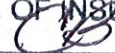


MAY 7 2002

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

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In the Matter of:	)	Docket No. 02A-094-INS
	)	
<b>FIDELITY AND GUARANTY LIFE</b>	)	
<b>INSURANCE COMPANY,</b>	)	<b>CONSENT ORDER</b>
NAIC # 63274;	)	
	)	
Respondent.	)	

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Fidelity and Guaranty Life Insurance Company ("F&G"). The Report of the Examination of the Market Conduct Affairs of F&G, dated March 12, 2001 alleges that F&G has violated A.R.S. §§ 20-444, 20-448.01, 20-446.03, 20-461, 20-1233, 20-2110, and A.A.C. R20-6-215, R20-6-801, and R20-6-1203.

F&G wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

**FINDINGS OF FACT**

1. F&G is authorized to transact life insurance and annuity business pursuant to a Certificate of Authority issued by the Director.
2. The Examiners were authorized by the Director to conduct a market conduct examination of F&G. The on-site examination covered the time period from January 1, 2000 through December 31, 2000, and was concluded on March 12, 2001. Based on the findings the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Fidelity and Guaranty Life Insurance Company" dated March 12, 2001.

1           3.     The Examiners reviewed all of the policy forms used by the Company  
2 during the time frame of the examination and found as follows:

3           a.     F&G used two annuity application forms (FGL 3938 (2-94) and  
4 FGLI 4587 (04-2000)) that failed to contain the notice that upon written request, an  
5 insurer is required to provide within a reasonable time factual information regarding the  
6 benefits and provisions of the annuity contract to the contract holder, and that if for any  
7 reason the contract holder is not satisfied with the annuity contract the contract holder  
8 may return the annuity contract within ten days after the contract is delivered and  
9 receive a refund of all monies paid. These noncompliant forms were also found in ten  
10 of 50 annuity files reviewed.

11          b.     F&G used two claim forms (FGLI 4462 0499 and FGL CL1 (2-91))  
12 that failed to contain a compliant fraud warning notice.

13          c.     F&G used two HIV-related test consent forms (FGLI 3452 (8-97)  
14 AZ and FGL 3452 (10-90) AZ) that were not filed nor approved by the Director. These  
15 noncompliant forms were found in 15 of 15 files where an HIV-related test was  
16 performed.

17           4.     The Examiners reviewed 37 pieces of annuity advertising and 12 pieces  
18 of life insurance advertising and found as follows:

19          a.     F&G used two multiple annuity brochures (ADLF 2878 0599 and  
20 ADLF 3118 2000) that misrepresented the inflation rate from 1987 to 1999. The  
21 illustrated rate over that period was 176%, when in fact the inflation rate over that  
22 period was 146%.

23          b.     F&G used nine annuity sales brochures (ADLF 2625 1198  
24 Wealthmaster 4, ADLF 2835 0399 AZ Power Select Annuity, ADLF 2877 0799  
25 Prosperity series, ADLF 2878 0599 Prosperity series, ADLF 2983 04-2000 Prosperity





1 5. F&G violated A.R.S. § 20-2110(A) by failing to provide applicants with the  
2 specific reason for the adverse underwriting decision.

3 6. F&G violated A.A.C. R20-6-215(F)(3)(f) by:

4 a. Failing to maintain a copy of the Policy Summary.

5 b. Failing to maintain a Replacement Register.

6 7. F&G violated A.A.C. R20-6-215(E)(2)(a) by failing to use a compliant  
7 Notice of Replacement of Life Insurance.

8 8. F&G violated A.A.C. R20-6-215(F)(3)(c) by failing to notify the existing  
9 insurer within three working days.

10 9. F&G violated A.A.C. R20-6-215(F)(3)(d) by:

11 a. Failing to delay the issuance of a policy for 20 days.

12 b. Failing to send a Policy Summary to the existing insurer.

13 10. F&G violated A.A.C. R20-6-215(F)(2)(b) by failing to include a statement ,  
14 signed by the agent regarding whether he or she knew replacement was or might be  
15 involved in the transaction, with or part of the application.

16 11. F&G violated A.A.C. R20-6-801(E)(1) and A.R.S. § 20-461(A)(2) by failing  
17 to acknowledge the receipt of a claim within ten working days.

18 12. F&G violated A.A.C. R20-6-801(C) by failing to maintain claim files in  
19 such detail that pertinent events and the dates of such events could be reconstructed.

20 13. Grounds exist for the entry of the following Order in accordance with  
21 A.R.S. §§ 20-220, 20-456 and 20-2117.

