

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT
CODE STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE AND FINAL AGENCY ORDER

IN THE MATTER OF THE INVESTIGATION OF AMERICAN
ASSURANCE CORPORATION.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE ("AOD") AND FINAL AGENCY ORDER ("Order"), arises out of the investigation by Martha Fulford, Administrator, Uniform Consumer Credit Code ("Administrator") into Respondent's compliance with the UCCC and its rules, including 4 CCR 902-1:8 ("Rule 8"), is agreed to by American Assurance Corporation ("Respondent") who will not engage in the conduct described herein in the future, and is entered by the Administrator pursuant to C.R.S. § 5-6-109 and § 5-6-110 of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* ("UCCC").

SECTION I
Findings of Facts and Conclusions of Law

1. The Administrator is authorized to administer the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.*
2. Respondent is a Colorado corporation with a principal office located at 3345 S. Wadsworth Blvd., Lakewood, Colorado 80227.
3. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. § 5-6-109 and § 5-6-110. This AOD applies to all consumer credit transactions entered into by Respondent with consumers in Colorado in accordance with C.R.S. § 5-1-201 administered by Respondent on behalf of creditors.
4. In June 2020, the Administrator served the Respondent with a civil investigative demand pursuant to her investigation of Guaranteed Automobile Protection ("GAP") in Colorado.
5. GAP means an agreement structured as either an insurance policy or a contractual term that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the

total loss of the consumer's automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle or theft ("GAP waiver"). See Rule 8(a).

6. Among other things, Respondent processes consumer claims for GAP waivers on behalf of certain creditors in Colorado and calculates the amount of the waiver to be applied to the consumer's account. Typically, auto dealers are the original creditors and sell GAP to consumers.

7. Respondent came forward, accepted responsibility, and without admitting liability, raised this issue with the Administrator. Respondent is the first company to work with the State to address the GAP claim administration concerns raised by the Administrator. Respondent chose to cooperate rather than deny and defend its conduct and engage in protracted litigation or delay for the benefit of its Colorado customers. Respondent provided information to the Administrator concerning its calculation of GAP waivers in good faith and on a voluntary basis. Respondent represents that all information provided to the Administrator regarding GAP is true, accurate and complete in all material respects.

8. Respondent reported that its calculation of the GAP waivers to be applied to the accounts of Colorado consumers did not comply with Rule 8(e). Rule 8(e) provides that:

GAP must pay or forgive the deficiency balance owed by the consumer at the time of the total loss with the exception of amounts previously owed for unpaid installments, legally permitted delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, premiums for creditor-imposed property damage insurance, and deferral fees. GAP must pay or forgive the deficiency balance that would have been owed if the consumer had maintained property damage insurance on the automobile (even if the consumer has not done so) or if the creditor has purchased property damage insurance for the automobile and added it to the amount of the debt pursuant to UCCC § 5-2-209, C.R.S.

9. Accordingly, Rule 8(e) requires creditors to waive the full deficiency balance and only permits certain specified deductions from the GAP waiver. Respondent voluntarily reported it had previously taken deductions from GAP waivers authorized in other states but not authorized in Colorado by Rule 8(e).

10. Respondent made the following deductions not authorized in Colorado by Rule 8(e):

a. Condition Adjustments

- When insurance companies adjust the payout on a total loss

based on the condition of the vehicle relative to a vehicle in normal condition. For instance, if a vehicle owner has a torn headliner or the stereo has been removed.

- b. Excess Amount Financed
 - GAP comes in either 125% or 150% benefit limits. If the covered vehicle has a loan in excess of 125% or 150% of the MSRP (for new vehicles) or the NADA value (for used vehicles) when the GAP is written, the excess amount financed is not covered.
- c. Excess Mileage Driven
 - Insurance payouts are based on driving an average number of miles during the period the vehicle is owned; driving in excess of that amount can result in deductions.
- d. Prior Damages
 - When the insurance company reduces the payout for damage to the vehicle which was incurred prior to the total loss and it is not repaired by the vehicle owner; and
- e. Salvage Amount
 - When the customer elects to keep totaled vehicle and the insurance company reduces the insurance proceeds.

SECTION II Order

11. To remediate this conduct, the Administrator orders the Respondent as follows:

- a. together with all related or affiliated entities, and its officers, directors, shareholders, managers, members, principals, subsidiaries, heirs, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the Respondent's direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with who received actual notice of the AOD, hereby are prohibited and permanently enjoined from engaging in any conduct that violates Rule 8(e), including taking any deductions from GAP waivers not authorized by Rule 8(e), and shall immediately cease and desist from engaging in or committing such conduct, and shall not in the future engage in or commit conduct that violates Rule 8(e).

b. Respondent has voluntarily performed a self-audit of all transactions entered into by consumers in Colorado that Respondent administered from October 1, 2014 to the present. Respondent identified all consumers covered by this AOD, as provided in paragraph 3, which received a GAP waiver during this time but did not receive a waiver of the full deficiency balance in accordance with Rule 8(e). For each consumer identified, Respondent voluntarily provided the Administrator a list identifying (i) the name and address of the consumer, (ii) the total amount of the refund, (iii) the specific charges refunded, and (iv) for each charge refunded the basis for the deduction as outlined in paragraphs 10(a) to (e). Respondent provided the list to the Administrator in Microsoft Excel. Respondent and Administrator shall maintain this list confidentially.

c. Respondent shall attempt to refund all unauthorized amounts erroneously withheld in violation of Rule 8(e) in accordance with paragraph 12(a). This implicates 171 consumers, and the total refund amount due and owing is \$121,983.38. This amount is payable to the Administrator, along with any interest thereon, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, and for consumer or creditor educational purposes, or consumer credit or consumer protection enforcement efforts. The Administrator elects, in lieu of making payment directly to the Administrator in the first instance, to direct Respondent to attempt refunds directly to consumers as stated in paragraph 12(a), on behalf of the Administrator, any deductions it took from GAP waivers in violation of Rule 8(e) with any refunds reverting to the Administrator after 90 days in accordance with paragraph 12(d) below. If any consumers have a balance outstanding with the creditor, then Respondent may make these refunds pursuant to an account credit.

