

## **REQUEST FOR STATEMENT OF INTEREST**

**Issued: December 18, 2009**

**Modified: January 8, 2010**

**Extended: January 22, 2010**

**Modified and Extended: February 26, 2010**

### **I. BACKGROUND**

The New York Liquidation Bureau (the "Bureau") carries out the responsibilities of the Superintendent of Insurance in his capacity as liquidator, rehabilitator, conservator or ancillary receiver of all entities under his receivership pursuant to Articles 74, 75, 76 and 77 of the New York Insurance Law and Article 6A of the Workers' Compensation Law (the "Receiver"). The Bureau acts on the Receiver's behalf in discharging his duties to protect policyholders and creditors of insurance companies that have been placed into his receivership ("Estates"). The Bureau's objective is to maximize the assets and resolve the liabilities of such companies in an effort to return rehabilitated companies to the marketplace or to distribute the assets of liquidating companies to creditors. A current list Estates under the Receiver's receivership may be found at <http://www.nylb.org/Estates.htm>.

The Bureau also is responsible for the administration and adjudication of claims which meet the criteria for coverage under the Property/Casualty Insurance Security Fund, Public Motor Vehicle Liability Security Fund and Workers' Compensation Security Fund.

The Bureau is supplementing its outside counsel panel (the "Panel") and is interested in placing experienced and highly skilled law firms and sole practitioners ("Law Firms") on the Panel. ALL LAW FIRMS CURRENTLY ON THE PANEL AND HANDLING BUREAU MATTERS WILL REMAIN ON THE PANEL AND NEED NOT SUBMIT A RENEWED STATEMENT OF INTEREST (hereinafter "Statement(s) of Interest").

The Bureau encourages participation by qualified, certified minority and women-owned business enterprises ("MWBE's") and Law Firms with a demonstrated commitment to diversity in the workplace. The selected Law Firm will be performing services solely on behalf of the Superintendent as Receiver, not in his capacity as Regulator.

### **II. LEGAL MATTERS AND ALLOWABLE FEES**

The Bureau requires legal services from outside counsel in the six general areas listed below (a more detailed list of specific areas of expertise required by the Bureau is set forth in Section IV below):

**A. General Liability Claims.** The Bureau is seeking to retain Law Firms to represent insureds who are the subject of claims for personal injury, property and casualty loss and other general liability claims covered by policies written by the Estates. In connection with these assignments, the Bureau will pay \$140 per hour for work performed by partners, \$120 per hour for work performed by associates and \$60 per hour for work performed by paralegals. Appellate work under this category is subject to the same fee schedule. For a breakdown of the specific areas of legal expertise relating to general liability claims that the Bureau may at times require from the Law Firms on its Panel, see Section IV.B.1 below.

**B. Professional Liability Claims (including Medical Malpractice).** The Bureau is seeking to retain Law Firms to represent insureds who are the subject of professional liability claims covered by policies written by the Estates. In connection with these assignments, the Bureau will pay \$160 per hour for work performed by

partners, \$120 per hour for work performed by associates and \$60 per hour for work performed by paralegals. Appellate work under this category is subject to the same fee schedule.

