

REPORT ON EXAMINATION  
OF THE  
FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK  
AS OF  
DECEMBER 31, 1998

DATE OF REPORT

MAY 11, 2000

EXAMINER

BERNARD LOTT

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GEORGE E. PATAKI  
Governor

STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

NEIL D. LEVIN  
Superintendent of Insurance

May 11, 2000

Honorable Neil D. Levin  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and in compliance with the instructions contained in Appointment Number 21441 dated July 29, 1999, attached hereto, I have made an examination into the conditions and affairs of the Fidelity National Title Insurance Company of New York as of December 31, 1998 and respectfully submit the following report thereon.

The examination was conducted at the Company's administrative office located at 15661 Redhill Avenue, Tustin, California 92780.

Wherever the designation "the Company" or "FNNEW" appear herein without qualification, they should be understood to indicate the Fidelity National Title Insurance Company of New York. Wherever the designation "FNFI" appears herein without qualification, it should be understood to indicate the Fidelity National Financial, Inc. Wherever the designation "FNTIC" appears herein without qualification, it should be understood to indicate the Fidelity National Title Insurance Company.

## 1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1991. During 1997, this Department commenced an examination of the Company as of December 31, 1996. That examination found that the Company lacked certain key supporting documentation to substantiate amounts reported in its filed annual statement. This is discussed more fully in item 2I herein, "Accounts and Records". Subsequently, the examination was updated to cover the seven-year period from January 1, 1992 through December 31, 1998. Transactions subsequent to that date were reviewed where deemed appropriate by the examiner.

This examination comprised a complete verification of assets and liabilities as of December 31, 1998, a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Company's independent certified public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of the Company
- Management and control
- Corporate records
- Fidelity bonds and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Growth of the Company
- Business in force
- Loss experience
- Reinsurance
- Market conduct activities
- Accounts and records
- Financial statements

A review was also made to ascertain what actions were taken by the Company with regard to comments and recommendations made in the prior report on examination. The Company's actions are noted in Item 5 "Compliance with Prior Report on Examination", in this report.

This report on examination is confined to financial statements and comments on those matters, which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

## **2. DESCRIPTION OF COMPANY**

On March 17, 1993, the Company, then named Security Title and Guaranty Company, was purchased by Fidelity National Financial, Inc. from Helmsley Enterprises, Inc.

In 1993, the Company filed with the Superintendent of Insurance a Certificate of Amendment to its charter in compliance with Section 1206 of the New York Insurance Law. Such certificate authorized the change of the corporation's name from Security Title and Guaranty Company to Fidelity National Title Insurance Company of New York. The Department on March 29, 1993 approved the amendment.

In 1995, the Company filed with the Superintendent of Insurance a Certificate of Amendment to its charter, as restated and amended, in compliance with Section 1206 of the New York Insurance Law. Such certificate authorized an increase in capital from \$1,250,000 comprised of 250,000 shares with a par value of \$5 per share to \$1,500,000 comprised of 250,000 shares with a par value of \$6 per share. To implement this change in par value, the Company transferred \$250,000 from gross paid-in and contributed surplus to capital.

On April 1, 1996, the Company purchased 100% of the outstanding common stock of Nations Title Insurance of New York, Inc. and National Title Insurance of New York, Inc. for \$10,742,000. The Department approved this acquisition.

Effective April 21, 1997, the Company merged with Fidelity National Title Insurance Company of Pennsylvania, with the Company as the surviving corporation. The New York and Pennsylvania Insurance Departments approved this merger.

A. Management

Pursuant to the Company's charter and by-laws, as amended, management of the Company is vested in a board of directors consisting of not less than seven (7) nor more than thirty (30) members. As of the examination date, the board of directors was comprised of seven (7) members. The directors as of December 31, 1998, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
William P. Foley, II Santa Barbara, CA	Chairman and Chief Executive Officer, Fidelity National Financial, Inc.
Joseph N. Friedman New York, NY	Senior Vice President, Fidelity National Title Insurance Company of New York
Allen D. Meadows Woodland Hills, CA	Senior Vice President and Chief Financial Officer, Fidelity National Title Insurance Company of New York
Christopher J. Quintero Lynbrook, NY	Vice President, Fidelity National Title Insurance Company of New York
Jonathan A. Richards Mamaroneck, NY	Senior Vice President and Senior Counsel, Fidelity National Title Insurance Company of New York
Frank P. Willey Santa Barbara, CA	Executive Vice President, Fidelity National Financial, Inc.
Charles H. Wimer New York, NY	Executive Vice President and Secretary, Fidelity National Title Insurance Company of New York

The minutes of all meetings of the board of directors and committees thereof, held during the examination period were reviewed. The meetings were generally well attended, however, the

overwhelming majority of the board's resolutions were effectuated through the unanimous written consent of directors, in place of actual board meetings.

The Company indicated that the by-laws did not specifically exclude it from taking action by unanimous written consent in lieu of actual meetings. The Company referenced the provisions of Section 708(b) of the Business Corporation Law ("BCL"), wherein it states, unless otherwise restricted by the certificate of incorporation or the by-laws, any action required or permitted to be taken by the board may be taken without a meeting if all the members of the board consent in writing to the adoption of a resolution authorizing the action. Section 708(b), however, is not self-executing. For a corporation to avail itself of the advantages offered under this section, it must amend its by-laws or certificate of incorporation. The Insurance Department's Office of General Counsel has opined that in the exercise of its statutory authority under the Insurance Law it will permit amendments to the by-laws or the certificate of incorporation of insurers to carry out the intention of Section 708(b) of the BCL. The board of directors or a committee thereof should be permitted to exercise this new ability to act, however, in very limited emergency situations. Any proposed amendment to the by-laws or certificate of incorporation must contain specific language of limitation, and must be based upon a showing of definite necessity.

