

FILE

*Williams v. A-1 Automotive Center*



MILLER & KILLEBREW LLP  
ATTORNEYS AT LAW  
450 FLAMINGO DRIVE, SUITE 1000  
CLEAR BAY, FRANKLIN 33002

MEMORANDUM

**To:** Applicant  
**From:** Tania Miller  
**Re:** Williams v. Biggs d/b/a A-1 Automotive Center  
**Date:** July 29, 2008

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We represent Robert Williams in a dispute with A-1 Automotive Center (A-1), concerning repairs that A-1 made to his minivan. He wants us to file a lawsuit on his behalf.

I believe Mr. Williams may be able to sue A-1 for fraud. I'm attaching notes of my interview with Mr. Williams and my memorandum to the file identifying four potentially actionable statements.

Please complete the following tasks:

1. Write a memo analyzing which of the four statements are actionable and which are not, and explaining the reasons for each of your conclusions.
2. For each statement that you determine to be actionable, draft a separate cause of action for fraud. Be sure to follow our firm's drafting guidelines for causes of action.

# MILLER & KILLEBREW LLP

## OFFICE MEMORANDUM

**To:** Attorneys  
**From:** Tania Miller  
**Re:** Drafting Causes of Action  
**Date:** September 5, 2004

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In pleading a cause of action, firm practice requires attorneys to draft the minimum allegations necessary to plead the required legal elements of the claim, presented in separately numbered paragraphs. The practice of pleading the required legal elements minimizes the risk of the court dismissing an action for failure to state a claim.

For example, a complaint for negligence must usually allege four elements: that the defendant had a duty, that the defendant breached that duty, that the defendant's breach was the proximate cause of injury to the plaintiff, and that this injury caused the plaintiff to suffer compensable damages. The following complaint for negligence provides an example of a negligence pleading consistent with the firm's pleadings practice:

1. When driving his car on the streets of Franklin City, Joe McMann owed other persons using the streets the duty to drive his car as a reasonable and prudent person would.
2. On December 5, 2002, Joe McMann breached his duty by driving his car at a speed in excess of the posted speed limit and through a red light at the corner of First Avenue and K Street in Franklin City.
3. When Joe McMann breached his duty, his car struck Sally Young, who was a pedestrian lawfully walking in a crosswalk at the intersection of First Avenue and K Street.
4. As a result of Joe McMann's breaching his duty, Sally Young suffered serious bodily injury and other damages.

## **Client interview notes: Robert Williams**

July 24, 2008

Met with new client Robert Williams this morning concerning his dispute with A-1 Automotive Center (A-1). A-1 is a small auto-repair shop located in Navasota, Franklin, which is owned and operated by Aaron Biggs.

Last month, Williams and his family were planning to leave for a one-week vacation in Ocean City, Columbia. He intended to drive to Ocean City in his 2003 Dodge minivan. At that time, the minivan had approximately 75,000 miles on the odometer and was in perfect working condition.

Williams saw an advertisement in a local newspaper in which A-1 offered an oil change and fluid check for \$29.95, and decided to take advantage of it. On Thursday, June 5, 2008, he called A-1 and spoke with Biggs, who told him to bring in the minivan and said that A-1 would do the work right away.

When Williams arrived, he was informed by Biggs that his minivan would have to be test-driven. Williams told Biggs that he would like to go along. After waiting around for half an hour, however, he saw his minivan being driven around the corner by one of the shop's mechanics. When the mechanic returned from the test-drive, Williams saw him talking and joking about something with Biggs. A few minutes later, Biggs walked over and told Williams that although the minivan was shifting fine, there might be a little slippage in the transmission, and that A-1 would have to find what was causing the problem. Because Biggs could not estimate how long that would take, Williams took a bus home.

Williams was home no more than 15 minutes when he received a call from Biggs telling him that there were problems with the minivan's transmission. Biggs told Williams that he had "checked and found a notification from Dodge about a defect causing the gears to grind down." Williams expressed surprise that there could be any problem with the transmission when the vehicle had been running perfectly, and he told Biggs not to take the transmission out of the minivan until he arrived.

When Williams arrived at the shop about 45 minutes later, the transmission had already been removed from his minivan and disassembled. Biggs told Williams, "Your transmission is going to fail, and soon!" Biggs gave him the option of having his old transmission repaired for about \$1,400 or purchasing a rebuilt transmission from A-1's stock at a cost of around \$1,700. Although Williams originally had had no intention of putting a rebuilt transmission into his minivan, at that point he felt he had no choice. He had no expertise in automotive repair, he was planning to leave for his vacation the next day, and Biggs told him that it would take three days to repair his own transmission but that a rebuilt transmission could be installed by that evening.

