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# SCHIFF'S INSURANCE OBSERVER

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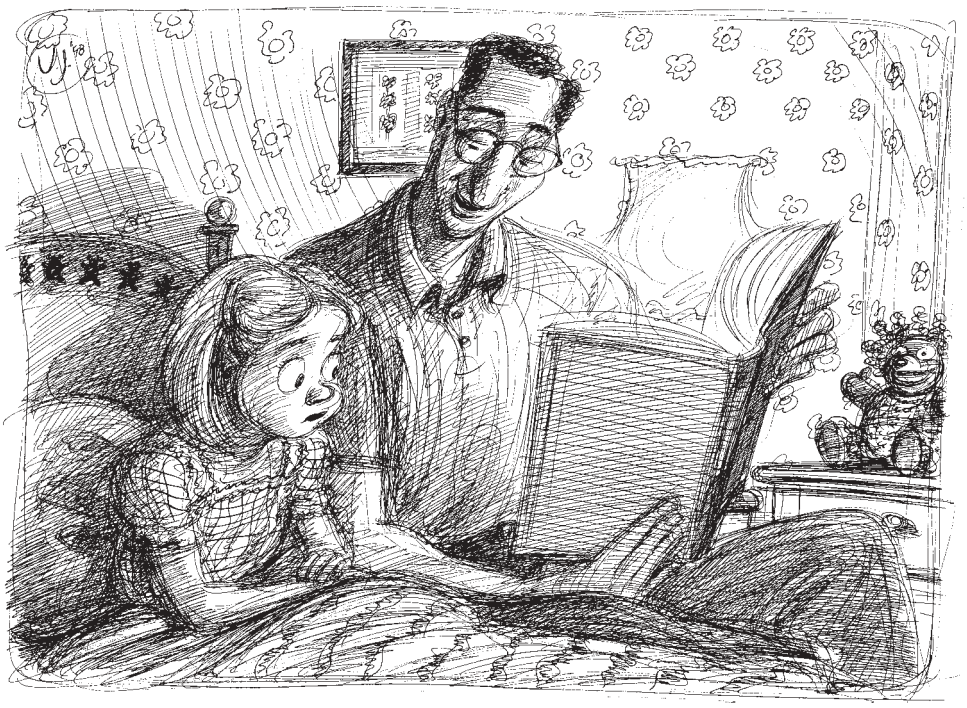
# Insurance Regulator Sucks up to Big Insurers

## *Makes Public Data Secret*

New York's insurance law requires insurance companies doing business in the state to file with their annual statement a supplement (Schedule G) that lists the names, titles, and compensation of employees whose pay exceeds $60,000. The public disclosure of the Schedule G data is a legacy of the famous Armstrong Committee investigation of New York life insurance companies, which commenced in 1905. In fact, the original *purpose* of releasing the data in Schedule G was to *make it public*, thereby preventing the sort of abuses that the Armstrong investigation revealed.

Since Schedule G is a government document, it's subject to New York's Freedom of Information Law (FOIL) and (theoretically) can be obtained by filing a FOIL request with the Insurance Department.

In 2000, at the urging of Equitable and Prudential, the New York State Insurance Department refused to comply with FOIL requests for Schedule G data, thereby negating important reforms. At the time, the department's refusal seemed ill-conceived and sleazy. In light of the recent wave of corporate scandals it looks even worse, and raises serious questions about the judgment and behavior of New York's insurance commissioner, Greg Serio.



*"Go screw yourself, the insurance commissioner explained."*

The scandals uncovered by the Armstrong Committee were major news stories in 1905 and 1906. They were followed by the press as closely as scandals involving Martha Stewart, Enron, Tyco, investments banks, and mutual funds are followed today. During the investigation the Committee's counsel, Charles Evans Hughes, came to prominence for his meticulous questioning of reluctant insurance executives, drawing out details that eventually comprised a long list of improprieties including payoffs to judges, lobbyists, and politicians; abusive executive compensation schemes; nepotism; secret connections between insurance companies and investment banks; secret control of banks and securities firms; interlocking directorships and self-dealing by officers and directors; and fraudulent financial statements.

