

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. INS-18-0066

SCOTT B. RHOTEN, an Individual, and
NORTHWEST COMMUNITY
INSURANCE LLC, a Limited Liability
Company,

ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL
PENALTIES, AND CONSENT TO
ENTRY OF ORDER

Respondents.

10 The Director of the Department of Consumer and Business Services for the State
11 of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”)
12 chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750, and
13 the administrative rules issued thereunder (“Insurance Code”), has conducted an
14 investigation into the activities of Scott B. Rhoten (“Rhoten”) and Northwest Community
15 Insurance LLC (“NCI”) (collectively, “Respondents”) and determined that Respondents
16 engaged in violations of the Insurance Code.

Respondents wish to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the signature(s) subscribed on this Order, Respondents hereby CONSENT to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

22 1. On March 22, 2004, Rhoten was issued an Oregon resident insurance producer
23 license. Rhoten's national insurance producer number is 7997667.

24 2. On August 16, 2012, NCI was issued an Oregon resident insurance producer
25 license. NCI's national insurance producer number is 16760454.

26 3. Rhoten is NCI's owner and designated responsible licensed producer.

1 4. On or around November 28, 2016, Respondents submitted an application for a
2 surplus lines insurance policy on behalf of an Oregon resident (“NR”). The policy was
3 intended to insure NR against certain risks associated with his automobile repair business.

4 5. That same day, NR provided Respondents with \$990.71 in anticipated
5 insurance premium costs and related fees, and Rhoten deposited the funds into NCI’s client
6 trust account.

7 6. On or around November 30, 2016, NR’s insurance application was approved
8 by Western Heritage Insurance Company (“Western”), with an effective date of December
9 1, 2016. Pacific Coast E & S Insurance Services (“Pacific Coast”) acted as Western’s
10 general agent on the transaction.

11 7. On or around December 2, 2016, Pacific Coast notified Rhoten that NR’s
12 application should not have been approved and that Respondents needed to replace NR’s
13 policy. Rhoten directed Pacific Coast to “flat cancel”¹ the policy and claimed NR did not
14 want it.²

15 8. NR had not communicated to Rhoten that he did not want the policy.

16 9. On or around December 14, 2016, Western issued a cancellation endorsement
17 for NR’s policy.³ The endorsement noted that the policy had been flat cancelled effective
18 December 1, 2016.

19 10. Rhoten failed to provide NR with the cancellation endorsement and failed to
20 notify him that his policy had been cancelled. As a result, NR never sought or obtained a
21 replacement insurance policy for his business.

22 11. On or around August 31, 2017, the building in which NR operated his
23 automobile repair business caught fire and was damaged, along with certain property that

24 ¹ “Flat cancellation” entails the cancellation of an insurance policy or bond as of its effective date, before the
25 insurer has assumed liability. This requires the return of paid premium in full since the insured had never
been covered under the policy. *See* <https://www.irmi.com/term/insurance-definitions/flat-cancellation>.

26 ² Respondents did not attempt to replace NR’s insurance policy.

26 ³ NR’s Western insurance policy number was AGP0818427.



would have been covered under NR's cancelled policy.

12. Despite the cancellation of NR's policy on or around December 14, 2016, Respondents did not offer to refund NR his November 28, 2016 premium payment until on or around September 22, 2017.⁴

CONCLUSIONS OF LAW

The Director CONCLUDES that:

13. The Director has jurisdiction over this action under ORS 731.236(1) and ORS 731.256(1).

14. Respondents are “Insurance Producers” as defined under ORS 731.104.

10 15. As NCI's designated responsible licensed producer, Rhoten was responsible for
11 NCI's compliance with the Insurance Code under ORS 744.059(2)(b).

12 16. Once NR's insurance policy had been cancelled, Respondents were required to
13 refund the premium funds NR had paid on or around November 28, 2016.

14 17. By failing to refund NR's premium funds within 30 days of their receipt,
15 Respondents violated Oregon Administrative Rules ("OAR") 836-074-0025.

16 18. Respondents demonstrated financial irresponsibility in the conduct of their
17 business by failing to refund NR's premium funds until approximately 10 months after
18 Respondents had received them, in violation of ORS 744.074(1)(h).

19 19. Because the Director has reason to believe that Respondents have been engaged
20 in violations of the Insurance Code, the Director may issue an order to Respondents to
21 cease and desist under ORS 731.252(1).

