

JAN 4 2021 1-4-21

M. Corriveau, Deputy

**Wilhelm v. State Farm (CV 2019-012558)**

***Plaintiff's Position Statement Re: Discovery Dispute***

This is a simple, one-issue dispute arising out of the repair of the Wilhelm's mini-van. The Autatex software did not write State Farm's repair estimate. Autatex is simply a tool that monetizes the judgments human beings make about proper repairs. Three years ago, the Wilhelms asked State Farm to pay a body shop estimate to perform procedures recommended by Nissan's Autobody Repair Manual to repair the crushed rear quarter of their Nissan Pathfinder. State Farm slashed that estimate in half by specifying the use of a full rear-quarter assembly saw-cut from a salvage yard vehicle. The body shop notified State Farm that Nissan had strictly prohibited such a repair technique in writing and refused to perform it. In early 2018, the body shop provided State Farm copies of Nissan's Position Statements describing approved and prohibited repair procedures. The body shop's master mechanic told State Farm's adjuster that its repair would weaken structural components of Nissan's crash-tested safety systems and make it more likely that the vehicle could explode or fail to protect rear seat occupants in a subsequent collision. State Farm has refused to pay one penny more than its repair estimate based on its contention that it was prepared to rebut the positions taken by the manufacturer and the body shop that its specified repair method was unsafe. A reasonable timeframe for State Farm to disclose that defense passed a long time ago and yet another time extension would be both procedurally and substantively unfair to the Wilhelms.

The single disputed issue was fully defined by the Nissan Position Statements and the body shop in early 2019 and has never changed. State Farm should have disclosed a substantive defense of a repair using a salvaged rear quarter clip in February 2020 when its initial disclosures were due – but it did not. In April 2020, State Farm stipulated that it would fully disclose any expert opinions supporting its repair by November 12, 2020. Plaintiffs generously agreed to allow State Farm 14 months from the date of the lawsuit to disclose an expert justification that it should have had when it denied payment. Plaintiffs also reluctantly agreed to disclose their expert opinions 30 days before State Farm – giving State Farm a strategic advantage it truly wasn't entitled to here. Then, in a good faith effort to avoid bringing a discovery dispute to this Court, plaintiffs stipulated to a 60-day extension of this critical deadline – giving State Farm until January 11, 2021 to finally disclose a substantive expert defense. The plaintiffs (a working-class family of six) have timely disclosed an expert opinion that is identical to the position articulated by the body shop three years ago. State Farm (the largest auto insurer in the world), having failed to disclose a substantive defense as required by Rule 26.1, and having already secured a stipulated 60-day extension of its expert deadline, now asks the Court for 90 more days (120 days after plaintiffs' completed disclosure) to find an expert to support a repair procedure it should have been prepared to defend when it was specified. State Farm's inability to timely disclose any competent justification for its position goes to the heart of the plaintiffs' substantive allegations and it would be grossly unfair to the Wilhelms for the Court to grant State Farm yet another time extension.

JAN 4 2021

*8:46 am*

AG. GERVASELL, Deputy

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8 **ARIZONA SUPERIOR COURT**  
 9 **MARICOPA COUNTY**

10 Jason Wilhelm and Melissa Kay Armstrong  
 11 Wilhelm, husband and wife,

12 Plaintiffs,

13 vs.

14 State Farm Mutual Automobile Insurance  
 15 Company, an Illinois corporation,

16 Defendant.

Case No. CV2019-012558

**DEFENDANT STATE FARM'S POSITION  
 STATEMENT REGARDING DISCOVERY  
 DISPUTE**

(Honorable Roger Brodman)

17 This Court should extend all discovery deadlines by 90 days from the date of its ruling on  
 18 this discovery dispute. A brief description of this case informs this discovery dispute.

19 After an accident, Plaintiff took her vehicle to a mechanic who prepared a repair estimate  
 20 using Audatex software. State Farm used the same Audatex software to prepare its estimate, but  
 21 State Farm's estimate was lower than the mechanic's estimate. The mechanic refused to accept  
 22 State Farm's estimate as full payment, and Plaintiff refused to pay the mechanic the difference  
 23 between the mechanic's estimate and State Farm's estimate. The mechanic—a non-party to this  
 24 litigation—now purportedly seeks to recover well over \$100,000 in storage fees from Plaintiff  
 25 and alleges that its storage fees are growing \$100 per day. Plaintiff is using the mechanic's  
 26 claim to justify a damages award against State Farm for over \$100,000 plus punitive damages.  
 27 Because of that allegation, this is not a run-of-the-mill repair case.

1 After this litigation began, Plaintiff made a novel argument that State Farm committed  
2 bad faith because its repair estimate proposed an unsafe repair. State Farm disputes this, and this  
3 allegation has required the defense investigate how the Audatex software and State Farm's  
4 estimate did not specify an unsafe repair. Moreover, the mechanic used the same exact software  
5 but reached a different result. State Farm has been investigating this software and requires  
6 additional time to demonstrate why an unsafe repair was never proposed, either through the  
7 software or through human decision. Finally, State Farm is looking for witnesses to explain how  
8 this software works.

9 Undersigned counsel emailed Plaintiff back on November 24, 2020 to request a 90-day  
10 extension. Plaintiff never responded. Undersigned counsel emailed Plaintiff again on December  
11 9, 2020, and received a demand for a meet and confer, which was unsuccessful. Due to the  
12 holiday, this hearing has now been scheduled for January 4, 2021, and deadlines have passed  
13 during this period. A 90-day extension from the dates in the existing scheduling order would not  
14 account for this lapsed time while working through the discovery dispute.

15 For the foregoing reasons, the Court should grant a 90-day extension from the date of its  
16 order on this issue.

17 DATED December 23, 2020.

18 **CHRISTIAN, DICHTER & SLUGA, P.C.**

19 By: /s/ David M. Bell  
20 David M. Bell  
21 Daniel B. Bernardone  
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1 ORIGINAL of the forgoing  
2 e-mailed December 23, 2020 to:

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By: /s/ April Schofield