It is recommended that if the Company wishes to act under the provisions of Section 708(b) of the Business Corporation Law, it should amend its by-laws or certificate of incorporation to provide for such actions in accordance with Section 1206 of the New York Insurance Law. Additionally, the board should limit the use of unanimous written consent in lieu of meetings to limited emergency situations.

The examination determined that investment transactions were not being approved by the board of directors as specified in Section 1411(a) of the New York Insurance Law. Section 1411(a) of the New York Insurance Law states in part,

“No domestic insurer shall make any loan or investment, unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan...”

While the Company did elect an investment committee during the period covered by the examination, a review of the board of directors' minutes did not find any reports submitted from the investment committee to the entire board for its approval.

It is recommended that the Company adhere to the provisions of Section 1411(a) of the New York Insurance Law with regard to the board of directors' approval of investment transactions.

The principal officers of the Company as of December 31, 1998, were as follows:

<u>NAME</u>	<u>TITLE</u>
William P. Foley, II	Chairman and Chief Executive Officer
Patrick F. Stone	President and Chief Operating Officer
Allen D. Meadows	Executive Vice President and Chief Financial Officer
Andrew F. Puzder	Executive Vice President and General Counsel
Carl A. Strunk	Executive Vice President
Ronald R. Maudsley	Executive Vice President
Frank P. Willey	Executive Vice President
Charles H. Wimer	Executive Vice President and Secretary
Robert Calamari	Senior Vice President
Joseph N. Friedman	Senior Vice President

B. Territory and Plan of Operation

At December 31, 1998, Fidelity National Title Insurance Company of New York was licensed to transact the business of title insurance, as defined in paragraph 18 of Section 1113(a) of the New York Insurance Law. As of the examination date, the Company was licensed in twenty-nine (29) states and three (3) additional jurisdictions and is detailed below:

Alabama	Maryland	Rhode Island
Arkansas	Massachusetts	South Carolina
California	Michigan	Tennessee
Connecticut	Maine	Texas
Delaware	Minnesota	Vermont
District of Columbia	New Hampshire	Virginia
Florida	New Jersey	West Virginia
Georgia	New York	Wisconsin
Illinois	North Carolina	District of Columbia
Kentucky	Ohio	Puerto Rico
Louisiana	Pennsylvania	U.S. Virgin Islands

A comparison between direct premiums written in New York and nationwide during the examination period is detailed below:

DIRECT PREMIUMS WRITTEN

<u>Year</u>	<u>New York State</u>	<u>Nationwide</u>	Percentage Written in New York State as a Percentage of <u>Nationwide Premiums</u>
1992	\$18,106,940	\$44,724,058	40.49%
1993	16,085,839	49,264,927	32.65%
1994	29,458,676	84,092,895	35.03%
1995	17,369,505	46,628,957	37.25%
1996	39,131,712	90,107,399	43.43%
1997	62,851,049	196,526,744	31.98%
1998	<u>89,268,611</u>	<u>303,338,649</u>	<u>29.43%</u>
Totals	<u>\$272,272,332</u>	<u>\$814,683,629</u>	<u>33.42%</u>

Based upon the lines of business for which the Company is licensed, the Company's current capital structure, and pursuant to the requirements of Article 64 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$250,000.

The Company is primarily engaged in the business of issuing title insurance policies and secondarily in performing other title-related services such as escrow, collection and trust activities in connection with real estate transactions. These services are provided through the Company's direct branch operations and independent agents who issue policies on their behalf. Approximately seventy-two percent (72%) of the total premiums written by Fidelity National Title Insurance Company of New York in 1998 were concentrated in five states: Florida, Michigan, New Jersey, New York, and Pennsylvania.

During the period under examination, the Company maintained full service underwriting and claims regional offices located in Irvine, CA; Walnut Creek, CA; New York, NY; and Dallas, TX. In addition, business is produced through approximately two thousand six hundred (2,600) independent agents and brokers. Approximately eighty-seven percent (87%) of the Company's premium income was derived from agency operations as of December 31, 1998.

C. Reinsurance

The Company assumes a relatively minor volume of business from other insurers compared to its direct writings (less than one percent). The majority of these assumptions are on a facultative basis and are non-obligatory.

All ceded reinsurance contracts effected during the examination period were reviewed. These contracts all contained an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

As of December 31, 1998, the Company had the following ceded excess of loss reinsurance program in place:

<u>Contract</u>	<u>Cession</u>
First Layer 100% authorized	\$1,000,000 excess \$1,000,000 each risk, each occurrence
Second Layer 100% authorized	\$18,000,000 excess \$2,000,000 each risk, each occurrence

The underwriting files for the aforementioned contracts were requested but never provided. The Company did not demonstrate that it kept any formal documentation of its assessment of transfer of risk related to the contracts.

It is recommended that the Company maintain documentation of its evaluation of transfer of risk for all ceded reinsurance contracts to support management's accounting positions related to these contracts in accordance with Chapter 22 of the NAIC Accounting Practices and Procedures Manual.

#### D. Holding Company System

The Company is a wholly-owned subsidiary of FNFI, a Delaware corporation. FNFI is ultimately controlled by William P. Foley, II, who owns 20.5% of the presently issued and outstanding shares of

FNFI; no other person owns more than 5% of these shares. A complete FNFI holding company chart is appended to this report as Exhibit 1.

