

REPORT ON EXAMINATION  
OF THE  
FIDELITY NATIONAL PROPERTY & CASUALTY  
INSURANCE COMPANY  
AS OF  
DECEMBER 31, 2008

DATE OF REPORT

JANUARY 29, 2010

EXAMINER

JIMMIE NEWSOME

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

January 29, 2010

Honorable James J. Wrynn  
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 30355 dated June 10, 2009, attached hereto, I have made an examination into the condition and affairs of the Fidelity National Property & Casualty Insurance Company as of December 31, 2008 and submit the following report thereon.

Wherever the designation "the Company" appears herein without qualification, it should be understood to indicate the Fidelity National Property & Casualty Insurance Company.

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

The examination was conducted at the Company's main administrative office located at 4905 Belfort Road, Jacksonville, Florida 32256.

## 1. SCOPE OF EXAMINATION

The Department has performed an association examination of Fidelity National Property & Casualty Insurance Company. The previous examination was conducted as of December 31, 2003. This examination covers the five-year period from January 1, 2004, through December 31, 2008. Transactions occurring subsequent to this period were reviewed where deemed appropriate, by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the Company’s own control environment assessment and an evaluation based upon the Company’s Sarbanes Oxley documentation and testing. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Financial Condition Examiners Handbook of the NAIC:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance

Accounts and records  
Statutory deposits  
Financial statements  
Summary of recommendations

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

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

## **2. DESCRIPTION OF COMPANY**

The company was incorporated as Soflens Insurance Company under the laws of the State of New York on June 7, 1971. It became licensed and commenced business on September 15, 1971. On January 1, 1980, the name was changed to Bausch & Lomb Insurance Company and again to First Community Insurance Company on January 1, 1993.

On October 1, 1993, Bankers Insurance Group, Inc. acquired the Company from Bausch & Lomb, Inc. On January 3, 2003, the Company was acquired by Fidelity National Financial, Inc. ("FNF"), a title insurance holding company domiciled in California.

On February 28, 2003, the Company's stock was contributed downstream from FNF 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 23, 2004 the present name of Fidelity National Property & Casualty Insurance Company was adopted.

At December 31, 2008, capital paid in was \$3,465,564 consisting of 10,898 shares of common stock with a par value of \$318 per share. Gross paid in and contributed surplus was \$2,384,436.

A. Management

Pursuant to the Company's charter and by-laws, as amended and restated, management of the Company is vested in a board of directors, consisting of not less than thirteen nor more than twenty-five members. The board is required to meet at least one time during each calendar year. At December 31, 2008, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Christopher Abbinante Barrington, IL	Executive Vice President, Fidelity National Financial, Inc.
Kristin V. Bellouny Staten Island, NY	Senior Vice President, Fidelity National Title Insurance Company
Mark O. Davey Ponte Vedra Beach, FL	President & Chief Executive Officer, Fidelity National Property & Casualty Insurance Company
John M. Giorgianni Jacksonville, FL	Vice President Accounting, Fidelity National Property & Casualty Insurance Company
Michael L. Gravelle Santa Barbara, CA	Executive Vice President & Legal and Corporate Secretary, Fidelity National Financial, Inc.
Roger S. Jewkes Santa Barbara, CA	Executive Vice President & Division Manager, Fidelity National Financial, Inc.
Anthony J. Park Jacksonville, FL	Executive Vice President & Chief Financial Officer, Fidelity National Financial, Inc.
Donald E. Partington San Juan Capistrano, CA	Senior Vice President & General Counsel, Fidelity National Title Insurance Company
Raymond R. Quirk Jacksonville, FL	President, Fidelity National Financial, Inc.
Jonathan A. Richards Mamaroneck, NY	Senior Vice President & Chief Counsel, Fidelity National Title Insurance Company
Peter T. Sadowski Jacksonville, FL	Executive Vice President & Chief Legal Officer, Fidelity National Financial, Inc.
Alan L. Stinson Jacksonville, FL	Chief Executive Officer, Fidelity National Financial, Inc.
Charles H. Wimer New York, NY	Executive Vice President, Fidelity National Title Insurance Company

During the period covered by this examination, the Company did not hold any meetings of its board of directors, but rather conducted all business through “Written Consent of the Board of Directors in Lieu of a Meeting.” Section 708(b) of the Business Corporation Law permits corporate action required or permitted by the board of directors or a committee thereof to be taken without a meeting if all members of the board or committee consent in writing to the adoption of a resolution authorizing the action. Section 3.3 of the Company’s by-laws states:

A regular meeting of the Board of Directors shall be held without notice other than by this Bylaw immediately after and at the same place as the annual meeting of the Shareholders. The Board of Directors may provide by resolution the time and place, either within or without the State of California, for the holding of additional regular meetings without other notice than such resolution.

