

SUFFOLK, SS.

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

V.

Defendant .

1. Linda L. Ruthardt, as she is the Commissioner of Insurance of the Commonwealth of Massachusetts (the "Commissioner"), by and through Thomas F. Reilly, Attorney General, brings this proceeding pursuant to G.L. c. 175, § 180B, the Commissioner seeking her appointment as Receiver for the purposes of conservation and rehabilitation of New England Fidelity Insurance Company ("New England Fidelity") and an injunction restraining New England Fidelity from further proceeding with its business, except at her direction, and barring actions by third parties that may interfere with the conservation and rehabilitation of New England Fidelity.

SUBJECT MATTER JURISDICTION

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

PARTIES AND RELATED ENTITIES

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.

STATEMENT OF FACTS

5. New England Fidelity is authorized to issue insurance policies pursuant to, among others, clauses 1, 2, 4, 5, 6, 7, 8, 9, 12, 13 and 17, of G.L. c. 175, § 47, G.L. c. 175, §§ 54B, 54C, 54D, 54E, and 54F. Generally, these clauses refer to property and casualty lines of insurance. New England Fidelity is licensed only by the Commonwealth of Massachusetts and writes business only in the Commonwealth.

6. New England Fidelity's audited financial statements for the period ending December 31, 1999 were due on June 1, 2000 as required by 211 CMR § 25.01, but have not been filed.

7. 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.

8. New England Fidelity's June 30, 2000 unaudited financial statement was filed with the Commissioner on August 14, 2000 and reports 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 2000. The minimum capital and surplus mandated by G.L. c. 175, § 48 for New England Fidelity is \$5.75 million.

9. Based upon the Commissioner's examination of New England Fidelity under G.L. c. 175, § 4, she has concluded that material adjustments to its financial statements are required. New England Fidelity's financial reinsurance agreement with the AIG Insurance Companies ("AIG") does not reflect an actual transfer of risk to AIG and may therefore not be given credit as a matter of statutory accounting principles, thereby reducing reported surplus by approximately \$3.2 million. Therefore, New England Fidelity's reported June 30, 2000 surplus, which is already below the minimum level set by law, should be further reduced by \$3.2 million which yields a negative surplus of approximately \$500,000 as of June 30, 2000.

10. New England Fidelity recently reported an operating loss of over \$500,000 in July, 2000.

11. New England Fidelity's property reinsurance coverage was cancelled effective January 1, 2000 thereby leaving New England Fidelity exposed to catastrophic loss.

12. In the absence of audited financial statements, the very significant operating loss reported during 2000, the cancellation of New England Fidelity's property reinsurance coverage, the reported June 30, 2000 surplus being below the minimum level set by law, the requisite adjustments to the reported June 30, 2000 surplus yielding a negative surplus of \$500,000, and the July 2000 operating loss of over \$500,000, the Commissioner has concluded that New England Fidelity's financial condition is hazardous within the meaning of G.L. c. 175, § 6.

13. For the reasons described above the Commissioner requests that the Court authorize the cancellation of all of New England Fidelity's policies, in the form attached hereto as Exhibit "A", with ninety days advance notice to such policyholders.

14. It is in the best interest of the public and the policyholders and creditors of New England Fidelity for the Court to appoint the Commissioner as Receiver of New England Fidelity for the purposes of conservation and rehabilitation, and to issue an injunction pursuant to G.L. c. 175, § 180B

enjoining New England Fidelity, its directors, officers, employees and agents from further conducting or operating the business of New England Fidelity, except upon the order of the Receiver or Special Deputy Receiver. The condition of New England Fidelity as described above requires the appointment of a Receiver to further monitor its condition and management, take control of its property and assets, oversee its continued operation for the purpose of conserving its assets and rehabilitating them, and to take such measures as may be proper to eliminate the causes and conditions noted herein. The Commissioner proposes that the Receiver report to the Court within thirty days with recommendations for further action.

15. Pursuant to G. L. c. 175 § 180D, the Commissioner will be required to give notice of her appointment to New England Fidelity's policyholders, in a form prescribed by the Court. A proposed form of such notice to policyholders is attached as Exhibit "B".

16. The Commissioner requests that the Court appoint Kevin J. McAdoo, who has acted as New England Fidelity's Administrative Supervisor, as Special Deputy Receiver, pursuant to G.L. c. 175, § 179. The Commissioner further requests, pursuant to G.L. c. 175, § 179 and § 180B, that she be authorized to continue to employ special counsel and to fix the compensation of said special counsel, and to continue to pay

said compensation and all other necessary expenses of taking possession of New England Fidelity and of conducting this proceeding, out of the funds or assets of New England Fidelity.

