The Insurance Receivership Process in New York

By Peter H. Bickford

Introduction

Since the Mid-1980s I have actively represented managements, shareholders, policyholders, claimants, and reinsurers (both as creditors and as debtors) of insurance operations in liquidation or rehabilitation in New York. During that time I have observed the handling (or mishandling) of the receivership process spanning the administrations of five Governors and eight superintendents. Each new administration has vowed to "do something" about the system, and in particular address the "mess" at the Liquidation Bureau. What has been clear from these efforts over the years is that the "mess" has been largely misunderstood and the entrenchment and resilience of the Bureau grossly underestimated.

When the current administration came on the scene in 2007, it was under the banner of openness, transparency and reform. When there appeared to be a significant disconnect between the promise and reality, and in response to numerous expressions of exasperation by colleagues, I began a series of eight articles on the receivership process in New York, which I posted at **http://insuranceioi.blogspot.com/** from August 2008 through March 2009. After completing the series, I received a number of requests for the entire series. I am therefore presenting this series of postings as one combined article.

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Part I: What exactly is the Liquidation Bureau anyway?

It is easier to state what the liquidation bureau is not. According to the New York Court of Appeals, it is not a state agency (and therefore not subject to audit by the state comptroller). According to the records of the Secretary of State, it is not a corporation. And according to the Insurance Law . . . : well, let's just say its status is undefined.

Before 1993 there were no statutory references to a liquidation bureau in the Insurance Law, including the receivership article, Article 74. In 1993, subsection (g) was added to Section 7405 ("Order of liquidation; rights and liabilities") requiring the superintendent as receiver to prepare an annual report on the status of each company in liquidation or rehabilitation. The last sentence of this new section states: "This report shall be separate and apart from other reports issued by *the liquidation bureau of the department* in the normal course of its business." This is the only reference in the Insurance Law (actually the only reference in the entire New York Consolidated Laws) to a liquidation bureau.

The Bureau's existence may be assumed, but its status and mandate are not defined anywhere in the law. The home page of the Liquidation Bureau's web site states:

> "The New York Liquidation Bureau (NYLB) is a unique entity. [No debate there!] Receiving no funding from taxpayers, it carries out the responsibilities of the Superintendent of Insurance as Receiver, and acts on his behalf in the discharging of his statutorily defined duties to protect the interests of the policyholders and creditors of insurance companies that have been declared impaired or insolvent."

The bureau's web site also states that it has "performed this function since 1909, when the New York State Legislature passed the law mandating that the Superintendent assume the separate responsibility of Receiver." However, the law does not establish a bureau to carry out this function. The law requires that the superintendent be designated as rehabilitator or liquidator to take control of the assets of an insolvent company and liquidate or manage the estate. It also permits the appointment of deputies and assistants to support the superintendent in this role as receiver. It was clearly anticipated that these appointments would come from the key employees of the insolvent company itself -- those with the greatest knowledge of the business and operations of the company being liquidated -- and would be engaged only for the duration of the receivership process.

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The hiring of employees of the insolvent company, and the temporary nature of these appointments, was succinctly summarized in a 1915 report to the New York State Constitutional Convention Commission on the Organization and Functions of the Government of the State of New York (at page 118) -- just a few years after the statute referred to in the Bureau's web site:

> **"The practice is to retain such of the employees of each company which comes into liquidation as may be necessary to attend to the details of its affairs, and to dispense with them as rapidly as consistent with the proper conduct of its business."**

The current statute is consistent with this historical record of the temporary nature of the receivership of insurance companies. Rather than authorizing the establishment of a permanent bureau, current Section 7422 authorizes the superintendent to appoint deputies and others to assist in the performance of the receivership function, "and all expenses of conducting any proceeding under this article shall be fixed by the superintendent, *subject to the approval of the court*, and shall be paid out of the funds or assets of such insurer."

Article 74 clearly views each insolvency as a separate proceeding with the superintendent acting as receiver under the supervision and control of a Supreme Court judge for that estate. Nowhere in the law is there any provision for the establishment of a permanent agency or bureau to carry out this function, and there is no central judicial oversight designated to coordinate the handling of all pending receivership proceedings collectively.

The limited role and temporary nature of the agents assisting the receiver for a particular estate has evolved into a permanent liquidation bureau, particularly over the past thirty years. This evolution occurred without a statutory, judicial or regulatory mandate to do so. As the number and size of insolvencies increased dramatically in the late 1970s and into the 1980s, the liquidation bureau grew into its own self-operating permanent bureaucracy, flying under the radar and accountable to no one – not the legislature, not the courts, and not the regulators.

The Bureau today has half as many employees (over 450 employees) as the entire New York Insurance Department, and most of them are protected by union contracts. The Bureau also purports to have a budget of over $100 million, but this "budget" is not

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subject to any independent oversight. Although Section 7422 requires court approval of expenses for an estate, there is no requirement in the law – including the much-touted new legislation that would require annual audits – that the supervising court be provided with any regular, interim financial or status report. More significantly, no one court would be looking at the bureau or its budget as a whole.

The current administration has made a lot of noise about reforming the bureau and making it more "transparent." It is doing this, however, by making the bureau even more permanent, contrary to the mandate of Article 74 and the statutory receivership scheme.

Is there an existing example of how the system could and should work under the existing statutory authority? The answer is yes!

Part II: The Right Stuff

On July 7, 1994, a consensual order of rehabilitation was entered against United Community Insurance Company (UCIC) in Upstate New York. Less than a month later, on August 3, 1994, the then superintendent of insurance, Sal Curiale, filed a petition with the New York Supreme Court in Schenectady to liquidate UCIC. The management of UCIC, having just consented to rehabilitation, vehemently opposed the petition and the issue of the actual financial condition of the company became the subject of an evidentiary hearing and the hiring by the court of an independent actuary. In the meantime, the New York Liquidation Bureau was effectively dismantling the company under the rehabilitation order.

When the new superintendent, Ed Muhl, reviewed the stalemate in early 1995, he made an extraordinary decision: he appointed a special agent *from outside the Liquidation Bureau* to assess the financial status of UCIC and to handle the rehabilitation or liquidation of UCIC, whichever was warranted. The special agent put together a small team of experts and a plan of action and advised the court of those plans. The special agent determined to the satisfaction of the court that the company was insolvent and an order of liquidation was entered on November 9, 1995 -- more than 14 months after the

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petition had been filed – and this time with the consent of UCIC's owner and board of directors.

