

**STATE OF OREGON**  
**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**INSURANCE DIVISION**

In the Matter of **Wayne C. Apple** and ) **STIPULATION** and  
**AV Investments Inc. dba Valley River Insurance.**) **FINAL ORDER**  
) Case No. INS 00-05-019  
) File No. 2060 IV

**STIPULATION**

The Director of the Department of Consumer and Business Services (Director) has commenced the above entitled administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256(1), to take action against Wayne C. Apple (Apple), an individual, and AV Investments Inc., an Oregon corporation which formerly did business as Valley River Insurance (Valley River), for violating, not complying with or otherwise being subject to, certain provisions of the Oregon Insurance Code.

Apple, individually and on behalf of Valley River, enters into this stipulation to conclude this proceeding without further administrative or judicial proceedings pursuant to ORS 183.415(5). Apple represents by signing herein that he has the authority to sign this stipulation on behalf of Valley River.

Apple and Valley River, received a notice of proposed action. Apple and Valley River waive any objections relative to such notice. Apple and Valley River also waive the right to receive a notice of rights and procedures in contested cases, to have a hearing and to be represented by an attorney at the hearing, and to judicial review of the final order.

Apple and Valley River admit and agree to the following:

**Facts**

**Licensing**

Apple, an individual, has been licensed in Oregon as a resident individual agent, since 11/13/72. Apple's license number is 101569. Apple's current residence and business street address is 1818 Happy Lane, Eugene, OR 97401. Apple's current residence and business mailing address is PO Box 70557, Eugene, OR 97401.

Valley River, an Oregon corporation, was licensed in Oregon as a resident firm or corporate agent from 5/27/93 to 5/31/98. Valley River's license expired because it

was not renewed. Valley River's license number was 806020. At all relevant times, Apple was a shareholder and the Secretary/Treasurer of, as well as a licensed agent employed by, Valley River. Valley River's last business street address was 1050 Willagillespie Road, Suite 105, Eugene, OR 97401.

### Misappropriation

On or about 6/19/97, Apple received from Gary W. Gilliland (Gilliland) dba Airport Taxi & Limousine, of Eugene, Oregon, a check, number 2864, dated 6/19/97, made payable to "Valley River Ins" in the amount of \$7,000. On the same date, Apple deposited the check into Valley River's insurance premium trust account, number 01107077, at Pacific Continental Bank in Eugene, Oregon. On 7/18/97, Apple received from Gilliland another check, number 2883, dated 7/18/97 made payable to "Valley River Ins" in the amount of \$11,002.70. On the same date, Apple deposited the check into Valley River's insurance premium trust account, number 01107077, at Pacific Continental Bank in Eugene, Oregon. These two checks totaled \$18,002.70. Apple received these checks as partial payment of the annual premium of \$25,781 for the renewal of a commercial automobile insurance policy, number BA1212100, to be issued through McFall General Agency, Inc. (MGA) by Guaranty National Insurance Company (GNIC).

Gilliland did not authorize Apple to withhold or use the money for any purpose other than to pay the deposit of the premium due for the renewal policy. MGA did not authorize Apple to retain any portion of the money but required Apple to remit the entire amount. However, on 7/22/97, Apple remitted to MGA only \$6,445.25 of \$18,002.70 to be applied toward the premium due for the renewal policy. Gilliland intended to finance the remaining \$7,778.30 of the \$25,781.

On 8/18/97, Gilliland signed a premium finance agreement with Premium Financing Specialist, Inc. (PFS) to finance what he thought was the remaining \$7,778.30 for the renewal policy. However, the amount actually financed was \$19,335.75. On four occasions from 8/27/97 to 12/8/97, Apple paid to NIC, without the knowledge or consent of Gilliland, a total of \$8,235.62 to be applied toward the amount financed by Gilliland. Apple never paid to or on behalf of Gilliland the remaining \$3,321.83. Furthermore, during the interim from 6/19/97 to 7/31/97, Apple withheld or used for other purposes as much as \$10,361.26 of the \$18,002.70.