22 **ORDER**

23 **IT IS HEREBY ORDERED THAT:**

24 1. Fidelity and Guaranty Life Insurance Company shall cease and desist  
25 from committing the following practices:



1 a. Using non-compliant annuity applications, claim forms, and HIV-  
2 related test consent forms;

3 b. Using advertising materials that are untrue, deceptive and  
4 misleading regarding the business of insurance;

5 c. Failing to provide applicants with the specific reason for an  
6 adverse underwriting decision;

7 d. Failing to maintain a copy of the Policy Summary in replacement  
8 files;

9 e. Failing to maintain a replacement register;

10 f. Using a compliant Notice of Replacement of Life Insurance;

11 g. Failing to send a Notice of Replacement of Life Insurance within  
12 three working days;

13 h. Failing to delay the issuance of a replacement policy for 20 days;

14 i. Failing to send a Policy Summary to the existing insurer;

15 j. Failing to require that a statement from the agent regarding  
16 whether he or she knew that replacement was or might be involved in the transaction,  
17 be included with the application or be part of the application;

18 k. Failing to acknowledge the receipt of a claim within ten working  
19 days;

20 l. Failing to maintain claim files such that pertinent events and the  
21 dates of those events can be reconstructed.

22 2. Within 90 days of the filed date of this Order, F&G shall submit to the  
23 Arizona Department of Insurance, for approval, evidence that corrections have been  
24 implemented and communicated to the appropriate personnel, regarding the issues  
25 outlined in Paragraph 1 of the Order section of this Consent Order. Evidence of

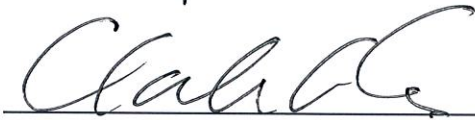
1 corrective action and communication thereof includes, but is not limited to, memos,  
2 bulletins, E-mails, correspondence, procedures manuals, print screens, and training  
3 materials.

4 3. The Department shall be permitted, through authorized representatives,  
5 to verify that F&G has complied with all provisions of this Order.

6 4. F&G shall pay a civil penalty of \$17,500 to the Director for deposit in the  
7 State General Fund in accordance with A.R.S. §§ 20-220(B), 20-456, and 20-2117.  
8 The civil penalty shall be provided to the Market Conduct Examinations Section of the  
9 Department prior to the filing of this Order.

10 5. The Report of Examination of the Market Conduct Affairs of Fidelity and  
11 Guaranty Life Insurance Company as of March 12, 2001, including the letter submitted  
12 in response to the Report of Examination, shall be filed with the Department upon the  
13 filing of this Order.

14 DATED at Phoenix, Arizona this 7<sup>th</sup> day of May, 2002.

15  
16 

17 Charles R. Cohen  
18 Director of Insurance

1 **CONSENT TO ORDER**

2 1. Fidelity and Guaranty Life Insurance Company has reviewed the  
3 foregoing Order.

4 2. Fidelity and Guaranty Life Insurance Company admits the jurisdiction of  
5 the Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and  
6 consents to the entry of the Conclusions of Law and Order.

7 3. Fidelity and Guaranty Life Insurance Company is aware of the right to a  
8 hearing, at which it may be represented by counsel, present evidence and cross-  
9 examine witnesses. Fidelity and Guaranty Life Insurance Company irrevocably waives  
10 the right to such notice and hearing and to any court appeals related to this Order.

11 4. Fidelity and Guaranty Life Insurance Company states that no promise of  
12 any kind or nature whatsoever was made to it to induce it to enter into this Consent  
13 Order and that it has entered into this Consent Order voluntarily.

14 5. Fidelity and Guaranty Life Insurance Company acknowledges that the  
15 acceptance of this Order by the Director of the Arizona Department of Insurance is  
16 solely for the purpose of settling this matter and does not preclude any other agency or  
17 officer of this state or its subdivisions or any other person from instituting proceedings,  
18 whether civil, criminal, or administrative, as may be appropriate now or in the future.

19 6. Bruce H. Saul, who holds the office of  
20 Senior Vice President of Fidelity and Guaranty Life Insurance Company, is  
21 authorized to enter into this Order for it and on its behalf.

22  
23 **FIDELITY AND GUARANTY LIFE INSURANCE COMPANY**

24  
25 April 30, 2002  
Date

By Bruce H. Saul  
*Senior Vice President*



1 COPY of the foregoing mailed/delivered  
2 this 7<sup>th</sup> day of May, 2002, to:

3 Sarah Begley  
4 Deputy Director  
5 Mary Butterfield  
6 Assistant Director  
7 Consumer Affairs Division  
8 Paul J. Hogan  
9 Chief Market Conduct Examiner  
10 Deloris E. Williamson  
11 Assistant Director  
12 Rates & Regulations Division  
13 Steve Ferguson  
14 Assistant Director  
15 Financial Affairs Division  
16 Nancy Howse  
17 Chief Financial Examiner  
18 Alexandra Schafer  
19 Assistant Director  
20 Life and Health Division  
21 Terry L. Cooper  
22 Fraud Unit Chief

23  
24 DEPARTMENT OF INSURANCE  
25 2910 North 44th Street, Second Floor  
Phoenix, AZ 85018

Wayne M. Smiley, Market Conduct Officer  
Fidelity and Guaranty Life Insurance Company  
1001 Fleet Street, 7<sup>th</sup> Floor  
Baltimore, MD 21202