Further, Section 3.6 of the Company’s by-laws states:

Unless otherwise restricted by the Charter or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if all members of the Board or Committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or Committee.

Although the Company’s by-laws permit action by written consent of the Board of Directors in lieu of a meeting, an informal opinion issued in March 1975 by the Department’s Office of General Counsel concluded that it would not be in the best interests of the people of the State of New York to allow insurance companies to make unfettered use of Section 708(b) of the Business Corporation Law. The Department concluded that Boards of Directors or Committees thereof should be permitted to utilize action by written consent only in limited situations and not in lieu of a regularly scheduled meeting and that, if permitted by a company’s by-laws, such by-laws must contain specific language of limitation, and must be based upon a showing of definite necessity.

It is recommended that the Company hold at least one regular meeting of its board of directors pursuant to Section 3.3 of its by-laws.

It is recommended that if the Company wishes to continue to act under the provisions of Section 708(b) of the Business Corporation Law that it amend its by-laws to contain specific language of limitation, which must be based upon a showing of definite necessity.

As of December 31, 2008 the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Mark O. Davey	President & Chief Executive Officer
Michael L. Gravelle	Executive Vice President, Legal & Corporate Secretary
Anthony J. Park	Executive Vice President & Chief Financial Officer
Paul I. Perez	Executive Vice President & Chief Compliance Officer
Peter T. Sadowski	Executive President & Chief Legal Officer
Alan L. Stinson	Executive Vice President

B. Territory and Plan of Operation

As of December 31, 2008, the Company was licensed to write business in all fifty states and the District of Columbia. Approximately 79% of the Company's direct writings in 2008 were concentrated in California, Florida, Louisiana, New Jersey, New York and Texas.

As of December 31, 2008, 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>Kind of Insurance</u>
3	Accident and health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
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 Company is also authorized to transact such workers' compensation insurance as may be incidental to coverages contemplated under paragraphs 20 and 21 of Section 1113 (a) of the New York Insurance Law, including insurances described in the Longshoremen's and Harbor Workers'



Compensation Act (Public Law No. 803, 69<sup>th</sup> Congress as amended; 33 USC Section 901 et seq. as amended).

Based upon 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 \$4,550,000.

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

<u>Calendar Year</u>	<u>New York State</u>	<u>Total Premiums Written</u>	<u>Premiums Written in New York as a Percentage of Total Premiums Written</u>
2004	\$3,214,511	\$246,891,104	1.30%
2005	\$3,399,445	\$261,319,805	1.30%
2006	\$4,047,611	\$318,486,556	1.27%
2007	\$4,468,702	\$361,392,964	1.24%
2008	\$10,766,903	\$453,563,769	2.37%

The Company principally writes flood business through its participation in the National Flood Insurance Program ("NFIP") "Write-Your-Own" program. The Company does not retain insurance risk on the program, as it cedes 100% to the NFIP. The Company's flood program is administered by affiliated insurance agency, Fidelity National Insurance Services ("FNIS"), which retains a fee for such service and the processing of claims. The Company also writes surety, homeowners, automobile dwelling, umbrella and recreational product lines of business through FNIS, utilizing leads and technology resources from the parent company's escrow and title operations. The Company is actively operating on a direct basis in fifteen states using FNIS direct mail marketing approach. FNIS sales penetration rate through this platform is approximately 20%. In addition to the direct mail marketing program, the group utilizes independent agents. All of the Company's business, with the exception of surety is ceded 100% to its immediate parent, Fidelity National Insurance Company.

#### C. Reinsurance

During the period covered by this examination, the Company did not assume any business.

