

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1999-001053

05/17/2004

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
K. Ballard  
Deputy

FILED: 05/19/2004

STACEY SKENE, et al.

ELAINE RYAN

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE

KELLY A O'CONNOR

RULING

**STATE FARM'S MOTION FOR SUMMARY JUDGMENT NO. 1 (CONTRACT LANGUAGE)**

Defendant State Farm's Motion for Summary Judgment No. 1 (Contract Language) has been under advisement. The Court finds and rules as follows:

**There Are Disputed Material Issues Of Fact Regarding Whether State Farm Breached Its Contract**

State Farm argues that it did not breach its contracts because it is not obligated to prepare an estimate and that even if it were, some shops may not have separately itemized the Omitted Repairs. State Farm also argues that even if it did not pay for the necessary Omitted Repairs, Plaintiffs and the Class were not damaged because some shops may have performed the Omitted Repairs for free. However, the Court is of the opinion that State Farm is contractually obligated to pay for all repairs necessary to restore its policyholders' vehicles to pre-loss condition. General Claims Memo ("GCM") #439, 2/2/98. State Farm does not repair vehicles; rather, its policy contract limits State Farm's liability for the "cost of repair or replacement," to "an estimate written based upon the competitive prevailing price." In accordance with its policy contract, the estimate dictates the amount State Farm will pay to repair policyholders' vehicles. State Farm informs its policyholders by letter that: "The most we will pay for repairs is the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1999-001053

05/17/2004

amount of our estimate and any supplements agreed to by us,” Claim Supervision Manual Article 8, 11/97.

Here, Plaintiffs’ and the Class’ damages claim are based on the payment they claim that they did not receive, not the repairs made to their vehicle. Judge Donahoe previously stated:

The breach by State Farm, if there was one, occurred when the estimate was written. Either the estimate included an amount for the needed repair or it did not. That is the crux of Plaintiff’s case – State Farm intentionally did not include the Omitted Repairs on the estimate so State Farm would not have to pay for the repairs. Whether the repairs were performed gratuitously by someone does not seem to the Court to determine whether there was a breach of insurance policy or fraud.

**There Are Disputed Material Issues Of Fact Regarding The Consumer Fraud Claim**

**(A) The Allegations Of False Promises And Omitted Material Information**

In its Auto Damage Claim Policy provided to all policyholders submitting auto property damage claims, State Farm states that: “We will provide you with a detailed appraisal of damage and cost of repairs.” State Farm further states that it “will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition.” State Farm Arizona Policy Form. Here, the questions of fact are: (1) whether State Farm required its estimators and contracted Service First Shops to use estimating software pre-programmed to not include the Omitted Repairs on the estimate; (2) whether State Farm informed its estimators and shops requesting payment for the Omitted Repairs that the “prevailing competitive practice” was for the shop to absorb the cost of the Omitted Repairs; (3) and whether State Farm rewards shops that abide by its estimating practices by referring policyholders to them.

**(B) The Claim Regarding Alleged Damages Based Upon State Farm’s Alleged Misrepresentations And Material Omissions**

There are genuine issues of disputed fact as to whether Plaintiffs and the Class were damaged in the amount necessary to perform the necessary, but excluded, Omitted Repairs.

**(C) The Claim For Injunctive Relief**

Based upon the foregoing, there are genuine issues of disputed fact as to whether Plaintiffs and the Class are entitled to injunctive relief.

THEREFORE, IT IS ORDERED denying State Farm’s Motion for Summary Judgment No. 1 re: Contract Language.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1999-001053

05/17/2004

IT IS FURTHER ORDERED filing unsigned the following:

- 1) Proposed Order re: denial of State Farm's Motion for Summary Judgment No. 1
- 2) Proposed Order re: granting of State Farm's Motion for Summary Judgment No. 1

**STATE FARM'S MOTION FOR SUMMARY JUDGMENT NO. 2 (ELECTRONIC ESTIMATES INSUFFICIENT TO ESTABLISH LIABILITY)**

Defendant State Farm's Motion for Summary Judgment No. 2 (Electronic Estimates Insufficient to Establish Liability) has been under advisement. The Court finds and rules as follows:

State Farm raises four main arguments in support of summary judgment: (1) State Farm argues that its employees and body shops do not use standard terminology to describe the Omitted Repairs; (2) State Farm argues that shops differ as to whether and how they charge for Omitted Repairs; (3) State Farm argues that electronic estimates do not show all payments State Farm made; and (4) State Farm argues that Plaintiffs' repair expert testified that the estimates do not include sufficient information to show liability. The Court concludes that as to each of those arguments, there are disputed fact issues.

**(A) Terminology Used To Identify The Omitted Repairs**

Plaintiffs' repair expert, Garry DeRungs, has testified that Arizona body shops use the same standard terms to identify the Omitted Repairs. Thus, this is a jury issue as to the weight and affect of such testimony.

**(B) Issue Re: "Judgment Time"**

State Farm argues that some shops "may" include an Omitted Repair in "judgment time" or its "paint materials allowance;" and thus it "can't be determined solely from the estimate whether it includes a charge for an [Omitted Repair]." The Court concludes that this is also a jury issue. State Farm's policy contracts provide for it to pay the cost to repair policyholders' damaged vehicles to pre-loss condition. State Farm bases the amount it will pay on a written repair estimate. State Farm requires its estimators and Service First Shops to separately itemize on the repair estimate each procedure "necessary to restore the damaged vehicle to its pre-loss condition."

Thus, this is a jury issue. As a threshold matter, sufficient evidence exists from which a jury could determine if an Omitted Repair is not identified on the repair estimate and that State Farm did not pay for it.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1999-001053

05/17/2004

**(C) Hard Copy Validation Exceptions**

The hard copy validation “exceptions” that State Farm relies on goes to the weight and affect of the evidence for the jury to decide. In other words, the validation estimates give rise to disputed fact issues.

**(D) The Electronic Estimates Contain Sufficient Information To Raise Fact Issues For The Jury To Decide As To Whether An Omitted Repair Was Required And Whether State Farm Paid For The Omitted Repairs**

Mr. DeRungs has testified that he could make these determinations from the electronic estimates.

**Conclusion**

There are genuine issues of material fact and State Farm is not entitled to judgment as a matter of law on the issue of whether electronic estimates adequately establish State Farm’s liability. Thus,

IT IS ORDERED denying State Farm’s Motion for Summary Judgment No. 2 (Electronic Estimates Insufficient to Establish Liability).

FILED UNSIGNED:

- 1) Proposed Order re: granting of State Farm’s Motion for Summary Judgment No. 2
- 2) Proposed Order re: denial of State Farm’s Motion for Summary Judgment No. 2