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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation  
**DOCKETED**

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NOV 18, 2002

AZ CORP COMMISSION  
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WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of:  
  
AMERICAN AUTOMOTIVE GROUP, INC.  
c/o Douglas Warren  
9044 East Los Gatos Drive  
Scottsdale, Arizona 85255  
  
DOUGLAS WARREN and JANE DOE  
WARREN, husband and wife  
9044 East Los Gatos Drive  
Scottsdale, Arizona 85255  
  
MATTHEW W. WARREN and JOAN DOE  
WARREN, husband and wife  
8912 East Pinnacle Peak #446  
Scottsdale, Arizona 85255  
  
ROBERT D. BJERKEN and JANE DOE  
BJERKEN, husband and wife  
5024 North 78<sup>th</sup> Street  
Scottsdale, Arizona 85250  
  
Respondents.

) DOCKET NO. S-03457A-02-0000  
)  
) **NOTICE OF OPPORTUNITY FOR**  
) **HEARING REGARDING PROPOSED**  
) **ORDER TO CEASE AND DESIST, FOR**  
) **RESTITUTION, FOR ADMINISTRA-**  
) **TIVE PENALTIES, AND FOR OTHER**  
) **AFFIRMATIVE ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING (See VIII)**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER (See IX)**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that RESPONDENTS have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

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I.

**JURISDICTION**

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3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
4 Arizona Constitution and the Securities Act.

5 II.

6 **RESPONDENTS**

7 2. At all times material hereto, RESPONDENT AMERICAN AUTOMOTIVE  
8 GROUP, INC. ("AAG") was an Arizona corporation, authorized to do business and doing business  
9 in Maricopa County, Arizona. Its last known business address was 3168 East Indian School Road,  
10 Phoenix, Arizona. AAG is not currently authorized to do business in Arizona, having failed to file  
11 its annual report for the year 2001.

12 3. RESPONDENT DOUGLAS WARREN is an individual and a resident of Arizona.  
13 At all times material hereto, DOUGLAS WARREN was an officer and/or a director of AAG.

14 4. At all times material hereto, RESPONDENT JANE DOE WARREN was the spouse  
15 of DOUGLAS WARREN. All actions taken by DOUGLAS WARREN as alleged herein were done  
16 for the benefit of the marital community of DOUGLAS WARREN and JANE DOE WARREN.  
17 JANE DOE WARREN therefore is joined in this action, pursuant to A.R.S. § 44-2031(C), to  
18 establish the liability of the marital community for the violations alleged herein.

19 5. RESPONDENT MATTHEW WARREN is an individual and a resident of Arizona.  
20 At all times material hereto, MATTHEW WARREN was an officer and/or a director of AAG.

21 6. At all times material hereto, JOAN DOE WARREN was the spouse of MATTHEW  
22 WARREN. All actions taken by MATTHEW WARREN as alleged herein were done for the benefit  
23 of the marital community of MATTHEW WARREN and JOAN DOE WARREN. JOAN DOE  
24 WARREN therefore is joined in this action, pursuant to A.R.S. § 44-2031(C), to establish the  
25 liability of the marital community for the violations alleged herein.

26 7. At all times material hereto, RESPONDENT ROBERT D. BJERKEN ("BJERKEN")

1 was a resident of Maricopa County, Arizona. On or about October 28, 1998, BJERKEN became  
2 trustee of a certain trust established by a trust Indenture agreement dated May 9, 1997 (the "AAG  
3 Trust").

4 8. At all times material hereto, RESPONDENT JANE DOE BJERKEN was the spouse  
5 of BJERKEN. All actions taken by BJERKEN as alleged herein were done for the benefit of the  
6 marital community of BJERKEN and JANE DOE BJERKEN. JANE DOE BJERKEN therefore is  
7 joined in this action, pursuant to A.R.S. § 44-2031(C), to establish the liability of the marital  
8 community for the violations alleged herein.

9 9. AAG, DOUGLAS WARREN, JANE DOE WARREN, MATTHEW WARREN,  
10 JOAN DOE WARREN, BJERKEN, and JANE DOE BJERKEN may be collectively referred to as  
11 "RESPONDENTS". JANE DOE WARREN, JOAN DOE WARREN, AND JANE DOE  
12 BJERKEN may be collectively referred to as "RESPONDENT SPOUSES."