At the end of the investigation, the Committee issued a report of almost 450 pages, of which more than a hundred were devoted to "the topic of remedial legislation," as R. Carlyle Buley noted with understatement in *The American Life Convention: A Study in the History of Life Insurance*. The remedial legislation that was soon enacted in New York was extensive, and required the disclosure of detailed financial statements, investments, commissions, political contributions, legal fees, dividend rates, claims resisted, and the name and positions of employees earning more than $5,000. (The Armstrong report had concluded that instead of limiting salaries by statute, it would be better to subject them to "complete publicity.") Over the years, New York's legislature raised the salary threshold five times, most recently in 1985 when it was increased from $40,000 to $60,000. If the threshold had kept up with inflation, it would be about $100,000 today.

Since 1975, *The Insurance Forum* has published an annual issue detailing the compensation of insurance-company executives. At first the data came from the Schedule G exhibit

to the statutory annual statement promulgated by the National Association of Insurance Commissioners (NAIC). "In 1986, however, the NAIC eliminated the exhibits from the statements," writes Joseph Belth, editor of *The Insurance Forum*. "Two reasons were given. First, the regulators said they had no need for the exhibits. Second, the regulators said there was too much public interest in the exhibits." (How ironic considering that "complete publicity" was the reason the data was made public to begin with.)

Since 1986 Belth has compiled compensation data from the Schedule G supplements filed in New York and Nebraska. In November 1999, Belth made his annual FOIL request to the New York Insurance Department. He requested the names, titles, and salaries of employees earning more than $600,000. (He didn't plan to publish the names of those earning between $60,000 and $600,000.) The data Belth requested is filed with the Insurance Department by March 1 each year, and the department usually gave it to Belth in April. When he hadn't received it by May 2000, he called the department to inquire, and was informed that he would receive only the name, title, and compensation of insurance companies' three highest-paid employees and directors. All other names in the Schedule G would be redacted.

Although Belth didn't have much compensation data to include in *The Insurance Forum's* July 2000 executive compensation issue, he had a shocking story. Through a subsequent FOIL request he discovered that the Insurance Department's decision to withhold the Schedule G data had been made in response to requests from Equitable and Prudential. Equitable asked the Insurance Department not to release the names in the Schedule G supplement—only the titles and salaries. "The dissemination of such personal information is very distressful to our employees and has caused us a great deal of disruption" wrote Equitable's president, Michael Hegarty.

New York's Freedom of Information Law exempts some documents from public release, including those that "are trade secrets," "constitute an unwarranted invasion of personal privacy," "could endanger the life or safety of any person," could "deprive a person of a right to a fair trial," or could "interfere with law enforcement investigations or judicial proceedings." Equitable sent the Insurance Department a memorandum by its lawyers opining that the release of Schedule G data constituted an "unwarranted invasion of personal privacy."

Prudential also wrote to the Insurance Department. It requested that the *entire* Schedule G be kept secret. In addition to the "unwarranted invasion of personal privacy" argument, Prudential claimed that the Schedule G was a "trade secret," and, if disclosed, "would endanger the life or safety of any person."

Although insurance-company employees' salaries had been publicly disclosed for ninety-four years, two months after receiving the letter from Equitable—and without any public hearing—New York's Insurance Department decided to withhold the Schedule G data on the grounds that its release would constitute an "unwarranted invasion of personal privacy."

The Insurance Department denied Belth's appeal for the Schedule G data, and on December 4, 2000 he filed a lawsuit against the Insurance Department. On September 28, 2001, Justice Nicholas Figueroa of the New York Supreme Court, ruled against the Insurance Department, ordering it to provide Belth with the information he'd requested.

The following is excerpted from Figueroa's decision. We have substituted "Belth" for the word "petitioner," and "NYSID" (New York State Insurance Department) for the word "respondent."

