

A Truer Course

In 1995 then NY superintendent of insurance, Ed Muhl, took an extraordinary step: he by-passed the Liquidation Bureau and appointed an independent special agent in charge of the liquidation of an insurance company – United Community Insurance Company (UCIC). The independent agent engaged

the requirements of the law. The superintendent's role as receiver of insolvent insurers is separate and apart from his/her role as regulator.

An excellent description of the temporal role of the superintendent as receiver is found as far back as in a 1915 report to the New York State Constitutional Convention

claims and other expertise necessary for the efficient rehabilitation or winding-up of an insolvent insurer's business. This body of expertise is far broader, deeper and more flexible than any permanent staff can be to deal with the variety of companies that come into receivership. The existence of a permanent staff also runs counter to the receiver's ability to hire key personnel from an insolvent company with institutional knowledge invaluable to an efficient receivership process.

Another major problem with the argument for a large, permanent bureau is that the statute never anticipated a permanent bureau, and accordingly does not provide for proper organization, reporting and oversight of such an entity. What we have ended up with is a huge, uncontrolled behemoth roaming free and unaccountable at the expense of the estates under its management. *Regardless of how large and complex an insolvent estate, the fact remains that each estate is a temporary assignment, and the mission of the receiver is to end that temporary assignment ASAP. This is awfully hard to do with a full-time, unionized staff that feeds off of the assets of the insolvent companies to survive.*

This gets us back to UCIC: under the independent special agent, the liquidation of UCIC operated efficiently and openly, and produced regular distributions to creditors, the first occurring just three years after liquidation in 1998, followed by distributions in 1999, 2001, 2004 and in 2007 – totaling about 35% of approved claims. As assets were marshaled – primarily reinsurance recoveries – and claims were resolved, staffing was reduced accordingly so that by 2008 salaries and associated benefits were under \$200,000, and the number of open claims reduced to a couple of hundred.

For years, however, the liquidation bureau sought to bring this maverick estate under its aegis, and in early 2009 the bureau succeeded in getting the special agent to step aside and to bring the estate into the bureau. The affect on the UCIC estate is startling!

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Peter H. Bickford

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a core group of professionals to assist with the marshalling of assets, review and determination of claims, coordination with the guaranty funds and reinsurers, and the preparation of regular statutory statements. These efforts were openly coordinated with the liquidation court, which held numerous conferences with the special agent and all interested groups.

The extraordinary thing about this appointment, however, is not that the superintendent by-passed the liquidation bureau; it is that this action fit squarely within the statutory framework of the law. The NY Insurance Law does not call for or authorize the creation of a “liquidation bureau.” It calls for the superintendent to be the court appointed liquidator or rehabilitator (broadly referred to as the “receiver”) of an insolvent insurer, and empowers the receiver with authority to hire agents to assist in fulfilling this role on a case-by-case basis. Under the law, the liquidation or rehabilitation of each insolvent insurer is a separate proceeding subject to the supervision of the court responsible for that estate. It is a temporary assignment, lasting until the insolvent insurer is rehabilitated and returned to the marketplace, or its liquidation is completed, with all assets being distributed in accordance with

Commission on the Organization and Functions of the Government of the State of New York:

“The practice is to retain such of the employees of each company which comes into liquidation as may be necessary to attend to the details of its affairs, and to dispense with them as rapidly as consistent with the proper conduct of its business.”

Nowhere in the law is it anticipated that there should be a permanent “bureau” to control the receivership process, and certainly not one with a full time – mostly unionized – staff half the size of the entire insurance division of the DFS.

Some have tried to justify the need for a substantial, permanent bureau to be able to deal with the size and complexity of insolvent insurers today as opposed to 100 years ago. The size and complexity argument, however, actually argues against a permanent bureau. The law as correctly described by the 1915 report authorizes the receiver to hire experts as needed for a particular estate, including from the staff of the insolvent insurer itself. Our industry is supported by a broad array of experts on every aspect of the business of insurance, including run-off, reinsurance,

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Now that the estate is ensconced in the belly of the beast, it no longer files separate, complete financials and reports of its activities. What information is provided is included in the bureau's combined, columnar financials. While it is difficult to compare the apples of the special agent's reports to the lemons of the bureau's, a few numbers jump out at you from the bureau's limited reporting. According to the 2009 bureau report — the first year of taking control of UCIC — salaries and related employee benefits charged to the estate were in excess of \$1 million—a five-fold increase from the year before under the control of the special agent. Also, rent increased four times from approximately \$40,000 to almost \$160,000 and professional fees (not including LAE) went from about \$70,000 to almost \$600,000, while on the other side of the ledger, claim and LAE expenses decreased from \$1.6 million to about \$130,000. Although these numbers were significantly lower in the 2010 report, they were still multiples of the comparable numbers in the last year under the special agent. Simply put, under the bureau's control the claim resolution activity has been reduced to a nominal amount, while expenses have soared, and the bureau has paid no dividends since taking control of the estate!

As the Executive Life debacle has shown a sharp light on the lack of accountability and consequences for mismanagement by the bureau, UCIC likewise shows the gross inefficiencies in the system as it has evolved over the decades. This evolution has been contrary to the clear statutory concept, and has resulted in the inefficient, unaccountable, wasteful and non-responsive system that plagues us today.

It is time to revert to the original concept, which as demonstrated by designation of an independent special agent in the UCIC proceeding, can be far more beneficial to the estate, its policyholders and creditors. [A]

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