

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of NEW ENGLAND)	
INTERNATIONAL SURETY, INC.,)	Docket No. 2813-EO
TECHNICAL SUPPORT SERVICES, INC.,)	
FRED FOSTER and JOSEPH AGUDA)	

EMERGENCY ORDER

Pursuant to the authority granted the Commissioner of Insurance by K.S.A. 77-536, K.S.A. 40-2,125, K.S.A. 40-2701, et seq., and K.S.A. 40-2001, et seq., Kathleen Sebelius, the duly elected, qualified, and acting Commissioner of Insurance of the State of Kansas, hereby makes the following findings of fact, conclusions of law, states policy reasons, and orders, as follows:

Findings of Fact

New England International Surety, Inc.

1. New England International Surety, Inc. (hereafter Surety) is a Panamanian corporation whose principle place of business is in Geneva, Switzerland.
2. Surety may be served by serving its resident agent in charge BSMWL, Inc., 9401 Indian Creek Parkway, Overland Park, Kansas, 66210.
3. Surety has represented itself to the public through its internet web page and other publications that it is admitted to do the business of surety and insurance in the state of Kansas, which is not and has never been a true statement. (See Affidavit and Certificate of Kathleen Sebelius, Commissioner of Insurance of the State of Kansas attached hereto as Exhibit A).

4. Surety filed with the Secretary of State of Kansas as a foreign corporation to enter into commercial guaranties and any other lawful business in the state of Kansas commencing April 1, 1998.

5. On October 5, 1998, Surety issued its Guarantee Agreement to Technical Support Services, Inc., (hereafter Technical Support), a Kansas corporation, guaranteeing payment of interest and repayment of principal to lenders to enhance the marketability of Technical Support's promissory notes up to \$3,292,500 U.S. dollars.

6. Surety issued a guarantee agreement under the terms of a promissory note in the amount of \$300,000 to Edward Charles Frye, Trustee, a Texas resident, guaranteeing payment of interest and repayment of the principal amount of Frye's loan to Technical Support should it default on such payments.

7. Technical Support has defaulted under the terms of the promissory note issued to Edward Charles Frye, Trustee, and he has filed notice of claim against Surety with Joseph Aguda, U.S. Agent, New England International Surety, Inc., 5200 Elysian Fields Avenue, New Orleans, Louisiana, 70122, pursuant to the terms of the Guarantee Agreement.

8. Surety has not performed under the Guarantee Agreement and has not paid lender Frye either the interest or principal as required by said Agreement.

Technical Support Services, Inc. and Fred Foster

9. Technical Support Services, Inc., (hereafter "TSS") is a non-insurance corporation organized and existing under and by virtue of the laws of the State of Kansas, with its principal place of business at 1700 Avenue F, Dodge City, Kansas, 67801.

10. Fred J. Foster (hereafter "Foster") is a resident of Dodge City, Kansas, who was and is Chief Operating Officer of TSS and its sole officer, director and shareholder.

11. On November 24, 1998, at Dodge City, Kansas, TSS through and by Foster, issued a nine month Promissory Note maturing August 24, 1999, to Edward C. Frye, Trustee, (hereinafter "Holder") promising to repay to Edward C. Frye, Trustee, as holder of said note, the principal sum of \$300,000 together with monthly payments of interest on the outstanding principal balance in the amount of 12% simple interest per annum.

12. On November 24, 1998, Foster and TSS mailed to Edward C. Frye at his address in Las Vegas, Nevada, Holder's copy of the Promissory Note, a copy of the master guaranty agreement issued by Surety to TSS guaranteeing payment should TSS default under the terms of the promissory note and a receipt for funds transferred by Holder to TSS.

13. On January 12, 1999, Foster and TSS mailed to Edward C. Frye at his address in Las Vegas, Nevada, Holder's bond Certificate issued by New England International Surety, Inc. which guaranteed payments to Holder required by the Promissory Note issued by Technical Support Service, Inc.