[The] information Belth seeks is contained in Schedule G of the New York Supplement to the Annual Statement submitted by life insurance companies doing business in New York State. The information is required to be filed pursuant to New York Insurance Law 307(a)(1) and 4233(a), (6) and (3).

NYSID…redact[ed] "the names of employees listed in Schedule G...except for the names of the directors, the trustees and three senior officers," thus, leaving Belth without the names of those insurance executives receiving salaries of $600,000 or more…

Belth's July 31, 2000 administrative appeal was denied…on grounds that disclosing the names would constitute an unwarranted invasion of privacy under Public Officer's Law 87(2)(6), and 89(2)(6), but [the Insurance Department] offered to list the positions and salaries with names redacted.

Belth alleges that the data he seeks have been available from NYSID since 1986. NYSID has published that data in a newsletter circulated to insurance regulators, industry officials and insurance scholars. However, in 2000, various insurance companies, learning that Belth was also publishing this information on the internet, wrote to NYSID, expressing their opposition to the continued disclosure of this information.

None of these insurance companies claim that anyone had actually been harmed by the internet publication, instead they allege claims of unspecified harm…

The sole issue is whether Public Officers Law 89(2)(6) bars disclosure because it constitutes an unwarranted invasion of privacy. The court holds that releasing the names and salaries to Belth of insurance company employees earning in excess of $600,000 yearly, does not violate this statute.

The fact that the employees are non-governmental employees should not insulate their salary from public view. The insurance industry is highly regulated, and the filing of employees' salary has been required since the early 1900's. Consequently, contrary to NYSID's assertion, insurance company employees, although privately employed, do not have a greater expectation of privacy rights than government employees. Moreover, the insurance company employees whose salaries NYSID resists divulging have no newly enhanced expectation of privacy, because, until 1999, NYSID regularly revealed the information.

In *Hopkins v. City of Buffalo*, 107 A.D.2d 1028, the court held that releasing the names and payroll records of non-governmental employees working on public works projects did not constitute an unwarranted invasion of privacy…

The fact that salaries of insurance personnel may be published on the internet does not convert the previously disclosable data into non-disclosable information…

Other than NYSID's conclusory and unsupported statements about the occurrence of unspecified employee distress and insurance industry disruption, NYSID has offered nothing to show that the data's dissemination has or will have an adverse effect…

The legislature in 1906 mandated that insurance companies file the names, salaries, and titles of employees earning a certain salary in order to thwart the political corruption and nepotism that then tainted the insurance industry. Based on the statute's continued existence over the course of the past century, the legislature still sees an enduring need for filing this information.

Moreover, public disclosure of this information fosters the statute's salutary purposes various ways. The public has an interest in seeing to it that insurance companies are competently managed, as insurance policies constitute a substantial part of the public's financial security. Additionally, the public has an interest in ensuring that insurance companies are discouraged from unduly influencing those public

officials charged with regulating their activities.

Disclosure also discourages insurance companies from the temptation of placing friends or relatives in lucrative positions based solely on their connections, or in the case of government officials, as a reward for prior favorable treatment.

As a result of balancing the public interest against the lack of disclosure, the court concludes that NYSID must disclose the information which Belth seeks…

Given the fact that NYSID has, until Belth's most recent request, publicly disclosed the information, and given the fact that it has not specified any potential harm resulting from the data being placed on the internet, NYSID's refusal lacks a rational basis, and is arbitrary and capricious.

Since Justice Figueroa's decision, the Insurance Department has provided Belth with the names of insurance-company employees earning more than $600,000.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On August 12, 2003, *Schiff's* submitted a FOIL request to the New York State Insurance Department for the Schedule G's for Equitable, Guardian, John Hancock, Metropolitan Life, New York Life, Principal, and Prudential. Our particular interest in the data was prompted by the fact that John Hancock had hired Richard Syron's daughter. Syron was on Hancock's board of directors and was chairman of its compensation committee. (For reasons that have never been satisfactorily explained, Hancock's board approved a compensation package for the company's wretched CEO, David D'Alesssandro, that came to about $100 million over several years—despite the fact that he did a terrible job.) We planned to examine the compensation data to see how many relatives of directors were employed by Hancock and the other insurance companies.