The management of the UCIC estate by the special agent and his team since 1995 has been an example of how efficiently and transparently an estate can be managed for the benefit of policyholders and creditors in New York under the existing statutory scheme. This was accomplished by the special agent working closely with the various state guaranty funds, creditors and reinsurers, by staffing commensurate with the actual needs and activity of the estate, and by being accountable to the liquidation court through regular conferences and reports. UCIC is the only company in liquidation in New York that has consistently filed with the liquidation court annual statements prepared on a statutory accounting basis. While dividend declarations by estates in liquidation in New York are rare, UCIC has paid dividends over the years totaling 35% of recorded liabilities. Information on the estate is regularly provided by the special agent to the liquidation court and all interested parties, including representatives of the principal creditors, reinsurers and guaranty funds.

The Liquidation Bureau, however, has done its best over the years to downplay the record of UCIC and bring the estate into the fold of the Bureau. For instance, searching for UCIC on the Bureau's website will produce no reference to the special agent (the contact person listed is an employee of the Bureau and not the special agent), no indication that any dividends have been paid, and no reference to any filed documents other than the order of liquidation. If it were not for the level of involvement by the liquidation court, creditors, and guaranty funds fostered by the special agent over the years, this estate would have years ago become just one more mishandled estate in the Bureau's quiver.

What was extraordinary about Superintendent Muhl's decision to use a special agent outside of the Liquidation Bureau was not that it was outside the statutory scheme, but rather quite the opposite. The UCIC case is extraordinary because it is squarely within the statutory scheme, and it is the only estate that actually follows the original concept of the statute. It is the only estate that works closely with the court, files regular reports, prepares its annual statements on a statutory basis, and gets all its expenses and actions approved with full disclosure to all interested parties. This feat could not have been

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accomplished without the foresight of Superintendent Muhl, his understanding of the scope of his authority as receiver, and the pro-active participation of the court.

The original statutory scheme recognizes that each estate is different and allows the superintendent to bring the appropriate expertise to bear on each individual circumstance. Unfortunately, the Liquidation Bureau, by its very nature (a fixed staff of 500 people, most of whom are protected by a union contract), is a one-size-fits-all operation, with a voracious appetite but little flexibility. The result is a statutory process that has been highjacked by a non-statutory entity accountable to no one.

It will take more than adding layers of reports and audits to this already cumbersome operation to provide efficient and transparent management of insolvent estates. It will take a return to the actual intent and structure of the statutory scheme!

Note: The legislation sought by the Liquidation Bureau as a "reform" action, requiring the annual audit of the Bureau and the estates under its management, was signed into law as Chapter 540 on September 4, 2008. Part V of this series addresses this law and why it will move the Bureau even further from proper oversight, and make the administration of insolvent estates even more costly and inefficient.

Part III: [In]Security Funds

This seems like a particularly good time to discuss insurance security funds as part of the review of the insurance insolvency process in New York. While every state has some form of security or guaranty fund coverage for both property/casualty and life insurance products, New York does it differently – not necessarily better, but definitely differently.

Guaranty Fund Overview

The various state insurance guaranty funds generally provide coverage to resident policyholders against the failure of any carrier admitted to do business in the state. There are limitations and caps on coverage that vary from state to state. For information on any particular states coverage, go to the web sites of the National Conference of Insurance Guaranty Funds (www.ncigf.org) for information on property/casualty funds, and the

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National Organization of Life and Health Insurance Guaranty Associations (www.nolhga.com) for information on life and health funds. Both of these organizations make available detailed information on the coverages, caps and limitations on a state-by-state basis. The NCIGF site also has some excellent publicly available summary charts comparing coverages and limitations by state.

Even though these associations make information publicly available about the funds, the insurance guaranty funds are little known to or understood by the insurance consumer. There are many factors contributing to this lack of understanding including:

- Insurance claims are not as readily determined, for instance, as the balance in a bank account covered by Federal Deposit Insurance;
- The caps, coverages and exclusions are not uniform but vary greatly from state to state; and
- Most insidiously in this age of instant communication and "openness," the laws of most states specifically prohibit the advertising of the existence or coverage of the insurance security and guaranty funds, particularly the life insurance funds (see my June 18, 2008 post, "Outing Life Guaranty/Security Funds").

This series, however, is about the insolvency process in New York and, of course, the insurance security funds in New York have their own quirks and distinctions from the rest of the universe.

New York has five, count 'em, five insurance security funds -- three property/casualty funds and two life funds. The three New York p/c funds are the Property/Casualty Insurance Security Fund, the Workers' Compensation Security Fund and the Public Motor Vehicle Liability Security Fund. The two life funds are the Life Insurance Guaranty Corporation, which was replaced (but not eliminated) by the Life Insurance Company Guaranty Corporation of New York in 1985.

The New York P/C Funds

There are two main differences between New York's three p/c funds and the p/c funds in all other states:

1. The New York funds are pre-assessed rather than post-assessed; and

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2. The New York funds are controlled directly by the superintendent of insurance as receiver rather than by separate guaranty associations.

By statute, the New York p/c funds are funded by annual assessments of all licensed carriers writing the kinds of business covered by each fund. For the largest of these funds, the Property Casualty Insurance Security Fund, all licensed p/c insurers are assessed 0.5% of "net direct written premiums" in any year where the balance in the fund falls below $150 million. According to the 2007 Annual Report of the Superintendent to the Legislature, the balance in this fund at March 31, 2007 (the latest published report) was $180,903,187. Although this balance is in excess of $150 million, it is likely that the annual calls will continue without break for the foreseeable future because of the extensive demands against the fund in recent history, including the solvency concerns with the other two p/c funds.

The other two funds are not only smaller, but they are financially stressed to the point of having required legislative intervention to support them – particularly the Public Motor Vehicle Liability Security Fund, which at March 31, 2007 had a balance of $92,760. The Workers' Compensation Security Fund had a March 31, 2007 balance of $52,748,854, but this balance was supported by loans in excess of $17 million from assets of estates in liquidation. These loans were authorized by legislation adopted in 2005 as part of emergency measures taken by the New York Legislature to shore up the stressed funds -- measures that raise a number of unanswered questions about the long term viability of the funds and the proper or improper use of estate funds.

The 2005 legislation required the superintendent of insurance to evaluate the funds and make recommendations to the Legislature for "long term" solutions to the fund issues. This resulted in a May 2006 report by then Superintendent Howard Mills, supported by an extensive evaluation by the consulting firm of RSM McGladrey, recommending a number of statutory and administrative reforms. Among the more significant recommendations were proposals to eliminate the cap on assessments; reduce the $1 million cap on claims to either $500,000 or $300,000 consistent with other state funds (NY is the only state with a cap in excess of $500,000, and most states cap claims at $300,000); exclude claims of large commercial insureds (again, consistent with the

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restrictions in many other states); and merge the Public Motor Vehicle Liability Security Fund with the more broadly funded Property/Casualty Insurance Security Fund. To date, however, I am not aware that the current administration has actively pursued these or other proposed reforms with the Legislature.