14. On January 12, 1999, Foster and TSS also mailed to Edward C. Frye, Holder, a form entitled "Lender's Acknowledgement of Receipt of Guarantee Agreement and Consent to Be Bound by Its Terms" with the request that he sign said form and return it to TSS and Foster in the pre-addressed stamped return envelope.

15. In their letter of January 12, 1999, Foster and TSS instructed Holder to "1) sign the original of the Lender's acknowledgment form and have a witness sign as well [your broker may be a witness] and return to us in the envelope provided; and 2) Sign the copy of the Lender's Acknowledgment form and retain for your records."

16. Edward C. Frye, Trustee of the Edward C. Frye Charitable Remainder Trust, and Edward C. Frye, as an individual, had no contact with NEISI Surety except through and by his dealings with Foster and TSS.

17. Holder Frye, as an individual and as Trustee, invested in the short term promissory note in reliance upon the Guarantee Agreement dated October 5, 1998, between Surety and TSS which Guarantee Agreement was represented to Holder to be a surety bond issued by a surety insurance company licensed by the Commissioner of Insurance of the State of Kansas and admitted to do business as a surety insurer in the State of Kansas guaranteeing the payments under the note. (See Complaint in *Edward C. Frye, Trustee, et al v. Technical Support Services, et al*, Case No. 99-2461-GTV, USDC Kansas, attached hereto as Exhibit B).

18. Holder received monthly interest payments from TSS and Foster according to the terms of the note until May, 1999; and the last payment from TSS and Foster to Holder was received in early June, 1999.

19. On or about June 29, 1999, and pursuant to the terms of the note and the guarantee agreement, Holder Frye mailed Notice of Default to TSS and Foster via certified mail with a copy to Surety also via certified mail.

20. Neither Foster nor TSS is licensed as an insurance or surety bond agent by the State of Kansas nor in any way authorized or certificated to do the business of surety insurance.

Joseph Aguda

21. Joseph Aguda is designated as the U.S. Agent for New England International Surety, Inc. and its Claim Department and may be served at 5200 Elysian Fields Avenue, New Orleans, Louisiana, 70122.

22. On June 29, 1999, TSS and Foster sent to Holder Frye a completed Notice of Claim with instructions to sign and execute the Notice of Claim and send it directly to Mr. Joseph Aguda, U.S. Agent, New England International Surety, Inc., Attn: Claims Department, 5200 Elysian Fields Ave., New Orleans, LA, 70122, along with a certified copy of the promissory note, Notice of Default to Technical Support Services, Inc., and a Certified Copy of the Bond Certificate (guarantee agreement).

23. Joseph Aguda, TSS, Foster and Surety have failed and refused to pay Holder's claim.

Conclusions of Law

24. K.S.A. 40-1102 describes the kinds and lines of insurance and insurers which are subject to regulation by the Commissioner of Insurance and the Kansas Insurance Code at subparagraph (1):

(d) to become surety or guarantor for any person, copartnership or corporation in any position or place of trust or as custodian of money or property, public or private; ***to become a surety or guarantor for the performance by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, except contracts or policies of insurance;. . .***

(g) to insure against loss by reason of the insufficiency of the security conveyed or pledged under mortgage or deed of trust;

(h) to insure the payment of bonds and notes secured by mortgages or deeds of trust, and to buy and sell mortgages or deeds of trust upon real property and interest therein;. . .

25. Both Surety, as an insurance company, and its surety insurance products are subject to the regulation of the Commissioner of Insurance and the Insurance Code of the state of Kansas at Kansas Statutes Annotated, Chapter 40.

26. K.S.A. 40-214 requires Surety to be licensed to do surety and insurance business in Kansas:

It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions of the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245 and amendments thereto. . .