Examination review determined that the Company made the required annual filings, as registrant, pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

### Inter-company Transactions

A review of inter-company transactions noted that it was not always possible to determine if settlement between affiliates was completed in a timely manner. The Company's inter-company account summarized its activities with affiliates. When a manual journal entry involving more than one affiliate was posted, the Company's general ledger software package automatically created an "automatic entry" to the inter-company account. This automatic entry served to create a receivable or payable for the all affiliates involved, counter-balancing the manual entry. Settlement of these inter-company transactions could occur in one of, or a combination of, three ways: either journal entry (offsets), wire transfer or by check. The Company settled "balances" and not necessarily specific invoices or transactions. Since there were no procedures in place to ensure that the inter-company account was zeroed-out at any specific time, inter-company balances or portions thereof, could remain unsettled indefinitely.

It is recommended that the company maintain documentation to ensure that inter-company account balances are settled in a timely manner.

In addition, it is recommended that the Company modify its general ledger system to track and accumulate affiliate transactions by each affiliated company on a rolling twelve-month basis. This would

enable the Company to determine if transactions exceed the reporting and prior approval thresholds as set forth in Article 15 of the New York Insurance Law.

#### Cost Reimbursement Agreements

At December 31, 1998 the Company was a party to several “Cost Reimbursement Agreements” with affiliated entities. These agreements provided that various members of the holding company system would provide services on behalf of, or pay for services to other affiliated entities. Upon review it was disclosed that the agreements lacked certain clauses and provisions that should be added for the protection of the Company. It was noted that the agreements did not contain a duration and termination clause or a provision that shared expenses were to be allocated in a manner consistent with Department Regulation 30. The agreement did not include provisions that services were to be provided at cost and that an inspection of records must be available. Also, clear and complete reporting and settlement requirements should be included in the agreement.

Subsequent to the current examination the Company revised the agreements to include some of the aforementioned provisions. These agreements, however, have not been submitted to the New York Insurance Department and have not been non-disapproved pursuant to Section 1505(d) of the New York Insurance Law.

It is recommended that the Company file its cost reimbursement agreements with the Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law.

### Overhead Expense Allocation

A review was made into the Company's overhead expense allocation procedure. Overhead expenses, including those related to the aforementioned Cost Reimbursement Agreements, were categorized into various cost centers and allocated, with the exception of legal expenses, based on each insurer's percentage of the combined direct premiums written for all insurers in the holding company system for the prior year. Legal expenses were allocated based on each insurer's percentage of the combined outstanding claims for all insurers in the holding company system for the prior year. Overhead expenses sampled confirmed the above allocation. All other inter-company expenses were allocated based on the particular circumstances of each individual expense. The Company had no written guidelines for the allocation of non-overhead expenses.

It is recommended that the Company prepare written guidelines for the allocation of non-overhead expenses, in accordance with Regulation 30.

### Tax Allocation Agreement

On March 1, 1993, the Company entered into a Tax Allocation Agreement with its parent, FNFI. Upon review, it was determined that the agreement did not comply with the minimum guidelines set forth in the New York Department's Circular Letter No. 33 (1979).

It is recommended that the Company amend its Tax Allocation Agreement to comply with the guidelines set forth in New York Insurance Department's Circular Letter No. 33 (1979) and submit it to the Department pursuant to Section 1505 of the New York Insurance Law.

Subsequent to the examination date, a revised Tax Allocation Agreement between FNFI and its subsidiaries was initiated. The Company indicated that the agreement, when finalized, would be submitted to the board of directors for ratification and then submitted to the Department for approval.

E. Custodian Agreement

As of December 31, 1998, the Company's custodian agreement with United Missouri Bank lacked certain necessary safeguards, controls and protective covenants prescribed by the Insurance Department, for the custody and safekeeping of securities.

Subsequent to the examination date the Company amended the agreement and provided executed copies that included the missing safeguards, controls and protective covenants.

The Company maintained securities in the custody of a brokerage firm, Everen Securities ("Everen"). Department guidelines require that securities held under custodial or safekeeping arrangements be in a bank or trust company licensed by the United States or any state thereof, if such bank or trust company is regularly examined by a United States federal or state authority. The amount was not material to the balance sheet so no examination adjustment was deemed necessary.

It is recommended that the Company refrain from the practice of utilizing brokerage firms in the capacity of custodians for its securities.

F. Audited Engagement Contracts

Section 89.2 of Insurance Department Regulation 118 states, in part:

"Every insurer subject to this part shall retain an independent Certified Public Accountant (CPA) who agrees by written contract with such insurer to comply with the provisions of

Section 307(b) of the New York Insurance Law, this Part and the Code of Ethics and Professional Standards adopted by the American Institute of Certified Public Accountants (AICPA)...”

The Regulation continues to list the requirements that must be specified in a contract between an insurer and its certified public accountant.

A review of the audit engagement contracts entered into between the Company and its certified public accountants, for the period covered under this examination, revealed that the contracts were not in compliance with the Department Regulation 118. The contracts failed to include the provisions specified in Section 89.2.

It is recommended that the Company comply with the provisions of Section 89.2 of the Department’s Regulation 118.

G. Conflict of Interest

Fidelity National Title Insurance Company of New York has a procedure to distribute conflict of interest questionnaires annually, to all officers (Assistant Vice-President and above) and the board of directors. The procedure requires the corporate secretary to bring any conflicts to the attention of the board. It was noted that the Company has not established written procedures that would permit the board to properly oversee and handle any conflicts of interest that may arise.

The Company has a fiduciary responsibility to ensure that its directors, officers and responsible employees do not use their official positions to promote any interest that is distinct from that of the Company.

It is recommended that the Company establish written procedures that detail the specific actions to be taken by the board of directors if conflicts of interest arise.

It is recommended that the Company maintain complete minutes of its proceedings on such matters.

