

REPORT ON EXAMINATION

OF THE

FIDELITY NATIONAL PROPERTY AND CASUALTY INSURANCE COMPANY

AS OF

DECEMBER 31, 2003

DATE OF REPORT

JUNE 4, 2004

EXAMINER

ADEBOLA AWOFESO

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

June 4, 2004

Honorable Gregory V. Serio  
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 22117 dated January 6, 2004 attached hereto, I have made an examination into the condition and affairs of Fidelity National Property and Casualty Insurance Company as of December 31, 2003, and submit the following report thereon.

The examination was conducted at the Company's administrative offices located at 10301 Deerwood Park Boulevard, Suite 100, Jacksonville, Florida 32256.

Wherever the designations "the Company" or "FNPCIC" appear herein without qualification, they should be understood to indicate Fidelity National Property and Casualty Insurance Company.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

## 1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1999. This examination covered the four-year period from January 1, 2000 through December 31, 2003. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised of a complete verification of assets and liabilities as of December 31, 2003. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Company's independent 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 Company
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Growth of Company
- Business in force by states
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

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**

The Company was originally incorporated as Soflens Insurance Company on June 7, 1971, under the laws of the State of New York. As of January 1, 1980 and January 1, 1993, the name was changed to Bausch & Lomb Insurance Company and First Community Insurance Company respectively. Effective January 3, 2003, Fidelity National Financial, Inc. (“FNFI”) of Santa Barbara, California acquired all issued and outstanding shares of the Company’s stock from Bankers Insurance Group, Inc. (“Bankers”), the owner of the Company since October 1, 1993.

On February 28, 2003, the Company’s stock was contributed downstream from FNFI to Fidelity National Title Insurance Company (“FNTIC”), a California domiciled title insurer. On May 1, 2003, the Company’s stock was again contributed downstream from FNTIC to Fidelity National Insurance Company (“FNIC”), a California domiciled property and casualty insurer.

On December 12, 2003, the Company changed its name to Fidelity National Property and Casualty Insurance, Inc. and on January 14, 2004 the present name of Fidelity National Property and Casualty Insurance Company was adopted.

Capital paid in is \$3,465,564 consisting of 10,898 shares of common stock at \$318.00 par value per share. Gross paid in and contributed surplus is \$2,384,436. Gross paid in and contributed surplus and capital paid in increased by \$500,000 during the examination period, as follows:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
1999	Beginning gross paid in and contributed surplus	\$ 1,884,436
2002	Surplus contribution	<u>500,000</u>
2003	Ending gross paid in and contributed surplus	<u>\$ 2,384,436</u>

A. Management

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen nor more than twenty-one members. At December 31, 2003, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Christopher Abbinante Chicago, IL	Strategic Implementation, Chicago Title
Raymond M. Cavanagh New York, NY	President, TSNY Agency
Mark O. Davey Jacksonville, FL	President and Chief Executive Officer, Fidelity National Property and Casualty Insurance Company.
William P. Foley, II Jacksonville, FL	Chief Executive Officer/Chairman, Fidelity National Financial, Inc.
Ronald R. Maudsley Santa Barbara, CA	Division Manager, Fidelity National Financial, Inc.
Donald E. Partington Irvine, CA	General Counsel, Fidelity National Financial, Inc.
Raymond R. Quirk Jacksonville, FL	President, Fidelity National Financial, Inc.
Jonathan A. Richards New York, NY	Senior Vice President Legal, Fidelity National Financial, Inc.
Peter T. Sadowski Jacksonville, FL	Executive Vice President Legal, Fidelity National Financial, Inc.
Ernest D. Smith Jacksonville, FL	Division Manager, Fidelity National Financial, Inc.
Alan L. Stinson Jacksonville, FL	Chief Financial Officer, Fidelity National Financial, Inc.
Frank P. Willey Jacksonville, FL	Vice Chairman, Fidelity National Financial, Inc.
Charles H. Wimer New York, NY	Executive Vice President Administration, Fidelity National Financial, Inc.

A review of the minutes of the board of directors shows that there were no meetings held during 2003. In lieu of meetings, all actions were taken by signed written consent of all directors.

The minutes revealed that for the calendar year 2003, investment transactions were not approved by the Company's board of directors. Section 1411(a) of the New York Insurance Law states:

“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”.

It is recommended that the board of directors approve all investment transactions pursuant to the provisions of Section 1411(a) of the New York Insurance Law.