The pre-assessment/post assessment dichotomy between New York and other states is probably not terribly significant today. While it might have been argued in the past that pre-assessments allow greater flexibility in addressing insolvencies on a timely basis, the sheer volume of insolvencies, the resulting claims, and the resulting financial stress on the funds, has *de facto* made even the New York funds close to being post-assessment funds.

The second significant difference between the p/c funds in New York and those of other states is that in the rest of the country, each state's fund is managed by a separate entity – generally a guaranty association that is independent of the receiver and that include industry representation (the funds are, after all, the funds of the contributing insurers!). In New York, however, there is no separate entity managing or overseeing the funds. The New York p/c funds are nothing more than general accounts, subject to the sole control of the superintendent of insurance. There is no industry representation, no separate claim handling function and no separate oversight.

The existence of guaranty associations provides an excellent check and balance in the insurance insolvency system. Receivers benefit from the expertise of the associations and their members in the management and payment of claims, and the associations provide an opportunity for the industry to have a better understanding of potential fund requirements and the unique issues facing particular insolvent estates.

In New York, however, the industry has limited, if any, involvement in the management or review of claims of an estate, and very little input to estate-specific issues that may arise, except in the context of costly and time consuming adversarial proceedings.

Finally, and of most significance, the absence of separate p/c guaranty associations in New York results in even more authority over the control and management of insolvent estates residing with the Liquidation Bureau as the superintendent's agent – a Bureau that, as I have pointed out in earlier installments in this series, is not a state agency (it just

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acts like one), has no clear statutory foundation, is subject to no central regulatory or judicial oversight, and despite its claims of transparency, is not obligated to provide any significant information about its operations to any regulatory, judicial, consumer or industry body. In effect, the New York p/c funds are pools of money collected from the industry, with unfettered check-writing authority granted to the superintendent's agents – the Liquidation Bureau -- who are accountable to no one!

The New York Life Funds

The principal life insurance guaranty fund in New York is the Life Insurance Company Guaranty Corporation of New York, which was created by special legislation in 1985. The creation of the Life Insurance Company Guaranty Corporation of New York in 1985, however, did not terminate the Life Insurance Company Guaranty Corporation, which continues to cover claims on policies issued before August 1985 that are not covered by the "new" fund.

The life fund in New York bears a much closer resemblance to the funds in other states. Assessments from the industry are made only on an "as needed" basis so there is no pre-funding involved. Also, unlike the New York p/c funds, the New York life fund is actually managed by a separate not-for-profit corporation whose members are all New York licensed life insurers. The members in turn select the directors of the corporation who are charged with its management.

The pre-1985 fund remains relevant because the "new" fund has limitations and coverage distinctions quite different from the pre-1985 fund. Most significantly, the "new" fund has a $500,000 cap on claims, and covers only New York resident policyholders of licensed companies, while the pre-1985 fund covers claims under any policy issued by a domestic life insurer. These distinctions are likely to play a significant role in addressing the Liquidation Bureau's work-out plan for Executive Life Insurance Company of New York in Rehabilitation, whose remaining book of business consists primarily of single premium deferred annuities issued before and after August 1985.

Although the New York life funds are closer to the traditional separate entities found in most other states, they seem to fly under the radar to a greater extent than the New York p/c funds. For example, information on the p/c funds is included each year in the

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superintendent's annual report to the Legislature, but there is no information included regarding the life funds. This is the case even though Article 77 of the insurance law covering the new fund requires an annual report be filed with the superintendent.

The New York insolvency process is fraught with inconsistent and ineffective reporting requirements. Parts IV-A and IV-B of this series explain these requirements and how they affect the effectiveness of the process.

Part IV-A: Information Highway or By-way?

The current administration has repeatedly stated its intent to be more transparent in its operation of the liquidation process in New York. The Liquidation Bureau has demonstrated this intent by issuing numerous press releases on its activity and has posted significant information and documents on its web site (www.nylb.org). Most recently, it has posted the long-awaited audit of the Bureau and the estates under its management for calendar year 2006, and has sought and received significant press coverage of this event ("NY Liquidation Bureau Issues First Complete Independent Financial Audit In Its 99-Year History … Bureau Receives Unqualified 'Clean' Opinion from Auditor on its 2006 Financial Data" – Press release of October 29, 2008). The administration has also touted the passage of the legislation it proposed requiring the audit of the Bureau and the estates it manages in the future ("Bureau Sought Change to State Insurance Law to Provide Greater Transparency" – Press release of August 7, 2008).

But does this seeming plethora of information constitute true transparency – in the open and helpful sense? Does it provide meaningful information to interested parties in insolvent estates, including policyholders, creditors, other claimants, reinsurers, guaranty funds, regulators, courts and legislators? What does the law require, and are the receiver and his agents complying with those requirements? What information is required to be made available by the security funds in New York? Is the information available from the security funds consistent with the statutory requirements? How helpful is the Freedom of Information Law (FOIL) to anyone seeking additional information about an insolvent estate or a security fund?

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In order to present this material in manageable bites, I have divided the subject into two parts: in this Part IV-A, I will cover the reporting requirements and practices of the rehabilitator and liquidator, including the Liquidation Bureau. The next Part (Part IV-B) will cover the reporting requirements and practices of the security funds.

Licensed New York insurers are required by statute to file financial statements on a statutory accounting basis with the Insurance Department on or before March 1 of each year (Insurance Law §307(a)(1)). Within five months of the end of a calendar year, each licensed insurer (other than companies with minimal premium volume) are required to file audited financial statements, which statements, together with the auditor's opinion, are to be made publicly available by the Department ((§307(b)(1)). In addition to the reporting requirements, the superintendent of insurance has the power to examine the affairs of an insurer "as often as he deems it expedient," but at least every 3 to 5 years, depending on the business of the insurer (§309).