H. Abandoned Property Law

An examination review indicated that the Company was complying with Section 1317 of the New York State Abandoned Property Law with regard to the filing of such reports.

I. Accounts and Records

As noted in Item 1, “Scope of Examination,” of this report, in 1997, this Department commenced an examination of the Company as of December 31, 1996. During the course of the examination, Company management was unable to provide key supporting documentation that would enable verification of certain assets reported in both the Company’s filed annual statement as well as the filed annual statements of its two wholly-owned New York domiciled subsidiaries, Nations Title Insurance of New York, Inc. and National Title Insurance of New York. Management’s inability to provide this documentation resulted in credit being disallowed for certain assets and a determination that each of the three entities was insolvent, as follows:

<u>Company</u>	<u>Surplus to policyholders, per draft report on examination</u>
Fidelity National Title Insurance Company of New York	\$(13,814,019)
Nations Title Insurance of New York, Inc.	\$(6,472,879)
National Title Insurance of New York Inc.	\$(1,205,333)

The draft report on examination was transmitted to the Company during 1999. Company management, in its response to the draft report, noted that they could provide supporting documentation for amounts reported in its most recent annual statement. Based on management's response, the examination was updated to December 31, 1998.

The circumstances described above resulted in unnecessary cost to the Company and a strain on the Department's resources. It is recommended that in the future the Company maintain adequate documentation for all amounts reported in every statement filed with the Department.

#### Capital Contribution

In 1997 the Company completed a \$3,000,000 capital contribution to a subsidiary, Nations Title Insurance of New York. The contribution was made in the form of a bond that had been held by the Company as an investment. The Department approved the transaction, however, the Company transferred the bond at an incorrect value. The Company used the bonds' amortized value. Pursuant to Department's guidelines, the transactions should have been performed at the bonds' current market value. The difference between the bonds amortized value and current market value was not material to change the Company's financial statement.

It is recommended that all future capital contributions, via the transfer of securities, be transacted at the securities' current market value.

#### Cash

A review of the Company's cash noted bank reconciliations with adjustments to cash dated as far back as 1994 had not been booked to the general ledger. Additionally, numerous outstanding checks, at

least a year old at the examination date, had not been cashed, voided, or otherwise resolved and booked at December 31, 1998. It should also be noted that in some cases documentation supporting account balances was either inadequate or not provided.

It is recommended that the Company book its cash adjustments to the general ledger in a timely manner. It is recommended that the Company research and resolve all “stale” outstanding checks. It is recommended that the Company maintain accurate and complete workpapers supporting amounts reported in its filed annual statements.

#### Investment in Call Options

A review of the Company’s investments as of the examination date noted transactions involving call options specified in Section 1403(d)(7) of the New York Insurance Law. New York Insurance Department Regulation 142 states that companies engaged in transactions of the type specified in Section 1403(d)(7) are required to file a plan with the Superintendent at least 60 days prior to implementation. As of the examination date the Company had not filed a plan with the Superintendent pursuant to Regulation 142. Subsequent to the examination date, July 1, 1999, the portion of Section 1403 concerning call options was repealed and replaced by Section 1410. Additionally, Regulation 142 was replaced by Regulation 163.

It is recommended that the Company file a “Derivative Use Plan” with the Superintendent pursuant to New York Regulation 163 prior to engaging in the type of transaction specified in Section 1410 of the New York Insurance Law.

### Agency Agreements

Agency agreements and audit reports of agents doing an insurance business on behalf of the Company in New York State were reviewed to determine whether the Company was following the contractual provisions of the agency agreements. The following exceptions were noted:

- (i) The audit reports revealed that some agents failed to maintain escrow deposits in accordance with the terms of the agency agreements.
- (ii) In some instances agents commingled escrow deposits which were held on behalf of the Company.
- (iii) Some agents commingled funds with the escrow of other title insurers.
- (iv) The review of the audit reports also indicated that several agents failed to maintain accurate records of escrow deposits held.

With regards to premium remittances, agents routinely disregarded a clause requiring remittance of premiums on a monthly basis, and remitted premiums late.

It is recommended that the Company adhere strictly to the standard provisions of the agreements with its agents, as regards to the maintenance of escrow accounts.

It is recommended that the Company seek to ensure that the agents maintain accurate records of all escrow deposits held and that the Company seek to obtain timely remittances of escrow deposits and premiums from its agents.

### Statutory Premium Reserve

While the Company did establish a reinsurance reserve, pursuant to the provisions of Section 6405(a) of the New York Insurance Law, it failed to segregate admitted asset in a manner consistent with Section 6405(c). Section 6405(c) states in pertinent part:

“The reinsurance reserve required by subsection (a) of this section shall be maintained as follows: Admitted assets of a value at least equal to the amount required for such reserve shall be continuously held by the corporation as a segregated reserve fund at all times distinct and separate from all its other assets...Securities which are part of such fund shall

be kept separate from all other securities and shall be clearly identified as securities belonging to such fund...”

It is recommended that the Company separate its admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to the provisions of Section 6405(c) of the New York Insurance Law.