As of December 31, 2003, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Mark O. Davey	President and Chief Executive Officer
Todd C. Johnson	Vice President and Corporate Secretary
Alan L. Stinson	Vice President and Chief Financial Officer
Patrick G. Farenga	Vice President and Treasurer
Peter T. Sadowski	Vice President Legal
Anthony J. Park	Chief Accounting Officer
Anton M. Rosandic	Chief Operating Officer
George M. Sloane	Senior Vice President

#### Conflict of Interest

The Company has an established procedure for disclosure to its board of directors or trustees of any material interest or affiliation on the part of its officers, directors, trustees or responsible employees which is likely to conflict with the official duties of such person. In 2003, only four out of the thirteen directors signed the conflict of interest statements. It is recommended that all directors sign an annual conflict of interest statement.

B. Territory and Plan of Operation

As of December 31, 2003, the Company was licensed to write business in the District of Columbia and all fifty states.

As of the examination date, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
3	Accident & health
4	Fire
5	Miscellaneous property damage
7	Burglary and theft
8	Glass
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity
24	Credit unemployment
26(A)(B)(C)(D)	Gap

The following schedule shows the direct premiums written by the Company both in total and in New York for the period under examination:

DIRECT PREMIUMS WRITTEN

<u>Calendar Year</u>	<u>New York State</u>	<u>Total United States</u>	<u>Premiums Written in New York State as a percentage of United States Premiums Written</u>
2000	\$2,214,065	\$ 41,302,197	5.36%
2001	\$2,670,747	\$ 47,129,668	5.67%
2002	\$3,347,988	\$ 51,128,617	6.55%
2003	\$3,602,719	\$200,975,480	1.79%



Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$4,450,000.

C. Reinsurance

Assumed

The Company assumes a relatively minor volume of business as compared to its direct writings.

Ceded

The Company participates in the Florida Hurricane Catastrophe Fund administered by the State Board of Administration of the State of Florida ("SBA"). As a participant, the SBA reimburses the Company for losses caused by any storm declared to be a hurricane by the National Hurricane Center.

Since 1994, the Company has been a servicing carrier for the National Flood Insurance Program under the "write your own" program. Business written under this program is 100% ceded to the United States Government. In exchange for the services provided under the program, the Company receives a ceding commission fee based on losses incurred related to the flood business only.

Concurrent with the acquisition of the Company from the Bankers Insurance Group, all net policy liabilities of the Company incurred prior to January 3, 2003 were assumed by Bankers Insurance Company pursuant to a loss portfolio transfer agreement. This transaction is accounted for as retroactive reinsurance pursuant to paragraph 28 of SSAP 62. Additionally, the agreement also reinsures a 100% quota share of the new and renewal policies related to business serviced by the Bankers Insurance Group and written by the Company. This agreement expires on January 3, 2005.

Effective January 3, 2003, the Company entered into a 100% quota share reinsurance agreement with an affiliate, Fidelity National Insurance Company (“FNIC”). This agreement covers all non-flood and non-Bankers Insurance Group business written by the Company. Under the terms of this agreement FNIC agrees to reinsure up to 100% of the Company’s acceptable risks. The agreement was not submitted to the Department prior to enactment. Pursuant to Section 1505(d)(2) of the New York Insurance Law, the Company was required to notify the Superintendent in writing of its intention to enter into such agreement at least 30 days prior to the effective date.

It is recommended that the Company comply with the notification requirements set forth in Section 1505(d)(2) of the New York Insurance Law.

The Company was made aware of the violation noted above. Subsequent to the examination date, on April 7, 2004, the Company submitted the agreement to the Department. This agreement is currently under review.

The Schedule F data as contained in the Company’s filed annual statements was found to accurately reflect its reinsurance transactions.

The examiner reviewed all ceded reinsurance contracts in effect at December 31, 2003. The contracts all contained the required standard clauses including insolvency clauses meeting the requirements of Section 1308 of the New York Insurance Law.

#### Unauthorized Reinsurance

The trust agreement obtained by the Company in order to take credit for cessions made to unauthorized reinsurers was reviewed for compliance with Department Regulation 114. The review revealed that trust agreement does not contain the required clause of termination notification from trustee to the beneficiary as per Part 126.3(g) of Department Regulation 114, which states:

“The trust agreement must provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary”.