The Company, as required by Florida statute, participates in the Florida Hurricane Catastrophe Fund administered by the State Board of Administration of the State of Florida (“SBA”), at the elected 90% participation level. As a participant, the SBA provides reimbursement to the Company for losses caused by any storm declared to be a hurricane by the National Hurricane Center.

The Company principally writes flood insurance business through its participation in the National Flood Insurance Program Write Your Own (“WYO”) Program, which is administered by the Federal Insurance Administration (“FIA”) of the Federal Emergency Management Agency (“FEMA”). Under the WYO Program, the Company offers flood insurance coverage to eligible applicants and is under the Standard Flood Insurance Policy designed by FIA. The Company does not retain insurance risk on the program, as it cedes 100% of the business to FEMA. The federal government is a guarantor of flood insurance coverage for WYO company policies and bears the insurance risk of loss. In exchange for the services provided under the WYO Program, the Company receives an expense allowance for policies written and claims processed.

Effective January 22, 2004, the Company entered into a 100% quota share reinsurance agreement with its affiliate, Fidelity National Insurance Company (“FNIC”). Under the terms of the agreement, FNIC agrees to assume 100% of all liability, including, but not limited to, losses and loss adjustment expenses, for all policies written by the Company with the exception of surety, flood and business underwritten by Bankers Insurance Company.

It was noted during the prior examination that the agreement had not been submitted to the Department for non-disapproval pursuant to Section 1505(d)(2) of the New York Insurance Law. The Company was made aware of this and submitted the agreement to the Department; however, the Department requested changes to the agreement before it could be non-disapproved. The Company withdrew the filing and as of the date of this report had not submitted an amended agreement incorporating the Department’s suggested changes. It is noted that the agreement remains in effect.

It is recommended that the Company submit its 100% quota share reinsurance agreement to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(2) of the New York Insurance Law.

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

Concurrent with the acquisition of the Company by Fidelity National Financial, Inc., the Company entered into a portfolio reinsurance and administration agreement (“Agreement”) with Bankers Insurance Company, effective January 3, 2003. The Company reinsured all net policy liabilities and premiums payable to the Company on non-flood and non-NFIP flood insurance policies underwritten by the Company at the date of the closing of the transaction. The agreement transferred initial reserves in the amount of \$3,153,042, for which the Company paid an initial consideration of \$3,153,042, since the consideration paid was equal to the reserves transferred, there was no initial gain on this contract at inception. As of the examination date, inception to date losses under this Agreement totaled \$3,529,818, with \$376,775 carried as a special surplus fund, designated as “Surplus from retroactive reinsurance ceded.” The Company reported a contra-liability in the amount of \$1,836 for outstanding losses related to this agreement as of the examination date. This reinsurance transaction was accounted for by the Company as a retroactive reinsurance agreement pursuant to the provisions of paragraphs 28 through 34 of NAIC Accounting Practices and Procedures Manual, Statements of Statutory Accounting Principles (“SSAP”) 62. Accordingly, all claims incurred and outstanding are treated as direct reserve, with no offset for ceded amounts.

In addition, the agreement also reinsures on a 100% quota share basis, both new and renewal policies written by the Company for a specified period of time going forward. The policies comprised all the lines of insurance business written by the Company with the exception of the flood policies issued under the National Flood Insurance Program administered by FEMA. This agreement was filed with the Department on October 31, 2002, pursuant to Section 1505(d)(3) of the New York Insurance Law and was approved by the Department on December 19, 2002.

It is the Company’s policy to obtain the appropriate collateral for its cessions to unauthorized reinsurers. Letters of credit and trust accounts obtained by the Company to take credit for cessions to unauthorized reinsurers were reviewed for compliance with Department Regulations 133 and 114, respectively. No material exceptions were noted.

All ceded reinsurance agreements in effect as of the examination date were reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

Examination review of the Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk

as set forth in SSAP No. 62. Representations were supported by appropriate risk transfer analyses and an attestation from the Company's chief executive officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in paragraphs 26 and 27 of SSAP No. 62.

