

ⓔ 1/10/96

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

FILED

JAN 18 1996 CIV.-7

WILLIAM EBERT, d/b/a American)
Auto Body,)

Plaintiff,)

vs.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Defendant.)

Carl D. Oblinger
Clerk of the Circuit Court

No. 93-L-58

**ANSWER TO PLAINTIFF'S THIRD AMENDED
COMPLAINT COUNTS I, III, IV & VII**

Now comes the defendant, State Farm Mutual Automobile Insurance Company, through its attorneys, REED, ARMSTRONG, GORMAN, COFFEY, GILBERT & MUDGE, P.C., and in Answer to Counts I, III, IV & VII of Plaintiff's Third Amended Complaint states as follows:

**COUNT I
(Injunctive Relief)**

1. Defendant has insufficient information to either admit or deny whether or not plaintiff has been the owner and operator of American Auto Body for 19 years, but admits the remainder of the allegations in Paragraph 1.
2. Admitted.
3. Defendant admits that for a number of years plaintiff signed State Farm's Repair Facility Criteria Survey Form and that American Auto Body has been listed in the State Farm Insurance Repair Facility Reference, but denies the remaining allegations in Paragraph 3.
4. Admitted.

5. Admitted.

6. Admitted.

7. Defendant admits that plaintiff made approximately two telephone calls to employees of State Farm, but denies the remaining allegations of Paragraph 7.

8. Defendant denies that said letter was the only response received by plaintiff as to the reasons for the removal of American Auto Body from State Farm's Repair Facility Reference, and denies that the quotation therefrom is full and complete.

9. Defendant has insufficient information to either admit or deny whether plaintiff is a collector of guns and his reasons for keeping a gun on his property, and demands strict proof thereof, and denies that any right that the plaintiff may have to keep a weapon on his property is unlimited, or permits the plaintiff to display same in an inappropriate manner to others lawfully upon the property or in a manner which makes such other persons uncomfortable or apprehensive for their safety, and denies that any right to bare arms that plaintiff may have requires defendant and its personnel to continue to list American Auto Body in its Repair Facility Reference or requires them to enter onto the premises of American Auto Body against their wishes.

10. Denied.

11. Defendant admits that claimants against and insureds of State Farm who needed auto body repairs and who selected American Auto Body were sent letters from State Farm in the form of Exhibit "D" or in a form substantially similar to Exhibit "D." Defendant further admits that such a letter was sent to Mr. Sarunas Valuikenas dated July 24, 1992, to Mr. John Moloney dated March 27, 1992 and to Mr. Steve Mills dated September 2, 1992. Defendant denies that any such letter was sent to Ms. Janet Miller dated August 27, 1992 since this claim

was a total loss. Defendant has insufficient information to admit or deny whether any such letter was sent to a Mr. Nelson Capitano dated August 29, 1992 defendant cannot locate any such file, and accordingly, demands strict proof thereof. State Farm further denies all remaining allegations of Paragraph 11, and denies that said letter discouraged any of its persons named in Paragraph 11 or any other person from doing business with American Auto Body.

12. Denied.
13. Denied, and each subparagraph thereof is denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.

WHEREFORE, defendant prays for judgment in its favor and against plaintiff, plus its costs of this action.

JURY DEMAND

**COUNT III
(Defamation-Liable Per Quod)**

1-27. Defendant adopts and realleges Paragraphs 1 through 27, inclusive, of its answer to

Counts I and II hereof as Paragraphs 1-27, inclusive, of its answer to Count III thereof.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

WHEREFORE, defendant prays judgment in its favor and against plaintiff, plus the costs of this action.

JURY DEMAND

**COUNT IV
(Punitive Damages)**

1-27. Defendant adopts and realleges Paragraphs 1 through 22, inclusive, of its answer to Count I and Paragraphs 23-27, inclusive, of its answer to Count II hereof as its answer to Paragraphs 1-27, inclusive, of Count IV hereof.

28. Denied.

29. Denied.

WHEREFORE, defendant prays for judgment in its favor and against plaintiff plus the costs of this action.

