

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 27-CV-18-5608
Hon. Ronald L. Abrams

Plaintiff,

vs.

CONSENT JUDGMENT

AutoAssure, LLC, d/b/a Vehicle Services
Department,

Defendant.

WHEREAS, Plaintiff State of Minnesota, by its Attorney General, Keith Ellison (“State” or “AGO”), served and filed the Complaint in this matter against Defendant AutoAssure, LLC, d/b/a Vehicle Services Department (“AutoAssure”), on April 6, 2018, alleging that AutoAssure unlawfully deceived Minnesota consumers in its marketing and sale of service contracts, in violation of Minnesota Statutes sections 59B.07, 325D.44, 325F.69, and 325F.71;

WHEREAS, on May 16, 2018, AutoAssure answered and denied the allegations in the State’s Complaint; and

WHEREAS, the AGO and AutoAssure (the “Parties”) desire to resolve fully the claims set forth in the Complaint by this Consent Judgment and Order (“Consent Judgment”).

NOW, THEREFORE, the AGO and AutoAssure hereby agree to entry of an order with the following terms and conditions:

INJUNCTIVE RELIEF

1. For purposes of this Consent Judgment, the following terms have the following meanings:

- (a) “Minnesota resident” means any person with a Minnesota address.
- (b) “Service contract” has the meaning given to it by Minnesota Statutes section 58B.02, subd. 11.

2. Except for the conduct expressly allowed by Paragraph 3, AutoAssure, whether acting directly or indirectly, individually or in conjunction with any other person, or through any entity or assumed name, including any merged or acquired predecessors, parents or controlling entities, successors, or subsidiaries, and AutoAssure’s officers, employees, or other agents, all of whom when acting for or on behalf of AutoAssure, are hereby enjoined and restrained from marketing, advertising, offering, promoting, or contacting any Minnesota resident in any attempt or other effort to solicit the sale of a service contract, including but not limited to by sending direct mail advertising to Minnesota residents, for a period of four (4) years from the date the Order accompanying this Consent Judgment is signed by the Court.

3. Notwithstanding Paragraph 2, AutoAssure shall be permitted to communicate by any means, receive payments from, and provide refunds to, Minnesota residents who purchased service contracts through AutoAssure prior to the date the Court approves this Consent Judgment relating to the purchased service contract, but, unless requested or initiated by such Minnesota residents, AutoAssure shall not market, advertise, promote, or solicit such Minnesota persons to purchase additional service contracts, goods, or services for a period of four (4) years from the date the Order accompanying this Consent Judgment is signed by the Court.

4. AutoAssure shall not, whether directly, indirectly, individually, representatively, or through or in combination with any other person or entity, engage in any of the following

conduct in Minnesota when selling service contracts or otherwise operating or doing business in Minnesota:

- (a) Through any act or omission, represent, suggest, or imply that a consumer's manufacturer warranty has expired when it has not;
- (b) Through any act or omission, represent, suggest, or imply that AutoAssure can update or extend a manufacturer warranty or service contract, unless such is true;
- (c) Through any act or omission, represent, suggest, or imply that the service contracts sold by AutoAssure are an extension or continuation of a manufacturer warranty or service contract, unless such is true;
- (d) Through any act or omission, represent, suggest, or imply that AutoAssure is associated with any motor vehicle manufacturer or any dealership from which motor vehicles are purchased, unless such is true, including but not limited to use of the name "Vehicle Services Department";
- (e) Through any act or omission, represent, suggest, or imply that AutoAssure is associated with or sponsored by the government, including but not limited to use of the name "Vehicle Services Department," use of an eagle emblem, or use of any other insignia that represents an association with the government;
- (f) Through any act or omission, represent, suggest, or imply that the service contracts sold by AutoAssure provide better or different coverage than they actually do;
- (g) Through any act or omission, represent, suggest, or imply that the service contracts cover "everything," provide "bumper-to-bumper" coverage, or otherwise use similar or equivalent language to describe the service contracts, unless such is true;
- (h) Through any act or omission, represent, suggest, or imply that there is a date after which a customer loses the ability or eligibility to purchase a service contract from AutoAssure, unless such is true, provided that AutoAssure may inform customers of the requirements for eligibility for service contract purchase, including mileage limits, vehicle types, and vehicle usage; or
- (i) Through any act or omission, engage in any other conduct that violates Minnesota Statutes sections 59B.07, 325D.44, 325F.69, and 325F.71.

