 By Peter H. Bickford

# Christmas In July

Oh the anticipation! Ever hopeful for pleasant surprises and thoughtful gifts! Alas, once again it is not to be. Nothing but another collection of coal in our stockings! Guess we're still bad boys and girls.

The 2013 annual report of the NY superintendent of financial services to the

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governor and the legislature, required to be submitted on or before June 15th each year (the required date for submission used to be a month earlier, but the law was changed a year ago to give the apparently overwhelmed regulators an extra month to prepare), was posted on the DFS website on July 3rd. The report is dated as of the due date—June 15th, which happens to have been Father's Day and a Sunday—so I suspect that it was not actually submitted to the governor or the legislature until at least Monday, June 16th.

In any event, with the extra month to prepare, the report at best would be received by the governor and the legislature during the last week of the legislative session when all the legislators and the governor's staff were, I'm sure, poised to absorb and study the report as part of their deliberative process. Given the content of the report, however, the extra month to prepare seems to have been wasted, and the timing makes its contents largely stale and useless for any governmental or legislative purpose.

The legislative session ended with its usual flurry over the weekend of June 21-22. The following day, June 23, Governor Cuomo issued his end-of-session report titled "Building on Success." This buoyant report extols the administration's legislative accomplishments including support for the growth of businesses and workers statewide. Financial services, including insurance, are not mentioned much at all. But the annual report of the DFS should fill any void. The first two DFS annual reports have not done so, but there is always hope for Christmas in July.

This administration has shown the ability to produce great looking reports. The Governor's budget and end-of-session reports are good examples. And let's not forget the NY Liquidation Bureau's beautiful report issued earlier this year (see my **Insight** column *"Encore! Encore!"* in the May 12, 2014 IA issue). The 2013 DFS report, in contrast, lacks any pizzazz whatsoever. It is 17 pages of narrative – mostly about the DFS – and 47 pages of dry statistics and schedules. So what? Flash is not what the report is supposed to be all about.

The statutory purpose of the report is to provide a "general review of the insurance business, banking business, and financial product or service business utilizing the most current information available." By contrast the DFS website describes the superintendent's annual report as "a review of the department's activities as well as developments in the financial services industry regulated by the department in the previous year." This description places an emphasis on the DFS activities over the regulated businesses – an emphasis that is simply not found in the statute.

The superintendent's cover letter to the report gives the reader some hope for insight into DFS efforts on behalf of the insurance and banking industries by stating: "As its charter instructs, the Department has and will continue to work aggressively to foster the growth of a fair, robust financial services industry and to protect consumers." If not exactly the statutorily prescribed charge to the DFS, it at least mentions growth of the industry as an objective. Let's look at how the report addresses this promise.

After an introductory section that describes the various DFS divisions, the report narrative turns to "Major Accomplishments" – not of the industry but of the DFS – with the statement that: "The Department continues to work to protect consumers and promote a thriving sustainable financial services sector for the long term." And what does the DFS consider to be its major accomplishments in "Encouraging the Growth of Industry"? Here are the insurance related topics under that heading in the report:

- Setting industry standards for the acquisition of annuity businesses;
- Automobile Usage Based Insurance Discount Programs.

That's it! That is the extent of the 2013 accomplishments that DFS considers to be "encouraging growth" in the insurance industry. Compare this to the next section, "Protecting Consumers", that includes the following topics:

- Storm Sandy Disaster Response (including the infamous Report Card on claim handling practices of insurers)
- Reforming Force-Placed Insurance
- Reducing Health Insurance Costs
- Affordable Care Act Implementation
- Investigation into Out-Of-Network Medical Costs
- Reforming Life Insurers' Claims Practices
- Investigating the use of Shadow Insurance

Without even getting into the report's next section of major accomplishments, "Promoting Strong, Smart, Targeted

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Regulation," you may already suspect that the report confirms an unfriendly agenda where lip service is paid to promoting the growth of the insurance industry.

And how is this report in any way helpful to its intended recipients - the governor and the legislature? Aside from being devoid of meaningful analysis of the industry itself, whatever helpful information it may contain is woefully stale by the time it reaches its intended recipients, who are at that time already halfway out the door on their summer break.

Even if the report were timelier, however, it is far from compliant with the statutory charge that the report be based on "the most current information available." Although the report is for the most recent calendar year (2013), the consolidated financial data from licensed companies is actually for the calendar year 2012. Today with immediate access to electronically filed statements in a standard format there is no excuse for not being able to include 2013 data in the 2013 annual report by its due date five and a half months after the end of the year. It makes no sense in this age of instant data access for the report to provide consolidated industry data that is essentially 18 months old.

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Nor should funding for a timely and relevant report be considered an issue. At the end of the report, there are several schedules of DFS collections and expenditures. Here are a few highlights from these schedules:

- Total DFS Receipts - $1.292 billion
- Insurance Industry Assessments - $394.6 million
- Insurance Industry Examination Fees - $11.3 million
- Fines and Penalties - $368 million
- Total Expenditures [i.e., operating expenses] from Insurance Accounts - $203.5 million

Insurance industry assessments alone far exceed DFS expenditures for the Insurance Division. Then there is the number that jumps off the page: the $368 million in "Fines and Penalties" collected by the DFS during 2013 (2014 is also off to a good start considering some of the major fines already announced this year by the DFS). There is no discussion in the report on the use or disposition of any excess receipts over and above the specific usage (such as the p/c guaranty funds) or operating budgets. What happens to these excess funds? How are the fines and penalties used? Where does the money go? Are we entitled to know?

Who is enjoying Christmas in July?[IA]