But what happens to these reporting and examination requirements when an insurer is placed into liquidation or rehabilitation in New York? Interestingly, the liquidation and rehabilitation article of the insurance law (Article 74) is silent on the subject. Under a plain reading of the law, so long as the insolvent insurer remains licensed, it should continue to be subject to the same statutory reporting requirements as solvent insurers. The statute does not provide for automatic withdrawal or stay of the license or licenses of insolvent insurers. Liquidators try to justify not filing reports and not subjecting the entity in liquidation to examination by arguing that after an order of liquidation is entered, the entity in liquidation ceases to be a licensed entity. However, that argument is not supported by the law as written and is further belied by the common practice of liquidators treating licenses as tangible assets that can be sold. Moreover, even if that argument could be accepted for companies in liquidation, it cannot be said to be applicable to companies in rehabilitation, where the specific charge of the rehabilitator is "to conduct the business thereof, and to take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court shall direct." (§7403).

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The other argument made to try to justify not filing reports and not allowing examination is that under Article 74, the courts assume responsibility for the conduct of the liquidators and rehabilitators of an estate, thus taking the place of the regulators. However, while the law requires court approval of the material actions or plans of the liquidator or rehabilitator, it does not remove the applicability of §§307 and 309, and it does not provide the court with the necessary authority or tools to perform regulatory oversight of an estate. For example, none of the statutorily required reports discussed in this article are required to be filed with the rehabilitation or liquidation court. In fact, there is no statutory requirement for the liquidator or rehabilitator of an estate to file any report on the status of an estate with the court, except for a final report to close the estate. (Note: I referred in the prior Part of this series to the requirement in §7422 that the expenses of an estate are subject to the court's approval. A review of the docket of any of the significant estates under the Liquidation Bureau's management shows that this requirement is followed more in the breach than in the practice).

Only one of the current estates in liquidation files regular annual statements on a statutory basis (and that estate is the one estate not managed by the Liquidation Bureau). The two estates in rehabilitation have started filing statutory statements, but no estate – liquidation or rehabilitation – prepares and files with the superintendent annual audited statements within five months of the end of the calendar year (Note: the recently enacted statutory requirement for annual audited statements of the Bureau and each estate under its management has less strenuous requirements in terms of time and content and does not specifically eliminate the requirements of §307. That legislation, which is not effective until December 31, 2009, and which directly conflicts with existing law, will be addressed in a later installment of this series).

Furthermore, once an insurer is placed in rehabilitation or liquidation in New York, the insurance department ceases to continue the regular periodic §309 examinations of those entities, even though the insurance law does not exempt those entities from such examination. While I have been informed that there have been instances of insurance department examination of companies in receivership in the distant past, the practice has evolved that once a company is ordered into liquidation or rehabilitation, the insurance

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department ceases to be the regulator of that entity – perhaps to avoid the inherent conflict of the superintendent regulating himself.

Assuming for the moment that insolvent estates are no longer subject to §§ 307 and 309 (as seems to be the unstated position of the Liquidation Bureau and the bureaus of the insurance department responsible for the regulation of licensed companies), what reports are they subject to? There are only two other reporting requirements in the Insurance Law regarding estates in liquidation or rehabilitation: §206 and §7405(g).

Section 206 requires the superintendent to include in his annual report to the Legislature: "Lists of . . . insurers organized, admitted, merged, withdrawn, or placed in liquidation, conservation, or rehabilitation" (§206(a)(5); and "Tables relative to liquidation, conservation or rehabilitation proceedings by the department for prior years including the preceding calendar year" (§206(b)(3). The 247 page annual report for 2007 (obtainable in pdf format from the Department's web site at www.ins.state.ny.us/nyins.htm) has 10 pages devoted to the receivership process: 4 pages of narrative about the Liquidation Bureau, 2½ pages listing all the estates under its management, and an income and disbursements sheet for each of the three p/c security funds. There are no statements or other financial data for any of the estates.

The other applicable section, §7405(g), requires the rehabilitator or liquidator to submit to the insurance department an annual report for each estate in rehabilitation or liquidation within 120 days of the end of the calendar or fiscal year for that estate, which report is to be prepared "upon whichever standard the corporation conducts its financial affairs" and "shall include a financial review of the assets and liabilities of the corporation, the claims accrued or paid in that period, and a summary of all other corporate activity and a narrative of the actions of the rehabilitator or liquidator respecting such corporation." The report, therefore, need not be on a statutory basis, and need not be a full and complete financial report. Also, even though §307(a)(1) requires licensed insurers to file on a calendar year basis, the §7405(g) reports do not have to be on a calendar year basis. The last sentence of §7405(g) is also interesting. It states that the report under this section "shall be separate and apart from other reports issued by the liquidation bureau of the department in the normal course of its business." This statement

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seems to provide further support for the conclusion that the law does not excuse the liquidator or rehabilitator from the filing requirements of §307 or from examination under §309.

Even if the rehabilitator or liquidator does not file §307 statutory statements by March 1 each year, an interested person can at least obtain a copy of the §7405(g) report on an estate after April 30, right? Well, yes, but not from the Liquidation Bureau. As noted above, the Liquidation Bureau is not a state agency (as confirmed by the New York Court of Appeals last year) and therefore is not subject to the Freedom of Information Law (FOIL). Unless the Bureau voluntarily provides such reports, it cannot be compelled to do so under FOIL. At the present time, the Bureau does not voluntarily provide such reports and does not post them on its web site. All is not lost, however. Because the §7405(g) report is filed with the insurance department, which is subject to FOIL, a copy can be obtained from the department. However, the report, even if obtained, is not going to be terribly helpful in analyzing an estate. With the exception of the estates in rehabilitation and the one estate in liquidation mentioned above, the reports are on a "modified cash basis" rather than on a statutory basis. Furthermore, while in the past there was a separate report on each estate as required by §7405(g), the new administration has presented the report on a combined basis with financial data in columns and only a brief narrative for each estate.

Simply put, the reporting and compliance requirements of the law for licensed insurers have not been applied to companies in receivership in New York even though there appears to be no exemption from these requirements. Information about estates in receivership -- whether in rehabilitation or liquidation -- is minimal and of limited value to interested parties. And the Liquidation Bureau, despite its repeated expressions of openness and transparency, posts only what it wants to post, and makes available only what it wants to make available -- and then only in the manner and format it wants the public to see.

The next Part of this series explores the reporting requirements for and practices of the New York insurance security funds to see if they are any more transparent than the receivers and the Liquidation Bureau – and some of the results may be surprising.

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Part IV-B: Information Highway or By-way?

As discussed above, the statutory reporting requirements on the receiver and his agents, including the Liquidation Bureau, are limited and not necessarily helpful to policyholders, claimants and other interested parties. Despite all the noise about transparency, the information available is generally what the Liquidation Bureau decides to disclose rather than what interested parties want to know. Is it any different for New York's several insurance security/guaranty funds?