On August 26 we received the Schedule G's, however, the names of employees earning less than $600,000 had been redacted. "This redaction is necessary to prevent an unwarranted invasion of personal privacy," wrote Susan Donnellan, the Insurance Department's deputy general counsel.

Justice Figueroa had found that withholding the data that Belth had requested—the names of those earning more than $600,000—on the grounds that it constituted an unwarranted invasion of privacy "lack[ed] a rational basis, and is arbitrary and capricious." If the release of the names of thousands of people earning more than the $600,000 doesn't constitute an unwarranted invasion of personal privacy, it is hard to see why the release of the rest of the names would.

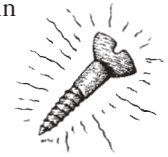
On September 25, David Schiff sent the following appeal to the Insurance Department:

Dear Ms. Donnellan:

Thank you for responding to my Freedom of Information Law (FOIL) requests for the Schedule G pages...

I made my FOIL requests for numerous reasons. First, these compensation schedules are part of each company's annual statement, which is a public document. Second, these schedules were available for public inspection for 94 years. Third, in order for my publication, *Schiff's Insurance Observer*, to analyze and report on important corporate-governance matters at the companies listed above, it is necessary to examine the complete Schedule G filings.

The Schedule G filings you sent me have been heavily redacted. I estimate that more than 95% of the key information contained in the schedules is missing. You redacted the employees' names on the grounds that disclosure of the names would constitute "an unwarranted invasion of personal privacy." Withholding the names on that basis is clearly in error because the very purpose of Section 4233 of the New York Insurance Law is to compel public disclosure of the information filed pursuant to it.



Section 4233(b)(3) was originally enacted in 1906 as Section 103(8) of the New York Insurance Law. That provision was one of many recommended by the Armstrong Committee. The Armstrong Committee was appointed after major scandals involving nepotism, bribery, double-dealing, improper use of corporate funds, and financial abuses rocked the insurance industry in 1905. Following its investigation, the Armstrong Committee issued a report, which concluded, generally, that it would be "inadvisable to recommend that the Legislature attempt to prescribe the expenditures of insurance corporations." More specifically, the Armstrong Committee concluded that it would be "unwise to limit salaries by statute." Rather, the Armstrong Report recommended that the Legislature "permit freedom of management subject to general regulations and *complete publicity*." [Emphasis added.] The Armstrong Report further recommended that "complete publicity" be accomplished through a "clear and specific provision...for disclosure of the transactions of the companies."

More recently, on September 28, 2001, the Supreme Court in New York County ruled that the New York Department of Insurance had not made the case for the privacy exemption so as to outweigh the need for complete publicity. (See *Joseph M. Belth v. New York Department of Insurance*.)

The annual statement was a public document long before the enactment of FOIL laws, and the redacting of key data from the Schedule G contravenes the reason the data is disclosed in the first place.

The recent wave of scandals involving corporate behavior, auditing, and financial services has made the public—and regulators—acutely aware of the need for good disclosure practices.

I trust that you will rethink this matter and come to the conclusion that hiding important public documents from the public is not the sort of behavior that the New York Department of Insurance wants to engage in.

On October 3, Donnellan denied our appeal, writing that the department was acting "*in compliance* [emphasis added] with the Court's order" in *Belth v. New York State Department of Insurance*.

Justice Figueroa had ruled that disclosing names and salaries does not constitute an unwarranted invasion of per-

sonal privacy. In her letter, Donnellan did not explain how denying our FOIL request was "in compliance" with his decision.

Right now, the only way we can obtain the data in the Schedule G is by bringing a lawsuit against the Insurance Department. Such an action would be costly. For the moment, we have chosen not to go through that process. Instead, we are bringing the department's actions to light.

Greg Serio won't be New York's insurance commissioner forever. When he leaves the department there's a good chance that he'll take a job in the insurance industry. Then it can repay him for the fine work he's done keeping the data in Schedule G out of the public view. ■