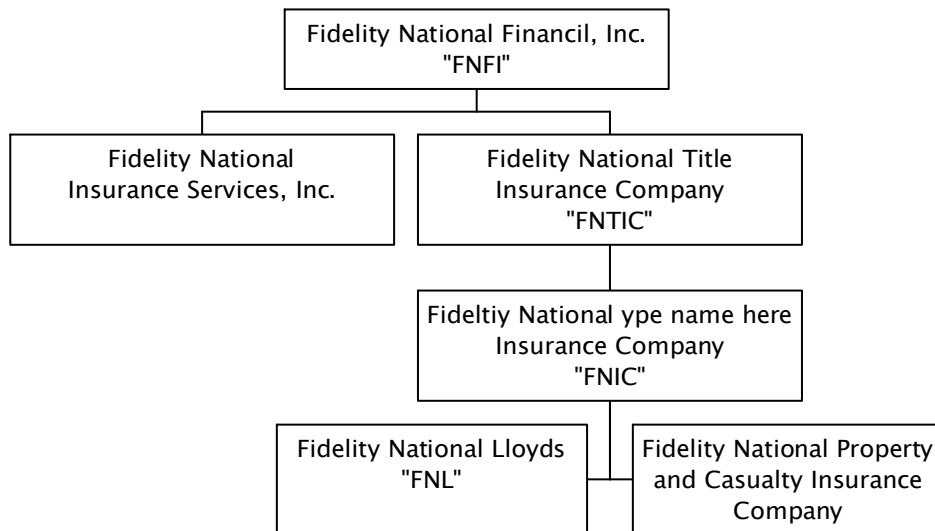
It is recommended that the Company obtain a trust agreement that includes the required clause stated above.

D. Holding Company System

The Company is a member of the Fidelity National Financial, Inc. The Company is a wholly-owned subsidiary of Fidelity National Insurance Company, a State of California corporation, which is ultimately controlled by Fidelity National Financial, Inc.

A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abbreviated chart of the holding company system at December 31, 2003:



At December 31, 2003, the Company was party to the following agreements with other members of its holding company system:

#### Tax Allocation Agreement

The Company entered into Tax allocation and tax reimbursement agreement with Fidelity National Financial, Inc. and several of its subsidiaries. Pursuant to the terms of the agreement, the parties file consolidated federal income tax returns. The agreement provides that the Company's tax liability, on a consolidated basis, would be no more than what it would have been if the Company filed a separate return on a stand alone basis. The agreement was not filed with the Department prior to enactment.

Pursuant to Circular Letter No. 33 (1979) of the Department, the Company was required to notify the Superintendent in writing of its intention to enter into such agreement at least thirty days prior to the effective date of the agreement.

It is recommended that the Company comply with the notification requirements set forth in the Department Circular Letter No. 33 (1979).

At the examiner's request, the Company filed this tax allocation agreement on April 7, 2004. This tax allocation agreement is currently under review.

#### Master Service Agreement

Effective March 12, 2003, the Company entered into a master service agreement with Fidelity National Financial, Inc. and several of its subsidiaries. Under the terms of this agreement, services such as underwriting, claim settlement, payroll, legal, communications, advertising, regulatory, financial, general administrative services, investment services, etc shall be performed by any of the affiliates. The agreement was not submitted to the Department prior to enactment. Pursuant to Section 1505(d)(3) of the New York Insurance Law, the Company is required to notify the Superintendent in writing of its intention

to enter into such agreement at least thirty days prior to the effective date of the agreement. The Company therefore violated Section 1505(d)(3) of the New York Insurance Law by failing to file its master service agreement with the Department thirty days prior to its implementation.

It is recommended that the Company comply with the notification requirements set forth in Section 1505(d)(3) of the New York Insurance Law.

The Company was made aware of the violation noted above. Subsequent to the examination date, on April 7, 2004, the Company submitted this agreement to the Department. This agreement is currently under review.

E. Abandoned Property Law

Section 1316 of the New York State Abandoned Property Law provides that amounts payable to a resident of this state from a policy of insurance, if unclaimed for three years, shall be deemed to be abandoned property. Such abandoned property shall be reported to the comptroller on or before the first day of April each year. Such filing is required of all insurers regardless of whether or not they have any abandoned property to report.

The Company's abandoned property reports for the period of this examination were all filed on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law, with the exception of the abandoned property report required for year-end 2003. It is recommended that the Company file its abandoned property reports on a timely basis pursuant to the provisions of Section 1316 of the New York State Abandoned Property Law.

