[INSIGHT] By Peter H. Bickford

Less Is Not More

The New York legislature ended its 2013 session in the wee hours of the morning on June 22nd. The next day Governor Cuomo issued a press release together with a 46-page end of session report titled "New York Rising" extolling the accomplishments of the Administration with the help of the legislature. The Governor's end of session report focuses much of its content on the development of business and the creation of jobs – particularly Upstate – including sections on "Supporting our Wine Beer and Spirits Industries" and "Supporting New York's Yogurt Boom." Not surprisingly, there is very little on the insurance industry, and certainly nothing about support for or growth of the insurance business in the State. But why should it? Why burden a political manifesto on the administration's accomplishments with talk of insurance? Why drag down an upbeat presentation of the administrations goals and vision for the denizens of New York with the mundane details of an industry with over $4 trillion in assets, generating over $600 billion in premium revenue and employing tens of thousands of those denizens?

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Starting with Superintendent Lawsky's introductory cover letter, it is made clear that the emphasis of the report is on the actions of the DFS – particularly its strong enforcement actions — with little if any actual analysis or discussion of the businesses it regulates; thus standing the intent of the statute on its head.

After all, there is a legislatively mandated report that deals with the financial sector, including insurance; namely, the annual report of the superintendent of financial services to the governor and the legislature required by law. This is the same report that I criticized last year for being but a mere shadow of the old insurance department reports ("*DFS Report: Size and Content May Send Message*," **IA**, June 18, 2012). But last year's report was the first report of the newly created department of financial services. The superintendent and his minions have had another year of experience with and exposure to all aspects of the insurance industry. In addition, the law was changed to give the superintendent an extra month to prepare and file this year's report. Therefore, there was reason to hope that round two would be a vast improvement over round one, with more emphasis on and analysis of the insurance business in the State of New York. At the very least, round two could not possibly be even less informative than last year's minimalist effort. Incredibly it is not just a little bit worse, it is far worse than anyone could have projected, particularly in view of its statutory mandate!

Last year's report, including all financial services and not just insurance, was a mere 118 pages compared to the 235 pages of the final report of the old insurance department relating solely to the business of insurance. Of its slimmed-down 118 pages, roughly one-third related specifically to insurance, one-third to banking and one-third to the combined services of the DFS. In other words, the first report of the DFS covering all financial services, including both banking and insurance, was half the size of the final insurance department report, and only a third of that related to the business of insurance. How could this year's report with an extra month to prepare and a year's more experience for the preparers, possibly be even more bare-boned? Apparently it was easy.

A few days before the end of the legislative session in June, the DFS posted its "Annual Report to the Governor and the Legislature for the year ended December 31, 2012" (www.dfs.ny.gov/reportpub/annual/dfs_annualrpt_2012.pdf). At a total of 71 pages (including the cover letter and title page) the report is a remarkable one-third shorter than the already anemic prior report. Furthermore, the narrative on the insurance business has been reduced to two pages supplemented by 18 pages of statistics. *While last year's DFS report could be viewed as the Readers' Digest version, the newly filed report is barely the Cliffs Notes version*!

Mind you, this is the regulator's full report on a Statewide business with over $4 trillion in assets generating close to $1 billion in direct revenues for the State, and as an industry is one of the largest employers in the State. Compare this meager effort to the glossy, energetic 46-page "End of Session" report issued by the Governor's office the day after the end of the session. Or compare it to the beautiful annual report of the New York Liquidation Bureau discussed in my last column ("*Beauty is Skin Deep*," **IA**, June 22, 2013), which, at 146-pages, is more than twice as long as the entire DFS report on all financial services!

While Shakespeare observed that "brevity is the soul of wit," there is nothing funny about the DFS's continued de-emphasis of the importance of the business of insurance to the economy of New York. This disengagement is again reflected by the report's neglect of the statute's principal mandate to provide "a general review of the insurance business, . . . utilizing the most current information available." Rather than being a report focused primarily on the businesses overseen by the DFS, the report continues to be first and foremost about the DFS itself. Starting with Superintendent Lawsky's introductory cover letter, it is made clear that the emphasis of the report is on the actions of the DFS – particularly its strong enforcement actions — with little if any actual analysis or discussion of the businesses it regulates; thus standing the intent of the statute on its head.

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By simply having the legislature move the filing date for the report to a few days before the end of the legislative session, the DFS pulled off a classic legislative sleight of hand: this statutory change rendered the mandated report on the status of the business of insurance obsolete, outdated and practically useless upon issuance, thus providing the DFS with an excuse to ignore the mandated scope of the report and produce instead another paean to itself. With the report's true intent and purpose eviscerated by the change in the law, the DFS apparently succumbed to the temptation of not spending any significant time or effort to prepare a useless albeit statutorily required report on the workings of the industries it regulates.

The losers in this ploy, of course, are the people of the State of New York and their representatives in the legislature who are entitled to hear from the insurance industry's chief regulator on the vitality of an industry that is a major contributor to New York's economy and the well being of its residents. [IA]