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The Feeling Was Not Mutual

by Edward J. Slaby

On Friday June 19, 1998, the New York State Legislature adjourned for the year. During that week there was a frenzied effort to put together legislation authorizing mutual life insurance companies in New York to reorganize as stock companies through the formation of upstream Mutual Holding Companies (MHCs).

New York is the home state of ten mutual life companies, ranging from giants such as Met Life and New York Life, to smaller companies such as Unity Mutual. The estimated market value of these ten companies is more than $40 billion, so it is not surprising that the New York State legislature, and in particular the Assembly Insurance Committee, would closely scrutinize the proposed legislation and also that it would become a political football.

MHCs allow the sale of a minority stake in the company to outside stakeholders.

The large New York mutuals wanted a bill authorizing MHCs primarily so they could make acquisitions in the rapidly consolidating financial services sector. For the small companies, the MHC structure would be a way station on the road to possible full demutualization, when circumstances and preparedness are more appropriate. The alternative for all companies that wished to shed their mutual structure was a conversion to total stock ownership.

A defining moment in the trajectory of the New York MHC legislation came on October 8, 1997, at a public hearing held by the Insurance Committee of the New York State Assembly. In addition to the Insurance Superintendent, there were more than 30 witnesses who testified, including mutual company CEOs, state regulators, legal specialists, consumerists, journalists, and academics.

The proposed bill seemed to have excellent prospects for consideration and passage. It was a Governor's Program Bill and had the support of the Insurance Superintendent. The mutual companies in New York, large and small, were behind it. However, significant opposition emerged at this hearing from various parties who spoke in opposition to the bill, which they considered to be, variously, "... ill-conceived" (David Schiff), "... an executive self-enrichment scheme" (Ralph Nader), and "... fundamentally flawed" (Joseph Belth). James Adkins, a constant MHC gadfly, proved to have detailed and well researched facts and opinions in opposition to the bill.

The result of this and subsequent public hearings was a report published in March 1998 by the staff of the Assembly Standing Committee on Insurance. The title of the report, "The Feeling's Not Mutual," telegraphed its contents. This report methodically dissected the testimony from the hearings and concluded that the proposed bill was unfair to the participating policyholders, failed to protect their interests, and generally would produce a result which was not in their best interests. The report concluded that policyholders in a MHC transaction would give away up to 50% of their interest in the company and receive no compensation in return.

The New York mutuals made a last frantic effort in the hurly-burly of the last week of the legislative session to find a way to get the legislation "unstuck" from the Assembly Insurance Committee. Three high-powered lobbyists were deployed in support, as well as the industry's State Trade Association. A large mutual company's CEO truncated his vacation to return to the fray in Albany. The small companies were also represented by a skilled negotiator from their ranks.

Day to day, reports of prospects for the bill varied widely from unwarranted optimism to extreme realism. Finally, the word came that there was no deal, and the bill was dead for the session.

In retrospect, the Assembly Insurance Committee was not going to forward a bill whereby the mutual policyholders are not fairly compensated for what they are perceived to give up. The industry's negotiating intelligence seems to have been less than adequate, as evidenced by the fact that no proposal was ever forwarded by the industry side that even came close to what the Assembly leaders had all along said they wanted. There may have been too much reliance on political maneuvering, and not enough attention to substance, to get passage of the bill. The issue may best be summarized this way. If the company were to demutualize, the policyholders would receive 100% of its value. If a company were to reorganize as a MHC, the policyholders would receive 0%. A compromise would seem to be indicated.

So where does this leave the New York mutuals? Some of the large companies have already begun the costly and time-consuming effort of demutualizing. Others are studying it. The small mutuals most likely will survive but, in my opinion, the failure to pass the MHC in New York means that they will not be given a reasonable opportunity to thrive.

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