As discussed in Part III above, New York has five insurance security/guaranty funds. There are three non-life security funds administered by the superintendent of insurance: the property/casualty fund, the workers comp fund, and the public motor vehicle liability fund. The Life Insurance Company Guaranty Corporation, a separate entity with its own Board of life industry representatives, administers the guaranty fund protecting current life and annuity policies. There is also a life guaranty fund covering pre-1985 policies that still remains extant.

The P/C Security Funds

The p/c insurance security funds are accounts funded through industry assessments, with the commissioner of taxation and finance as custodian, and with the control of the funds vested with the superintendent as receiver. Because the p/c funds are essentially bank accounts and not separate entities, there are no specific reporting requirements for these funds. The superintendent is required to include as part of his annual report to the legislature under Insurance Law Section 206 "[a] statement of the expenses of administering" the funds, and to include "[t]ables relative to liquidation, conservation or rehabilitation proceedings by the department . . ." In response to these requirements, the superintendent includes a one-page schedule summarizing receipts, disbursements and balances for each of the three p/c funds. That is the sum total of the regularly provided public information about these funds!

However, because the fund accounts are within the custody of the commissioner of taxation and finance, some additional records regarding the funds can be obtained under the Freedom of Information Law. Hence, as a result of FOIL requests over a number of

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years to the department of taxation and finance, I have obtained detailed information on the disbursements from the three p/c funds on an estate-by-estate basis.

Curiously, however, the taxation and finance department advises that it does not keep records on recoveries from estates. For that information I was referred to the Liquidation Bureau, which, of course, takes the position that it is not a state agency and therefore not subject to FOIL. Notwithstanding this limitation, the Bureau includes some information on recoveries from estates in its annual report filed with the superintendent and which is obtainable under FOIL.

As a result, by using the information obtained from the taxation and finance department about disbursements and the limited information from the Liquidation Bureau on recoveries, I have been able to construct schedules of the net disbursements from the funds on an estate basis for the 10 years from 1998 through 2007 for the p/c fund and for the 6 years from 2002 through 2007 for the motor vehicle and w/c funds. Following are the five estates with the greatest net drain on each fund over these periods:

P/C Fund Net Distributions (in millions) 1998 through 2007:

Reliance Ins. Co.	--	$ 298.2
Group Council Mutual	--	$ 184.4
First Central Ins. Co.	--	$ 113.0
Transtate Ins. Co.	--	$ 75.5
Legion Ins. Co.	--	$ 73.0
Total All Estates	**--**	**$ 1,066.0**

W/C Fund Net Distributions (in millions) 2002 through 2007:

Reliance Ins. Co.	--	$ 172.3
Legion Ins. Co.	--	$ 76.5
Home Ins. Co.	--	$ 34.0
Fremont Indemnity	--	$ 14.6
Amer. Mutual Boston	--	$ 12.1
Total All Estates	**--**	**$ 354.1**

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PMV Fund Net Distributions (in millions) 2002 through 2007:

NY Merchant Bakers	--	$	46.4
Capital Mutual	--	$	26.7
Reliance Ins. Co.	--	$	8.5
Legion Ins. Co.	--	$	3.3
Acceleration Nat'l	--	$	3.3
Total All Estates	**--**	**$**	**89.3**

The information that I have been able to glean through FOIL, although not nearly providing a complete picture of the funds, still is enough to raise questions about the management of estates and the security funds provided by the industry. Unfortunately, however, this detailed information is simply not required to be disclosed on any regular basis nor made available for public analysis.

The Life Funds

Unlike the p/c funds, there is a specific statutory authority for "examination and regulation by the superintendent" of the Life Insurance Company Guaranty Corporation, the entity that administers the principal life guaranty fund, and a requirement that the Corporation file an annual financial report and "a report of its activities during the preceding calendar year." (§7714). Because the superintendent is required to make annual reports and examination reports on licensed companies publicly available (see §§307 and 311), access to this information about the Life Insurance Company Guaranty Corporation and the life guaranty funds it administers must be readily available as well, right? Wrong.

The superintendent does not include any information on the life funds in the annual report to the legislature, and there is no financial information included on the Life Insurance Company Guaranty Corporation web site (www.nylifega.org), which contains more disclaimers than useful information.

Because the annual financial report and examination reports are filed with the superintendent, they should be available under FOIL. However, in response to my FOIL requests, I was informed that no examinations have been conducted and the annual reports contain "confidential" information and are therefore exempt from disclosure. After an appeal, I eventually received copies of the last couple of "annual reports", but

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they were so heavily redacted as to make them useless (the redacted documents reminded me of a 1950's HUAC-era spy movie!).

Ironically, there is more information available on the p/c funds – controlled by the superintendent and his agents at the Liquidation Bureau -- than is available on the industry administered life funds. The cost to the industry for funding these funds is substantial, but there is no hue and cry demanding greater disclosure or accountability. Perhaps, therefore, there should be little surprise that the receivership process in New York is translucent at best, and that the Liquidation Bureau can claim transparency with so little disclosure.

Part V: The Legislative Cure – Masking the Disease?

Can you imagine a domestic New York insurer going to the Legislature with a proposed bill that would increase the insurers' reporting requirements and expand its regulatory oversight? At the very least, one would expect the Legislature to look at the request with skepticism and seek to understand the motives behind the request. One would certainly not expect the Legislature to pass the bill or for the Governor to sign it without any significant airing of the problems and discussion of the proposed solution. That, however, is essentially what happened last year when the Liquidation Bureau presented the Legislature with a bill requiring annual audits of the Bureau and the estates under its management. The bill, as requested by the Bureau and without any significant public airing, was passed by the Legislature last June and signed into law in September [Laws of 2008, Chapter 540, amending §7405(g)].

So what could be so bad about requiring the Bureau to conduct annual audits? Why wouldn't the revised law "provide greater transparency for policyholders and the public and to improve the Bureau's fiscal accountability," as proclaimed by the Bureau's August 7, 2008 press release?

As Shakespeare wrote, let me count the ways!

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A Failure to Provide an Oversight Function

First and foremost, providing for audits assumes that an oversight function already exists. It does not. As discussed in earlier installments of this series, the moment an order of rehabilitation or liquidation is signed, the superintendent of insurance becomes the receiver responsible for managing the estate and ceases to be its regulator – a void that is not addressed by the law. Providing for audits without providing for oversight responsibility, therefore, is placing the proverbial cart before the horse.

