

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
SPRINGFIELD, SANGAMON COUNTY, ILLINOIS

WILLIAM EBERT d/b/a American) Case No. 93-L-58
Auto Body,)
)
Plaintiff,)
)
v.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendant.)

AFFIDAVIT OF MARK MILLER
SUBMITTED IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, MARK MILLER, being first duly sworn on oath, depose and state as follows:

1. This affidavit is based upon my personal knowledge, and if sworn to testify as a witness in this case I can competently testify as to all of the facts and circumstances contained in this affidavit.

2. On 12/16/93 my wife and I had occasion to take our damaged Oldsmobile to the State Farm Insurance Company claims office located at 2801 West Lawrence Street, Springfield, IL. to be inspected by representatives of State Farm Insurance Company.

3. Because I was concerned about how I had been treated in the past by State Farm Insurance Company, I took a tape recorder with me in order to record what transpired at the State Farm claims office.

4. While at the State Farm Insurance Company claims office on 12/16/93 I met Mr. Jim Hayden, a person who identified himself to me as a representative of State Farm Insurance Company.

5. While I was at the State Farm Insurance Company claims office on 12/16/93 I was taken by the person who identified himself to me as Jim Hayden to an office in the building. In the office there was a plaque with Jim Hayden's name on it.

6. The person who identified himself as Jim Hayden presented me with a estimate in connection with our claim which estimate identified Jim Hayden as the person who estimated the job and indicated the inspection date was 12/16/93.

7. I specifically remember the conversation that I had with Jim Hayden on 12/16/93.

8. I recorded the conversation I had with Jim Hayden on 12/16/93. Attached hereto and made a part hereof is a true, correct, and accurate transcript (consisting of ten (10) typewritten pages), of the relevant portion of the conversation I had with Jim Hayden on 12/16/93 relative to William Ebert and American Auto Body.

FURTHER AFFIANT SAYETH NOT.



Mark Miller

Subscribed and sworn to before me, a Notary Public, this 22nd day of September, 1999.



Bruce A. Beeman

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Jim Hayden/Mark Miller Conversation

Tape #43

12/16/93 at 11:00 a.m. conversation between Jim Hayden, State Farm Insurance Company Claims Specialist and Mark Miller (and Kathy), at the State Farm Insurance Company claims office, Springfield, IL

Mr. Hayden: Do you know what shops you want?

Mrs. Miller: American Auto Body.

Mr. Hayden: Okay. Now, American Auto Body, has he looked at it yet?

Mrs. Miller: No.

Mr. Miller: No. We asked around, we've asked around and that's what we come up with. That or Ernie --

Mr. Hayden: He'll do a good job. There's no problem with that. The only problem that we have is this, and I hate to have this kind of a problem, but American Auto body and State Farm will not work, and we cannot go on his premises to inspect the car. So if you have additional damages, we may not be as effective in helping you as we would like to be because Bill Ebert does not want us on his premises. When he gets our estimate he'll, what he'll do is he'll virtually ignore this estimate and write his own, and he's going to give you a bill for whatever he thinks it's worth to repair your car. So and he'll also write it at a higher labor rate. We write ours at 30 dollars an hour because that's the prevailing rate. He'll write 32 dollars an hour. And if you insist on him doing it, you would have to pay that difference, so you may want to think before you get the guy.

I don't have any problems with Bill doing it, and I have no animosity towards Bill. We're good friends, we have respect for each other, but our businesses do certainly clash. So you ought to consider that before you, before you, what you might want to do. Say well, here's an estimate that State Farm has written. Can you live with that? He's probably going to say no.

I'll tell you what happens here. A lot of times, you know, for many, many years I'm sure you know that when someone had an accident with an automobile, they'd go to a repair shop and the repair shop would say, I'll write you an estimate, and I'll get you a courtesy bid. And because of the fact that we had courtesy bids, we decided to write our own estimates, we don't want to dictate prices, so we survey the shops.

We say we'll pay whatever the majority of the shops pay. The majority of the shops, I think all except one, charges 30 dollars an hour. Bill Ebert charges 32. We think that is not in the best interest of our insured to pay a higher rate when we have to increase policy premiums to compensate for that. When we've got 90 percent of the shops or 99 percent of the shops, we pay them 30 dollars an hour, we feel that we're making a fair fare, and we pay at 30 dollars and hour.

There's also some charges that Bill will have in his estimate that we feel are unfair to you and unfair to us. Number one, he may charge you for hazardous waste disposal. We feel that hazardous waste disposal is one of the costs of doing business. When you get into the body shop business, you're going to have to dispose of your waste like anyone else does in the business. We don't think it's fair for him to bill you and subsequently to bill us.

