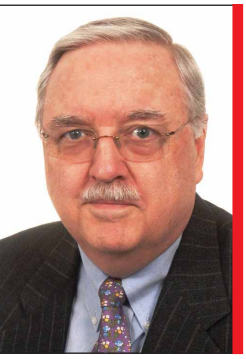
[INSIGHT] By Peter H. Bickford

ENCORE! ENCORE!

Congratulations to the New York Liquidation Bureau! Yes, you read that right. For the second year in a row the Bureau has timely posted its annual report on its website (www.nylb.org). This is the statutorily required report of the Superintendent of Financial Services as receiver (liquidator, rehabilitator, conservator or ancillary receiver) on the status of the companies under the receiver's management. Publicly posting the report also eliminated the need to file a Freedom of Information Law request to obtain a copy of it, which was *de rigueur* before last year.



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The 2013 report was posted on time and is a comprehensive document full of interesting information. Some interesting highlights of the report include:

- As of December 31, 2013, the Bureau was responsible "for the administration of twenty-seven Domestic Estates, twenty-two Ancillary Estates, two Rehabilitations, three Conservations, and twenty-four Fraternal Benefit Societies."
- As of December 31, 2013 the Bureau employed 252 people (down from 413 at the end of 2004) with about half of those employees members of a union, the Civil Service Employees Association (CSEA).
- During 2013 The Bureau closed ten domestic estates, four ancillary estates (estates with a primary liquidator in another state), two estates under conservation, and sixteen Fraternal Benefit Societies.
- During 2013 the Bureau made final distributions from estates of $23 million and interim distributions of $165 million.
- Since 2006 the Bureau has made distributions from estates of almost $950 million with about $540 million of that total occurring in just the past two years.
- The number of claims outstanding at the end of 2013 for domestic and ancillary estates totaled approximately 11,000, down from a total of approximately 15,000 in 2012 and 21,000 in 2011.
- At the end of 2013 the Bureau had about $750 million of assets under management for companies in liquidation, compared to about $843 million at year end 2012; and about $17 million of assets for companies in rehabilitation compared to about $2.8 billion at year end 2012 (this sudden decline is another story for another time).

The depth and content of the report is also remarkable when compared to the Superintendent's report as chief regulator of the insurance industry. The Bureau's report is far more detailed, informative (even with all its shortcomings) and timely than the superintendent's combined annual report on the insurance and banking businesses. What makes this so remarkable is the depth and extent of the report of a bureau with less than $1 billion in assets currently under management, compared to the department of financial services report in a state with 1,700 insurance companies with assets exceeding $4.2 trillion; and 1,900 banking and other financial institutions with assets of more than $2.9 trillion.

The Bureau's 2013 report includes one major improvement: a return to the old format of including a separate statement for each estate under its management as required by statute rather than continuing a cumbersome consolidated format instituted in 2007. While these statements are not full financial statements, lack consistency and significant content, they at least respond to the minimum requirement of the law for separate statements for each estate under receivership. As thin as these statements may be, they are much more open and accessible than the consolidated format used in the past six reports of the Bureau.

The Bureau's report remains disappointing, however, in its failure to recognize its proper role, and in continuing to mask the deficiencies in the structure and accountability of the insurance receivership process in New York.

The major disappointment in the report is its reflection of the Bureau's continuing inability to understand the basics of the statutory charge to the receiver, particularly regarding the receiver's statutory role as rehabilitator. On page 17, under the heading "Receivership Operations", the report states:

"After the entry of an order placing an impaired New York insurer into rehabilitation and/or liquidation, the Receiver and the NYLB have the statutory responsibility to marshal the assets and resolve the liabilities of the failed entity."

Wrong! When a company – for whatever reason including a number of reasons other than financial impairment – is placed into rehabilitation the statutory charge to the rehabilitator is "to take possession of the property of such insurer and to conduct the business thereof . . ." Marshaling assets and resolving liabilities – a standard bankruptcy concept - is the statutory charge for liquidation but NOT for rehabilitation. This is a distinction that the Bureau historically seems to never have

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been able to understand or accept. The idea of actually managing a business is simply alien to liquidators. There are numerous examples of the Bureau applying scorched-earth bankruptcy standards to insurance rehabilitations. (Among the more recent examples of a misconceived and mishandled rehabilitation of a viable entity is, of course, Executive Life Insurance Company of New York.)

As pleasant a surprise as the Bureau's current report appears to be, and as good a job as the Bureau says it is doing in its efforts to manage estates under its control, the fact remains that the Bureau continues to be an entity devoid of formal, statutory standards of accountability and oversight. Although much of what is wrong with the receivership process can only be fixed permanently through legislation, the current administration can take action to further its efforts to improve the transparency of and confidence in the process to its primary constituents – claimants of the estates. For instance, the superintendent as receiver, could, without any change in current law:

- Continue to reduce the size and principal responsibility of the Bureau for the management of estates in receivership;
- Develop a pool of authorized independent receivership professionals to be called upon in a more efficient and accountable as-needed basis;
- 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; and
- Provide for appropriate oversight and accountability – not blanket immunity — for the receiver's agents in the performance of their services.

By taking these next steps towards full accountability and transparency, the administration can set the example for proper legislative changes aimed at providing a permanent fix to the receivership process and as a template for future administrations.

I look forward to reading about the next level of improvements in the 2014 report of the receiver![IA]

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