JURY DEMAND

**COUNT VII
(Violation of Consumer Fraud and Deceptive Business Practices Act)**

1-27. Defendant adopts and realleges Paragraphs 1 through 22, inclusive, of its answer to

Count I and Paragraphs 23-27, inclusive, of its answer to Count II hereof as its answer to Paragraphs 1-27, inclusive, of Count VII hereof.

28. Defendant admits that 815 ILCS 505/2 contains the quoted language in Paragraph 28. Defendant denies that the quoted language is a complete quotation from 815 ILCS 505/2.

29. Admitted.

30. Admitted.

31. Admitted.

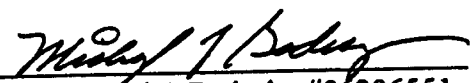
32. Denied.

33. Denied.

WHEREFORE, defendant prays for judgment in its favor, and against plaintiff, plus its costs of this action.

JURY DEMAND

REED, ARMSTRONG, GORMAN,
COFFEY, GILBERT & MUDGE, P.C.

BY 
Michael J. Bedesky #06206551
#1 Mark Twain Plaza, Suite 300
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257

**AFFIRMATIVE DEFENSES TO
COUNT I, II, III, IV, VI, & VII**

Now comes the defendant, State Farm Mutual Automobile Insurance Company, through

its attorneys, REED, ARMSTRONG, GORMAN, COFFEY, GILBERT & MUDGE, P.C., and for its Affirmative Defenses to Counts I, II, III, IV, VI, & VII states as follows:

1. Defendant is free to choose with whom it will or will not do business. State Farm's decision not to do business with American Auto Body is not actionable and is justified by State Farm's legitimate business interests in protecting its employees from a perceived risk of harm and/or abuse from being exposed to displays of fire arms and/or inappropriate or unprofessional comments by plaintiff.
2. The constitutions of both the United States of America and the State of Illinois guarantee the right of freedom of speech, which right extends to corporations, and any restriction on defendant's freedom of speech in the form of a preliminary or permanent injunction would be an illegal prior restraint upon such freedom of speech, in violation of both the United States and Illinois Constitutions.
3. The constitutions of both the United States of American and the State of Illinois guarantee the right to freedom of association. This right extends to corporations, and includes the freedom to choose with whom not to associate. Any restriction on this defendant's freedom of association in the form of a preliminary or permanent injunction would be an illegal prior restraint upon such freedom of association in violation of both the United States and the Illinois Constitutions.
4. Any statements made by defendant, its agents and employees concerning American Auto Body and/or William Ebert are statements of opinion, and are not actionable.
5. Any statements made by defendant, its agents and employees concerning American Auto Body and/or William Ebert were made in the context of State Farm's business of paying for

automobile repairs and therefore constitute privileged business communication between State Farm and its insureds or State Farm and those damaged by State Farm insureds.

6. Because plaintiff is guilty of "unclean hands," plaintiff is barred from any equitable relief in this action.

WHEREFORE, defendant prays for judgment in its favor and against plaintiff, plus its costs of this action.

JURY DEMAND

REED, ARMSTRONG, GORMAN,
COFFEY, GILBERT & MUDGE, P.C.

BY



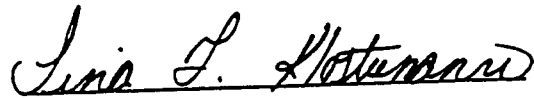
Michael J. Bedesky #06206551
#1 Mark Twain Plaza, Suite 300
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257

PROOF OF SERVICE

A copy of the foregoing was mailed to all counsel of record by enclosing same in an envelope, with postage prepaid addressed to:

Mr. Stephen M. Osborne
Beeman Law Offices
413 South Seventh Street
P.O. Box 5276
Springfield, IL 62705-5276

and deposited in the U. S. Mail in Edwardsville, IL 62025 on this 10th day of January,
1996.



Secretary
#1 Mark Twain Bank Plaza
P. O. Box 368
Edwardsville, IL 62025
(618) 656-0257