Supporters point out that the new law provides that the audits be provided to the insurance department and the Legislature, thereby making them publicly available. But for what purpose and effect? Once an order of rehabilitation or liquidation is signed, the insurance department ceases regulating the insolvent company and has been given no charge – statutorily or otherwise – to conduct any review or analysis of the audited statements. Because the Court of Appeals has determined that the Liquidation Bureau is not a state agency, in large part because it does not involve the management or use of state funds, the state comptroller has no audit authority over it. It is also doubtful that the Legislature intends to assume any responsibility for the oversight of the estates or the Liquidation Bureau. And if members of the general public sought to fill this oversight void by challenging the reports or their methodologies, I suspect they would be ignored or summarily tossed for lack of standing.

Curiously, the law does not provide for submitting the reports to the one entity with statutory authority over insolvent estates – the courts. In fact, the law does not provide for any regular reports or statements to be filed with the liquidation or rehabilitation court. And if such a court were provided with the audited statements, it would most likely be quick to point out that its function is limited to ruling on matters put before it by the receiver, and not to act as the regulator of the estate or its managers.

A Failure to Address the Reporting Deficiencies

Second, the new law perpetuates and further imbeds the reporting deficiencies of the current law. Rather than following the §307 standard for all other licensed companies (filing statutory statements by March 1 with the statements audited by June 1 each year – see Part IV-A above), the current law allows statements to be filed for each estate subject

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to rehabilitation or liquidation "upon whichever standard the [estate] conducts its financial affairs." Also, these statements do not have to be filed until the end of April, and are unaudited. These statements have proven to be of little value to policyholders, creditors, regulators, legislators, guaranty funds, investors or other interested parties, or even as a management tool for the Liquidation Bureau itself. Unfortunately, the new law not only fails to address these reporting deficiencies, it perpetuates them and wraps them in the protective cloak of an audit.

Most significantly:

- The new law dilutes the reporting requirements even further by allowing for combining the statements of the individual estates rather than requiring separate statements for each company in liquidation or rehabilitation. This combining is directly contrary to the whole receivership concept. Each estate is a separate entity with a distinct book of business under the supervision of a designated Supreme Court Justice. The idea of combining the results of these separate entities is new with the current administration and serves no useful disclosure purpose. Parties interested in one estate may have no interest in another estate, and reviewing combined statements would be of no help to interested parties in determining such things as the cost or effectiveness of the management of an estate, its success in marshalling assets, the likelihood of distributions to policyholders, guaranty funds or other creditors, or the prospects for new investor interest.
- Rather than seeking reporting consistency, such as by requiring reports to be filed on a basis consistent with other licensed companies under §307, the new law maintains the old reporting standard ("upon whichever standard each corporation conducts its respective financial affairs"). The new law, therefore, perpetuates the Liquidation Bureau's open-ended ability to prepare statements on some hybrid or mixed (or unknown) accounting basis, which has been one of the main reasons for the lack of meaningful and reliable information about the various estates and the Liquidation Bureau itself over the years.

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- As stated before, there is no statutory requirement for the filing of any kind of regular, periodic report – financial or otherwise – with the liquidation or rehabilitation court.
- The new law provides for the filing of the audited statements by August 1 of each year, without any explanation for allowing two more months than all other licensed companies are allowed under §307. By the time anyone can review and consider the consequences of these statements, they will be significantly out of date, thereby diluting any value or insight they might have provided.
- The bill memorandum in support of the new law stated that the cost of the financial statements and audit opinions "will be below $300,000 annually." That is for about 30 estates plus the Bureau itself – about $10,000 per audit. Based on the original engagement letters as posted on the Liquidation Bureau's web site and subsequently removed, the cost of the 2006 audits was estimated to exceed $1.1 million and to be completed by Fall 2007. Those engagement letters were only for 2006, and the Bureau subsequently expanded the engagement to cover 2007 as well (although the engagement letters for 2007 were never posted). The 2006 audits were not completed until October 2008, and the 2007 audits, promised by year-end 2008, were posted on the Bureau's website without fanfare (unlike the 2006 reports) in March 2009. The full cost of these audits – all of which are fully borne by the creditors and policyholders of the estates – is unknown, but scary to anticipate. Believing that 30 plus audits can be done annually for "less than $300,000" is even scarier.
- The new law requires an audit of every estate "subject to liquidation or rehabilitation," no matter the size, age or status of the estate. There is no discretion or de minimis exception, which is likely to result in totally unnecessary and disproportionately costly audits for some estates, particularly those at the end of the liquidation process or with minimal remaining assets or exposure. Even §307 exempts small companies from the audit requirement.

Financial audits have their place and can be useful control and management tools. However, without having first established a meaningful oversight function and a

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consistent, recognized reporting standard, and without providing for timeliness of the reports, these audits are nothing more than a costly waste of estate assets for appearance sake – a rush to fix a problem without understanding the problem.

If there is a theme to this series of articles, it is that the problems with the liquidation process in New York are systemic. The new law does not address these systemic problems. On the contrary, it protects the past through an audit of what is, rather than an examination of what should be. The new law gives all the appearances of providing "greater transparency and accountability," while in fact it further imbeds the current deficiencies of the receivership system and makes the task of future, meaningful change that much more difficult to recognize and achieve.

Audit Endnote

On October 29, 2008, the Liquidation Bureau issued a press release proclaiming:

> "NY LIQUIDATION BUREAU ISSUES FIRST COMPLETE INDEPENDENT FINANCIAL AUDIT IN ITS 99-YEAR HISTORY -- Bureau Receives Unqualified "Clean" Opinion from Auditor on its 2006 Financial Data"

The full 128-page report is posted on the Bureau's web site, including the auditor's opinion letters. Very impressive! The audit firm, Amper, Politziner & Mattia LLP, is a respected mid-level accounting firm, and there is no reason to believe that they performed their review other than thoroughly and diligently. Although the original engagement letters (posted and subsequently removed from the Bureau's web site) were more akin to a review than an audit – primarily because the sampling and access to records was to be provided by Bureau personnel, not the auditors – it is reasonable to assume, based on the opinion letters, that the scope of the engagement was expanded and changed before the completion of the audits.

One wonders, however, what the Bureau was seeking to convey by its proclamation of a "clean" 2006 audit. Without getting into a discussion of what constitutes a "clean" opinion, it is interesting to note that the "clean" year, 2006, pre-dates the current administration, which has repeated castigated the prior Bureau leadership as having been fraught with incompetence, greed and corruption. If that were the case, how was it possible for the report to be "clean"? Yes, the current administration could take credit for

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cleaning up the mess created by their predecessors, but then the 2006 report would not have been "clean" – 2007 or 2008 maybe, but not 2006. Is it possible that their predecessors were not as evil as pictured? Is it possible that the problems with the Bureau are the system and not the personnel?