- C. Workers' Compensation Claims.** The Bureau is seeking to retain Law Firms to represent insureds who are the subject of workers' compensation claims covered by policies of the Estates. In connection with these assignments, the Bureau will pay the rates and fees set forth in the Workers' Compensation Fee Schedule attached as Exhibit A.
- D. Fidelity and Surety.** The Bureau is seeking to retain Law Firms to represent insurance companies in matters relating to fidelity and surety bond insurance policies written by the Estates. In connection with these assignments, the Bureau will pay \$140 per hour for work performed by partners, \$120 per hour for work performed by associates and \$60 per hour for work performed by paralegals.
- E. Insurance Coverage Matters and First Party Claims.** The Bureau is seeking to retain Law Firms to represent the Receiver regarding insurance coverage matters and first party claims. The duties of these Law Firms will include litigating declaratory judgment actions, conducting hearings before court-appointed referees, drafting coverage opinions and providing legal advice. In connection with these assignments, the Bureau will pay \$140 per hour for work performed by partners, \$120 per hour for work performed by associates and \$60 per hour for work performed by paralegals. Appellate work under this category is subject to the same fee schedule.
- F. Bureau and Receivership Matters.** The Bureau is seeking to retain Law Firms to represent the Receiver in matters relating to, *inter alia*, insurance company transactions and tax issues, Bureau contracts and commercial transactions, Bureau labor and employment issues, Bureau real estate leasing, insurance law opinions and advice, and reinsurance issues. In connection with these assignments, the Bureau will pay an amount not to exceed \$350 per hour for equity partners, \$300 per hour for non-equity partners, \$250 per hour for senior associates (seven or more years out of law school), \$200 per hour for junior associates, \$150 per hour for full-time contract lawyers and attorneys not yet admitted to the bar, and \$75 per hour for paralegals. Appellate work under this category is subject to the same fee schedule. For a breakdown of the specific areas of legal expertise relating to Bureau and receivership matters that the Bureau may at times require from the Law Firms on its Panel, see Section IV.B.6 below.

The legal fees set forth above apply only to new matters assigned to Law Firms placed on the Panel after it has been formally reconstituted. All matters assigned before that time shall continue to be compensated at the current rate until the matter is concluded.

### **III. RULES AND INSTRUCTIONS**

In order to facilitate a fair evaluation of all Statements of Interest, the Bureau requires that all Statements of Interest maintain a uniform format. Accordingly, all Statements of Interest must strictly adhere to the requirements outlined in this RSI. The Bureau may, in its sole discretion, modify, rescind or provide an addendum to this RSI, require potential Law Firms submitting Statements of Interest ("Applicants") to revise their Statements of Interest or supply additional information in response, and/or invite any Applicants to appear for an interview.

All compliant Statements of Interest will be reviewed by a committee that will, under the supervision of the Bureau's Chief Compliance Officer, consider Applicants based exclusively on the Statements of Interest submitted, the quality of legal services previously provided by Applicants, any subsequent interviews with Applicants and/or additional information submitted

by Applicants at the request of the Bureau.

Statements of Interest must specifically supply all items of information requested in Section IV below in the exact format set forth in Section IV. Material deviations from the required format will likely result in disqualification of the Statements of Interest. If any item in Section IV does not apply to Applicants, Applicants must specifically indicate that the item is not applicable. Applicants may not satisfy an item of requested information by submitting or referring to a brochure, promotional or descriptive literature, or any other document, unless the request expressly permits such submission or reference.

Statements of Interest must be formatted in 12-point or larger font. All Applicants shall submit one original and four copies of the Statements of Interest. All Statements of Interest must be signed and dated by a partner or member of the Law Firm. In submitting signed Statements of Interest, Applicants certify that the information in the Statements of Interest is materially complete, truthful and accurate.

Applicants shall be bound by the information contained in its Statements of Interest. Statements of Interest may be withdrawn from consideration at any time by written submission to Chief Compliance Officer Tarik F. Ajami at the address listed below.

All Statements of Interest must be sent via overnight courier or hand delivery to:

New York Liquidation Bureau  
123 William Street  
New York, New York 10038-3889  
Attn: Tarik Ajami  
Chief Compliance Officer  
**RSI: Outside Counsel Panel**

Statements of Interest must be received by the Chief Compliance Officer at the address listed above, **no later than 5:00 p.m., New York City Time, on Friday, March 26, 2010**, unless such deadline is extended in writing by, and at the sole discretion of, the Bureau.

**Law Firms intending to file a Statement of Interest may submit written questions to the Bureau until 5:00 p.m., New York City time, on March 19, 2010.** Questions should be sent via e-mail to Chief Compliance Officer **Tarik Ajami** at [tajami@nylb.org](mailto:tajami@nylb.org) or via mail to Tarik Ajami at the address listed above.