F. Significant Operating Ratios

The following ratios have been computed as of December 31, 2003, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	0%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	56%
Premiums in course of collection to surplus as regards policyholders	15%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

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

	<u>Amount</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$20,027,258	52.57%
Other underwriting expenses incurred	13,354,587	35.05
Net underwriting loss	<u>4,715,241</u>	<u>12.38</u>
Premiums earned	<u>\$38,097,086</u>	<u>100.00%</u>

#### G. Accounts and Records

##### 1. Service Agreement with Insurance Management Solutions Group (“IMSG”)

Effective January 3, 2003, the Company entered into a service agreement with Insurance Management Solutions Group, (“IMSG”) a subsidiary of National Flood Services Inc. Pursuant to the terms of the agreement, IMSG performs certain administrative and special services such as claims processing, functional support services and customer service for the Company flood business ceded to the national flood insurance program under the “write your own”(“WYO”) program. IMSG also makes available property, data processing and communication equipment, and facilities as the Company may

request. In exchange for providing these services and facilities, the Company reimburses IMSG pursuant to a service fee schedule. Service fees for claim services are based on a percentage of paid claims and the service fees for policy issuance are based on a percentage of written premiums.

The agreement calls for a biennial audit of any and all WYO Flood Program business written by the Company to be conducted at IMSG premises and at Company's expense. The examination review indicated that the last audit performed by an independent auditor was as of September 30, 2001.

It is recommended that the Company require biennial audits of WYO Flood Program business as set forth in the agreement.

## 2. Engagement Letter

The engagement letter between the Company and the certified public accounting ("CPA") firm of KPMG is missing the following required clauses pursuant to Department Regulation 118, Part 89.2:

"(a) on or before May 31<sup>st</sup>, the CPA shall provide an audited financial statement of such insurer and of any subsidiary required by Section 307(b)(1) of the Insurance Law together with an opinion on the financial statements of such insurer and any such subsidiary for the prior calendar year and an evaluation of the insurer's and any such subsidiary's accounting procedures and internal control systems as are necessary to the furnishing of the opinion;

(b) any determination by the CPA that the insurer has materially misstated its financial condition as reported to the superintendent or that the insurer does not meet minimum capital or surplus to policyholders requirements set forth in the Insurance Law shall be given by the CPA, in writing, to the superintendent within 15 calendar days following such determination..."

It is recommended that the Company's agreement with its CPA firm include all of the provisions set forth in Part 89.2 of Department Regulation 118.

## 3. Custodian Agreement

Management answered affirmatively to the following General Interrogatory:

“Excluding items in Schedule E, real estate, mortgage loans and investments held physically in the reporting entity’s offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to a custodial agreement with a qualified bank or trust company in accordance with Part 1-General, Section IV.H-Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook?”

However, examination review indicated that the Company’s custodial agreement was lacking the protective covenants set forth in Section IV. H of the NAIC Financial Condition Examiners Handbook.

It is recommended that the Company procure a custodial agreement that is in compliance with the NAIC guidelines.



### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 31, 2003 and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$15,103,427	\$0	\$15,103,427
Common stocks	932	0	932
Cash, cash equivalents and short-term investments	10,748,535	0	10,748,535
Receivable for securities	5,128	0	5,128
Investment income due and accrued	164,798	0	164,798
Uncollected premiums and agents' balances in course of collection	1,987,724	0	1,987,724
Net deferred tax asset	<u>53,258</u>	<u>0</u>	<u>53,258</u>
Totals Assets	<u>\$28,063,802</u>	<u>\$0</u>	<u>\$28,063,802</u>

Liabilities, Surplus and Other FundsLiabilities

Losses	\$ 898,831
Loss adjustment expenses	196,619
Commissions payable, contingent commissions and other similar charges	3,258,529
Other expenses (excluding taxes, licenses and fees)	100,892
Taxes, licenses and fees (excluding federal and foreign income taxes)	2,834,986
Current federal and foreign income taxes	375,357
Unearned premiums	12
Ceded reinsurance premiums payable (net of ceding commissions)	5,490,607
Payable to parent, subsidiaries and affiliates	2,574,468
Retroactive reinsurance reserves ceded	<u>(1,095,451)</u>
Total liabilities	\$14,634,850

