

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

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

PLAINTIFF'S SUPPLEMENT TO ANSWERS TO RULE 213(g) INTERROGATORIES

NOW COMES the Plaintiff, William Ebert d/b/a American Auto Body, by and through his attorneys, Wolter, Beeman, & Lynch, Attorneys at Law, and discloses the supplemental opinions, and the bases for those opinions, of persons previously disclosed who have or will have an opinion about the case and testify at trial. **The supplemental portions of the disclosures are in bold type.**

1. Mr. Jay Buck
Clifton Gunderson L.L.C.
2653 W. Lawrence
Springfield, IL 62704

A. The subject matter on which he is expected to testify:

(1) Damages suffered by the plaintiff by reason of defendant's conduct complained of by the plaintiff.

(2) Plaintiff's profits prior to defendant's conduct complained of by the plaintiff.

(3) Plaintiff's profits subsequent to defendant's conduct complained of by the plaintiff.

(4) The profits plaintiff would have realized absent defendant's conduct complained of by the plaintiff.

B. Conclusions and opinions of the witness and the bases

therefore:

(1) Plaintiff realized gross receipts during the following years:

1988	\$440,535
1989	\$364,171
1990	\$409,650
1991	\$400,615

The plaintiff realized total gross receipts of \$1,614,971 during the years 1988 through 1991, inclusive. The plaintiff realized average annual gross receipts of \$403,742.75 during these years.

The bases for these conclusions and opinions are a review of plaintiff's federal income tax returns and Forms Schedule C.

(2) Plaintiff realized gross receipts during the following years:

1992	\$399,983
1993	\$322,788
1994	\$427,518
1995	\$304,851
1996	\$411,046

The plaintiff realized total gross receipts of \$1,866,186 during the years 1992 through 1996, inclusive. The plaintiff realized average annual gross receipts of \$373,237.20 during these years.

The Plaintiff realized gross receipts during the following years:

1997	\$337,537
1998	\$357,189

The plaintiff realized total gross receipts of \$2,560,912 during the years 1992 through 1998, inclusive. The plaintiff realized average annual gross receipts of \$365,844.57 during these years.

The bases for these conclusions and opinions are a review of plaintiff's federal income tax returns and Forms Schedule C.

(3) Plaintiff realized the following gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1988	\$71,169.75
1989	\$83,289.46
1990	\$55,429.06
1991	\$79,699.85

The plaintiff realized total gross receipts of \$289,588.12 from repair jobs of State Farm insureds or claimants during the years **1988 through 1991 (correction from original disclosure)**, inclusive. The plaintiff realized average annual gross receipts of \$72,397.03 from repair jobs of State Farm insureds or claimants during these years.

The bases for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files.

(4) Plaintiff realized the following gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1992	\$41,622.53
1993	\$44,969.85
1994	\$38,750.58
1995	\$28,575.98
1996	\$42,723.88

The plaintiff realized total gross receipts of \$196,642.82 from repair jobs of State Farm insureds or claimants during the years 1992 through 1996, inclusive. The plaintiff realized average annual gross receipts of \$39,328.56 from repair jobs of State Farm insureds or claimants during these years.

Plaintiff realized the following gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1997	\$43,093.44
1998	\$25,543.54

The plaintiff realized total gross receipts of \$265,279.80 from repair jobs of State Farm insureds or claimants during the years 1992 through 1998, inclusive. The plaintiff realized average annual gross receipts of \$37,897.11 from

repair jobs of State Farm insureds or claimants during these years.

The bases for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files.

(5) Plaintiff realized the following percentage of total gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1988	16.14%
1989	22.87%
1990	13.53%
1991	19.89%

The bases for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files and a review of plaintiff's federal income tax returns and Form Schedule C.

(6) Plaintiff realized the following percentage of total gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1992	10.40%
1993	13.93%
1994	09.06%
1995	09.37%
1996	10.39%

Plaintiff realized the following percentage of total gross receipts from repair jobs of State Farm insureds or claimants during the following years:

1997	12.76%
1998	07.15%

The bases for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files and a review of plaintiff's federal income tax returns and Form Schedule C.

(7) Plaintiff realized average annual gross receipts from repair jobs of State Farm insureds or claimants of \$72,397.03 during the years 1988 to 1991 inclusive.

The basis for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files.

(8) Plaintiff realized average annual gross receipts from repair jobs of State Farm insureds or claimants of \$39,328.56 during the years 1992 to 1996 inclusive.

Plaintiff realized average annual gross receipts from repair jobs of State Farm insureds or claimants of \$37,897.11 during the years 1992 to 1998 inclusive.

The basis for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files.