27. K.S.A. 40-209(a) sets out the requirements for Surety to be licensed to do business in Kansas:

Any insurance company organized under the laws of any other country, state or territory, upon application, may be authorized to transact business in this state, when possessed of the required amount of paid-up capital and surplus, or surplus only if a mutual company, and:

- (1) Has made the deposit required by this code with the department of insurance of this or any other state in the United States;
- (2) participates to the extent possible in the insurance regulatory information system administered by the national association of insurance commissioners;
- (3) has submitted an examination report of its financial condition and affairs which has been conducted by the insurance department of the state of domicile within three years of the date of application unless the commissioner determines that an earlier report will satisfy the purpose of this provision;
- (4) demonstrates that any majority ownership interests are in sound financial condition;
- (5) is not owned, managed or controlled by persons previously convicted of criminal activity involving fraud or embezzlement or offenses of a similar nature;
- (6) has been in operation at least three years and has been the subject of an examination of its affairs and financial condition other than its organizational examination. This requirement does not apply to

subsidiary or affiliate companies with substantially the same management of an admitted company, a continuing corporation resulting from merger or consolidation or a company whose admission is determined by the commissioner to be in the best public interest;

(7) the company will not require immediate regulatory attention by the department upon admission pursuant to K.S.A. 40-222b and amendments thereto.

28. Surety has never met the requirements to be licensed set forth at K.S.A. 40-209 and is not licensed in the State of Kansas to do the business of insurance as required by K.S.A. 40-214, and is therefore an unauthorized insurer as defined at K.S.A. 40-2701, et seq.

29. Surety's filing with the Kansas Secretary of State is not now and was not ever in compliance with the Kansas Insurance Code requirements for Surety to sell surety and insurance in Kansas.

30. K.S.A. 40-2701 of the Uniform Unauthorized Insurers Act subjects Surety to the jurisdiction of the Commissioner of Insurance and states the public policy reasons therefore:

The purpose of this act is to subject certain insurers to the jurisdiction of the commissioner of insurance and the courts of this state in suits by or on behalf of the state. The legislature hereby declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interests, the legislature herein provides methods for substituted service of process upon such insurers in any proceeding, suit or action in any court and substituted service of any notice, order, pleading or process upon such insurers in any proceeding by the commissioner of insurance to enforce or effect full compliance with the insurance laws of this state. . .

31. K.S.A. 40-2404 defines false information and advertising generally to be an unfair method of competition and an unfair and deceptive act and practice:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:. . .

(2) Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading. ...

(9) It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are:

(a) Committed flagrantly and in conscious disregard of such provisions; ...

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; ...

32. K.S.A. 40-2702(b) defines the transaction of the business of insurance in Kansas:

Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state:

(1) The making of or proposing to make, as an insurer, an insurance contract;

(2) the taking or receiving of any application for insurance;

(3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications or delivery of policies or contracts or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state. Nothing herein shall be construed to prohibit full-time salaried

employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

(6) the transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or

(7) the transacting of or proposing to transact any insurance business, in substance equivalent to any of the foregoing, in a manner designed to evade the provisions of this act.

Policy Reasons

33. Based upon the information above stated, the Commissioner of Insurance of Kansas has jurisdiction over all parties named pursuant to K.S.A. 40-2701 and K.S.A. 40-2001 given that they are all doing the business of insurance as defined by K.S.A. 40-2702(b) and the findings at paragraphs 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 21, and 22, but are not licensed nor admitted to do the business of insurance in violation of K.S.A. 40-214 and K.S.A. 40-209(a).

34. Based upon the information contained in paragraphs 3, 4, 6, 7, 8, 12, 17, and 20, it appears that all parties have violated K.S.A. 40-2404(2) by engaging in and continuing to engage in one or more unfair methods of competition and unfair and deceptive acts and practices by falsely advertising and otherwise representing that Surety is admitted and licensed as an insurer by the State of Kansas.

