[INSIGHT] By Peter H. Bickford

Beauty is Skin Deep!

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WOW! What a report! Full of colorful charts, graphs, statistics and other amazing stuff! It is clearly a thing of beauty! I am referring – surprisingly – to the self-proclaimed "New York Liquidation Bureau - 2012 Annual Report," which was announced by Superintendent Lawsky by press release on May 29th and at the same time publicly posted on the Bureau's website (www.nylb.org). The report is chuck-full of interesting information about the operations of the Bureau and the estates under its management, with a strong emphasis on the efforts of the current administration to close estates, resolve claims, distribute assets and reduce staff. For example the report shows:

- There were 64 open receiverships at the end of 2012: 38 domestic (liquidations and rehabilitations), and 26 foreign or alien (ancillary receiverships and conservations)
- There had also been 8 estates closed during 2012, a historically high number.
- The number of Bureau employees was down from 413 at the end of 2004 to 252 at the end of 2012.
- Over 6,000 claims were resolved in 2012 (with more than half, however, closed without payment!).
- A total of $117.6 million was drawn down by the Bureau from the three p/c guaranty funds: $61.6 million from the main PC Fund, $52.7 million from the Workers Comp Fund and $3.3 million from the Private Motor Vehicle Fund.
- A substantial $345.6 million was distributed to creditors during 2012: $152.9 million as early access distributions to guaranty funds and interim distributions to creditors, and $192.7 million as final distributions upon the closing of estates – welcome news to creditors who were used to waiting many years for even a token distribution.

In addition to all the information about the Bureau's efforts to resolve claims and close estates more quickly, the report also includes individual albeit brief reports on each estate. At 146 pages, the report is 20+ pages longer and more informative than the 2011 DFS annual report covering the entire insurance industry including the insurance receivership process.

This handsome report appears to be the Bureau's attempt to satisfy the statutory requirement for an annual report by "the rehabilitator or liquidator" for each estate in rehabilitation or liquidation. The statutory provision (Section 7405(g)(1)) requires a separate report by the rehabilitator or liquidator for each estate and is to include "a financial review of the assets and liabilities of the [estate], the claims accrued or paid in that period, and a summary of all other corporate activity and a narrative of the actions of the rehabilitator or liquidator respecting such [estate]."

Although much of the information called for in the statute is included somewhere in the Liquidation Bureau's report, it is presented in a piecemeal manner and does not provide a unified or complete report on each estate. Also, Section 7405(g)(1) does not reference a Liquidation Bureau; rather it requires a report from the superintendent of the DFS in his capacity as rehabilitator or liquidator. In fairness, however, the Section 7405(g)(1) report has been a required filing since 1993, and has historically been released as a report by the Liquidation Bureau. Until just a couple of years ago, the report was basically a compendium of the required individual estate reports and not a self-laudatory piece for the Bureau like the current report. On the other hand, unlike the new report, prior reports were not the subject of a public press release; were not posted on the Bureau's website; and were not made publicly available except through a specific Freedom of Information Law request.

The new report is clearly designed to impress us with the efforts and progress of the current administration to improve the performance of the Liquidation Bureau. In fact, great strides have been made by the current administration to improve the record of the Bureau in resolving claims, distributing assets and closing estates – strides that should not be minimized. *As impressive as it appears to be, however, the report continues the current administration's unfortunate efforts to gloss over the main problems regarding the insurance receivership process in New York – lack of accountability and oversight.*

The recent exposure of this failure of accountability and oversight, particularly through the well-documented Executive Life of New York disaster (see, i.e., "*Soggy Saga: Executive Life's Liquidation Drowns Policyholders', Annuitants' Interests in 21 Year Long Process*," **IA**, February 20, 2012; and "*Ongoing ELNY Debacle Exposes Serious Problems*," **IA**, February 18, 2013) has revealed the long simmering truth that the insurance receivership process in New York is broken and needs to be rebuilt. The ELNY event exposed the ability of the Liquidation Bureau to operate under the radar without any meaningful oversight or accountability for decades, and in that particular case at a cost to the ELNY beneficiaries of almost $2 billion and the literal bankruptcy of the current life guaranty

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fund coverage for future life company insolvencies.

What is clearly needed is a full statutory and regulatory overhaul of the foundation and substance of the insurance insolvency process, but there is no indication that the DFS has any intention of pursuing such changes, relying instead on its own administrative efforts as reflected in the Liquidation Bureau report. Unfortunately, the progress reported by the Liquidation Bureau is substantially cosmetic and does little to change the unstable and unsustainable foundation of the insurance insolvency process in New York. It does not, for instance:

- Establish a properly constituted and accountable rehabilitation and liquidation office and/or a pool of authorized independent receivership professionals;
- Provide each receivership court with the tools necessary for effective oversight of insolvent estates, including regular, periodic, meaningful report, plans and conferences;
- Provide for effective and timely participation by all interested parties in the process;
- Address the financial condition of and inequities inherent in the life guaranty fund system;
- Address the issue of separating control of the property casualty security funds from direct control of the receiver as in all other states; or

Provide for appropriate oversight and accountability – not blanket immunity — for the receiver's agents in the performance of their services.

These are but a few of the issues that will need to be addressed to ensure the long-term effectiveness and integrity of the insurance receivership process in New York, and to avoid the eventual recurrence of an ELNY type disaster in the future. Unfortunately, it does not appear that there is any intention or will to do anything more than polish the can and kick it down the road – again. [IA]

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