(9) Plaintiff's average annual gross receipts from repair jobs of State Farm insureds or claimants fell from \$72,397.03 per year during the years 1988 to 1991, to \$39,328.56 per year during the years 1992 to 1996 resulting in a loss of receipts from repair jobs of State Farm insureds or claimants of \$33,068.47 per year.

Plaintiff's average annual gross receipts from repair jobs of State Farm insureds or claimants fell from \$72,397.03 per year during the years 1988 to 1991, to \$37,897.11 per year during the years 1992 to 1998 resulting in a loss of receipts from repair jobs of State Farm insureds or claimants of \$34,499.92 per year.

The basis for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files.

(10) Plaintiff's cost of goods sold for 1992 through 1996 were as follows:

1992	\$131,858
1993	\$102,290
1994	\$137,731
1995	\$114,082
1996	<u>\$136,582</u>
Total	\$622,543

Plaintiff's cost of goods sold for 1997 through 1998 were as follows:

1997	\$118,471	
1998	<u>\$129,904</u>	
Total (92-98)		\$870,918

The bases for these conclusions and opinions are a review of plaintiff's federal income tax returns and Form Schedule C.

(11) The ratio of plaintiff's cost of goods sold to gross receipts are as follows:

1992	33%
1993	32%
1994	32%
1995	37%
1996	33%

The ratio of plaintiff's cumulative cost of goods sold to gross receipts for the years 1992 through 1996, inclusive, is 33%.

The ratio of plaintiff's cost of goods sold to gross receipts are as follows:

1997	35%
1998	36%

The ratio of plaintiff's cumulative cost of goods sold to gross receipts for the years 1992 through 1998, inclusive, is 34%.

The bases for these conclusions and opinions are a review of plaintiff's federal income tax returns and Form Schedule C.

(12) Plaintiff's lost profits from repair jobs of State Farm insureds or claimants is currently estimated at \$22,045.64 per year during the years 1992 to 1996.

Plaintiff's lost profits from repair jobs of State Farm insureds or claimants is currently estimated at \$22,769.95 per year during the years 1992 to 1998.

The basis for these conclusions and opinions are a review of a compilation of plaintiff's State Farm jobs prepared by the plaintiff from a review of plaintiff's sales tickets and files and a review of plaintiff's federal income tax returns and Form Schedule C.

(13) State Farm earned net income of \$2,343,000,000 in 1996; \$972,000,000 in 1995; and \$485,000,000 in 1994.

The basis for these conclusions and opinions are a review of State Farm's Summary of Operating Data contained in its 1996 Annual Report to Policyholders and its 1995 Annual Report to Policyholders.

(14) See attached letter and attachments from Mr. Buck dated September 7, 1999, attached hereto and incorporated by reference herein, for rebuttal opinions to recent report submitted by Mr. David Burnett.

C. The qualifications of the opinion witness are set forth on his curriculum vitae, a copy of which is attached hereto and incorporated by reference herein.

2. Mr. Leno M. Meneghetti
1225 Monument Ave.
Springfield, IL

A. The subject matter on which he is expected to testify:

(1) The preparation of federal income tax returns for the plaintiff and information related thereto;

(2) Foundation necessary to introduce plaintiff's federal income tax returns into evidence.

B. Conclusions and opinions of the witness and the bases therefore:

(1) Plaintiff realized gross receipts during the following years:

1988	\$440,535
1989	\$364,171
1990	\$409,650
1991	\$400,615
1992	\$399,983
1993	\$322,788
1994	\$427,518
1995	\$304,851
1996	\$411,046

Plaintiff realized gross receipts during the following years:

1997	\$337,537
1998	\$357,189

The bases for these conclusions and opinions are personal and professional knowledge and experience as preparer of plaintiff's federal income tax returns and accompanying schedules.

(2) Plaintiff's cost of goods sold were as follows:

1992	\$131,858
1993	\$102,290
1994	\$137,731
1995	\$114,082
1996	\$136,582

Plaintiff's cost of goods sold were as follows:

1997	\$118,471
1998	\$129,904

The bases for these conclusions and opinions are personal and professional knowledge and experience as preparer of plaintiff's federal income tax returns and accompanying schedules.

(3) Plaintiff's federal income tax returns were prepared in accordance with the Internal Revenue Code and regulations promulgated thereunder.

The bases for these conclusions and opinions are personal and professional knowledge and experience as preparer of plaintiff's federal income tax returns and accompanying schedules.

C. The qualifications of the opinion witness are his education and his professional knowledge and experience in the fields of accounting and preparation of income tax returns.