13 **III.**

14 **FACTS**

15 10. AAG was incorporated as an Arizona corporation on or about April 17, 1997. Its  
16 incorporators and its initial officers and directors were MATTHEW WARREN and DOUGLAS  
17 WARREN.

18 11. On or about May 9, 1997, AAG entered into an Indenture (the "AAG Indenture")  
19 establishing the AAG Trust. By the terms of the AAG Indenture, the AAG Trust was to hold and  
20 administer the funds raised by AAG's sales of 18% Secured Promissory Notes (the "AAG Secured  
21 Notes"). The initial Trustee of the AAG Trust was Richard C. Yavitt, C.P.A. ("Yavitt").

22 12. Beginning on or about April 17, 1997, AAG issued, offered, and sold the AAG  
23 Secured Notes to investors within or from the State of Arizona. The AAG Secured Notes provided  
24 for a rate of return of eighteen percent (18%) per year, payable in quarterly installments to the holders  
25 thereof. The AAG Secured Notes were issued for a three-year term, and the entire principal amount  
26 of each Note was to be payable on the stated maturity date of each AAG Secured Note. The AAG

1 Secures Notes and the funds from the AAG Secured Notes, as well as funds utilized to pay investor  
2 interest, were to be held in escrow accounts established at Security Trust Company ("STC") and  
3 administered by the Trustee of the AAG Trust. (This arrangement will be referred to as the "AAG  
4 Note Program.")

5 13. In connection with their offer and sale of the AAG Secured Notes, RESPONDENTS  
6 made available to investors and potential investors a document entitled Limited Offering  
7 Memorandum (the "Offering Document").

8 14. The Offering Document represented that the AAG Secured Notes would be sold as a  
9 private offering, and that all investors would be required to be accredited and/or sophisticated  
10 investors eligible to participate as investors in a private offering.

11 15. AAG filed a Form "D" with the Securities Division on or about July 10, 1997.

12 16. Yavitt resigned as Trustee of the AAG Trust in the spring of 1998. On or about  
13 October 28, 1998, BJERKEN entered into an agreement to assume the responsibilities of Trustee of  
14 the AAG Trust.

15 17. At the time he assumed responsibility as Trustee of the AAG Trust, BJERKEN had  
16 twice previously, in 1991 and in 1996, been ordered to cease and desist from violations of the  
17 Securities Act.

18 18. The Offering Document failed to disclose that funds paid into the AAG Trust by  
19 investors who purchased the AAG Secured Notes might be utilized to pay interest to investors who  
20 had made earlier purchases of the AAG Notes. In fact, funds paid in by later investors were used to  
21 make interest payments to earlier investors. The AAG Note Program thus operated as a "Ponzi"  
22 scheme.

23 19. Beginning in August 1998, AAG sold unsecured promissory notes (the "AAG  
24 Unsecured Notes") bearing interest at rates from 20% to 30%. In other respects, the terms of the  
25 AAG Unsecured Notes were similar to the terms of the AAG Secured Notes.

26 20. AAG stopped making interest payments to investors in the AAG Secured Notes and

1 the AAG Unsecured Notes (collectively, the "AAG Notes") as of September, 2000.

2 21. On or about February 23, 2001, AAG entered into an agreement with Future Carz,  
3 Inc. ("FCI") (the "Acquisition Agreement"). Pursuant to the Acquisition Agreement, FCI agreed to  
4 acquire AAG, and to issue shares in FCI to the holders of the AAG Notes in exchange for the AAG  
5 Notes.

6 22. Pursuant to the Acquisition Agreement, AAG provided to each of the holders of the  
7 AAG Notes a document entitled Exchange Report Dated April 25, 2001 (the "Exchange Report").

8 23. The Exchange Report disclosed that AAG was "technically bankrupt," although it  
9 had not yet filed for bankruptcy protection, that AAG had not done any business since October 2000,  
10 and that AAG had not made any interest payments on the AAG Notes since September 2000.

11 24. The Exchange Report disclosed that AAG proposed to exchange all the AAG Notes  
12 for shares of the common stock of FCI, subject to the approval of the holders of the AAG Notes.

13 25. The Exchange Report also disclosed that AAG had failed to meet many of its  
14 obligations under the AAG Indenture.

15 26. The Exchange Report further disclosed that AAG had made interest payments to  
16 holders of the AAG Notes "primarily from offering proceeds received from later investors."