J. Significant Operating Ratios

The operating ratios presented below are on an earned-incurred basis and encompass the seven-year period covered by this examination:

	<u>Amounts</u>	<u>Percentage</u>
Losses incurred	\$43,352,669	5.00%
Operating expenses incurred	790,917,597	92.00
Net underwriting gain	<u>21,880,412</u>	<u>3.00</u>
Premiums and fees earned	<u>\$856,150,678</u>	<u>100.00%</u>

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination. This statement is the same as the balance sheet in the Company's filed Annual Statement:

<u>Assets</u>	<u>Ledger Assets</u>	<u>Non-Ledger Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$104,957,705	\$	\$	\$104,957,705
Stocks:				
Preferred stocks	9,862,046	164,782		10,026,828
Common stocks	36,514,416	(651,402)	9,624,147	26,238,867
Mortgage loans:				
First liens	907,050		118,766	788,284
Other than first liens	87,387		87,387	0
Real estate	102,625			102,625
Cash and s/t investments	22,026,262			22,026,262
Other invested assets	3,820			3,820
Title plants	2,874,845			2,874,845
Title insurance premiums and fees receivable	14,596,274		6,445,509	8,150,765
Interest, dividends and real estate income due & accrued	1,845,879			1,845,879
Receivable from parent, subsidiaries & affiliates	821,320		72,154	749,166
Other assets	2,060,254		2,060,254	0
Prepaid expenses	2,292,536		2,292,536	0
Recoupments receivable	6,902,279		6,902,279	0
Goodwill	170,710		170,710	0
Call options	73,414			73,414
Other receivables	<u>5,820</u>	<u>          </u>	<u>          </u>	<u>5,820</u>
Total assets	<u>\$206,104,642</u>	<u>\$(486,620)</u>	<u>\$19,622,977</u>	<u>\$177,844,280</u>

Liabilities

Known claims reserve	\$24,407,074
Statutory premium reserve	76,536,996
Commissions	1,003,044
Other expenses	10,583,864
Taxes, licenses and fees	4,562,309
Federal and foreign income taxes	890,851
Payable to parent, subsidiaries & affiliates	<u>2,107,638</u>
Total liabilities	\$120,091,776

Surplus and Other Funds

Common capital stock	\$1,500,000
Gross paid in and contributed surplus	23,355,310
Unassigned funds (surplus)	<u>13,980,208</u>
Surplus as regards policyholders	<u>\$57,752,504</u>
Total liabilities and surplus	<u>\$177,844,280</u>

NOTE: The Internal Revenue Service has completed its audits of the consolidated tax returns filed on behalf of the Company through tax year 1994. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. Audits covering tax years 1995 and 1996 commenced on March 26, 1999. Except for any impact, which might result from the examination changes contained in this report, the examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Operations and Investment Exhibit

Surplus as regards policyholders increased \$28,258,597 during the seven-year examination period, (January 1, 1992, through December 31, 1998) which is detailed as follows:

Statement of Income

Operating Income

Premiums and fees earned		\$856,150,678
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Deductions:

Losses and loss adjustment expenses incurred		\$43,352,669
Operating expenses incurred		<u>790,917,597</u>

Total operating deductions		<u>834,270,266</u>
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Net operating gain		\$21,880,412
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Investment Income

Net investment income earned		\$22,901,472
Net realized capital gains		<u>11,930,109</u>

Net investment gain		<u>34,831,581</u>
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Other Income

Net income before federal income taxes		\$64,976,184
Federal income taxes incurred		<u>21,599,171</u>

Net income		<u>\$43,377,013</u>
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Capital and Surplus Account

Surplus as regards policyholders, December 31, 1991, per report on examination			\$29,493,908
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income or (loss)	\$43,377,013	\$	
Net unrealized capital gains or (losses)		11,921,129	
Change in non-admitted assets		842,835	
Paid in capital	3,059,134		
Paid in surplus	19,660,170		
Dividends to stockholders		18,228,015	
Net other gains or losses	_____	<u>6,845,741</u>	
Total gains and losses	<u>\$66,096,317</u>	<u>\$37,837,720</u>	
Net increase to surplus as regards policyholders			<u>\$28,258,597</u>
Surplus as regards policyholders, December 31, 1998, per report on examination			<u>\$57,752,504</u>

**4. KNOWN CLAIMS RESERVE**

The examination liability of \$24,407,074 is the same as that reported by the Company as of December 31, 1998. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statement.

The Company's reserve for unpaid losses and claims are based on individual case estimates for losses on claims reported to the Company as of December 31, 1998, and estimates for unreported losses based upon past experience.

## **5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

A review was made into the actions taken by the Company with regard to the comments and recommendations contained in the prior filed report on examination. The item letters and page numbers shown below refer to that of the prior report:

<u>ITEM</u>	<u>PAGE NO.</u>
<u>Management</u>	
A. Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that the board members attend meetings consistently and set forth their views on relevant matters so that appropriate policy decisions may be reached by the board. Individuals who fail to attend at least one-half of the board's regular meetings, unless appropriately excused, do not fulfill such criteria. Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
The Company has complied with this recommendation. The Company indicated that the board members elected since the acquisition of Security Title & Guaranty Company recognize that they have a fiduciary responsibility to the Company. In the event a director is unable to fulfill his or her duties, such director will be requested to resign or be replaced.	
B. It is recommended that the Company comply with the provisions of Article II, Section 4 of its by-laws with respect to the convening of the required number of board of directors' meetings.	7
The Company has complied with this recommendation. The Company indicated that the board members are aware of the provisions of Article II, Section 4 of its by-laws and will ensure proper compliance with this article in the future.	
C. It is recommended that the Company adhere to the provisions of Section 1411(a) of the New York Insurance Law.	7

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The Company has not complied with this recommendation. A review of the board of directors' minutes did not indicate that the Company was adhering to the provisions of Section 1411(a) of the New York Insurance Law, regarding the approval of loan or investment transactions of the Company by its board of directors. A similar recommendation is contained in this report.

- D. It is also recommended that the Company seek to have the board of directors ratify, confirm and approve those investment transactions consummated by the Company's management during the period July 1991 to present. 7

The Company has complied with this recommendation. The Company indicated that since the acquisition, the board has ratified, confirmed and approved all material investment transactions pursuant to Section 1411(a) of the New York Insurance Law. However, it is noted that such approvals were a blanket approval given in the subsequent year.