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

BY: Stephen M. Osborne
His Attorney

September 7, 1999

Mr. Stephen M. Osborne
Wolter, Beeman & Lynch
413 South Seventh Street
P.O. Box 5276
Springfield, IL 62705

COPY

Re: *Ebert v. State Farm*

Dear Steve:

We have reviewed the analysis of the various facts concerning this case prepared by Mr. Burnett. The majority of the analysis utilized information, which was readily available in the existing exhibits and depositions. The information that was not available from these sources dealt with the revenues produced from the other insurance carriers, the total number of job tickets for each year, and the hourly labor rates used on the individual job tickets. If you believe it necessary, we could review that information also. However, we do believe Mr. Burnett completed his analysis using pertinent source documents. Mr. Burnett does state that his analysis was difficult due to the nature of the business and the available information.

Mr. Burnett suggests that the gross changes in income for American Auto Body are not related to the amount of, or changes in, State Farm business. This conclusion is based on the analysis performed on three particular facets of American Auto Body's business. These are:

1. Changes in gross income and its relationship with increases and decreases in business generated from three different insurance carriers.
2. Relationship between changes in income and number of jobs performed.
3. Relationship between changes in income and number of labor hours reflected in invoices for each job ticket.

We provide the following comments and/or observations relative to the analysis performed in each of these areas:

1. **Changes in gross income and its relationship with increases and decreases in business generated from three different insurance carriers.** Table A suggests fluctuations in gross income do not have direct relationships with changes in volumes from any insurance provider. Mr. Burnett's conclusion was that the gross income from State Farm does not have a cause and effect relationship with total gross income and that changes in gross income are caused by other factors, not the level of State Farm business.

Response: While there may not be a direct correlation between gross income and the volumes from any insurance provider, the analysis fails to look at the total change in revenue realized from State Farm business. During the years 1988 through 1991, American Auto Body averaged \$72,397 annually from State Farm business; the average for 1992 through 1996 dropped to \$39,328 resulting in a reduction in annual revenues of \$33,069. In 1991, 19.9 % of gross sales came from State Farm Business. In fact, for the years 1988 through 1991, 18.1% of average gross sales came from State Farm, whereas this average percentage dropped to 10.6% during the years 1992 through 1996. Table A - 1 reflects this trend.

2. **Relationship between changes in income and number of jobs performed.** Table B suggests that the number of jobs has changed from year to year with no particular pattern or trend. Mr. Burnett also says that it shows that the number of jobs for the period after 1991 has actually increased.

Response: Table B reflects the total number of tickets experienced by American Auto Body during each of the years. We agree that the total number of tickets may have increased during these time periods (annual average of 187 during 1989 through 1991 versus 201 during years after 1991). However, an analysis of the tickets for just the State Farm jobs shows that the average for 1989 - 1991 was 38.3 while only 26.6 for the years after 1991. Table B -1 shows this reduction in State Farm tickets. In addition, the average ticket size for these time periods dropped from \$1,908 to \$1,684 reflecting the fact that the size of the individual State Farm jobs has suffered a decrease. Also, while the number of total jobs may have increased for the period after 1991, the average size of the non-State Farm jobs has decreased since 1991 (\$2,144 for 1989 through 1991 versus \$1,906 after 1991) showing that American Auto Body has had to replace the larger State Farm work with a larger volume of smaller jobs. Table B - 2 shows this trend.

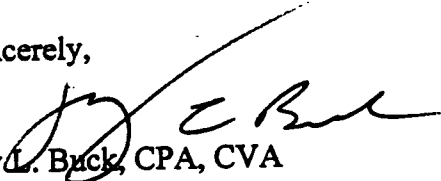
3. **Relationship between changes in income and number of labor hours reflected in invoices for each job ticket.** Table C translates labor sales into labor hours based on the labor rate charged on the job tickets. It assumes that American Auto Body was at full capacity during 1988 to 1991 based on Mr. Ebert's comments. Mr. Burnett states that it shows that in the years after 1991, American Auto Body has attained levels of production approximating levels prior to 1992 and that the dramatic increases and decreases indicate that there was no permanent decrease in capacity after 1991.

Response: The production levels were approximately the same during 1992 and 1994 (98.8% and 99.1%, respectively) while the production levels were significantly lower during 1993 and 1995 (75.5% and 70.2%, respectively). Therefore, the conclusion that the production levels after 1991 are comparable to 1991 is misleading.

In addition, Table C -1 shows that annual wages paid, as a percentage of gross income, has showed a steady increase since 1991. Also, the average markup experienced on wages (calculated by dividing labor sales by wage expense) shows a reduction in the profit margin realized on the hours charged to the repair jobs. These factors suggest that since 1991, American Auto Body's average annual wage expenses has been similar to 1991, yet with the same wage levels and reduced sales volume, their profit margins on labor sales has dropped significantly.

