

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

THE STATE OF WASHINGTON,

Plaintiff,

v.

AGA SERVICE COMPANY; and
JEFFERSON INSURANCE COMPANY,

Defendants.

NO. 21-2-0589-5 SEA

CONSENT DECREE

I. INTRODUCTION

1.1. The State of Washington (the State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Neal Luna, Mitchell Riese, and Raina Wagner, Assistant Attorneys General, filed this action against Defendants, AGA Service Company and Jefferson Insurance Company (together referred to as “AGA”) to enforce the Washington Law Against Discrimination (WLAD), RCW 49.60.030(1)(e); the Consumer Protection Act (CPA), RCW 19.86.020 and RCW 49.60.030(3) (*per se* CPA violation); and the Washington Insurance Code, RCW 48.30.300 and RCW 48.18.480.

1.2. AGA engages in trade or commerce within the meaning of RCW 19.86.010(2).

1.3. AGA offers travel insurance that provides coverage for travel costs, such as trip cancellation and interruption benefits, reimbursement of eligible medical costs in case of a covered medical or dental emergency, reimbursement for losses caused by a covered travel delay or

CONSENT DECREE

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1 baggage loss, and other situations. However, pursuant to policy forms that were reviewed and
2 affirmatively approved by the Washington Office of the Insurance Commissioner (“OIC”), from
3 at least January 1, 2014 through February 15, 2023, AGA excluded from coverage trip-cancellation
4 or trip-interruption losses caused by “mental or nervous health disorders,” such as anxiety,
5 depression, neurosis, psychosis, etc., or “any related physical complications” in many of its
6 policies (the “MNHD exclusion”).

7 **1.4.** From January 1, 2014, through January 31, 2023, AGA sold in Washington more
8 than 5.4 million travel insurance policies that contain the MNHD exclusion and denied or closed
9 at least 560 claims (the “Past Claims”) made under those policies in which an insured asserted that
10 their trip was cancelled or interrupted as a result of a mental or nervous health disorder.

11 **1.5.** The State alleges that AGA violated the WLAD, RCW 49.60.030(1)(e); the CPA,
12 RCW 19.86.020; and the Washington Insurance Code, RCW 48.30.300 and RCW 48.18.480; by:

13 **1.5.1.** Denying insurance coverage for, or excluding from insurance coverage,
14 claims for travel cancellation or interruption losses caused by the insured’s, a travel
15 companion’s, or a family member’s mental or nervous health disorder or any related
16 physical complications; and

17 **1.5.2.** Failing to conduct a bona fide statistical analysis regarding the risk or
18 exposure in travel losses caused by those with mental or nervous health disorders under
19 RCW 48.30.300 before discriminating against them.

20 **1.6.** AGA denies that it has violated any provision of Washington law by selling and
21 administering insurance policies pursuant to policy forms that were reviewed and affirmatively
22 approved by the OIC, the State’s legislatively authorized insurance regulator, and, by entering into
23 this Consent Decree, AGA does not admit liability or any violation of law.

24 **1.7.** The parties agree that this Court has jurisdiction over the subject matter of the
25 claims alleged and the parties to this lawsuit.
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1 receipt of wiring instructions or within thirty (30) days after the entry of the Consent Decree,
2 whichever is longer.

3 **3.3.** Within sixty (60) days of entry of this Consent Decree, the State will hire a third-
4 party administrator to locate any claimants whose Past Claims were denied solely under the
5 MNHD exclusion between January 1, 2014 and the date of this Consent Decree and to tender
6 payment for such Past Claims.

7 **3.4.** Within 180 days of entry of this Consent Decree, the State, through the third-party
8 administrator, shall make reasonable efforts to identify, locate, and contact claimants whose Past
9 Claims were denied solely under the MNHD exclusion between January 1, 2014 and the date of
10 this Consent Decree. AGA will supply the State and third-party administrator with information in
11 its possession that will aid in this process, including the identity and location of the claimant, the
12 date the claim was denied, and the amount of the denied claim.

13 **3.4.1.** For all claimants the third-party administrator is able to contact and make
14 arrangements for payment, the State, through the third-party administrator, shall pay the
15 full amount of the claim plus interest accruing at a rate of 12% per annum. Interest shall
16 accrue from the date of the final denial of the claim until 90 days after entry of this Consent
17 Decree.

18 **3.4.2.** Within 210 days after entry of this Consent Decree, the State, through the
19 third-party administrator will produce to AGA records reflecting the tenders of payment
20 made pursuant to this section. Such records shall include the name, address, phone number,
21 and relevant policy number for claimant as well as the amount paid to each claimant, the
22 date of the payment, and proof of the payment.

23 **3.5.** The parties may agree to extend the time periods set out in this Section III. The
24 parties shall not unreasonably withhold agreement to extend the times set out in this Section III.
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IV. DURATION AND ENFORCEMENT

4.1. This Consent Decree shall be in effect for a period of three (3) years from the date of its entry. Accordingly, the terms of this Consent Decree shall expire three years after the date of entry. No party may initiate any claim that any other party violated the terms of this Consent Decree after the expiration thereof. The Court shall retain jurisdiction for the duration of the Consent Decree to enforce its terms.

4.2. The State may move the Court to extend the duration of the Consent Decree in the event of noncompliance, whether intentional or not, with any of its terms, or if it believes the interests of justice so require.

4.3. Violation of any of the terms of this Consent Decree shall constitute a violation of an injunction for which civil penalties of up to \$25,000 per violation may be sought by the State pursuant to RCW 19.86.140, in addition to such other remedies as may be provided by law, including the imposition by the Court of injunctions, restitution, civil penalties, and costs, including reasonable attorneys' fees. The waiver of appeal in Section 1.10 shall not extend to any right to appeal any judicial determination regarding an alleged violation of this Consent Decree or any action taken to enforce this Consent Decree.

V. ADDITIONAL PROVISIONS

5.1. AGA acknowledges and agrees that no other promises, representations, or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this Consent Decree constitutes a single and entire agreement that is not severable or divisible, except that if any provisions herein are found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

5.2. Nothing in this Consent Decree shall be construed to limit or bar any other governmental entity or person from pursuing other available remedies against AGA or any other person.

5.3. All parties assert that they are entitled to an award of attorney fees and costs under RCW 19.86.080(1). For purposes of compromise only, the parties agree that they will not seek or obtain any award of attorney fees related to this action or the Civil Investigative Demand issued by the Attorney General and the litigation filed by the State outside the terms identified in Paragraph 3.1.

5.4. Information and documents submitted to or obtained by the State in connection with this Consent Decree may contain personal or private information regarding individuals and may constitute law enforcement records covered by RCW 42.56.240(1). The parties agree to keep these records confidential consistent with State law.

5.5. The parties agree that, within three (3) days of entry of the Consent Decree, AGA shall move to dismiss with prejudice its Notice of Discretionary Review and withdraw its Motion for Discretionary Review before the Court of Appeals, Division I, Case No. 859641.

5.6. The parties agree that, as of the date of the entry of this Consent Decree, litigation is not reasonably foreseeable concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Decree.

APPROVED on this **JAN 17 2024**


JUDGE/ **Annette M. Messitt**

1 Presented by:

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3 Attorney General

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