of the Glass-Replacement Industry in Minnesota Has Led to Greatly Inflated Replacement Costs, Which Are Then Spread to All Policyholders in the Form of Increased Premiums. Unsuspecting Policyholders Have No Idea They Pay Higher Premiums Because They Give Assignments of Their Claims to the Glass Shops.

The Minnesota Legislature has expressly directed insurers to “provide payment to the insured’s chosen vendor based on a competitive price that is fair and reasonable within the local industry at large.” Minn. Stat. § 72A.201, subd. 6(14). However, insurers in this State which endeavor to do just that are routinely hailed to arbitration against parties with whom they never agreed to do business, for refusing to blindly pay every invoice, no matter how drastically inflated above actual market prices.¹ Thus, in addition to the cost of the glass repair itself, insurers are forced to pay for arbitrations, hire attorneys, and pay other litigation costs. All of these factors end up increasing the insurance premiums paid by citizens of Minnesota.

¹ See, e.g., Appendix of Auto-Owners at 12 (Star Windshield invoice to Auto-Owners for glass replacement was more than double the competitive price that is fair and reasonable within the local industry at large, including a \$609.61 charge for the windshield itself whereas another glass shop would charge \$200); Appendix of Auto-Owners at 23 (Star Windshield charged \$600 for a windshield that could be purchased for \$85-100); Appendix of Austin Mutual at RA.27 (surveyed shops average quote was \$292.03; The Glass Network charged \$508.19); Appendix of Western National at WA.73-74, 77-78 (Star Windshield charged the new Nags Index price *plus* 191%); Appendix of State Farm at SFA.12-13, 27, 29 (Archer Auto Glass invoiced State Farm for \$815.32; State Farm’s competitive bid process resulted in a price of \$290.13).

These higher premiums have been caused over time by glass shops which have gradually moved to a system unregulated by forces of a market economy. By law, there are no longer any deductibles for comprehensive coverage for safety glass. Minn. Stat. § 65B.134. Thus, in selecting a shop for an auto glass repair, the policyholder is aware of no direct, immediate monetary stake. Consequently, for a period of time glass shops resorted to the infamous steak giveaways and cash rebates – now illegal – to attract price-unconscious consumers.²

This price-barren strategy creates inflated charges not in step with the market. With no consumer to object to the price, the prospect for overcharging is self-evident. No wonder Minnesota is at, or near, the top of the list of states for glass replacement costs.³ Although steaks and cash are no longer a legal method for attracting customers, there is still no basis for consumer price concern. What consumers fail to understand – and what, for obvious reasons, the glass shops never disclose – is that consumers are funding the glass shops' inflated profits via increased insurance premiums.

This discussion is relevant to the legal issue Appellants look to the Court to resolve: namely, whether “post-loss” assignments of insurance claims of undetermined amounts are valid when an anti-assignment clause is contained in the policy. What Appellants struggle (and fail) to overcome is the obstacle – which distinguishes the cases at bar from those cited

² See Appendix of Western National at 80.

³ See *supra* note 1.

as precedent by Appellants – that the “post-loss proceeds” sought by Appellants are for *undetermined amounts*. Appellants label these post-loss assignments “fixed,” but omit the notable (and obvious) fact that, unburdened by market forces, the glass shops are the only parties with the power to “fix” these amounts. In fact, the result of that “fixing” is never even conveyed to the consumer who selects the glass shop; in Appellants’ words, “for all intents and purposes, the policyholder is removed from the billing and payment process.”⁴

Logically, only the party footing the bill – here, the insurer – will undertake an investigation of pricing. Such an investigation is necessary to determine, as the legislature instructed, what is a “competitive price that is fair and reasonable within the local industry at large.” Unfortunately, when insurance companies undertake good-faith surveys to resolve this very question, they are routinely hailed to arbitration with the glass shop, leading to even more cost and expense to pass on to policyholders. The only entity profiting from this arrangement – and profiting handsomely⁵ – is the glass shop. This undermines the legislative intent and express direction that glass companies receive “competitive” prices that are “fair and reasonable” in the local industry at large.

⁴ Appellant’s Brief at 8.

⁵ See *supra* note 1.

III. Public Policy is Best Served When the Court Refrains from Second-Guessing the Legislature's Extensive Regulation of an Industry.

The legislature has heavily regulated the business of glass replacement. *Illinois Farmers Ins. Co. v. Glass Service Co.*, 683 N.W.2d 792, 796-97 (Minn. 2004) (reciting numerous statutes and amendments to statutes which are applicable to the industry). Under these extensive regulations, the limits of a glass company's participation in the insured's claim is that of a passive statutory beneficiary of the proceeds an insurer owes its insured. Minn. Stat. § 72A.201, subd. 6(14). This regulation certainly provides the glass company with no statutory authority to stand in the shoes of the insured in the insuring relationship, or to litigate the insured's claim for the cost of the glass repair or replacement. Thus, in the face of contract language explicitly prohibiting it, the glass shops seek this authority from the Court.