Part VI: Oscar Season

If there were such an award, the current administration of the New York Liquidation Bureau would win the Orwellian Double-Speak Oscar. The Bureau has taken every public opportunity to promote a new era of openness and accountability, and to paint itself as the champion of the interests of policyholders and insureds. However, reality can be quite the opposite as this series has shown.

As previously detailed, under the banner of transparency, the Bureau has actually reduced the scope of its reporting (for example, by issuing consolidated rather than the statutorily required individual statements for companies under its management), and has succeeded in obtaining legislation requiring the preparation of untimely reports, at the expense of the estates, that will be of little or no value as an oversight or management tool while needlessly tying the hands of estate managers in the future.

But these actions pale in audacity to its recent unprecedented use of the courts to further insulate itself from outside scrutiny and accountability!

As discussed in this series, the Bureau acts as the agent for the superintendent of insurance in his separate and private role as liquidator or rehabilitator, marshalling assets, paying claims and, in the case of rehabilitation, managing the business and acting to remove the causes of insolvency to restore the company to the marketplace. The courts have held that the liquidator or rehabilitator "stands in the shoes" of management so that, in theory at least, the Bureau and its employees are subject to the same standards of care and responsibility as any manager of any insurance entity.

Of course, given the circumstances of taking over an insolvent company, the law provides for certain protections for the estate, such as providing the courts with the authority to issue injunctions or orders "necessary to prevent interference with the

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superintendent or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, the obtaining of preferences, judgments, attachments or other liens, or the making of any levy **against the insurer, its assets or any part thereof.**" (Insurance Law § 7419; emphasis added)

These powers are clearly intended for the protection of the estate and its assets, and to allow for an orderly administration of an estate. They are not intended, and have not in the past been used overtly for the personal protection of the rehabilitator or liquidator and his agents – until now.

Since the start of the current administration in January 2007, there have been four liquidation and two rehabilitation orders issued. Each of these orders has included the following provision that did not exist in any such order entered into prior to 2007:

> **"The Superintendent as [rehabilitator] [liquidator] of [the company], his successors in office and their agents and employees are relieved of any liability or cause of action of any nature against them for any action taken by any one or more of them when acting in accordance with this Order and/or in the performance of their powers and duties pursuant to Article 74 of the New York Insurance Law;"**

By adding this paragraph to the form of court order of liquidation or rehabilitation, the Bureau seeks to obtain immunity without any basis in the law, and for which there is no precedent in any of the hundreds of liquidation and rehabilitation petitions filed in the past. This immunity, by the way, is no garden-variety immunity from mere negligence. It bestows absolute immunity – including for gross negligence or intentional acts committed while acting as liquidator or rehabilitator of an estate.

Once again the current administration of the Liquidation Bureau has acted counter to its own pronouncements of openness and accountability. The Bureau repeatedly states that it is protecting the interests of policyholders and claimants of insolvent estates, and has publicly invoked its "fiduciary" role more than a few times. In the law, of course, fiduciaries are held to a higher standard of care than mere managers. Not only is the Bureau not prepared to assume even the most basic standard of care for its actions or inactions, the Bureau seeks to escape any and all responsibility.

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Add this unprecedented immunity to the lack of existing institutional oversight or regulation, and you have the perfect setting for unbridled and undiscoverable abuse.

"And the Double-Speak Award goes to . . ."

A Note About the NAIC Insurance Receivers Model Act (IRMA):

Some readers familiar with IRMA might think: "What's the big deal? IRMA provides immunity for receivers and their agents." While IRMA provides a couple of immunity options – a limited and an absolute immunity -- only two states (Texas and Oklahoma) have adopted IRMA. The immunity provisions were and remain controversial, as many industry observers do not understand the logic in exempting receivers and their agents from responsibility for their actions, particularly for their gross mismanagement or worse.

But most significantly, immunity for receivers is a protection granted by law, and not to be taken through an unsuspecting court in a largely unopposed setting. This taking, combined with the lack of institutional oversight, is quite contrary to the "open and accountable" mantra of the administration.

Part VII: It's a Wrap!

The last glimmer of hope for enlightened management of the insolvency process in New York by the current administration was dimmed at the end of February 2009!

In Part II, "The Right Stuff," I applauded the one estate being run openly and efficiently by an agent of the receiver, free from the stifling and secretive bureaucracy of the Liquidation Bureau. This one estate, United Community Insurance Company, demonstrated that the tools necessary for an efficient, open and accountable process exist in the law today, requiring only the will of the administration to use that authority. Unfortunately, it appears that this will does not currently exist. Direct control of the United Community estate has been turned over to the Liquidation Bureau effective March 1, 2009. There are no more agents of the superintendent as receiver independent of the Bureau!

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But let's look at the bright side! In the parlance of the market, you have to find the bottom before you can start to rebuild. With that possibility in mind, it is time to wrap up this series of articles on the receivership process in New York with some thoughts on how that rebuilding can occur.

As has been pointed out repeatedly (some may say *ad nauseam*) throughout this series, the receivership process in New York lacks meaningful transparency and accountability. Yet the tools to address these deficiencies are, for the most part, already in place. Following are some thoughts on the steps that can be pursued to restore confidence and integrity to the process, focusing on three principal areas:

- Estate Management
- Third Party Participation, including the Courts, Regulators, Policyholders, claimants and creditors, Guaranty funds, and Reinsurers
- Legislation

Estate Management

As discussed on numerous occasions in this series, the Liquidation Bureau's talk about transparency belies reality. The first step to achieving true openness, however, is relatively simple and uncomplicated: communicate material information on a regularly basis to all groups legitimately interested in an estate, including its policyholders, creditors, reinsurers, guaranty funds, the courts and, yes, even its shareholders. To accomplish this, the superintendent as receiver need simply direct all of his agents (unfortunately, at the moment that is only the Liquidation Bureau) to:

- Prepare regular periodic reports on a standard format, including a narrative on developments and standard (i.e. statutory) financial and cash flow statements;
- File those reports with the appropriate receivership court and post them on the agent's web site;
- Invite input from all interested parties particularly policyholders, claimants, creditors, guaranty funds, and reinsurers; and

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- Hold regular conferences with the receivership court, with notice to all interested parties.

The receivership process should be about finding the greatest value for the policyholders, claimants and creditors of an estate. For this to be achieved, the process needs to be truly open and communicative with these parties and not just pay lip service to their concerns.