17 27. RESPONDENTS, including their employees and agents, raised at least \$5,803,297  
18 through the sale of the AAG Secured Notes to at least 70 investors. RESPONDENTS, including  
19 their employees or agents, also raised at least \$2,550,847 through sales of the AAG Unsecured Notes  
20 to an unknown number of investors. RESPONDENTS, their employees and agents, raised a total of  
21 at least \$8,354,144 through sales of the AAG Notes.

22 **IV.**

23 **VIOLATION OF A.R.S. § 44-1841**

24 **(Offer or Sale of Unregistered Securities)**

25 28. From on or about April 17, 1997 through September 2000, RESPONDENTS offered  
26 or sold securities in the form of promissory notes, within or from Arizona.



1 RESPONDENTS failed to abide by the terms of the AAG Indenture. Among other things,  
2 RESPONDENTS failed to make periodic payments to the sinking funds, and failed to provide timely  
3 and adequate reports to the Trustee, which resulted in the resignation of the original Trustee.

4 b) RESPONDENTS failed to disclose to investors the exact uses to which the funds  
5 received by AAG would be used. In particular, RESPONDENTS failed to disclose that some  
6 investor funds could be, and were, used to provide funding for substantial loans from AAG to  
7 DOUGLAS WARREN and MATTHEW WARREN, which were never repaid.

8 c) BJERKEN failed to disclose to existing or potential investors that he previously  
9 had been ordered on two separate occasions to cease and desist from violations of the Arizona  
10 Securities Act.

11 d) BJERKEN acted as Trustee under the AAG Indenture, but failed to discharge his  
12 responsibilities to the holders of the AAG Secured Notes, including failure to demand from AAG the  
13 reports provided for by the AAG Indenture, including annual audited financial statements.

14 34. This conduct violates A.R.S. § 44-1991.

15 35. RESPONDENTS DOUGLAS WARREN and MATTHEW WARREN directly or  
16 indirectly controlled BJERKEN within the meaning of A.R.S. § 44-1999. Therefore,  
17 RESPONDENTS DOUGLAS WARREN and MATTHEW WARREN are liable to the same extent  
18 as BJERKEN for his violations of A.R.S. § 44-1991.]

19 36. RESPONDENTS DOUGLAS WARREN, MATTHEW WARREN, and BJERKEN  
20 made, participated in or induced the sale of a security. Therefore, RESPONDENTS DOUGLAS  
21 WARREN, MATTHEW WARREN, and BJERKEN are liable for the above violations of A.R.S.  
22 § 44-1991.

23 **VII.**

24 **REQUESTED RELIEF**

25 The Division requests that the Commission grant the following relief against  
26 RESPONDENTS:



1 Persons with a disability may request a reasonable accommodation such as a sign language  
2 interpreter, as well as request this document in an alternative format, by contacting Shelly M.  
3 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
4 [shood@cc.state.az.us](mailto:shood@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
5 accommodation.

6 **IX.**

7 **ANSWER REQUIREMENT**

8 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE  
9 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer  
10 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,  
11 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of  
12 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must  
13 accompany the Answer. A cover sheet form and instructions may be obtained from  
14 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
15 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

16 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon  
17 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing  
18 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor,  
19 Phoenix, Arizona, 85007, addressed to Kathleen Coughenour DeLaRosa.

20 The Answer shall contain an admission or denial of each allegation in this Notice and the  
21 original signature of each RESPONDENT, RESPONDENT SPOUSE, or RESPONDENT's or  
22 RESPONDENT SPOUSE's attorney. A statement of a lack of sufficient knowledge or information  
23 shall be considered a denial of an allegation. An allegation not denied shall be considered  
24 admitted.

25 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a  
26 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify

1 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or  
2 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

3 The officer presiding over the hearing may grant relief from the requirement to file an  
4 Answer for good cause shown.

5 DATED this 15<sup>th</sup> day of November, 2002.

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8 Mark Sendrow  
9 Director of Securities

10 AAG Notice of Opportunity for Hearing.doc (KCD)

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# NEW APPLICATION

## Memorandum

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**DATE:** November 18, 2002

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**TO:** Nancy Cole  
Docket Control

AZ CORP COMMISSION  
DOCUMENT CONTROL

**FROM:** Kathleen Coughenour DeLaRosa  
Securities Division

**RE:** In re American Automotive Group, Inc., et al  
Docket No. S-003457A-02-0000  
Assigned Staff

**CC:** Mabel Aldridge

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This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

Kathleen Coughenour DeLaRosa (Staff Attorney)

Terry Nelson (Staff Investigator)

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