Williams told Biggs to install the rebuilt transmission. Biggs then said, "It would also help if we installed an extra cooler to keep it from running hot." Williams told Biggs that if the minivan had needed an extra cooler, the manufacturer would have installed one. With that, Biggs dropped the subject.

Williams picked up the minivan that evening and paid the bill. As Williams left the shop, Biggs told him, "I guarantee the job."

Williams took the minivan home and parked it in his garage. Later that evening, he noticed transmission oil all over the garage floor. He decided to delay his vacation and take the minivan back to A-1. When Williams looked at his receipt, however, he discovered that it was stamped "NO GUARANTEE." The next morning, when he called A-1 to inquire why this was the case, Biggs told him that because he had elected not to have the extra cooler installed, A-1 could not guarantee the transmission. That same day, Williams took the minivan to Mission Dodge, a local dealership, and told them about his experience with A-1. Mission discovered that the minivan's transmission was in fact his original transmission and not a rebuilt one. (Domestic car manufacturers mark engine transmission casings with the vehicle's serial number.) Mission also told Williams that Dodge had not circulated any notification about any problems with the transmissions in its 2003 minivans. Mission charged Williams \$128 to repair the transmission leak, which had been caused by A-1's improper reinstallation of the transmission.

On June 17, 2008, after he returned from vacation, Williams called A-1 and attempted to get his money back. Biggs told Williams that he would look into it. Williams called back several times to follow up with Biggs. Each time, Biggs told him that he was still looking into the matter. Williams came to us to bring suit.

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MEMORANDUM

**To:** File  
**From:** Tania Miller  
**Re:** Williams Matter  
**Date:** July 25, 2008

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Note to file—Further research needed to determine whether any of the following statements by Biggs might support a cause of action for fraud:

1. Biggs had “found a notification from Dodge about a defect causing the gears to grind down.”
2. “Your transmission is going to fail, and soon!”
3. “It would also help if we installed an extra cooler to keep it from running hot.”
4. “I guarantee the job.”

# RECEIPT

**A-1 Automotive Center**  
**4834 West Avenue**  
**Navasota, Franklin 33017**  
**(222) 555-2115**  
**FIRST CLASS SERVICE**

Invoice #: I0023059  
 Date: June 5, 2008  
 Page: 1

Customer: Robert Williams Address: 17159 Springfield Ct. City: Diamond Springs, FR 33015 Home Phone: (222) 555-3591 Work Phone: (222) 555-6705	Vehicle: 2003 Dodge Grand Caravan Minivan License: E47-S19 V.I.N.: JH5SV9257RS928599 Engine: V6/150hp/3.8L Mileage: 75,249																		
<b>Parts</b>	<b>Labor</b>																		
REBUILT TRANSMISSION, INCLUDING HOUSING, GEARS, SEALS, PLANETARY ASSEMBLY, SPRAGS, TORQUE CONVERTER, PAN GASKET, FILTER, BANDS, SOLENOID, AND FRONT PUMP; DRAIN AND REPLACE TRANSMISSION FLUID            \$1400.00	CUSTOMER REQUESTED WE REPLACE ORIGINAL TRANSMISSION WITH REBUILT TRANSMISSION INSTEAD OF REPAIRING ORIGINAL  6.25 hrs @ \$60.00/hr        \$375.00																		
	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Labor:</td> <td style="text-align: right;">\$375.00</td> </tr> <tr> <td>Parts:</td> <td style="text-align: right;">\$1400.00</td> </tr> <tr> <td>Other Fees:</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Supplies:</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Subtotal:</td> <td style="text-align: right;">\$1775.00</td> </tr> <tr> <td>Sales Tax:</td> <td style="text-align: right;">\$112.00</td> </tr> <tr> <td>Total:</td> <td style="text-align: right;">\$1887.00</td> </tr> <tr> <td>Paid:</td> <td style="text-align: right;">\$1887.00</td> </tr> <tr> <td>Balance Due:</td> <td style="text-align: right;">\$0.00</td> </tr> </table>	Labor:	\$375.00	Parts:	\$1400.00	Other Fees:	\$0.00	Supplies:	\$0.00	Subtotal:	\$1775.00	Sales Tax:	\$112.00	Total:	\$1887.00	Paid:	\$1887.00	Balance Due:	\$0.00
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NO GUARANTEE