

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

In the Matter of **John S. Nolan,**) **FINAL ORDER**
John S. Nolan Insurance, Inc., and)
John S. Nolan Insurance Consulting, Inc.) Case No. INS 02-07-011

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against John S. Nolan (Nolan); John S. Nolan Insurance, Inc. (JSNI), formerly known as Soda Creek Insurance, Inc.; and John S. Nolan Insurance Consulting, Inc. (JSNIC) (hereinafter collectively referred to as the parties).

On 9/26/02, the director issued a Notice of Proposed Action dated 9/25/02, pursuant to ORS 183.415 and related rules. The notice informed the parties that the director proposed to take certain disciplinary action against the parties, that the parties were entitled to a hearing, and that the parties had to request a hearing in writing within 21 days if the parties wanted a hearing. The notice also informed the parties that the record of the proceeding then to date, including the designated portion of the Insurance Division's file on the parties, would automatically become part of the contested case record for purposes of proving a prima facie case if the parties did not request a hearing within the time allowed to make the request.

The director did not receive a request for a hearing.

The director has reviewed the designated portion of the Insurance Division's investigation file on the parties and finds that it proves a prima facie case.

Therefore, director now makes the following final decision in this proceeding in accordance with ORS 731.248 and 183.470, and related rules.

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Findings of Fact and Conclusions of Law

Licensing

Nolan has been licensed in Oregon as a resident insurance agent since 5/27/69, and insurance consultant since 10/4/98. Nolan's current license number is 103387.

JSNI has been licensed in Oregon as a resident insurance agent from 8/12/74 to 8/31/00 and from 9/15/00 to 8/31/02. On 8/31/02, JSNI's license expired because JSNI did not renew the license. JSNI's license number was 803155. According to Oregon Corporation Division records, Nolan is the President and Secretary and registered agent of JSNI.

JSNIC has been licensed in Oregon as a resident insurance agent since 11/21/96 and insurance consultant since 3/31/97. JSNIC's current license number is 807803. According to Insurance Division records, Nolan is the only individual licensee currently employed by or contracted with JSNIC. According to Oregon Corporation Division records, Nolan is the President and Secretary and registered agent of JSNIC.

Failing to Maintain Insurance Premium in an Insurance Premium Trust Account

Nolan violated ORS 744.225(1) (1999) in three instances by failing to keep insurance premium in an insurance premium trust account until paid to the proper person by engaging in the following conduct. During April 1999, Nolan transferred on six occasions a total of \$89,460.42 from JSNIC's insurance premium trust account, number 370181001501, to JSNIC's operating account, number 370181001493, both at Key Bank in Portland, Oregon. Most of this amount was insurance premium because Nolan subsequently used the money to pay insurance premiums. On or about 4/23/99, Nolan issued a check, number 1991, dated 4/23/99, in the amount of \$76,460.42, and made payable to Arnold, Bruce & Doerfler (ABD), another insurance agency. The check was drawn on JSNIC's operating account. The check was used to pay insurance premiums for the following three insurance policies. The name of the insured, the name of the insurer, policy number, and amount of the premium relative to each policy is as follows:

<u>Insured</u>	<u>Insurer</u>	<u>Policy No.</u>	<u>Amount</u>
"Community Ambulance"	St. Paul Fire & Marine	FK06603483	\$3,555.94
Woodbury Family Ltd Part.	Continental Western	9YE95	\$15,008.25
Koldkist Beverage Ice, Inc.	Continental Western	9YE94	<u>\$57,896.20</u>
	Total		\$76,460.39

Failing to Deposit Insurance Premium into an Insurance Premium Trust Account

Nolan violated ORS 744.225(1) (1999) in four instances by failing to deposit insurance premiums into an insurance premium trust account by engaging in the following conduct:

1. On 10/12/01, Industrial Gasket, Inc. (Industrial Gasket), in Wilsonville, Oregon, issued a check, number 45932, dated 10/12/01, in the amount of \$4,490.00, and made payable to JSNI. The check was to pay part of the premium for an uncollectable accounts receivable insurance policy, number 3678127, issued by Euler American Credit Indemnity Insurance Company (EACIC) to Industrial Gasket. On 10/12/01, Nolan deposited the check into JSNIC's operating account, number 144000601, at Bank of the West in Portland, Oregon, rather than depositing it into an insurance premium trust account.