D. Holding Company System

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

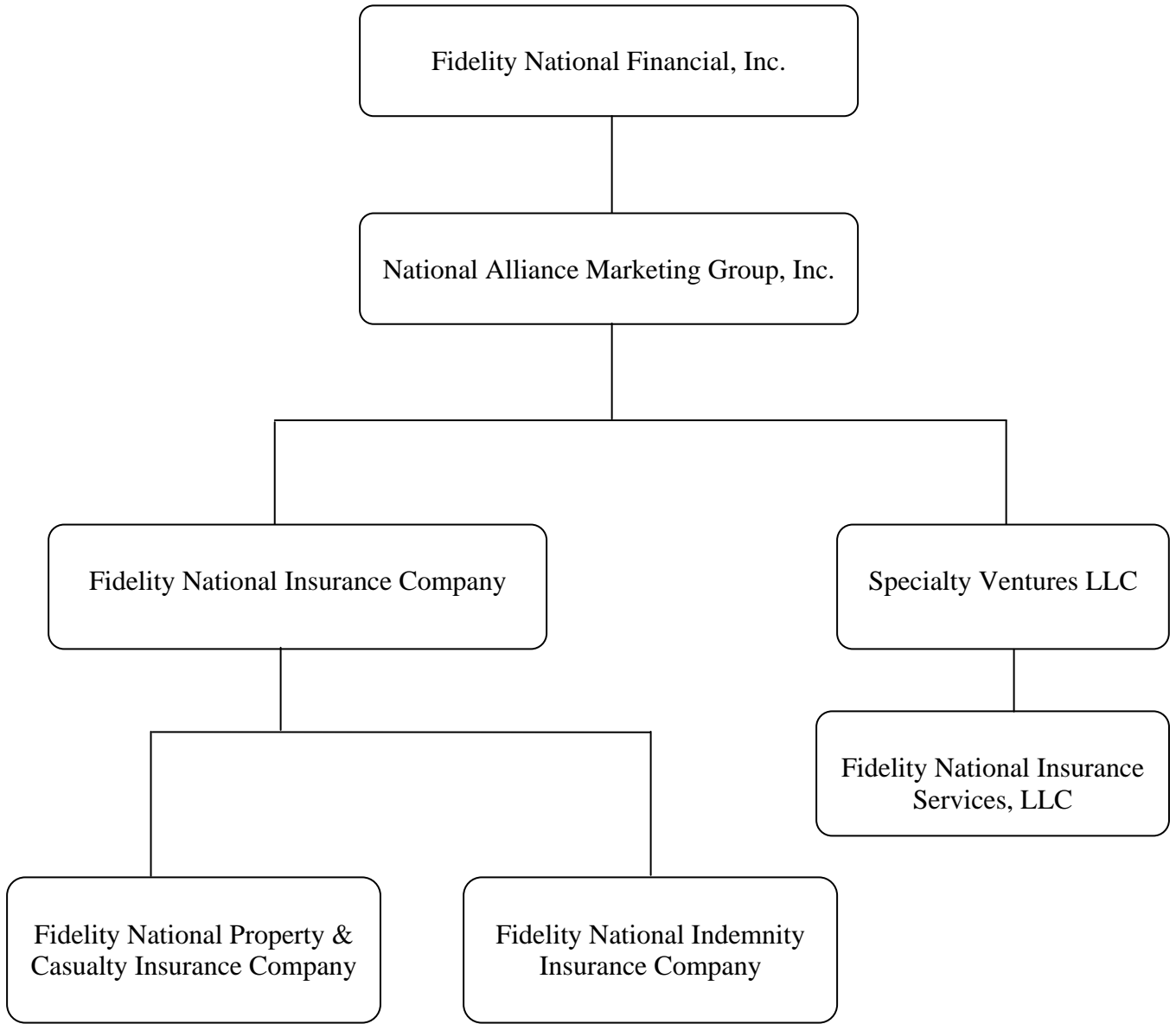
A review of the holding company registration statements filed with this Department indicated that such filings were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

Fidelity National Insurance Services, LLP, an affiliated agency procures 100% of the Company's insurance business with the exception of surety business pursuant to a general agency agreement thereby meeting the definition of a "controlling producer" as defined in Section 2.1(d) of Department Regulation 52-A.

Pursuant to Section 2.2(c)(2) of Department Regulation 52-A, on or before April 1 of each year, an annual report should be filed with the Department. It was noted that the Company failed to file the annual report for the period covered by this examination.

