

SUFFOLK, SS.

LINDA L. RUTHARDT, as she is  
COMMISSIONER OF INSURANCE of the  
COMMONWEALTH OF MASSACHUSETTS,

NEW ENGLAND FIDELITY INSURANCE  
COMPANY,

2. The Supreme Judicial Court has exclusive and original jurisdiction of this action pursuant to G.L. c. 175, § 180C.

3. Pursuant to G.L. c. 175, § 3A, the plaintiff Commissioner is charged with the administration and enforcement of the insurance laws of the Commonwealth.

4. The defendant New England Fidelity Insurance Company is a domestic stock insurance company organized under the laws of the Commonwealth. New England Fidelity has its principal place of business in West Springfield, Massachusetts, and is a wholly owned subsidiary of LADD Financial Group, Inc. ("LADD"), a Massachusetts general business corporation. New England Fidelity is licensed and does business only in Massachusetts.

5. On September 20, 2000, the Commissioner filed with the Court a Verified Complaint and Request for Appointment of Receiver with respect to New England Fidelity pursuant to G.L. c. 175, § 180B. The Court issued on that date an Injunction and Order Appointing Receiver, which among other things, appointed the Commissioner as Receiver of New England Fidelity for purposes of conservation and rehabilitation.

6. The Commissioner has been conducting an examination of New England Fidelity's financial condition pursuant to G.L. c. 175, § 4, and has been monitoring its financial condition pursuant to an Administrative Supervision Order dated May 22, 2000.

7. New England Fidelity has not filed audited financial statements for the year ending December 31, 1999.

8. As described in the Verified Complaint, New England Fidelity's June 30, 2000 unaudited financial statement was filed with the Commissioner on August 14, 2000 and reports at page 3 line 27 a reduction in "surplus as regards policyholders" (the net worth of an insurer) from \$6,078,961 at December 31, 1999 to \$2,712,986 at June 30, 2000—a reduction of over 55% during the first six months of 2000. A copy of the June 30, 2000 financial statement is attached as Exhibit "A".

9. Operating losses have continued in July and August. In addition, commutation of the reinsurance agreement described in ¶ 9 of the Verified Complaint further reduced surplus in August.

10. Approximately \$2.75 million of New England Fidelity's assets reported as of June 30, 2000, consist of funds on deposit with Springfield Institution for Savings, a division of Family Bank, FSB ("Bank"). Those funds are proceeds of a loan from the Bank to LADD pursuant to a Credit Agreement between LADD and the Bank dated March 18, 1999. The Credit Agreement permitted LADD to draw down advances on the loan solely for capital contributions to New England Fidelity. As security for the loan, LADD pledged 51% of the stock of New England Fidelity pursuant to a related Pledge Agreement. The transaction required approval of the Division of Insurance before the loan

was consummated, and that approval was obtained, subject to the condition that the Bank complete the "Form A" process required by G.L. c. 175, § 206B, before it exercised control over New England Fidelity. A copy of the Division of Insurance's approval is attached as Exhibit "B".

11. LADD drew down on the loan and made capital contributions to New England Fidelity in the amount of \$2.75 million. These amounts were reported as assets of New England Fidelity on its financial statements. However, the Commissioner has recently learned that New England Fidelity deposited the funds into an account with the Bank pursuant to an Investment Management Agreement. The Investment Management Agreement was neither submitted to nor approved by the Division of Insurance, as it should have been. That agreement contains a representation by New England Fidelity that "the Account is subject to restrictions on withdrawals of assets except for earnings on investments so long as the Credit Agreement as disclosed in Section 12, supra, remains outstanding." A copy of the Investment Management Agreement is attached as Exhibit "C".

12. A demand has been made on the Bank for release of the \$2.75 million of New England Fidelity funds. On September 28, 2000, the Bank advised that it would not transfer the funds it holds pursuant to the Investment Management Agreement. Although the Receiver disputes the Bank's right to withhold these funds,

it is clear that the approximately \$2.75 million is presently unavailable to pay New England Fidelity's claims and other obligations. New England Fidelity currently has approximately \$6.3 million of cash and invested assets which compares to its reported liability for claims under policies of insurance and unearned premium (net of premium receivables) of approximately \$11.1 million. Upon entry of an order finding New England Fidelity insolvent and directing its liquidation the Massachusetts Insurers Insolvency Fund (the "Fund") will be triggered. The Fund will then assume the obligation to adjust and pay covered claims as well as fund the return of unearned premium to policyholders.

13. In light of the foregoing adjustments, New England Fidelity's present surplus is estimated to be a negative \$2.6 million. The Commissioner has consequently determined that New England Fidelity, a domestic company which is the subject of a rehabilitation proceeding under G.L. c. 175, § 180B, is insolvent and should be liquidated within the meaning of G.L. c. 175, § 180C. Therefore, cause exists to order the liquidation of New England Fidelity, to appoint the Commissioner as Permanent Receiver of New England Fidelity pursuant to G.L. c. 175, § 180C and thereby trigger the application of the Fund to New England Fidelity obligations covered under the Fund's enabling statute, G.L. c. 175D.

14. The Commissioner requests that the Court appoint Kevin J. McAdoo as Special Deputy Receiver for purposes of the liquidation, pursuant to G.L. c. 175, § 179.

WHEREFORE, the Commissioner prays that this Court:

- (1) Set a date for a hearing on this petition pursuant to G.L. c. 175, § 180C, and issue an order of notice in the form submitted herewith;
- (2) After due notice and hearing, find that New England Fidelity is insolvent within the meaning of G.L. c. 175, § 180C, and issue an order in the form submitted herewith directing the liquidation of New England Fidelity and appointing the Commissioner as Permanent Receiver of New England Fidelity pursuant to G.L. c. 175, § 180C, to take possession of the property and effects of New England Fidelity, to settle its affairs and to distribute its assets subject to such rules and orders as this Court or a Justice thereof may prescribe; and,
- (3) Grant such other and further relief as may be appropriate.

LINDA L. RUTHARDT  
COMMISSIONER OF INSURANCE  
By her attorney,  
THOMAS F. REILLY  
Attorney General

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Date: October \_\_, 2000

VERIFICATION

I, Linda L. Ruthardt, state that I am the duly qualified Commissioner of Insurance of the Commonwealth of Massachusetts, and that I have read the allegations set forth in the Petition for Order Directing Liquidation of New England Fidelity Insurance Company and Appointment of a Permanent Receiver, and that they are true to the best of my knowledge, information and belief.

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Linda L. Ruthardt  
Commissioner of Insurance

Date: October \_\_, 2000