2. On 10/12/01, Industrial Gasket issued a check, number 45933, dated 10/12/01, in the amount of \$5,676.00, and made payable to JSNI. The check was to pay part of the premium for an employment practices liability insurance policy, number EPL1001293B, issued by United State Liability Insurance Company to Industrial Gasket. On 10/12/01, Nolan deposited the check into JSNIC's operating account, number 144000601, at Bank of the West in Portland, Oregon, rather than depositing it into an insurance premium trust account.

3. On 10/24/01, Jewett, Barton, Leavy, Kern, Inc. dba Tricomp Agency Services (JBL&K), an insurance agency, in Portland, Oregon, issued a check, number 22405, dated 10/24/01, in the amount of \$1,354.00, and made payable to JSNIC. The check was to pay the return premium for general liability insurance coverage, provided by American Manufacturers Mutual Insurance Company (AMMIC), as part of a package commercial insurance policy, number TKP 789 888-00, issued jointly by

various insurers within the Kemper group of insurance companies to Action Equipment. On 10/26/01, Nolan deposited the check into JSNIC's operating account, number 144000601, at Bank of the West in Portland, Oregon, rather than depositing it into an insurance premium trust account.

4. On 1/24/02, Alexander, Morford & Woo, Inc. (AMW), an insurance agency, in Portland, Oregon, issued a check, number 5924, dated 1/24/02, in the amount of \$8,625.30, and made payable to JSNI. The check was to pay part of the return premium to "UIOC, Inc. / Generation Net," (UIOC) in Portland, Oregon, for an insurance policy, number 90007105, issued by E-Risk Services, LLC, on behalf of specified underwriters at Lloyd's, in London, UK. On 2/1/02, Nolan cashed the check, rather than depositing it into an insurance premium trust account.

Illegally Withholding of Insurance Premium

Nolan violated ORS 744.013(2)(d) (1999) in four instances by withholding insurance premiums or unearned commissions or fees by engaging in the following conduct:

1. On 10/12/01, Industrial Gasket issued a check, number 45932, dated 10/12/01, in the amount of \$4,490.00, and made payable to JSNI. The check was to pay part of the premium of \$22,448.00 for an uncollectable accounts receivable insurance policy, number 3678127, issued by EACIC to Industrial Gasket. On 10/12/01, Nolan deposited the check into JSNIC's operating account, number 144000601, at Bank of the West in Portland, Oregon. On or about 10/12/01, Mepco Insurance Premium Financing, Inc. (Mepco) agreed to loan Industrial Gasket a total of \$17,958.00 to pay the remaining part of the premium for the policy. On 10/15/01, Mepco issued a check, number 700009533, dated 10/15/01, in the amount of \$17,958.00, and made payable to JSNIC. On 10/29/01, Nolan deposited the check into JSNIC's insurance premium trust account, number 144000593, at Bank of the West in Portland, Oregon. On or about 11/30/01, Nolan sent to EACIC some "Prudential Corporation plc London, England NOTE"s, each with a face value of \$5,000, as payment of the premiums due to EACIC. The "notes" stated that Nolan

caused the notes to be issued and that they were “redeemable in the assets of Jackson National Life Insurance Company.” EACIC did not accept the notes as payment. As of 6/12/02, Nolan had not paid any of the money to Industrial Gasket, Mepco, or EACIC.