It is recommended that the Company file the required annual report pursuant to the provisions of Section 2.2(c)(2) of Department Regulation 52-A.

The following is an abridged chart of the holding company system at December 31, 2008:



At December 31, 2008, the Company was party to the following agreements with other members of its holding company system:

1. Master Services Agreement

Effective March 12, 2003, the Company entered into a master services agreement with its ultimate parent, Fidelity National Financial, Inc. (“FNF”) and certain subsidiary corporations or majority owned entities of FNF. 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 designated affiliated companies.

It was noted during the prior examination that the Master Services Agreement had not been submitted to the Department for non-disapproval pursuant to Section 1505(d)(3) of the New York Insurance Law. The Company was made aware of this and submitted the agreement to the Department; however, the Department requested changes to the agreement before it could be non-disapproved. The Company withdrew the filing and as of the date of this report had not submitted an amended agreement incorporating the Department’s suggested changes. It is noted that the agreement remains in effect. Additionally, it was noted that the agreement was subsequently amended to add additional participants to the agreement and the Company did not submit these amendments to the Department pursuant to Section 1505(d)(3).

It is recommended that the Company submit the Master Services Agreement, including all amendments thereto, to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.

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

2. Tax Sharing Agreement

Effective November 3, 2006, the Company entered into a tax allocation agreement with Fidelity National Financial, Inc., its ultimate parent, and several affiliated companies. The agreement was submitted to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law and Department Circular Letter No. 33 (1979) on September 14, 2006; however, the Department requested changes to the agreement before it could

be non-disapproved. The Company withdrew the filing and as of the date of this report had not submitted an amended agreement incorporating the Department's suggested changes. It is noted that the agreement remains in effect.

It is recommended that the Company submit the tax sharing agreement with the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law and Department Circular Letter No. 33 (1979).

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

### 3. Flood Insurance Full Service Vendor Agreement

Effective June 1, 2005, the Company entered into a flood insurance full service vendor agreement with its affiliated agency, Fidelity National Insurance Services ("FNIS"). Under the terms of the agreement, FNIS agrees to provide administrative and related services to the Company for the flood policies written by FNIS on behalf of the Company. The Company authorize FNIS to act for and on behalf of Company in matters required to properly supervise and conduct the handling of the aforesaid flood insurance business, including (but not by way of limitation) the authority to collect and remit premiums, process applications and other forms, issue policies, and process all flood related claims.

It was noted that the agreement was not filed with the Department prior to its implementation, which is contrary to provisions of Section 1505(d) of the New York Insurance Law. The agreement was filed with the Department on September 8, 2008.

### 4. General Agency Agreement

Effective September 1, 2008, the Company entered into a general agency agreement with its affiliated agency, Fidelity National Insurance Services. Under the terms of the agreement, the Company authorizes FNIS to solicit and bind the Company on applications for and to issue policies of insurance on such class or classes of business and in such territory or territories as indicated in this agreement.

It was noted that the agreement was not filed with the Department prior to its implementation, which is contrary to provisions of Section 1505(d) of the New York Insurance Law. The agreement

was filed with the Department on September 8, 2008 and approved by the Department on November 5, 2008.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2008 based upon the results of this examination:

Net premiums written to surplus as regards policyholders	7%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	16%
Premiums in course of collection to surplus as regards policyholders	70%

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 five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$13,367,148	68.39%
Other underwriting expenses incurred	(87,096,720)	(445.58)
Net underwriting gain	<u>93,276,209</u>	<u>477.20</u>
Premiums earned	<u>\$19,546,637</u>	<u>100.00%</u>

F. Accounts and Records

During the period under examination, the examiners noted the following deficiencies in the Company's system of account and records:

1. Transfer of Flood Policies

On July 1, 2008, the Company's immediate parent, Fidelity National Insurance Company, stopped participating as a Write Your Own Company Coordinator under the National Flood Insurance Program with the Federal Emergency Management Agency and transferred all of its flood



policies along with the corresponding unearned premium to the Company. The Company received verbal approval from FEMA to perform the transfer prior to July 1, 2008. The Company stated that the transfer resulted from the lack of a benefit from utilizing two NFIP carriers and the Company was chosen to continue writing under the NFIP since they was the larger flood carrier.