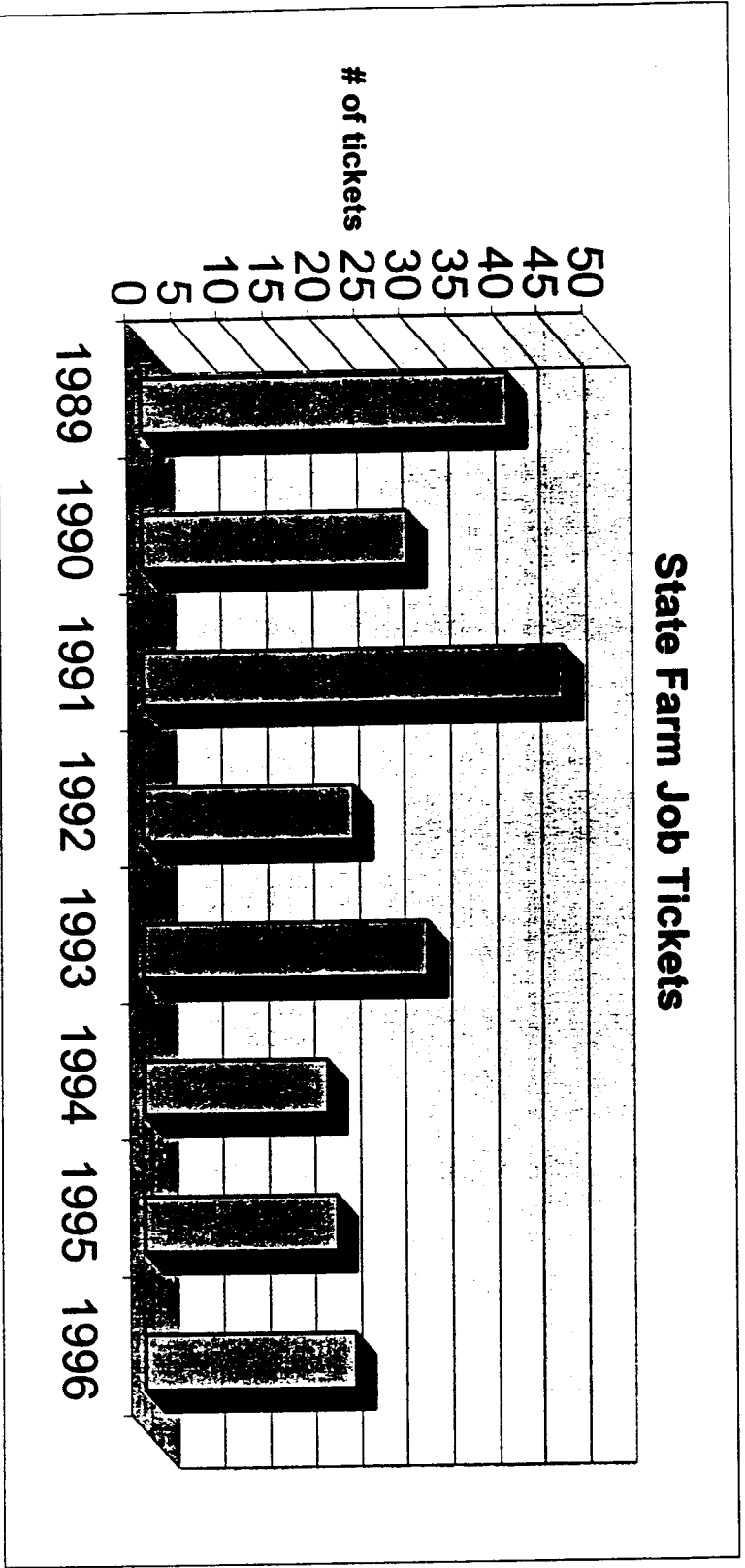
Please give me a call after you have had a chance to review this material if you would like to further discuss Mr. Burnett's analysis or our comments.

Sincerely,


Jay L. Byck, CPA, CVA
Member

# of State Farm Tickets	
1989	40
1990	29
1991	46
1992	23
1993	31
1994	20
1995	21
1996	23

State Farm Job Tickets



**Albert vs. State Farm
Analysis of Wages & Labor Sales**

Table C - 1

	<u>Wages per Tax Returns</u>	<u>Wages as a % of Gross</u>	<u>Labor Sales</u>	<u>Rate</u>	<u>Calculated Hours</u>	<u>Calc. Hours as % of 90/91 bas.</u>	<u>Labor Sales/ Wages</u>
1988	103,230	23.43%					
1989	88,097	24.19%					2.02
1990	104,428	25.49%	210,929	28	7,533		1.92
1991	110,749	27.64%	213,056	30	7,102		1.78
1992	122,083	30.52%	216,927	30	7,231	98.8%	1.70
1993	104,200	32.28%	176,827	32	5,526	75.5%	1.93
1994	120,399	28.16%	232,159	32	7,255	99.1%	1.69
1995	97,186	31.88%	164,284	32	5,134	70.2%	
1996	116,466	28.33%					