Surplus and Other Funds

Surplus from retroactive reinsurance ceded	\$ 110,368
Common capital stock	3,465,564
Gross paid in and contributed surplus	2,384,436
Unassigned funds (surplus)	<u>7,468,584</u>
Surplus as regards policyholders	<u>13,428,952</u>
Total liabilities and other surplus fund	<u>\$28,063,802</u>

NOTE: The Internal Revenue Service has not yet begun to audit the tax returns covering tax years 2000 through 2003. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$4,265,307 during the four-year examination period January 1, 2000 through December 31, 2003, detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$38,097,086
Deductions:		
Losses incurred	\$16,884,893	
Loss adjustment expenses incurred	3,142,365	
Other underwriting expenses incurred	<u>13,354,587</u>	
Total underwriting deductions		<u>33,381,845</u>
Net underwriting gain		\$ 4,715,241

Investment Income

Net investment income earned	\$ 3,164,842	
Net realized capital gain	<u>(152,023)</u>	
Net investment gain		3,012,819

Other Income

Net loss from agents' or premium balances charged off	\$ (111,823)	
Finance and service charges not included in premiums	88,141	
Miscellaneous income	354,576	
Income from sale of wind exposed business	70,000	
Retroactive reinsurance treaty gain	<u>110,368</u>	
Total other income		<u>511,262</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$ 8,239,322
Dividends to policyholders		<u>654,335</u>
Net income after dividends to policyholders but before foreign income taxes		\$ 7,584,987
Federal and foreign income taxes incurred		<u>4,095,492</u>
Net income		\$ <u>3,489,495</u>



#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$1,095,450 is the same as reported by the Company as of December 31, 2003. 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 statements.

#### **5. MARKET CONDUCT ACTIVITIES**

In the course of this examination, a review was made of the manner in which the Company conducts its business practices and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau of this Department.

The review was directed only at the practices of the Company in underwriting and complaint handling areas. No problem areas were encountered.

## 6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The recommendations cited in the prior examination report are not applicable to the current examination due to the change in control that occurred during the current examination period. Therefore, the prior examination recommendations have not been reflected in this report on examination.

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Management</u>	
(i).	It is recommended that the board of directors approve all investment transactions pursuant to the provisions of Section 1411(a) of the New York Insurance Law.	5
(ii).	It is recommended that all directors sign an annual conflict of interest statement.	5
B.	<u>Reinsurance</u>	
(i).	It is recommended that the Company comply with the notification requirements set forth in Section 1505(d)(2) of the New York Insurance Law.	8
(ii).	It is recommended that the Company obtain a trust agreement that includes the required termination clause.	9
C.	<u>Holding Company System</u>	
(i).	It is recommended that the Company comply with the notification requirements set forth in the Department Circular Letter No. 33 (1979).	10
(ii).	It is recommended that the Company comply with the notification requirements set forth in Section 1505(d)(3) of the New York Insurance Law.	11

<u>ITEM</u>		<u>PAGE NO.</u>
D.	<u>Abandoned Property Law</u>	
	It is recommended that the Company file its abandoned property reports on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law.	11
E.	<u>Account and Records</u>	
(i).	It is recommended that the Company require biennial audits of WYO Flood Program business as set forth in the agreement.	13
(ii).	It is recommended that the Company comply with the provisions set forth in Part 89.2 of Department Regulation 118.	13
(iii).	It is recommended that the Company procure a custodial agreement in compliance with NAIC guidelines.	14





Appointment No 22117

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Adebola Awofeso**

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

**FIDELITY NATIONAL PROPERTY AND CASUALTY INSURANCE COMPANY**

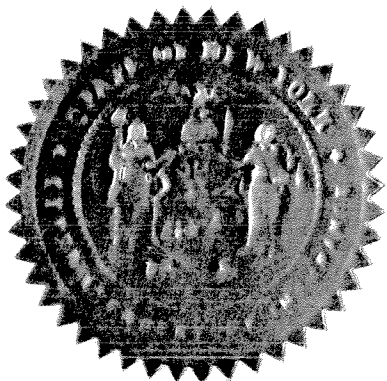
*and to make a report to me in writing of the condition of the said*

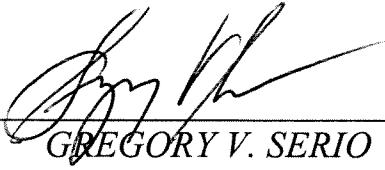
**Company**

*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 6th day of January, 2004*



  
\_\_\_\_\_  
GREGORY V. SERIO  
Superintendent of Insurance