

## Reflections

Whatever else you may think about Governor Cuomo's policies, you have to appreciate his ability to be ahead of the field when it comes to tooting one's horn. Take, for instance, his e-mail blast within minutes of the end of the legislative session. The session gaveled out at 12:18 a.m. Friday, April 25th, and less than an hour and a

ignore. Smooth to say the least.

This media-savvy flair exhibited by the Governor's office has trickled down to the agency level unevenly at best. The Department of Financial Services, for instance, has a very checkered record when it comes to the effectiveness of its pronouncements. Yes, it does quite well in publicizing its successes in vanquishing

More to the point, however, is the fact that the DFS reports on the businesses it regulates are bland, enforcement-centric pronouncements with little effort to report on industry achievements or activity. The most depressing example is the DFS Annual Report. Although intended to be a report primarily on the businesses the DFS is charged to regulate, it is essentially a list of DFS enforcement actions and a bunch of statistics and other data that is lacking in analysis or context. It is largely devoid of meaningful narrative – other than in touting its own actions – and has all the spirit of a functionary intent on doing the least possible to comply with the requirements of the job. The report diminishes the insurance business to mere inconsequential significance, with far more attention to the banking industry, a strange result given that direct tax and assessment revenues generated by the insurance industry in the state are more than ten times those generated by state regulated banks.

Stranger still is that a quasi-agency under the control of the same superintendent has managed to issue a brilliant, professional, informative annual report. Hard as it may seem, I am referring to the annual report of the much-maligned New York Liquidation Bureau. After many years of trying to obfuscate the data on receiverships in the state, the Bureau has done an about-face the past few years to produce and post on its website a much more helpful and informative package. The irony is that this about-face at the Liquidation Bureau has occurred since the creation of the DFS and under the leadership of the same superintendent responsible for the industry-unfriendly DFS annual report. It is almost as if the Gov's media people got lost on their way to the DFS and ended up at the Liquidation Bureau instead. Sure the report puts the best light on the efforts of the Bureau, but it also provides some valuable information in an organized, readable format. If the Liquidation Bureau can do so effectively, other agencies – particularly the superintendent's own DFS – should take note.



Peter H. Bickford

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half later – at 1:43 a.m. – the Governor's e-mail with the subject line: “We've reached a broad, comprehensive agreement here in Albany” was in my inbox. The e-mail included a link to a full press package detailing the end-of-session agreements reached with the legislators including videos, photos, quotations and graphics. Considering the oft-expressed belief that the session would be noted more for indictments than legislative achievements, the press package was quite remarkable. It heralded the few final legislative compromises as major triumphs of hard work and diligence by all participants and parties, even praising his opponents, while downplaying or ignoring unachieved goals, unrealized expectations or clear defeats.

This kind of instant, glossy coverage of gubernatorial achievements has come to be expected from the Cuomo camp – similar highly effective, professional packages accompanied the Gov's State-of-the-State speech and his budget unveiling, among other signature events. Sure that's politics, but the artistry displayed – making the most minimal or mundane legislative or administrative effort appear as a grand or sublime achievement – is hard to

wrongdoers – particularly in the banking world. Press releases announcing billion dollar fines have a built-in “shock and awe” affect whether or not done with any panache. They simply do not need to be dressed up to have the desired impact.

But even in its non-dramatic, functional efforts the DFS reports share little of the flair and style of the issuances from the Gov's offices. Many people would argue that state agencies should not be “playing politics” with their reports and media releases, and that it would be inappropriate for DFS, for instance, to issue similar glossy, finely dressed presentations. For the Gov to do this is OK, but not for his agencies.

To argue that state agencies do not issue political statements is, of course, a fantasy. A cursory look at the press releases issued by DFS over the past several years reflects an uninhibited propensity for backslapping, with the largest portion of DFS releases issued in the name of the Governor and not in the name of the department or the superintendent. When the administration wants to make a political statement, it is not limited to the releases from the Gov's office alone.

*continued on page 8*

continued from page 6

This is not to say that the Liquidation Bureau is free from its well-deserved slings and arrows. It is still a rogue agency with no discernable statutory basis and replete with inconsistencies and contradictions. Contrary to logic, for instance, estates under the management of the Bureau are no longer subject to regulatory oversight, examination or statutory reporting. Although the law now requires an annual audit of the Bureau and each estate under

its management, there is no agency or other entity responsible for reviewing the audits or their assumptions. There is no independent party legally capable of reviewing or examining the actions of the Bureau or its procedures and processes. Court supervision is narrow, condescending and ineffective in protecting claimants or in overseeing the actions of the Bureau, and the stench of the Executive Life debacle lingers.

Yes, the current Liquidation Bureau management has successfully closed estates

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and reduced staff and has fully and effectively documented its progress in its well-executed annual report. It is an example of how presentation can shape perceptions about a subject or the issuer. With a little more effort with its own reports, the DFS could improve perception and effectiveness in carrying out its regulatory mandate. It could also serve as a first step in improving perceptions of the DFS and its mission with the industry.<sup>[A]</sup>

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