It was noted that the Company and FNIC executed the transfer without formalizing a written agreement or approval from the board of directors of both companies. In addition, the Company failed to notify the Department of its intention to enter into this transaction as required by Section 1505(d) of the New York Insurance Law. The Company also failed to report the transfer in its annual holding company registration statement (Form HC-1) filing as required by Section 80-1.4 (a) of Department Regulation 52.

It is recommended that the Company formalize a written agreement outlining the terms and conditions of the transfer and file such with the Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law.

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

It is recommended that the Company exercise due care in disclosing all business transactions in its Form HC-1 filings pursuant to the provisions of Section 80-1.4 (a) of Department Regulation 52.

Subsequent to the examination date, the Company's immediate parent, FNIC and its subsidiary, Fidelity National Indemnity Insurance Company ("FNIIC") applied and were accepted to participate under the NFIP with FEMA for the contract years 2009 and 2010. In October 2009, FNIC began writing flood policies again as a WYO Company Coordinator.

In addition, it was noted that the Company's flood policies were being transferred to affiliate, FNIIC at renewal. Under this arrangement, the Company's policies in Texas and Florida are being renewed under FNIIC. The Company indicated that this will continue until every Texas and Florida policy is moved (at renewal) to FNIIC.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2008 as determined by this examination and as reported by the Company.

<u>Assets</u>	<u>Assets</u>	Non-Admitted <u>Assets</u>	Net Admitted <u>Assets</u>
Bonds	\$ 69,665,132		\$ 69,665,132
Common stocks	13,085,422		13,085,422
Cash and short-term investments	177,317,408		177,317,408
Receivable for securities	90,994		90,994
Investment income due and accrued	925,470		925,470
Uncollected premiums and agents' balances in course of collection	1,703,938		1,703,938
Amounts recoverable from reinsurers	2,100,713		2,100,713
Net deferred tax asset	1,597,008	\$1,253,370	343,638
Receivable from parent, subsidiaries and affiliates	<u>108,286</u>	<u>                    </u>	<u>108,286</u>
Total assets	<u>\$266,594,371</u>	<u>\$1,253,370</u>	<u>\$265,341,001</u>

<u>Liabilities, Surplus and Other Funds</u>	<u>Amount</u>
Losses	\$ 3,265,281
Loss adjustment expenses	1,836
Commissions payable, contingent commissions and other similar charges	6,105,499
Other expenses (excluding taxes, licenses and fees)	249,177
Taxes, licenses and fees	4,410,474
Current federal and foreign income taxes	3,874,921
Ceded reinsurance premiums payable	163,352,663
Retroactive reinsurance reserves ceded	(1,836)
Payable – pledged securities collateral	<u>1,755,415</u>
Total liabilities	\$183,013,430
<u>Surplus and Other Funds</u>	
Surplus from retroactive reinsurance ceded	\$ 376,775
Common capital stock	3,465,564
Gross paid-in and contributed surplus	2,384,436
Unassigned funds (surplus)	<u>76,100,796</u>
Surplus as regards policyholders	<u>82,327,571</u>
Total liabilities, surplus and other funds	<u>\$265,341,001</u>

NOTE: The Internal Revenue Service has completed its audits of the Company's consolidated Federal Income Tax returns through tax year 2008. 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. The Internal Revenue Service has not yet begun to audit federal income tax returns covering tax year 2009. 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 \$68,898,619 during the five-year examination period January 1, 2004, through December 31, 2008, detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$ 19,546,637
Deductions:		
Losses incurred	\$13,046,216	
Loss adjustment expenses incurred	320,932	
Other underwriting expenses incurred	<u>(87,096,720)</u>	
Total underwriting deductions		<u>(73,729,572)</u>
Net underwriting gain or (loss)		\$ 93,276,209

Investment Income

Net investment income earned	\$11,167,831	
Net realized capital gains or (losses)	<u>(645,048)</u>	
Net investment gain or (loss)		10,522,783

