

## What You Say May Undo What You Do

April 2, 2021 | [Frank Bishop, Jr.](#)

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The retail installment sales contracts used by auto dealerships include disclosures related to GAP insurance and other debt cancellation products that are required under the federal Truth in Lending Act in order for the charges for those products to be excluded from the finance charge. However, as a recent case illustrates, while the disclosure of the terms and the voluntary nature of a GAP insurance product is necessary, merely providing the disclosure and properly executing the RISC may not be sufficient to defend against claims that the product was, notwithstanding the disclosure, required by the dealership in order for the buyer to obtain financing. This case underscores the need to train salespeople that a verbal statement to a buyer that a debt cancellation product is required can subject the dealership to later claims by the buyer that the purchase was not voluntary, which can lead to statutory penalties and attorneys' fees under TILA.

In 2018, Yahaira Munoz bought a used 2011 Chevrolet Equinox from JLO Automotive, Inc. Munoz made a \$1,100 down payment and financed the balance of the purchase price with the dealership.

Munoz alleged that she questioned a \$752 charge for GAP insurance while she was reviewing the contract. The dealership's salesperson informed Munoz that "GAP insurance was a mandatory component of the transaction" and part of JLO Automotive's "low-income program." Munoz claimed that although she was not interested in buying GAP insurance, she bought it because the salesperson told her that it was mandatory.

In addition, the salesperson allegedly required Munoz to provide her checking account information so that the finance company could make automatic withdrawals from her bank account. Again, although Munoz did not want to participate in the automatic withdrawal program, she said she agreed to do so because the salesperson told her that it was required in order to participate in the low-income program and receive financing for the transaction.

Munoz later sued JLO Automotive for violating TILA, the Electronic Fund Transfer Act, and the Connecticut Unfair Trade Practices Act. JLO Automotive did not respond to the complaint, so Munoz moved for a default judgment.

The U.S. District Court for the District of Connecticut noted that the retail installment sale contract that Munoz signed contained language stating that GAP protection was not required to obtain credit and that GAP protection would not be provided unless the consumer signed for it, which Munoz did. The court determined that this contractual disclosure fulfilled TILA's requirement of a clear and conspicuous disclosure and also satisfied the three requirements for excluding GAP insurance from the finance charge: (1) it disclosed that GAP insurance was not required; (2) it disclosed the fee for the initial term of coverage; and (3) Munoz signed the affirmative request for coverage immediately beneath the disclosures.

The court rejected Munoz's argument that the salesperson's verbal statement that GAP insurance was required to obtain credit negated the written disclosure and thus created TILA liability. Therefore, because the GAP disclosure satisfied the criteria for the cost to be excluded from the finance charge, and because Munoz's TILA claim was premised on the notion that the GAP charge was a finance charge, the court denied her motion for a default judgment on her TILA claim.

The court, however, granted Munoz's motion for a default judgment with respect to her EFTA claim, which provides for statutory penalties, where she alleged that JLO Automotive required her to allow the finance company to debit her checking account automatically as a condition of financing. Finally, the court declined to exercise supplemental jurisdiction over the CUTPA claim.

Munoz filed a motion for reconsideration, arguing that the court had overlooked language in Regulation Z in concluding that a disclosure in the RISC she signed foreclosed her TILA claim. Munoz pointed out that the operative language of Reg. Z Section 226.4(d)(3)(i) provides that "[t]he debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing."

The court was persuaded that it had mistakenly focused on the disclosure requirement rather than the requirement that the GAP insurance not be mandatory. Furthermore, the Reg. Z staff commentary to Section 226.4 states that "whether the insurance or coverage is in fact required or optional is a factual question."

Therefore, because the court must, in the context of a motion for a default judgment, accept the plaintiff's allegations, and because Munoz alleged that the purchase of GAP insurance was, in fact, mandatory as a condition of her financing, the court determined that JLO Automotive violated TILA and was subject to actual and statutory penalties, in addition to reasonable attorneys' fees. Finally, the court concluded that the violation of TILA also constituted a violation of the CUTPA, which provides for statutory penalties.

*Munoz v. JLO Automotive, Inc.*, 2020 U.S. Dist. LEXIS 211243 (D. Conn. November 12, 2020).

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