- E. It is recommended that waiver of notice of annual meetings of the stockholders be executed in a timely manner and that such notice if executed, indicate approval of the acts of the board of directors, pursuant to Article 1, Section 8 of the Company's by-laws.

The Company has complied with this recommendation. The Company will execute a waiver of notice of annual meeting of the stockholders in a timely manner and comply with Article 1, Section 8 of its by-laws, wherein such notice will indicate approval of the acts of the board of directors. 8

Reinsurance

- F. It is recommended that the Company comply with the provisions of Section 307(a)(1) of the New York Insurance Law, with respect to the completion of Schedule F of the filed statement. 13

The Company has not complied with this recommendation. A review of the Company's reinsurance business revealed that the Company was not adhering to the provisions of Section 307(a)(1) of the New York Insurance Law, with respect to reporting all reinsurance business in Schedule F of its filed annual statement. A similar recommendation is contained in this report.

Tax Allocation Agreement

- G. It is again recommended that the Company formulate a written agreement and submit such agreement to the Department, pursuant to the provisions of Section 1505 of the New York Insurance Law and Department Circular Letter No. 33 (1979). 16

The Company has not complied with this recommendation. On April 4, 1994, the

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Company submitted a written tax allocation agreement to the Insurance Department, pursuant to the provisions of Section 1505 of the New York Insurance Law and Department Circular Letter No. 33 (1979).

However, the Company was advised that such agreement did not meet the provisions set forth in Department Circular Letter No. 33 (1979). To date, a revised agreement has not been filed with the Insurance Department. A similar recommendation is contained in this report.

- H. It is also recommended that the board of directors submit to the Department a certified resolution indicating its awareness of the Department's concern, and its approval of the agreement. 16

The Company has complied with this recommendation. On April 4, 1994, the Company submitted two certified copies of the board of directors' resolutions indicating approval of the Tax Allocation Agreement. However, the Insurance Department did not approve the Tax Allocation Agreement. To date, a revised agreement has not been filed with the Insurance Department nor has a new board of directors' resolution. A similar recommendation is contained in this report.

Audited Financial Statements

- I. It is recommended that the Company comply with the provisions of Section 307(b) of the New York Insurance Law and Department Regulation 118 with respect to its written engagement contracts with its CPAs. 20

The Company has not complied with this recommendation. A review of the Company's engagement contracts with its CPAs revealed that the engagement contracts were not in compliance with Section 307(b) of the New York Insurance Law and Department Regulation 118. A similar recommendation is contained in this report.

Conflict of Interest

- J. It is recommended that conflict of interest statements be distributed annually and that the existing conflict of interest guidelines be revised to permit the board of directors to properly oversee and handle any conflicts disclosed. 20

The Company has not complied with this recommendation. A review of the Company's conflict of interest guidelines, revealed that they do not permit the board of directors to properly oversee and handle any conflicts disclosed. A similar recommendation is contained in this report.

- K. It is also recommended that the board of directors maintain complete minutes of its proceedings on such matters. 21

The Company has not complied with this recommendation. The Company indicated

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that in the event, a conflict of interest arises, the Secretary of Fidelity would refer the matter to the board of directors for proper resolution and that complete minutes regarding such proceedings would be maintained.

Accounts, Records and Internal Control

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| L. | It is recommended that the Company implement the following concerning its title insurance premiums receivable:                             | 24 |
|    | (i) the Company record premiums and fees when due, in accordance with the provisions of Section 6404(b) of the New York Insurance Law and, |    |
|    | (ii) the Company maintains an aged listing of uncollected premiums pursuant to Section 6404(b) of the New York Insurance Law.              |    |

The Company has not complied with this recommendation. The Company indicated that under Fidelity's management, premiums and fees are properly recorded when they become due and that an aged listing of uncollected premiums is maintained. A review of the premiums receivable revealed that some agents do not remit premiums in a timely manner and that the Company has not instituted adequate accounting controls to ensure the aging of premiums and that any overdue premiums are properly reported.

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|----|---|----|
| M. | It is recommended that the Company implement the following concerning its agency agreements:  | 25 |
|    | (i) the Company adhere strictly to the standard provision of the contracts with its agents, as regards the requirement of an "errors and omissions" policy clause,  |    |
|    | (ii) that the Company adhere strictly to the standard provision of the contracts with its agents, as regards the maintenance of escrow accounts which are separate from the agents' other operating accounts. |    |
|    | (iii) that the Company seek to ensure that the agents maintain accurate records of all escrow deposits held, and  |    |
|    | (iv) that the Company seek to obtain timely remittances of escrow deposits from its agents.   |    |

The Company has complied with item (i) of the above recommendation. The Company requires all new agents to maintain errors and omissions coverage as well as fidelity bond coverage. Items (ii), (iii) and (iv) of the above recommendation have not been complied with. A similar recommendation is contained in this report.

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| N. | It is recommended that the Company comply with the provisions of Section 1217 of the New York Insurance Law. | 27 |
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The Company has complied with this recommendation. The Company indicated that under FNFI's management, it is Company policy to adhere to the provisions of Section 1217 of the New York Insurance Law.

Abandoned Property Law

- O. It is recommended that the Company maintain accurate reconciliations of the refundable escrow deposit balances to the General Ledger and remit amounts escheatable pursuant to Section 1317 of the New York Abandoned Property Law to the Comptroller, State of New York. 28

The Company has complied with this recommendation. Under Fidelity's management, the Company performs and maintains reconciliations of escrow deposit balances on a monthly basis and properly remits escheatable funds to the State Comptroller, pursuant to Section 1317 of the New York Abandoned Property Law.

