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NEW YORK I

Liquidation Bureau Updates Counsel List

Firms Must Reapply To Handle Cases

BY JOEL STASHENKO

THE NEW YORK Liquidation Bureau will formulate a new list of approved outside counsel to handle the \$25 million in legal work the bureau contracts out annually.

Letters were sent late last week advising the 250 firms currently on the list that they must reapply and



Mark G. Peters

compete with other firms seeking for the first time to do business with the bureau, said Mark G. Peters, a special state deputy insurance superintendent in charge of the bureau. A request-for-statements-of-interest form will be posted today on the bureau's Web site (www.nylb.org).

"Although there are certainly a number of excellent lawyers who have been doing work for the bureau, given the bureau's history and the conduct of its most senior staff in the past...we do not have confidence that the list as a whole represents lawyers who are chosen exclusively for merit, competence and efficiency," Mr. Peters said in an interview.

One of Mr. Peters's predecessors as head of the bureau is scheduled to go on trial Nov. 15 in Manhattan Supreme Court for allegedly helping steer a bureau contract to a company that paid her husband kickbacks. Johanna Hall, who was dismissed in August 2006, is also accused of using a bureau employee as a baby-sitter

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Liquidation Bureau Updates Outside Firm List

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for her three children during a trip to Disney World.

Mr. Peters once headed the public integrity unit in then-Attorney General Eliot Spitzer's office. He said he was hired earlier this year by Insurance Superintendent Eric R. Dinallo, another former aide to Mr. Spitzer, to bring in a new team to restore ethical standards and transparency to the bureau.

"That was done with the express mandate that this entity needed to be turned around and reformed and my goal is to make it a model for the way in which receiverships are handled nationally," Mr. Peters said.

The bureau, based in Manhattan, has a payroll of 450 staffers and an annual budget of \$100 million. Mr. Peters and others take pains to say it is not a government agency, though Mr. Dinallo appointed Mr. Peters to his post. By law, the insurance superintendent is designated as a private receiver by Supreme Court of an impaired or insolvent insurance company and the Liquidation Bureau steps in to process claims, investigate fraud and otherwise keep that company operating as it proceeds to bankruptcy or is nursed back to financial health.

The bureau hires outside counsel to conduct the normal legal business of the companies in receivership. Mr. Peters said there are currently 63 entities the bureau is running in receivership with combined assets of \$3.5 billion. At any given time, those insurers have about 4,700 legal cases pending, about three-quarters of them in New York City, he said.

To maintain continuity, Mr. Peters said outside attorneys will continue to handle pending cases in most circumstances as the bureau reconstitutes its outside counsel list.

Fees paid to outside counsel are typically \$140-\$160 an hour for partners, \$120 an hour for associates and \$60 an hour for paralegals. Fees are higher, up to \$350 an hour, for the

most complex litigation, such as medical malpractice cases.

Firms will have until the end of October to submit statements of interests and other information about their practices, which will be evaluated within the bureau. Mr. Peters said he hoped to have a new outside counsel list by the end of this year. About the same number of firms will be on the new list, he said.

"If you are not one of the best at what you do, you will probably find you are not on the panel anymore," Mr. Peters said. "But if you are a good, solid lawyer and your law firm is handling matters well, presumably you will be asked back on the panel."

Mr. Peters said political affiliation or involvement by attorneys should not be a consideration in their assignments by the bureau.

Specialties Considered

Another purpose for a new list is to get a better idea of what firms consider their specialties to better match outside attorneys with the cases the bureau assigns. The current "big blunderbuss" list is not broken down in that way, Mr. Peters said.

"It is a poorly constructed panel because when you need to hire a lawyer, you do not need to hire a generic lawyer," he said. "If you have a medical malpractice case in Utica, you need a med-mal firm. A generic list doesn't allow you to pick the right lawyer for the right job."

James K. Keefe Jr., a solo practitioner in Garden City, said he worked on more than a dozen cases for the bureau in 2004 and 2005 involving property owners who were insured by the Legion Insurance Co., a Pennsylvania-based company that came under receivership at the bureau. With the changeover from the Republican Pataki to the Democratic Spitzer administration, Mr. Keefe said he did not expect to see new assignments.

"Usually if you are getting them from one side, you won't get them from the other side," Mr. Keefe said Friday.

Mr. Keefe called it "gratifying" that the bureau wants to assemble an outside counsel roster based on merit and said he would reapply for the list.

Michael C. Conway, a partner with Harris & Conway in Albany, said his firm last did work for the Liquidation Bureau last year and would also want to be on a new list eligible for assignments.

"We're interested in getting back on it, or to get active again," he said.

The Liquidation Bureau also manages the Property/Casualty, Workers' Compensation and Public Motor Vehicle funds. The operations of the bureau are financed by assessments on the estates it manages and it receives no taxpayer funding.

Court of Appeals Case

The question of the bureau's status as a government entity is the subject of a case pending before the Court of Appeals. In *In the Matter of Serio v. Hevesi*, 111, the state comptroller's office is seeking for the Court to uphold subpoenas issued to the insurance superintendent and top officials at the bureau. The comptroller contends the superintendent is acting in his public capacity when he steps in as receiver of an insolvent insurer and, as such, the books of the Liquidation Bureau should be subject to the comptroller's auditors.

Being classified as a public agency would create new management issues for the bureau, such as extending civil service protections to its employees.

Mr. Peters said the bureau has commissioned an audit of its finances by Amper, Politziner & Mattia, including a review of whether outside counsels have improperly billed the bureau for past work. Indications are that "quite a few" instances of billing irregularities will be found, Mr. Peters said. He said the audit results will be made public on the bureau's Web site when they become available.

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