Because the legislature's extensive regulation has not provided glass companies with an interest in the insured's claim – and express contract language prohibits them from receiving it – this Court should also refrain from providing it. *Cf.*, *Wallace v. Tri-State Ins. Co.*, 302 N.W.2d 337, 339 (Minn. 1980) (if the legislature had intended to allow an entity a benefit under a statute which it otherwise does not possess, the legislature would have written such an exception into the law); *Fugina v. Donovan*, 259 Minn. 35, 39, 104 N.W.2d 911, 915 (1960) (courts owe great deference to the judgment of the legislature as to matters properly within its purview). This is especially so when the “right” demanded violates (1) the plain language of written contracts, (2) the public policy favoring the sanctity of

contracts, and (3) the expressed legislative direction that glass shops receive “competitive prices” set by a market economy.⁶

IV. Law and Public Policy Support the Court of Appeals’ Decisions.

The parties have already thoroughly set forth various public policy concerns in their briefs. The Insurance Federation and PCI support, without repeating, the arguments made by Respondents,⁷ and additionally submit those set forth below.

A. The Court Should Not Alter The Contracts Between Insurers And Individual Policyholders to Protect The Glass Shops’ Often Grossly Inflated Profits.

In each of the cases involved in this consolidated appeal, the Minnesota Court of Appeals enforced the plain language of the parties’ contract, holding the policyholders’

⁶ Due to the “system” of excessive overcharging developed by the glass industry, the legislature’s current regulatory approach – which demands use of market forces to determine “competitive” prices – cannot succeed without this Court’s enforcement of anti-assignment clauses in insurance policies. Even if the Court for some reason disagreed with the Legislature’s regulations, its function is to interpret and give effect to them. *Essling v. Markman*, 335 N.W.2d 237, 240 (Minn. 1983) (citing *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 469 (1981)).

⁷ Brief of Western National at 32-42 (courts very rarely void contract provisions on public policy grounds; legislature has struck a balance in auto glass repair regulation which should not be undone by voiding the non-assignment clause; non-assignment clause deflects problems with champerty and maintenance); Brief of Austin Mutual at 9-16 (enforcing anti-assignment clauses against transfer of unliquidated claim fulfills primary purpose of such clauses; transfer of unliquidated claims increases risk for the insurer); Brief of State Farm at 21-23, 41-45 (insurers should not have to do business with strangers to a contract which includes an anti-assignment clause; voiding anti-assignment clauses subjects insurers to increased risk of loss without consent; courts should not upset regulatory framework); Brief of Auto Owners at 10 (enforcing anti-assignment clauses prevents problems of champerty and maintenance).

assignments to glass shops were invalid because they violated the anti-assignment clauses contained in the policies. The court of appeals' decisions are in accordance with 100 years of precedent expressing this Court's strong support for the compelling public policy favoring the freedom of parties to contract. *James Quirk Milling Co. v. Mpls. & St. L. R. Co.*, 98 Minn. 22, 23, 107 N.W. 742, 742 (1906) (agreeing that "you have this paramount public policy to consider, that you are not likely to interfere with the freedom of contract.") (citation omitted). Adopting Appellants' argument that they should be permitted to unilaterally "fix" a price for auto glass repair contravenes the parties' written agreements to do business only with each other. Insurers, despite the existence of anti-assignment clauses in their policies, are frequently forced to deal with glass shops issuing invoices which, even if cut by 50% or more, would still include a profit for the shop.⁸ The Court should reject Appellants' request and instead enforce the plain language of the contracts. The glass shops' interest in maximizing their profits is – to put it mildly – not compelling enough to outweigh the strong public policy favoring the freedom to contract, especially given that those profits are passed on to the unsuspecting public by way of increased insurance premiums.

⁸ See *supra* note 1.

B. Allowing Glass Shops to Manipulate Market Forces in Essence Imposes a Tax on Consumers Veiled Under the Guise of the Regulation of Insurance.

As this Court recognized in *Glass Service Co.*, 683 N.W.2d 792 (Minn. 2004), “the business of insurance is quasi public in character; hence, it is competent for the state, in the exercise of the police power, to regulate it for the protection of the public.” *Id.* at 802 (citation omitted). Adopting Appellants’ arguments would not only directly violate the intent of the legislature that insurers pay glass shops “a competitive price that is fair and reasonable within the local industry at large,” but far from “protecting” the public, it would impose, in essence, a tax on consumers in the form of mandatory coverage for glass repairs with the accompanying increase in premium which only benefits one private industry. Approving this glass shop-designed system, and rubber-stamping the shops’ claimed “right” to charge double or more for a should-be inexpensive repair, would do the opposite of “protect” the public. Coupled with the legislature’s stated intent that insurers pay a “competitive price” and the express policy language prohibiting assignments, both this Court’s well-established precedent and public policy clearly support affirming the court of appeals in each of the consolidated cases.

CONCLUSION

The decisions of the court of appeals not only correctly apply the law, they best serve public policy. Each case at bar involves express contract language precluding assignments, and the Minnesota Legislature has declared that insurers pay glass shops “a competitive

price that is fair and reasonable within the local industry at large.” Appellants ask the Court to endorse their scheme of charging more than a “competitive,” market price for glass replacement, thereby forcing insurance consumers to subsidize their resulting engorged profits. This scheme, rejected by the court of appeals, circumvents both the law and the involved insurance contracts. For the foregoing reasons, both longstanding Minnesota law and public policy are best served by affirming the court of appeals, and the Insurance Federation of Minnesota and the Property Casualty Insurers Association of America support an affirmance in each of the consolidated cases.

Respectfully submitted,

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