35. Based upon the information contained in paragraphs 6, 7, 8, 15, 16, 17, and 19, it appears that all parties have violated K.S.A. 40-2404(9) by failing and refusing to pay the claim of Edward C. Frye, Trustee, filed with Surety.

36. Based upon the information contained herein it appears violations exist involving an immediate danger to the public health, safety or welfare requiring immediate action by the Kansas Insurance Department.

37. Based upon the information contained herein, an Order causing New England International Surety, Inc., Technical Support Services, Inc., Fred Foster and Joseph Aguda to cease transacting the business of insurance in Kansas constitutes only such action as is necessary to prevent or avoid immediate danger to the public health, safety or welfare justifying the use of emergency adjudication pursuant to K.S.A. 40-2,125 and K.S.A. 77-536.

38. The interests of the insuring and investing public and the need to protect those interests from further damage greatly exceed the interests of New England International Surety, Inc., Technical Support Services, Inc., Fred Foster and Joseph Aguda in continuing the transaction of the business of insurance in the State of Kansas.

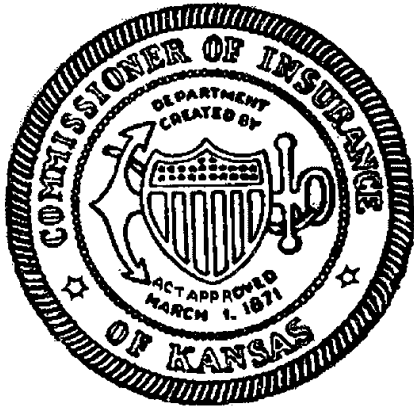
IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:

1. New England International Surety, Inc., Technical Support Services, Inc., Fred Foster, and Joseph Aguda and all other known and unknown agents, representatives and persons doing business in, for or with New England International Surety, Inc., shall immediately cease and desist such activity, as described in the paragraphs above, and any other acts which constitute the business of insurance in the State of Kansas as described in K.S.A. 40-2702(b).

2. Upon written request by New England International Surety, Inc., Technical Support Services, Inc., Fred Foster, or Joseph Aguda within fifteen (15) days after service of this Order to Kathy Greenlee, General Counsel, Kansas Insurance Department, 420 S.W. Ninth Street, Topeka, Kansas, 66612, this matter will be set for formal hearing which shall be conducted in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, et seq. If no adjudicative proceeding is requested and none is ordered by the Commissioner, this Order shall remain in effect against New England International Surety, Inc.,

Technical Support Services, Inc., Fred Foster, and Joseph Aguda until it is modified or vacated by the Commissioner.

IT IS SO ORDERED THIS 16th DAY OF NOVEMBER, 1999, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Kathleen Sebelius _____

Kathleen Sebelius

Commissioner of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 17th day of November, 1999, a true and correct copy of the above and foregoing Emergency Order was served upon the named parties by certified mail, return receipt requested, by depositing the same in the U.S. Mail, first class postage and other charges prepaid, addressed as follows:

New England International Surety, Inc.
c/o BSMWL, Inc.
9401 Indian Creek Parkway
Overland Park, Kansas 66210

New England International Surety, Inc.
c/o Stephen L. Imber, Attorney at Law
BLACKWELL, SANDERS, PEPER, MARTIN, LLP
9401 Indian Creek Parkway, Suite 1200
Overland Park, Kansas 66210

New England International Surety, Inc.
c/o Joseph Aguda, U.S.Agent
5200 Elysian Fields Avenue
New Orleans, Louisiana 70122

Technical Support Services, Inc.
c/o Fred Foster, Resident Agent
1700 Avenue F
Dodge City, Kansas 67801

Fred Foster
921 Club View Drive
Dodge City, Kansas 67801

Joseph Aguda
5200 Elysian Fields Avenue
New Orleans, Louisiana 70122

/s/ Margaret A. Gatewood _____
Margaret A. Gatewood
Senior Counsel
Kansas Insurance Department