Failure to Maintain Insurance Premiums in Trust Account

From 6/19/97 to 7/28/97, Apple transferred a total of \$10,648.70 of insurance premiums from Valley River's insurance premium trust account, number 1107077, at Pacific Continental Bank in Eugene, Oregon, to Valley River's operating account, number 22402838, at the same bank, or to Apple's business account, number 0000315387, at SELCO Credit Union in Eugene, Oregon, both containing other than insurance premiums. The date, amount and type of transfer in each instance is described below:

<u>Date of Transfer</u>	<u>Amount</u>	<u>Type of Transfer</u>
6/19/97	\$1,500.00	Telephone
6/25/97	\$1,200.00	Agency chk# 5001 dated 6/22/97
7/2/97	\$1,500.00	Telephone
7/11/97	\$1,850.00	Telephone
7/22/97	\$1,400.00	Telephone
7/28/97	<u>\$3,198.70</u>	Agency check no. 4498 dated 7/25/97
Total	\$10,648.70	

Failure to Respond Promptly to Director's Inquiry - Letter dated 8/3/99

On or about 8/3/99, the Insurance Division mailed a letter dated 8/3/99 to Apple's attorney, Jeffrey H. Boiler (Boiler), requesting that Apple provide by 8/31/99 certain information about Apple's insurance business activities. The information requested was certain financial documents that had been previously requested in a letter dated 3/12/99 and answers to specific questions that had been previously asked in a letter dated 4/12/99. The letter informed Boiler, on behalf of Apple, that ORS 731.296 required Apple to respond promptly and ORS 731.988 authorized the Director to impose certain penalties on Apple if he did not respond. On 8/12/99, the Insurance Division telephoned Boiler who said that he was preparing to send the requested information.

On 8/13/99, the Insurance Division received from Boiler a letter dated 8/12/99 providing some but not all of the financial documents. The Insurance Division never received from Apple or Boiler the remaining financial documents.

On 9/16/99, the Insurance Division received from Boiler a letter dated 9/14/99 enclosing an affidavit from Apple answering the specific questions. Apple's response was 16 days late.

## Failure to Respond Promptly to Director's Inquiry - Letter dated 9/20/99

On or about 9/20/99, the Insurance Division mailed a letter dated 9/20/99 to Apple's attorney, Boiler, requesting that Apple provide by 10/11/99 certain information about Apple's insurance business activities. The letter informed Boiler, on behalf of Apple, that "[f]ailure to respond, delay in responding or incompletely responding to this letter within the time allowed is a violation of ORS 731.296." On 9/30/99, the Insurance Division received from Boiler a letter dated 9/28/99 stating, among other things, that "I have not asked Mr. Apple to respond to your request for additional information ... [as requested in] your letter to him of September 20, with an October 11 deadline. ... Because of the tone and content of your September 20 correspondence, no further production of documents through our office will occur unless required by law." The Insurance Division did not receive any of the information until 12/16/99 when Apple appeared at and answered questions in an investigatory interview in response to an administrative subpoena dated 12/7/99 which was served on Apple on 12/12/99. Apple's response was 66 days late.

### **Ultimate Facts**

Apple misappropriated to his own use money that he received from an applicant relative to the transaction of insurance.

Apple failed to keep insurance premiums in an insurance premium trust account until paid to the person entitled to the premiums.

Apple did not respond promptly to an inquiry from the Director.

### **Conclusions**

Apple violated ORS 744.013(2)(d), 744.225 and 731.296.

Valley River is subject to administrative action pursuant to ORS 744.013(3).

### **Action**

The insurance agent licenses issued to Apple shall be revoked on the date of this order pursuant to ORS 744.013(1)(a).

The insurance agent licenses issued to Valley River shall be revoked on the date of this order pursuant to ORS 744.013(3).

Apple agrees not to apply to the Director for any license as an insurance agent, consultant or adjuster to be issued to either himself or to any business organization owned or operated by him. Apple also agrees not to own any equity interest in, or be an officer, director or employee of, any business organization licensed as an insurance agent, consultant or adjuster in Oregon.

Dated March 8, 2001.

/s/ Wayne C. Apple  
Wayne C. Apple

/s/ Wayne C. Apple  
Wayne C. Apple  
Secretary/Treasurer and Authorized  
Representative for AV Investments, Inc. dba  
Valley River Insurance

**APPROVED AS TO FORM:**

/s/ Jeffrey H. Boiler  
Jeffrey H. Boiler, OSB #83021  
Attorney for Wayne C. Apple and  
AV Investments, Inc.

**FINAL ORDER**

The Director adopts, and incorporates herein by this reference, the Facts, Ultimate Facts, Conclusions and Action in the above Stipulation as the Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order, respectively, of this Final Order.

Dated: March 12, 2001.

/s/ Mary C. Neidig  
Mary C. Neidig  
Director  
Department of Consumer and Business  
Services, State of Oregon

**CERTIFICATE OF SERVICE**

I certify that on March 22, 2001 I served the above Stipulation and Final Order by mailing a true copy thereof in a sealed envelope, with first class postage prepaid, to the parties named therein and to their attorney at their last known addresses.

/s/ Mitchel D. Curzon  
Mitchel D. Curzon  
Administrative Law Specialist  
Insurance Division

GEN76735