Other Income

Miscellaneous income	<u>\$266,407</u>	
Total other income		<u>266,407</u>
Net income before dividends, after capital gains tax and before all federal and foreign income taxes		\$104,065,399
Dividends to policyholders		<u>0</u>
Net income after dividends, after capital gains tax and before all federal and foreign income taxes		\$104,065,399
Federal and foreign income taxes incurred		<u>35,457,160</u>
Net income		\$ <u>68,608,239</u>

Capital and Surplus Account

Surplus as regards policyholders per report on examination as of December 31, 2003			\$13,428,952
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income or (loss)	\$68,608,239		
Change in deferred income tax	1,543,750		
Change in non-admitted assets	<u>0</u>	<u>\$1,253,370</u>	
Total gains and losses	<u>\$70,151,989</u>	<u>\$1,253,370</u>	<u>\$68,898,619</u>
Surplus as regards policyholders per report on examination as of December 31, 2008			<u>\$82,327,571</u>

**4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability of \$3,267,117 is the same as the amount reported by the Company as of the examination date. 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.

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

The prior report on examination contained ten recommendations as follows (item letters and page numbers refer to that of the prior report):

<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
The Company has complied with this recommendation.	
ii. It is recommended that all directors sign an annual conflict of interest statement.	5
The Company has complied with this recommendation.	

<u>ITEM</u>	<u>PAGE NO.</u>
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
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
ii. It is recommended that the Company obtain a trust agreement that includes the required termination clause.	9
The business covered by the trust agreement in question is in runoff and the amount in the trust is no longer material. Therefore, it is no longer deemed necessary for the Company to amend the trust agreement.	
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
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
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
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
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
The Company has complied with this recommendation.	
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
The Company has complied with this recommendation.	
ii. It is recommended that the Company comply with the provisions set forth in Part 89.2 of Department Regulation 118.	13
The Company has complied with this recommendation.	

<u>ITEM</u>	<u>PAGE NO.</u>
iii. It is recommended that the Company procure a custodial agreement in compliance with NAIC guidelines.	14

The Company has complied with this recommendation.

## **6. SUMMARY OF COMMENTS AND RECOMMENDATION**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It is recommended that the Company hold at least one regular meeting of its board of directors pursuant to Section 3.3 of its by-laws.	5
ii. It is recommended that if the Company wishes to continue to act under the provisions of Section 708(b) of the Business Corporation Law that it amend its by-laws to contain specific language of limitation, which must be based upon a showing of definite necessity.	5
B. <u>Reinsurance</u>	
i. It is recommended that the Company submit its 100% quota share reinsurance agreement to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(2) of the New York Insurance Law.	8
ii. It is recommended that the Company adhere to the notification requirements set forth in Section 1505(d)(2) of the New York Insurance Law.	8
C. <u>Holding Company System</u>	
i. It is recommended that the Company file the required annual report pursuant to the provisions of Section 2.2(c)(2) of Department Regulation 52-A.	10
ii. It is recommended that the Company submit the Master Services Agreement, including all amendments thereto, to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.	12
iii. It is recommended that the Company adhere to the notification requirements set forth in Section 1505(d)(3) of the New York Insurance Law.	12
iv. It is recommended that the Company submit the tax sharing agreement with the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law and Department Circular Letter No. 33 (1979).	13

ITEMPAGE NO.

- v. It is recommended that the Company adhere to the notification requirements set forth in Department Circular Letter No. 33 (1979). 13
- D. Accounts and Records
  - i. It is recommended that the Company formalize a written agreement outlining the terms and conditions of the transfer and file such with the Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law. 15
  - ii. It is recommended that the Company adhere to the notification requirements set forth in Section 1505(d) of the New York Insurance Law. 15
  - iii. It is recommended that the Company exercise due care in disclosing all business transactions in its Form HC-1 filings pursuant to the provisions of Section 80-1.4 (a) of Department Regulation 52. 15



Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Jimmie Newsome  
Associate Insurance Examiner

STATE OF NEW YORK    )  
                                  ) ss.  
COUNTY OF NEW YORK )

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

\_\_\_\_\_/s/\_\_\_\_\_  
Jimmie Newsome

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 2010.

Appointment No. 30355

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Jimmie Newsome**

*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 10th day of June, 2009*



A handwritten signature in black ink that reads "Eric R. Dinallo".

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ERIC R. DINALLO  
Superintendent of Insurance