Third Party Participation

The Courts

For the most part, the liquidation and rehabilitation courts in New York have been minimally involved in the oversight of management of the estates before them. Although it often seems that the courts grant undue deference to the receiver, it would be unfair to characterize them as merely rubber-stamping the requests of the receiver. The courts have a difficult job with a matter that is not the typical court case, and which often has no clear time frame to reach a conclusion.

There have been a number of exceptions, however, including New York Supreme Court Justice Shackman for the Constellation Re estate, Justices Kirschenbaum and Cahn for the various insolvent New York Insurance Exchange syndicates, and more recently Justice Stallman for the Midland Insurance Company estate and Justice Williams for the United Community Insurance Company estate Upstate. The involvement of these judges demonstrates the value that an attentive judge can bring to bear on the effective management of an estate.

However, even the most involved judges are limited to addressing only those matters before them, and if the receiver is not providing the judge with meaningful and timely information on a regular basis, and other interested parties are not able or willing to pursue matters with the court, the courts can only provide limited protection from systemic abuse.

The Regulators

A continuing regulatory role by the Insurance Department – separate and apart from the Liquidation Bureau or any other agent of the superintendent as receiver – would help ensure that the estates will be run openly and pursuant to the same standards and rules

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promulgated by the regulators for the rest of the insurance industry. In other words, when the superintendent of insurance is appointed receiver of an insolvent insurer, the same standards he applies to the rest of the industry should be applied to his own conduct of the business of the company in receivership.

The regulatory oversight of a licensed company should not end with the entering of an order of liquidation or rehabilitation. It makes no sense that when an insurance entity is placed in receivership, the superintendent ceases to be the regulator and becomes the manager of an unregulated insurance business. Why shouldn't the superintendent as receiver be held to the same standards that he imposes on the rest of the industry as its regulator? Why shouldn't he apply his own rules to himself? (For a fuller discussion of this point, see my November 2004 article presented at a conference on insurance insolvency, titled "Who Protects us from the Receiver?" A pdf copy of this article can be accessed at http://www.pbnylaw.com/publications.html.)

Policyholders, claimants and other creditors

Creditor representatives played a major role in the successful release of Constellation Reinsurance Company from liquidation in 1992, forcing the addition of significant value to the plan. Yet through the final hearing before Supreme Court Justice Shackman, the Liquidation Bureau protested the involvement of the very people it was purporting to protect. Although he deferred to the Bureau by not formally approving the creditors' committee, Justice Shackman allowed the active participation of the creditors' representatives in all phases of the proceedings – much to the chagrin of the Bureau but to the benefit of the policyholders and other claimants. This attitude of the Bureau towards interested third parties is unproductive and contributes significantly to the outside distrust of the Bureau.

The Bureau's justification for its position – that the involvement of third parties would interfere with the administration of an estate and be a waste of estate assets -- is disingenuous in view of the Bureau's lack of openness and accountability.

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Guaranty Funds

Guaranty funds as a group generally become the largest creditors as they pay claims against an estate. While the Bureau is quick to pass off claims to the guaranty funds of the various states, it is not very quick to provide meaningful or timely information on the status of the estate, the likelihood of immediate access to funding for the payment of claims, or the long-term prospects for distributions. Cooperation of the funds of the various states is essential for the efficient and cost effective management of an estate, and the receiver's agents must bring the funds into in dialogue on an estate at the earliest possible moment, and keep them involved over the life of the estate.

Of course, as described in Part III of this series, the property/casualty funds in New York are not separate entities, as they are in all other states: rather they are bank accounts funded by the rest of the industry and administered by the superintendent of insurance as receiver. This bank account approach concentrates all the authority in the receiver's agent (the Bureau) and eliminates the insight and perspective of the people that have to pay the assessments to meet the guaranty funds' obligations.

The failure of the life funds, which are separately run, to provide independent guidance is more a matter of inertia than anything. Life insolvencies have been few and far between over the past two decades, so that when a situation arises, there is no tested infrastructure in place to address the matter. This could be easily rectified by the superintendent invoking his authority over the life funds to require them to meet regularly, provide appropriate, publicly available reports, and establish procedures and protocols for the handling of claims, collection of assessments and involvement in plans for insolvent insurers.

Legislation

All of the foregoing changes and improvements can be accomplished within the existing statutes. But the law should be revised to address some of its weaknesses, shortcomings and foibles, which have been addressed in the various parts of this series. Among the matters that should or could be addressed through legislation are the following – in no particular order of importance:

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- Require the same standard of reporting (both as to timeliness and form) as is required of licensed insurers (i.e., based on statutory accounting principles); grant authority to the superintendent – as regulator – to waive by regulation or circular letter certain redundant, excessive or unnecessary requirements.
- Confirm the authority (and requirement) of the Insurance Department to maintain regulatory oversight over estates in receivership.
- Strengthen and standardize the requirement for regular, statutory statements and standardized reports to the liquidation or rehabilitation courts.
- Grant discretion to the Courts to recognize representatives of interested parties, including policyholders, creditor, guaranty funds and reinsurers.
- Eliminate the newly enacted audit requirements, and substitute a realistic oversight regimen over the receivership process and the agents of the receivership.
- Either eliminate the Liquidation Bureau altogether or clarify its status, standing and oversight.
- Place the p/c guaranty funds under the control of a separate entity with industry participation – similar to the funds in other states.
- Strengthen the reporting requirements and oversight of all the guaranty funds, p/c and life.
- Ultimately, allow for the appointment of receivers other than the superintendent of insurance, who would be held accountable on the same basis as any other licensee.

In other words, let the professional managers manage, and the regulators regulate!

Final Thoughts

Through this series I have attempted to show the errant path taken by New York's receivership process over the past several decades, and the need to repair and reshape the process. The system is not irrevocably broken, but it continues to move down a path that can only lead to eventual total mistrust and abuse. In view of the severe economic issues facing our industry today, the threat of massive insolvencies are not out of the question, and New York is ill prepared to handle such an event.

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Throughout my 23+ years representing creditors, policyholders, reinsurers, managements, and other interested parties of insolvent insurance companies, I have been told by a succession of Liquidation Bureau personnel that my proposals to open up the process to greater scrutiny and oversight, and to allow the active participation of third parties, would interfere with the administration of the estates by placing an unnecessary burden on the receivers and add significant cost to the estates. The reality is quite the opposite. I seek nothing more than to apply the same rules of business conduct to insolvent companies as are applicable to solvent ones.

Finally, the cocoon of secrecy that the Bureau has wrapped itself in over the years, and which is being enhanced by the current administration under an Orwellian ruse of transparency, has resulted in a bloated, unresponsive and arrogant bureaucracy, deeply mistrusted by those most directly affected.

It does not have to be that way.

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