Reserve for Undetermined Title Losses

- P. It is recommended that the Company establish adequate reserves to meet the requirements of Section 6405(b) of the New York Insurance Law. 33

The Company has complied with this recommendation. The Company is in the process of establishing procedures for the creation and maintenance of a "bulk reserve" which would serve to cover any deficiency in the known claim reserve due to adverse development and to meet the requirements of Section 6405(b) of The New York Insurance Law.

Statutory Premium Reserve

- Q. It is recommended that the Company adjust its books and records to reflect the \$237,570 increase in the statutory premium reserve determined by this examination. 34

The Company has complied with this recommendation. The Company has adjusted its books and records to reflect the \$237,570 increase in the statutory premium reserve.

- R. It is also recommended that the Company calculate the statutory premium reserve reported in its filed annual statements, in accordance with the provisions of Section 6405(a)(2). 34

The Company has complied with this recommendation. The Company ensures that, in the future, the statutory premium reserve will be calculated in accordance with Section 6405(a)(2).

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S. It is further recommended that the Company maintain admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to the provisions of Section 6405(c) of the New York Insurance Law.	35
<p>The Company has not complied with this recommendation. The Company did not maintain admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to Section 6405(c) of the New York Insurance Law. A similar recommendation is contained in this report.</p>	
<p><u>Due to Parent Company</u></p>	
T. It appears that the Company has not complied with Section 310(a)(2) of the New York Insurance Law since it failed to provide documentation requested by the examiners concerning its federal income tax liability.	36
<p>The Company, presently under FNFI's management, was unable to respond to this comment. The Company was unaware of the examination items requested of the previous management.</p>	
<p><u>Treatment of Policyholders and Claimants</u></p>	
U. A review was made of the American Land Title Association Facultative Reinsurance Agreement utilized by the Company during the period under examination, and the agreement was found to be in violation of the provisions of Section 1308 of the New York Insurance Law.	37
<p>Effective June 29, 1999, Section 1308 was amended and as currently written, it permits this form of reinsurance agreement.</p>	
V. It is recommended that the Company refund the premiums, which were overcharged to policyholders.	38
<p>The Company has not complied with this recommendation. The Company indicated that under FNFI's management, it is unable to respond to such recommendation, as the specific policies, which the previous examination reviewed are unknown. On October 4, 1993, the Company requested that the Insurance Department provide additional information regarding such findings so that an appropriate response could be provided and appropriate actions taken to refund the overcharged premiums to their respective policyholders. No such information was provided by the Insurance Department.</p>	
W. It is recommended that the Company establish and internal complaints department, to investigate and resolve complaints, and to maintain an ongoing central log to register	39

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and monitor all complaint activity.

The company has complied with this recommendation. The Company has designated a person in their New York office to handle all complaints. This person maintains an ongoing central log, which tracks all complaint activity and investigates and resolves such complaints. Data related to each complaint is maintained and catalogued as a component of the complaint log.

- X. It is also recommended that the Department take action with respect to the Company's failure to provide the examiners with its files pertaining to consumer complaints. (These complaints were received by the Department and forwarded to the Company.) 39

Due to the fact that the Company is currently under FNFI's management and unaware of the problems incurred by the previous examination, the Company requests that the Insurance Department not take action against the Company for such shortcomings.

- Y. It is further recommended that the Department take action with respect to the Company's failure to provide the examiners with its responses to the Department concerning the consumer complaints. 40

Due to the fact that the Company is currently under FNFI's management and unaware of the problems incurred by the previous examination, the Company requests that the Insurance Department not take action against the Company for such shortcomings.

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEMPAGE NO.

A. Management

It is recommended that if the Company wishes to act under provisions of Section 708(b) of Business Corporation Law, it should amend its by-laws or certificate of incorporation to provide for such actions in accordance with Section 1206 of the New York Insurance Law. Additionally, the board should limit the use of unanimous written consent in lieu of meetings to limited emergency situations. 5

It is recommended that the Company adhere to the provisions of Section 1411(a) of the New York Insurance Law as regards to the board of directors' approval of investment Transactions. 6