5. AutoAssure shall fulfill the terms of this Consent Judgment, and all of the owners, parents, subsidiaries, affiliates, and successors of AutoAssure, if and when acting for or on behalf of AutoAssure, shall also be bound by this Consent Judgment, so as to accomplish the full relief contemplated by this Consent Judgment. AutoAssure is permanently enjoined from effecting any change in its or any other entity's form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition, or otherwise engaging in any other method or practice, the effect of which is to avoid the terms of this Consent Judgment. AutoAssure is further permanently enjoined from effecting any change in its ownership stake in, or management authority over, any entity in which it has such ownership stake or management authority as a method of, or if the effect is, assisting the entity in avoiding the terms of this Consent Judgment.

MONETARY PAYMENT

6. AutoAssure shall pay monetary relief to the AGO under Minnesota Statutes section 8.31 of \$400,000, as follows:

- (a) \$16,000 on or before November 1, 2019; and
- (b) \$16,000 on or before the first day of each subsequent month for a period of twenty-four months, ending on November 1, 2021.

7. All or any portion of the monies received by the AGO pursuant to this Consent Judgment may be distributed, at the sole discretion of the AGO, to AutoAssure's Minnesota customers, pursuant to Minnesota Statutes section 8.31. Monies the AGO receives pursuant to this Consent Judgment may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the General Fund of the State of Minnesota pursuant to Minnesota Statutes section 8.31.

8. AutoAssure represents and warrants that, to the best of its knowledge, it has completely and accurately disclosed to the AGO all current and former Minnesota customers who purchased service contracts from AutoAssure. To the extent that AutoAssure provides a refund to any of its current Minnesota customers after the signing of this Consent Judgment, it shall notify the AGO within thirty (30) days of having done so. If AutoAssure neglects to take that step, the AGO shall not use that fact to support a violation of this Consent Judgment.

9. The monies to be paid under Paragraph 6 shall be sent payable to the “Minnesota Attorney General’s Office” at the following address: Collin R. Ballou, Assistant Attorney General, Minnesota Attorney General’s Office, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101. If any amounts due hereunder are not received by the AGO on the dates specified in Paragraph 6, the AGO shall, before taking any adverse or legal action, notify AutoAssure in writing of the alleged deficiency and provide AutoAssure at least ten (10) business days to rectify the situation.

10. If AutoAssure does not comply with the payment requirements contained in Paragraphs 6 and 9, or becomes the subject of any insolvency proceeding, including but not limited to the debtor seeking (voluntarily or involuntarily) federal bankruptcy protection, the entire unpaid balance of the amount referenced in Paragraph 6 shall become immediately due and payable.

GENERAL TERMS

11. This Consent Judgment constitutes neither an admission nor denial of the allegations set forth in the Complaint.

12. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the AGO, upon approval of this Consent Judgment by the Court, hereby fully and completely

releases AutoAssure of any and all claims of the AGO under Minnesota Statutes sections 59B.07, 325D.44, 325F.69, and 325F.71 arising out of the allegations in the AGO's Complaint in the above-captioned action, up to and including the date of the Court's approval of this Consent Judgment. The AGO through this Consent Judgment does not settle, release, or resolve any claim against AutoAssure by any person or entity not a party to this Consent Judgment, or by any other person or entity involving any private causes of action, claims, or remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division, including but not limited to the Minnesota Department of Commerce.

13. The claims, remedies, and relief provided for in this Consent Judgment are in addition to all other claims, remedies, and relief available to the State of Minnesota or the AGO.

14. AutoAssure shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO have approved of, condone, or agree with any conduct, actions, or inactions by AutoAssure.

15. Nothing in this Consent Judgment shall relieve AutoAssure of its obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

16. In the context of a voluntary or involuntary bankruptcy regarding AutoAssure, in any bankruptcy-related proceeding by or on behalf of the State, including a nondischargeability complaint or other proceeding to enforce the State's rights to any payment or monetary judgment under this Consent Judgment, the facts alleged in the Complaint shall and will be taken as true without the need for any further proof, evidence, or other showing for the purpose of protecting,

preserving, maintaining, or otherwise being able to ensure that the State is able to and may recover the amounts owed to it under the terms of this Consent Judgment.