17. Upon entry of the order appointing receiver for the purpose of conservation and rehabilitation herein requested, litigation against New England Fidelity, its directors, officers, employees and agents, or the Commissioner, as Receiver, in courts other than this Court is possible. The continuation, commencement or prosecution of such litigation or other proceedings in other courts or forums, and the time and expense involved in defending such litigation or proceedings, could interfere with the receivership proceeding in this Court and the orderly resolution of New England Fidelity's difficulties. Litigation against New England Fidelity, its directors, officers, employees and agents, or the Commissioner, as Receiver, conducted outside of a receivership proceeding in this Court, could materially hinder the discharge of the Receiver's responsibilities under G.L. c. 175, and frustrate the purpose and policies of the Commonwealth as expressed in G.L. c. 175, § 180B. Since such actions or proceedings would interfere with a receivership proceeding, they should be enjoined.

18. Litigation or other proceedings affecting the interests of New England Fidelity or the Commissioner, as

Receiver, may be instituted, prosecuted or continued in jurisdictions outside Massachusetts. Moreover, the Commissioner, as Receiver, may find it necessary or desirable to institute or defend litigation or other proceedings in jurisdictions outside Massachusetts, or to take other action requiring legal attention in jurisdictions outside Massachusetts, to protect New England Fidelity and its interests or otherwise to discharge the Receiver's responsibilities under G.L. c. 175. Accordingly, the Commissioner may need to employ attorneys or to continue the employment of attorneys previously employed by New England Fidelity or the Commissioner, as special or local counsel to represent the interests of New England Fidelity or the Commissioner, as Receiver, in the proper defense, prosecution or other disposition of litigation, other proceedings and other legal matters, all upon such terms and conditions as the Commissioner, as Receiver, considers necessary in accordance with G.L. c. 175, and to pay for said services out of the funds or assets of New England Fidelity.

19. Pending submission to the Court of any further proposed plans or requests for appointment, and pursuant to G.L. c. 175, § 180B, the Commissioner, in order to perform her duties as Receiver, requires authorization to delegate such authority to and to pay such appropriate personnel as the Commissioner, as Receiver, deems reasonably necessary to carry out the operations

of New England Fidelity in conservation and rehabilitation, subject to compliance with the provisions of G.L. c. 175, the supervision of the Commissioner, as Receiver, and subject to further orders of the Court.

STATEMENT OF CLAIMS

20. The allegations contained in Paragraphs 1 through 19 of this Verified Complaint Requesting Appointment of Receiver are reasserted as if set forth herein.

21. The foregoing allegations demonstrate that New England Fidelity's continued operation is hazardous within the meaning of G.L. c. 175, § 6. Therefore, grounds exist under G.L. c. 175, § 180B, for the granting of the injunctive relief requested, and for the appointment of the Commissioner as Receiver for the purposes of conservation and rehabilitation of New England Fidelity.

RELIEF REQUESTED

WHEREFORE, the Commissioner prays that this Court:

- (1) Enter an Injunction and Order Appointing Receiver in the form submitted herewith: (i) appointing the Commissioner and her successors in office as the Receiver of New England Fidelity for the purposes of conservation and rehabilitation pursuant to G.L. c. 175, § 180B, (ii) directing the Commissioner, as Receiver, to take immediate control of the property and assets of New England Fidelity and to administer them under the general supervision of this Court, (iii) approving the cancellation of New England Fidelity's policies of insurance, the form of notice to policyholders of the cancellation, and the form of notice to policyholders of the appointment of the Receiver, and (iv) directing the Receiver to report to the Court within thirty days with recommendations for further action; and,
- (2) Grant such other relief as may be appropriate.

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

J. David Leslie BBO # 294820
Special Assistant Attorney General
Eric A. Smith BBO # 546244
Rackemann, Sawyer & Brewster
One Financial Center
Boston, Massachusetts 02111
(617) 542-2300

Date: September __, 2000

NO OBJECTION TO ENTRY OF PROPOSED INJUNCTION
AND ORDER APPOINTING RECEIVER
New England Fidelity Insurance Company

By: _____

Title:

Date: September __, 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 Verified Complaint Requesting Appointment of Receiver, and that they are true to the best of my knowledge, information and belief.

Linda L. Ruthardt
Commissioner of Insurance

Date: September __, 2000