Another think is he'll charge to clean your car up when it's done. Your car is super clean. It's got 3600 miles on it. it becomes extremely dirty while it's in the shop. It'll have overspray, dust, and so forth because that's the nature of the body shop. He'll charge you to clean the car back up. We don't think that's fair because that charge comes to us.

We think it's part of good workmanship when you do a repair on somebody's car to give it back to them the way it was and not charge them for doing that. We don't think that should be an additional charge. So we have little various charges like that that's going to be different. He also disagrees with our interpretation of the guide book, Mitchell Mannings. Mitchell -- the book, Mitchell, that guide, that has a guideline book.

We interpret it one way. We feel that when we get the paint done, for instance, we've got here to repair, to repaint this 15 dollars an hour with 10.4 hours. He may want 12 or 14 hours. He'll want time to rub and cover sand and blend and buff, and we fell that these are included operations. So there are going to be differences in his estimate. As a matter of fact, I can almost assure you if you take my estimate out there for 1870 dollars, his is going to probably be at least 2500 dollars.

So I'm going to give you a letter that pretty well explains what my position is with American Auto Body. I have to do that. That's part of our requirement here. I'm going to give you my estimate. What I'd like you to do is go ahead and go to bill, give him that estimate, and as I say, I have the highest respect for Bill Ebert. He's a perfectionist. He does good work. And he runs his own business, and I want him to run

his business the way he wants to run it. But I want also to protect our policyholders. I don't want our prices and our policy premiums to escalate because a shop charges what we feel is exceptionally high prices and charge for things that we think are unfair charges. So because of that we do have these differences of opinion. And because we've taken a stand, he's also taken a stand he's not going to let us on his premises. So we have a real problem with that.

But I'll give you my estimate, you take it out and show it to him, and then you make your decision what you want to do. But you might want to ask him before you leave that car with him how much he's going to charge you to get that car back out. I know you love your car, and I don't want to see you without it.

Mr. Miller: Well, Ernie Vaughn, sometimes he gets kind of slow. And I don't, I don't want it in the shop for a long time.

Mr. Hayden: I don't blame you. I wouldn't either.

Mr. Miller: She asked, she got two people at her work, and I found one, you know, like you looking for a body shop, you don't, you ask people who had their cars fixed--

Mr. Hayden: Absolutely.

Mr. Miller: (Continuing) -- what their experience were instead of calling the body shop because the body shop -- we who else, if you had a second opinion? I mean, I don't want to go to Chullen's Auto Body.

Mr. Hayden: I don't want you to go to Chullen's Auto Body.

Mrs. Miller: Is that even in existence?

Mr. Hayden:

Yeah, I think it might still be. It might be, I don't know. I tell you what I would do. I don't want to tell you to go to any specific shop, but I want your car to be repaired right. I'll give you the list of three or four places that I have had good experiences with personally. I had my own vehicle repaired and my daughter's had her vehicle repaired and both of us are pretty critical about our vehicles.

One of those, and he's probably cheaper than the rest of them, is Louis Gietl. He's been in business, his family's been in business in Springfield, Illinois for 145 years. You don't stay in business that long by doing half-assed work. He's an excellent shop and an excellent person.

Matthews Autobody on North Street. Bobby Matthews is probably the best painter next to Ernie Vaughn in the city of Springfield. I mean, he's an excellent painter, and he'd do you a heck of a job. He'd be happy to have the job.

Another shop that's been in business and expanded since their parents got out of it and these two boys run it is Springfield Welding, Rod and Jim Paoli. They've dedicated themselves to that shop, and they've got a fantastic shop. They've expanded it and they've added things. They've got state-of-the-art equipment, and they would do you an excellent job on it. Those are three shops I can think of.

Mrs. Miller:

I've heard of Matthews.

Mr. Hayden: Yeah. And they ll do you a good job, any of those. But you take it to who you want to take it to. But I want you--what I don't want you to do, I don't want you to get into a situation where your car is being held for ransom, and you have to come up with a thousand dollars to get it out. I don't want to see that happen to you.

And I'm afraid that if you went to Bill Ebert you're going to end up paying a lot of money out of your own pocket, and I don't want you to do that. I got to find out which letter I got to give you a copy of. Here it is, 26. I can go ahead and write you a check if you want me to, and if you're concerned that there's going to be a major difference, and I don't think you'll find much of a difference at all if you go to another shop, certainly nothing that we can't work out, I'd be happy to write you a check and get you over to a shop, but I need --

Mrs. Miller: What happens if there are some things more that he'll need, like if I take it to American Auto Body? Whoever.

Mr. Hayden: Okay, Go ahead.

Mrs. Miller: And he calls you and tells you he needs more on that. You'll still work with him or--?

Mr. Hayden: Absolutely. What I can do, and what I do is, I get a phone call, I had a phone call this morning from By-Pass Auto Body. Say Jim, you figured a bumper on this thing, and when I got the bumper I needed to reinforce it. It's not on the estimate. I also need some more time on the frame rims. What can you do? I make an assignment, they send an estimator out, they asked me to go out there this afternoon and look at it.