17. For the purpose of protecting, preserving, maintaining, and ensuring that it is able to and may recover the amounts owed to the State under the terms of the Consent Judgment, the State and AutoAssure agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the State pursuant to 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(4), and/or 11 U.S.C. § 523(a)(7), that this Consent Judgment will have collateral estoppel and/or res judicata effects for such purposes, and AutoAssure agrees not to contend otherwise. AutoAssure further agrees that the entirety of the award of monetary relief pursuant to this Consent Judgment is nondischargeable debt under these statutes, and waives any right to contest or otherwise dispute the matter.

18. Within ten (10) business days of the Court's entry of an order approving this Consent Judgment, the AGO and AutoAssure shall file a Stipulation of Dismissal with Prejudice, dismissing the matter with prejudice and without additional costs and fees (other than any payments required herein) to either party.

19. The person signing this Consent Judgment for AutoAssure warrants that AutoAssure has authorized the person to execute this Consent Judgment, that he or she executes this Consent Judgment in an official capacity that binds AutoAssure and its successors, and that AutoAssure has been fully advised by its counsel or has voluntarily forgone such advisement before entering into the Consent Judgment.

20. This Consent Judgment may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Consent Judgment may be executed by facsimile or electronic copy in any image format.

21. This Consent Judgment constitutes the full and complete terms of the agreement entered into by AutoAssure and the AGO.

22. Service of notices or other documents required or permitted by this Consent Judgment shall be served on the following persons, or any person subsequently designated to receive such notices, by mail and email at the addresses identified below:

For the AGO:

Collin R. Ballou, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101
collin.ballou@ag.state.mn.us

For AutoAssure:

Richard Burton, Esq.
6400 Pinecrest Drive, Suite 400, Plano, Texas 75024
rickburton214@gmail.com

23. The failure of a party to exercise any rights under this Consent Judgment shall not be deemed to be a waiver of any right or any future rights.

24. This Consent Judgment, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

25. Nothing in this Consent Judgment shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in with regard to AutoAssure.

26. Each of the Parties is represented by counsel, participated in the drafting of this Consent Judgment, and agrees that the Consent Judgment's terms may not be construed against or in favor of any of the Parties by virtue of draftsmanship.

27. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to effectuate or carry out this Consent Judgment.

The AGO shall have all powers specified by Minn. Stat. § 8.31, and all other authority otherwise available to it for purposes of investigating any suspected violations of this Consent Judgment and monitoring compliance with this Consent Judgment.


28. The AGO may file this Consent Judgment with the Court without further notice to AutoAssure, and the Court may approve and enter this Consent Judgment *ex parte* and without further proceedings.

29. The Parties consent to entry of the foregoing judgment, which shall constitute a final judgment as to the State's claims. The judgment shall take effect immediately upon entry by the clerk of this Court.

30. The Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment, and all signatories hereto consent to the jurisdiction of the Court for the purposes of enforcing this Consent Judgment. The Parties may move the Court, as appropriate, to enforce or interpret the provisions of this Consent Judgment or, in the alternative, maintain an action for other relief as it determines is proper and necessary for the enforcement of this Consent Judgment. The Parties agree that, in any action brought to enforce the terms of this Consent Judgment, the Court shall have authority to award equitable relief, including specific performance.

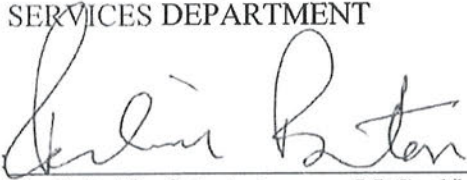
KEITH ELLISON
Attorney General
State of Minnesota

Dated: 9/11/19

By: 
COLLIN R. BALLOU
Assistant Attorney General

AUTOASSURE, LLC, D/B/A VEHICLE
SERVICES DEPARTMENT

Dated: 9/16/19

By: 
On behalf of AutoAssure, LLC, d/b/a Vehicle
Services Department

ORDER

Having reviewed the terms of the foregoing Consent Judgment, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: September 12, 2019

The Honorable Ronald L. Abrams
Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.