

End of the Trail

"My work here is done!" (The Lone Ranger)

Many of us smiled - perhaps cynically - at the *New York Times* headline on May 20th: "Benjamin Lawsky, Sheriff of Wall Street, Is Taking Off His Badge." The article included the semi-iconic rendering of "Johnny Lawsky" in old-west sheriff's garb

be a simple, matter-of-fact announcement. But when it comes to DFS announcements, nothing is simple or matter-of-fact.

The DFS press release directs readers to a link for "A summary of NYDFS initiatives and enforcement actions" from the

and interesting aspect of the DFS press package on the resignation. Take, for instance, the coincidence of timing. In 2012 - the first full year of existence of the DFS - the due date for the statutory annual report of the DFS was extended a month from May 15 to June 15. Both the 2012 and 2013 annual reports were filed, as allowed by the revised law, on the last day possible - June 15, 2013 and 2014 respectively. The 2014 report, however, was dated and posted on May 5, 2015, 40 days earlier than required and 10 days earlier than required even under the old law. Who ever heard of a statutorily required government report being filed early let alone 40 days early? (FIO take note!)

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The annual report is also interesting in two other respects.

First, the law (Section 207 of the Financial Services Law) requires that the superintendent's annual report "contain the following items, with respect to the preceding calendar year: (1) a general review of the insurance business, banking business, and financial product or service business . . ." The report as submitted is neither focused on the "preceding calendar year" nor does it include "a general review of the insurance business." Rather it is a four-year review of the DFS's "achievements" since its inception. The DFS Annual Report may be an excellent self-serving promotional brochure for the DFS and its departing leader prepared under the guise of the law, but it is certainly not the report called for by statute.

Second, the heading "Insurance Statistics" has disappeared from the annual report's table of contents! The table of contents includes no separate section on insurance and all the statistics, schedules and charts are found listed under the heading



Peter H. Bickford

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from *The Village Voice* cover in 2013. Place a black mask on that graphic and he would look very much like the Lone Ranger back in the 1950s. And like the Lone Ranger, he is now riding off into the sunset having vanquished all the bad guys in sight.

Of course, the main takeaway from the many media headlines and articles on the superintendent's announced resignation was the emphasis on his banking industry exploits and round up of financial services villains. One had to go to the insurance press to find anything other than a passing mention of insurance. Even in the insurance press, however, the overriding theme of banking and enforcement was not far from the surface. The NAIC Newswire, compiling articles on insurance regulatory matters, actually used the NY Times headline and article as its selected piece on the Superintendent's resignation. An interesting choice to say the least!

At first, the announcement of the resignation by New York's own Department of Financial Services seemed low key in comparison. The press release issued by the DFS does not refer to either "insurance" or "banking," using instead "financial services" as all-inclusive, and appears to

DFS 2014 Annual Report. The introductory paragraph to this summary states that: "In the four years since its creation, by employing a number of innovative enforcement strategies, NYDFS has sought to strengthen efforts to (1) police Wall Street, (2) protect consumers, and (3) regulate financial markets." Following this introductory statement are lists of "accomplishments" under each of the three categories. Anyone seeking to understand the climate for conducting an insurance business in the State should closely review these laundry lists of what DFS considers its major achievement over the past four years. The Wall Street section emphasizes the \$6 billion in penalties and actions against individual executives; and the consumer section emphasizes actions to protect consumers "against abusive lenders and insurance companies." Even in the last category, "new financial products and risks," the focus is on aggressive adoption and enforcement of rules that stifle rather than encourage development of new products. Of all the bullet points in the DFS list of accomplishments over its first four years, you will not find a single industry-friendly initiative.

But these lists are not the only curious

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“Banking Statistics.” In all likelihood (except in the minds of some diehard conspiracy theorists I know), this omission probably comes under the category of a classic Freudian slip. Given the already diminished importance of insurance in the eyes of the DFS, it is an interesting “slip” nonetheless.

And lest anyone thinks that the departure of our current superintendent provides hope for a shift in emphasis by the

DFS towards at least some support for industry growth and development and a reduced obsession with enforcement, the identified group of potential replacements should probably dash that thought. By the time this column is published we may know who the replacement will be, but as of this writing the names bandied about in the media are either former prosecutors or banking industry personae with no insurance background or expertise.

“Hi Ho Silver, Away!”

“Who was that masked man?” [A]

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Epilogue: Mr. Lawskey, I must take this last opportunity while you are still our superintendent to once again ask: Why, with all your emphasis on pursuing the wrongdoers in the name of protecting the consumer, did you not pursue the wrongdoers under your own roof in connection with the failed stewardship by the Liquidation Bureau of Executive Life Insurance Company? Why did you fail to protect the most seriously injured Executive Life annuitants whose interests you professed to represent? And when you failed to protect them, why did you go to extreme measures to prevent those same consumers from doing so themselves?

Why don't your rules of conduct for the industry, so exquisitely spelled out in your annual report, apply to your own house?

Peter Bickford has over four decades of experience in the insurance and reinsurance business, with particular focus on regulatory, solvency, agency, alternative market and dispute resolution issues. In addition to his experience as a practicing attorney, he has been an executive officer of both a life insurance company and of a property/casualty insurance and reinsurance facility. A complete biography for Mr. Bickford may be accessed at www.pbnylaw.com.

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