C. Reinsurance

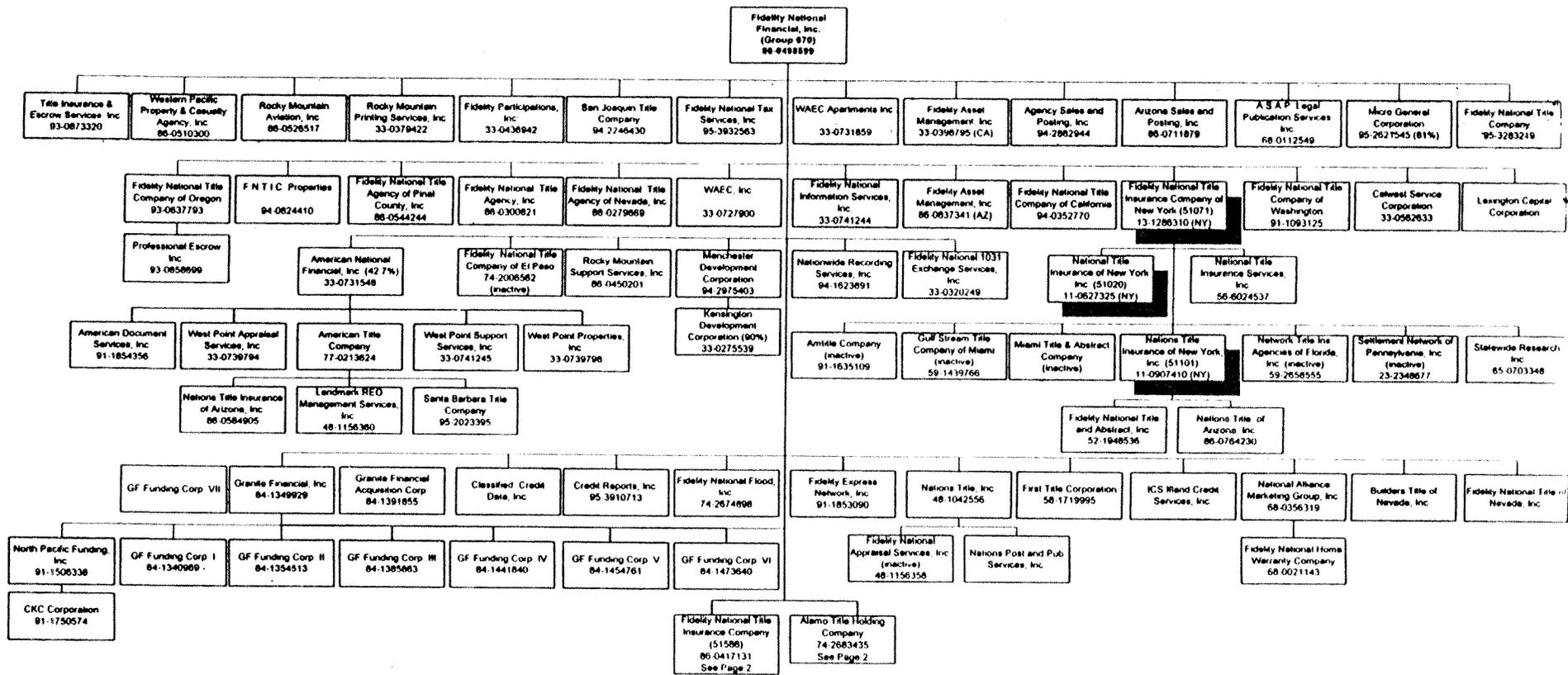
It is recommended that the Company maintain documentation of its evaluation of transfer of risk for all ceded reinsurance contracts to support management's accounting positions 9

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related to these contracts in accordance with Chapter 22 of NAIC Accounting Practices and Procedures Manual.	
D. <u>Holding Company System</u>	
It is recommended that the Company maintain documentation to ensure that inter-company balances are settled in a timely manner.	10
It is recommended that the Company modify its general ledger system to track and accumulate affiliate transactions by each affiliated company on a rolling twelve-month basis. This would enable the Company to determine if transactions exceed the reporting and prior approval thresholds as set forth in Section 1505(d) of the new York Insurance Law.	10
It is recommended that the Company file its cost reimbursement agreements with the Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law.	11
It is recommended that the Company prepare written guidelines for the allocation of non-overhead expenses, which are in accordance with Regulation 30.	12
It is recommended that the Company amend its tax allocation agreement to comply with the guidelines set forth in New York's Circular Letter No. 33 (1979) and submit it to the Insurance Department pursuant to Section 1505(d) of the New York Insurance Law.	12
E. <u>Custodian Agreement</u>	
It is recommended that the Company refrain from the practice of utilizing brokerage firms in the capacity of custodians for its securities.	13
F. <u>Audit Engagement Contract</u>	
It is recommended that the Company comply with the provisions of Section 89.2 of the Department's Regulation 118.	14
G. <u>Conflict of Interest</u>	
It is recommended that the Company establish written procedures that detail the specific actions to be taken by the board of directors if conflicts of interest arise.	15

<u>ITEM</u>	<u>PAGE NO.</u>
It is recommended that the board of directors maintain complete minutes of its proceedings on such matters.	15
I. <u>Accounts and Records</u>	
It is recommended that in future the Company maintain adequate documentation for all amounts reported in every statement filed with the Department.	16
It is recommended that all future capital contributions, via the transfer of securities, be transacted at the securities' current market value.	17
It is recommended that the Company book its cash adjustments to the general ledger in a timely manner.	17
It is recommended that the Company research and resolve all "stale" outstanding checks.	17
It is recommended that the Company maintain accurate and complete workpapers supporting amounts reported in its filed annual statements.	17
It is recommended that the Company file a "Derivative Use Plan" with the Superintendent, pursuant to New York Regulation 163, prior to engaging in the types of transactions specified in Section 1410 of the New York Insurance Law.	17
It is recommended that the Company adhere strictly to the standard provisions of the agreement with its agents, as regards to the maintenance of escrow accounts.	18
It is recommended that the Company seek to ensure that the agents maintain accurate records of all escrow deposits held and that the Company seek to obtain timely remittances of escrow deposits and premiums from its agents.	19
It is recommended that the Company separate admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to the provisions of Section 6405(c) of the New York Insurance Law.	19



# FIDELITY NATIONAL FINANCIAL, INC.



Appointment No 21441

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, NEIL D. LEVIN, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Bernard Lott**

*as proper person to examine into the affairs of the*

**Fidelity National Title Insurance Company of New York**

*and to make a report to me in writing of the condition of the said*

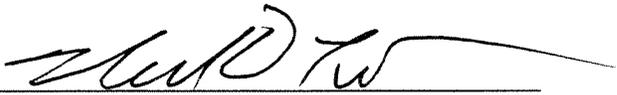
**Company**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 29th day of July, 1999*



  
NEIL D. LEVIN  
Superintendent of Insurance

Respectfully submitted,

\_\_\_\_\_  
/S/  
Bernard Lott  
Senior Insurance Examiner

STATE OF NEW YORK )  
                                  ) SS.  
                                  )  
COUNTY OF NEW YORK)

BERNARD LOTT, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

\_\_\_\_\_  
/S/  
Bernard Lott

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2000.