Mrs. Miller: But if you can't go there, how are they going to do that?

Mr. Hayden: But when we have to deal with Bill Ebert, we'd have to have them move their car off the premises. That's why I say, it's very, very complicated. American Auto Body, they filed a law suit against us, and it just, it's a shame. I really hate it because like I said, Bill and I are good friends. We're good personal friends. I've known Bill for well over 20 years, and we're the best of friends, but we don't work together.

And that's why I don't want you to get the impression I'm taking it away from him. If you want him to do it, he will do it, but I just want you to be aware that there could be some costs and some delays in getting the job done. I'll go ahead and write the check or do you want to wait?

Mr. Miller: I don't know which to do. I don't--

Mr. Hayden: Do you want to think about it for a while and give me a call back? You can do that. You don't have to make a decision today.

Mr. Miller: What does writing a check consist of?

Mr. Hayden? Well, when I write the check, the only think is, when I write the check I either need to make the check payable to you and the Springfield Credit Union or you and a repair shop. I have to protect the lienholder's interest in this vehicle.

So if I write the check to them, I have to write it to you and the lienholder or unless you tell me specifically what shop you want to do it. If you're going American Auto Body, I'd still have to write it to you and the lienholder because we're not allowed to write checks to Bill Ebert and American Auto Body either, so you'd have to have the lienholder endorse it over.

Mr. Miller: Well, if we went there, you can't write a check to him?

Mr. Hayden: No. I'd have to pay you and your lienholder, and then your lienholder would have to reissue the check to him. It's a very, very said situation. It really is.

Mr. Miller: I guess we'll shop around and see who is going to fix the car.

Mr. Hayden: Like I said, Bill will do you a good job. Don't get the impression I'm trying to drive you away from Bill. Bill will do you a good job, and we'll ultimately get it worked out, but it could be money and time out of your pocket. I want you to know that, you know. Let me go get that letter.

Mr. Miller: What if I went with --?

Mrs. Miller: Matthews. Then they'd write it to them and us.

Mr. Hayden: Then I'd write the check to you and Matthews right now, and then all you have to do is drive by and say, here's our estimate. What can you do for me. He would order the parts, schedule you in, and when it's all done, you take the car back.

Mr. Miller: Okay. So if the money goes to the credit union against the car, then we got to go to the credit union?

Mrs. Miller: They'll sign it, and they'll rewrite a check.

Mr. Hayden: Yeah. Just deposit, they'll reissue it to American Auto Body.

Mr. Miller: How long is that going to take?

Mr. Hayden: Five minutes.

Mrs. Miller: I've never done it before.

Mr. Hayden: It takes them a little longer to write a check than it does us.

Mr. Miller: Well, like at Franklin Life you write it, and then the next day--.

Mr. Hayden: Yeah. That's the way it used to be. Anymore like I write a check, I just punch it in the computer, go in the other room, and pick it up. It's done, and I'm there.

Mr. Miller: Let's go check around and see what--.

Mr. Hayden: Okay. Let me get that letter I just pulled off the machine. I'll give you a copy, two copies of my estimate and this letter and my business card. You call me and let me know your decision. If you need to talk about it more, feel free to call me, or you can come back in. I'll be glad to sit down and talk with you. Let me get that letter for you first.

Mr. Miller: That's the golf club. What's this guy's name? J.R. H-A-Y?

Mrs. Miller: H-A-Y-D-E-N.

Mr. Miller: d-e-n, Hayden?

Mr. Hayden: Here's the letter I just put in here. Somebody gave me that to throw away, and I'm determined to make it a ball with it.

Mrs. Miller: The ball might stick in there.

Mr. Hayden: You hit it with the other side.

Mrs. Miller: I don't know anything about golf.

Mr. Hayden: I don't know much about it, you can tell that, I wouldn't be playing at that. I think we can both write in that--.

Mr. Miller: Taylorville homeowners' claims that I wrote that and turned in to pay my insurance. Remember that?

Mr. Hayden: That letter that I told you about is here if you want to take a look at my copy or the file copy. It pretty well confirms what our conversation was. I have two copies of the estimate and a copy of that letter in here for you. Gary Smith is your claims rep, and if you need to talk to Gary, his claim number is 136459-999. I'm probably more accessible than Gary. I'm here all the time in this office. My name's Jim Hayden, and this direct line here is 793-7913.

So if you have any other problems or concerns, give me a call. I'll be happy to talk to you, and I wish you the best of luck in this. You know, I don't want you to have any problems at all, we'll eventually get it worked out, but I wanted you to know what kind of problems you may face in doing that, okay?

Mrs. Miller: Okay.

Mr. Miller: Okay.