2. On 10/12/01, Industrial Gasket inadvertently issued a check, number 45933, dated 10/12/01, in the amount of \$5,676.00, and made payable to JSNI to pay part of the premium for an employment practices liability insurance policy, number EPL1001293B, issued by United State Liability Insurance Company to Industrial Gasket. On 10/12/01, Nolan deposited the check into JSNIC’s operating account, number 144000601, at Bank of the West in Portland, Oregon. However, Industrial Gasket had previously financed the premium through Mepco on 6/29/01, and Mepco had issued a check, number 5531, dated 7/30/01, in the amount of \$31,674.40, and made payable to JSNIC, to pay, *inter alia*, the financed premium. When Industrial Gasket discovered the mistake, it requested Nolan to return part of the money, and to send the balance to AMMIC, an insurer within the Kemper group of insurance companies. Accordingly, on 11/16/01, Nolan issued a check, number 4107, in the amount of \$3,361.00, and made payable to Industrial Gasket. On 11/27/02, Nolan issued a check, number 4459, dated 11/27/01, in the amount of \$2,315.00, and made payable to “Kemper Insurance Company.” The checks were drawn on JSNIC’s insurance premium trust account, number 144000593, at Bank of the West in Portland, Oregon. The later check was to pay the additional premium, due as a result of an audit, for general liability insurance coverage that was provided by AMMIC as part of a package commercial insurance policy, number TKP 789 888-01, that was issued jointly by various insurers within the Kemper group of insurance companies to Industrial Gasket. However, the later check was dishonored twice because Nolan had insufficient funds in the account. As of 4/25/02, Nolan had not paid any of the money to Industrial Gasket or AMMIC.

3. On 10/24/01, JBL&K issued a check, number 22405, dated 10/24/01, in the amount of \$1,354.00, and made payable to JSNIC. The check was to pay the return premium for general liability insurance coverage that was provided by AMMIC as

part of a package commercial insurance policy, number TKP 789 888-00, that was issued jointly by various insurers within the Kemper group of insurance companies to Action Equipment. On 10/26/01, Nolan deposited the check into JSNIC's operating account, number 144000601, at Bank of the West in Portland, Oregon. Nolan did not pay the return premium to Action Equipment. Therefore, on 4/23/02, JBL&K issued a check, number 13488, dated 4/23/02, in the amount of \$1,354.00, and made payable to Action Equipment, to pay the return premium to Action Equipment. As of 5/10/02, Nolan had not paid back any of the money to JBL&K.

4. On 1/24/02, AMW issued a check, number 5924, dated 1/24/02, in the amount of \$8,625.30, and made payable to JSNI. The check was to pay part of the return premium to UIOC for an insurance policy, number 90007105, issued by E-Risk Services, LLC, on behalf of specified underwriters at Lloyd's, in London, UK. On 2/1/02, Nolan cashed the check. As of 5/10/02, Nolan had not paid any of the money to UIOC.

Subject to Disciplinary Action for the Acts of an Owner, Officer or Agent

JSNI and JSNIC and are each subject to disciplinary action pursuant to ORS 744.013(3) (1999) because Nolan violated the laws specified above; and Nolan is an officer of, and a licensed agent employed by or contracted with, JSNI and JSNIC.

Order

The Oregon license as an insurance agent and insurance consultant issued to Nolan shall be revoked on the date of this order, pursuant to ORS 744.013(1)(a) (1999).

The Oregon license as an insurance agent issued to JSNI shall be revoked on the date of this order, pursuant to ORS 744.013(3) (1999).

The Oregon license as an insurance agent and insurance consultant issued to JSNIC shall be revoked on the date of this order, pursuant to ORS 744.013(3) (1999).

Nolan shall pay a civil penalty of \$4,000, pursuant to ORS 731.988. The payment shall be made in the form of a cashier's check payable, in United States currency, to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. The payment shall be received by the Insurance Division by 5:00 PM (PT) on the 71st calendar day after the date of this order pursuant to ORS 183.090(2).

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, the parties may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the court within 60 calendar days after the date this order was sent to the parties.

Dated October 29, 2002

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

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