12. Respondent shall make the refunds, as follows:

a. Refunds. Respondent shall attempt to make any refunds due hereunder within 30 days after the Effective Date. Respondent shall update contact information, and use the most current information furnished to it by the consumer or Accuzip for issuing a refund. All refunds shall be made by check. If any refund is returned or not processed on the first attempt, Respondent shall exercise reasonable efforts and due diligence to re-attempt the refund for 90 days after the first attempted refund in accordance with paragraph 12(d) below.

b. Transmittal Letter. Concurrently with any refunds sent by Respondent pursuant to paragraph 12.a above, Respondent shall send

each consumer a letter, the form and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that the Respondent is cooperating with the Attorney General and Administrator in determining the amount of monies erroneously withheld from their GAP coverage in violation of Rule 8(e), and the Respondent is providing consumers with a refund for those amounts. A template of the transmittal letter is attached as Exhibit A.

c. Proof of Refunds. Within 120 days after the Effective Date, Respondent shall provide the Administrator with documentation reasonably acceptable to the Administrator that Respondent timely sent refunds to consumers, such as copies of checks. Additionally, Respondent shall update the list referenced in paragraph 11(b) identifying which consumers received payments.

d. Refunds Outstanding Beyond 90 Days. 90 days after the first attempted refund in accordance with paragraph 12(a) above, Respondent shall stop payment on outstanding refund checks, and pay to the Administrator within 30 days the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise. The Administrator shall deem all amounts paid by Respondent to her under this paragraph 12(d) (concerning payments to Colorado customers to whom Respondent was not able to deliver refunds within the 90 days required) as fulfilling the Respondent's refund and other obligations under this AOD. Nothing in this Order or AOD shall in any way limit, constrain, abridge, abrogate, waive, release, affect, impair, or otherwise prejudice the rights of or belonging to any individual consumer. Respondent accordingly reserves all rights and defenses to any consumer claims in accordance with C.R.S. § 5-6-116.

13. At Respondent's expense and at the Administrator's option, Respondent shall permit the Administrator to inspect its books and records once, at any time within normal business hours, and to conduct a follow-up inspection upon reasonable notice to Respondent's counsel. The inspection must occur within one (1) year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD.

14. All payments due the Administrator under paragraph 12(d) shall be deemed paid upon the Administrator's receipt of the payment. All such payments shall be by check made payable to the "Colorado Department of Law," and mailed to "Administrator, UCCC, Attn: Mica Moore, 1300 Broadway, 6th Floor, Denver, Colorado 80203. In accordance with paragraph 11(c), all such payments are to be held, in trust, to be used in the

Administrator's sole discretion for attorneys' fees and costs, consumer restitution, and for consumer or creditor educational purposes, or consumer credit or consumer protection enforcement efforts.

SECTION III Stipulation and Release

15. Respondent agrees and stipulates to this Order and AOD and all terms contained herein.

16. This Order and AOD fully resolve all of the issues between the Administrator and Respondent arising out of the particular issues, allegations, or charges raised by the Administrator as set forth herein and only those issues. This release does not apply to any GAP practices other than the specific benefits calculation issue described herein, and does not apply to other claims arising under Rule 8, including but not limited to, claims refunds owed under Rule 8(h). The Administrator releases Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties which accrued or may have accrued as a result of any consumer credit sale transaction entered into or administered by Respondent on or before the execution date of this Order.

17. Respondent acknowledges it has a right pursuant to C.R.S. § 5-6-109 to request an evidentiary hearing in this matter, present evidence, examine witnesses, and appeal from any adverse action, and hereby voluntarily waives said right in conjunction with this Order and AOD.

18. Respondent agrees that this Order contains the entire agreement between the Administrator and is binding upon all the officers, directors, employees, shareholders, managers, members, principals, affiliates, heirs, agents, trade names, and successors of the Respondent.

19. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as so executed shall constitute one agreement.

20. This AOD and Order are governed by Colorado law. In addition to any other remedy the Administrator may have, in the event of any claims or causes of action alleging or asserting a violation of or failure to comply with this AOD, after notice to Respondent and reasonable opportunity to cure the alleged failure without admission of liability, the Administrator may commence an action in the District Court for the City and County of Denver, and Respondent hereby consents to the jurisdiction, venue, and process. In the event of any action or proceeding alleging or asserting a violation of or failure to comply with this AOD, this AOD shall be admissible in full.

21. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

22. The date this AOD is executed by both of the parties shall be the Effective Date of this AOD for all purposes hereunder.

23. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

EXECUTED AND SO ORDERED by the Administrator this 19 -day of May, 2021.

Martha M. Fulford

Martha Fulford
Administrator
Uniform Consumer Credit Code

AGREED AND STIPULATED TO
BY:

AMERICAN ASSURANCE CORP.

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