22 20. The Director may impose a civil penalty of up to \$10,000 *per violation* upon
23 any person who violates a provision of the Insurance Code, under ORS 731.988(1).

24

⁴ Respondents fully and completely cooperated in the Director's investigation, and compensated NR for damages incurred from the fire. Respondents assert that their failures to notify NR that the policy cancelled and/or timely refund the premium were inadvertent.

ORDERS

Now therefore, the Director issues the following Orders:

3 21. As authorized by ORS 731.252(1), the Director ORDERS Respondents to
4 CEASE AND DESIST from violating any provision of the Insurance Code.

5 22. As authorized by ORS 731.988(1), the Director ORDERS that Respondents
6 pay, jointly and severally, a CIVIL PENALTY totaling \$10,000 as follows:

- A. \$7,500 for violating ORS 744.074(1)(h); and
- B. \$2,500 for violating OAR 836-074-0025.

9 23. The Director hereby suspends payment of \$7,500 of the CIVIL PENALTY for
10 a period of three years, provided Respondents:

11 A. Pay the remaining \$2,500 of the CIVIL PENALTY pursuant to the
12 terms of this Order; and
13 B. Do not violate the Insurance Code within the three-year time period.

14 24. The CIVIL PENALTY assessed herein (\$2,500) is due and payable as follows:

15 A. \$1,000 at the time this Order is returned to the Director;

16 B. \$750 by June 15, 2019; and

17 C. \$750 by July 15, 2019.

18 25. The suspended CIVIL PENALTY (\$7,500) will be waived three years from the
19 effective date of this Order, provided Respondents have complied with the foregoing Order
20 terms. The Director reserves the right to immediately assess and collect the suspended
21 civil penalty upon a determination that Respondents have violated any term of this Order.

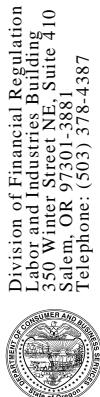
22 | 26. This Order is binding upon Respondents' successors and assigns.

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1 27. This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that
2 provision, the entry of this Order does not limit other remedies that are available to the
3 Director under Oregon law.

4 SO ORDERED this 28th day of May, 2019.

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6
7 CAMERON C. SMITH, Director
8 Department of Consumer and Business Services

9 /s/ Dorothy Bean
10 Dorothy Bean, Chief of Enforcement
11 Division of Financial Regulation

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Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



CONSENT TO ENTRY OF ORDER

2 I, Scott B. Rhoten, state that I have read the foregoing Order and that I know and
3 fully understand the contents hereof. I have been advised of my right to a hearing and of
4 my right to be represented by counsel in this matter. I voluntarily consent to the entry of
5 this Order without any force or duress, expressly waiving any right to a hearing in this
6 matter, as well as any rights to administrative or judicial review of this Order. I understand
7 that the Director reserves the right to take further actions against me to enforce this Order
8 or to take appropriate action upon discovery of other violations of the Insurance Code by
9 me. I will fully comply with the terms and conditions stated herein.

Signature: /s/ Scott Rhoten

State of Oregon

County of Washington

Signed or attested before me on this 16th day of May, 2019
by Scott B. Rhoten.

/s/ Elizabeth M. Whitson
Notary Public

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



CONSENT TO ENTRY OF ORDER

2 I, Scott Rhoten, state that I am an officer of NCI and am authorized to act on its
3 behalf. I have read the foregoing Order and know and fully understand the contents
4 hereof. I have been advised of NCI's right to a hearing and right to be represented by
5 counsel in this matter. NCI voluntarily consents to the entry of this Order without any
6 force or duress, expressly waiving any right to a hearing in this matter, as well as any
7 rights to administrative or judicial review of this Order. NCI understands that the Director
8 reserves the right to take further actions against it to enforce this Order or to take
9 appropriate action upon discovery of other violations of the Insurance Code with the terms
10 and conditions stated herein.

11 NCI further assures the Director that neither NCI nor its officers, directors,
12 employees, or agents will effect insurance services in Oregon unless such activities are in
13 full compliance with the Insurance Code. NCI understands that this Consent Order is a
14 public document.

Signature: /s/ Scott Rhoten

Position Held: Principal

State of Oregon

County of Washington

Signed or attested before me on this 16th day of May, 2019
by Scott B. Rhoten.

/s/ Elizabeth M. Whitson
Notary Public