Except as provided in this RSI and as otherwise necessary for the conduct of a business relationship previously established with the Bureau, Applicants submitting Statements of Interest, including their attorneys, may not communicate with Bureau personnel who are involved in the review, evaluation or selection of Applicants. **APPLICANTS (INCLUDING THEIR ATTORNEYS) MAY NOT DIRECTLY OR THROUGH AN INTERMEDIARY ATTEMPT TO INFLUENCE THE PROCESS OF EVALUATING AND SELECTING APPLICANTS FOR THE PANEL, EXCEPT THROUGH THE SUBMISSION OF STATEMENTS OF INTEREST AND ANY SUBSEQUENT INTERVIEW. THE BUREAU WILL DISQUALIFY APPLICANTS WHO ENGAGE IN PROHIBITED COMMUNICATIONS OF A MATERIAL NATURE, AS DETERMINED BY THE BUREAU.**

#### **IV. STATEMENT OF INTEREST**

The Statement of Interest shall set forth the following information:

##### **A. Applicant's General Information.**

1. Name of Law Firm.
2. Primary Office Address (include county).
3. General Telephone and Fax Numbers.
4. All Other Office Addresses (include counties).
5. Contact Person (include specific contact information).
6. Alternate Contact Person (include specific contact information).

##### **B. Area(s) of Expertise.**

The Bureau requires the services of Law Firms which possess expertise in certain areas of the law. To constitute an "area of expertise," one or more resident partners or members of the Law Firm must individually possess the requisite expertise in the relevant subject matter ("Specialized Partner"). To be considered a Specialized Partner, each Specialized Partner must:

- i. with respect to litigation expertise, have individually successfully first-chaired numerous significant jury trials to verdict in the relevant subject area and the applicable venues; or
- ii. with respect to transactional and advisory expertise, have individually successfully served as an advisor on, negotiated and closed numerous significant transactions in the relevant subject area; and
- iii. • be recognized as an expert in the field.

Select one or more of the following areas of legal expertise (in italics below) which Applicant possesses and seeks to provide to the Bureau.

AN APPLICANT'S OVER-SELECTION OF AREAS OF EXPERTISE TO INCLUDE AREAS IN WHICH APPLICANT DOES NOT POSSESS THE REQUISITE EXPERTISE WILL NEGATIVELY IMPACT THE BUREAU'S CONSIDERATION OF APPLICANT FOR PLACEMENT ON THE PANEL.

1. General Liability Claims.
  - a. *Personal Injury – General.*
  - b. *Personal Injury - Automobile/No-Fault.*
  - c. *Personal Injury - Lead Paint.*
  - d. *Personal Injury - Construction/Labor Law.*
  - e. *Subrogation.*
  - f. *Environmental/Toxic Torts (e.g., asbestos, etc.).*
  - g. *Product Liability (e.g., breast implants, tainted blood, etc.).*
  - h. *Property Damage.*
  - i. *Other (specify).*

2. Professional Malpractice Claims.
  - a. *Medical Malpractice.*
  - b. *Other Professional Malpractice (attorney, architect, etc.).*
3. Workers' Compensation Claims.
4. Fidelity and Surety Claims.
5. Insurance Coverage (Primary and Excess) Litigation, Opinions and Advice.
6. Bureau and Receivership Matters.
  - a. *Insurance Company Transactions (e.g., receivership asset sales).*
  - b. *Insurance Company Tax Issues.*
  - c. *Insurance Law Opinions and Advice (particularly with regard to Articles 74, 75, 76 and 77 of the New York Insurance Law and Article 6A of the Workers' Compensation Law).*
  - d. *Reinsurance and Reinsurance Coverage.*
  - e. *Bureau Contracts and Commercial Transactions.*
  - f. *Bureau Labor and Employment Matters.*
  - g. *Bureau Real Estate Leasing.*
  - h. *Miscellaneous (specify).*

**C. Facts Establishing Applicant's Expertise.**

For each area of expertise selected above, set forth the following:

1. The approximate percentage of Applicant's total work hours performed in the area of expertise.
2. The names of the Specialized Partners for each selected area of expertise.
3. The approximate percentage of each Specialized Partner's total work hours performed in the selected area of expertise.
4. If Applicant has selected General Liability Claims, Professional Malpractice Claims, Workers' Compensation Claims and/or Fidelity and Surety Claims (collectively, "Standard Insurance Claims") as an area of expertise, specify for each foregoing area of expertise the total number of cases in each area of expertise in which Applicant currently represents one or more plaintiffs and the total number of cases in which Applicant currently represents one or more defendants. Of the cases in which Applicant represents one or more defendants, set forth the number of cases in which Applicant is insurer-appointed counsel.
5. With respect to litigation expertise, set forth the specific venue(s) in which each Specialized Partner has individually successfully first-chaired numerous significant jury trials to verdict and the number of such verdicts in each such venue.
6. State the title, author and date of any articles or publications in relevant area(s) of expertise written by Applicant's attorneys within the last five years (hard copies of the relevant portions of these documents may be attached to the Statements of Interest).

7. A description of any special qualifications and/or certifications that Applicant or any of its attorneys possesses relative to the selected area(s) of expertise.
8. Any other facts relevant to establishing Applicant's expertise in the selected area(s) of expertise.

**D. Applicant Staff and Resources.**

1. Briefly describe the organizational form (e.g., partnership, professional corporation, etc.) and organizational structure of Applicant.
2. Set forth the aggregate number of full-time employees of Applicant (including all partners, members or other owners) and, of those, specify the number of equity partners (or members), non-equity partners, full-time senior associates (seven or more years out of law school), full-time junior associates, full-time contract attorneys, full-time paralegals and full-time support staff and other employees (each employee should be placed into only one of the foregoing categories).
3. For all Specialized Partners, specify names, state(s) and year(s) of admission, years of experience in the relevant area(s) of expertise and relevant professional affiliations and associations.
4. [Optional] Applicant may set forth the number of its full-time paralegals and support staff in specialized positions relevant to a selected area of expertise, along with a brief description of each such position (e.g., nurse paralegals, investigators, experts, accountants, etc.).
5. Specify any legal bill review program, system or service, such as Allegiant Systems or Allen Gray, Inc., into which Applicant has submitted its bills or invoices.
6. Set forth Applicant's professional liability insurance coverage, including current aggregate and per-occurrence limits. Applicants seeking to be qualified for General Liability matters must carry a minimum of \$1,000,000 of coverage per occurrence and in the aggregate. Applicants seeking to be qualified in any other expertise area must carry a minimum of \$3,000,000 per occurrence and in the aggregate.

**E. Applicant History and Licensing.**

1. State Applicant's number of years in business.
2. State all names used by Applicant within the past 10 years.
3. State all prior primary addresses of Applicant within the past 10 years.
4. Certify that Applicant and all its attorneys are in good standing in all jurisdictions in which they have been admitted.
5. For all Applicants who have worked on one or more Bureau matters in the last 10 years, respond to one of the three paragraphs below, as appropriate:
  - a. For all Applicants currently working on 20 or more Bureau matters, set forth a brief description of each such matter.
  - b. For all Applicants that are currently working on fewer than 20

matters but have worked on a total of 20 or more Bureau matters (including matters handled within the last 10 years), set forth a brief description of at least 20 such matters, including all Bureau matters currently being worked on by Applicant and the most recent Bureau matters previously worked on by Applicant.

- c. For all Applicants that have worked on 19 or fewer Bureau matters (either currently or within the last 10 years), set forth a brief description of all such matters.
  - d. For each description required above, include the nature of the matter, the attorney(s) primarily responsible for the matter, the key issues and difficulties confronted in the matter, and the resolution of the matter.
6. For every judgment entered against Applicant and/or any of its attorneys as a result of a claim against Applicant and/or any of its attorneys for professional malpractice, negligence or other malfeasance, set forth the date, all monetary relief granted, all injunctive relief granted, and the amount of the monetary judgment that currently remains unsatisfied, if any.
  7. Set forth the number of settlements within the last 10 years resulting in a payment of greater than \$10,000 in connection with any claims for professional malpractice, negligence or other malfeasance brought against Applicant or any of its attorneys.
  8. If Applicant or any of its attorneys has been convicted of any crime (felony or misdemeanor), set forth the relevant facts relating thereto.
  9. If Applicant or any of its attorneys has been the subject of any investigation by any governmental authority within the last five years, provide a brief description of the circumstances of each investigation, including the name of the investigating authority, the nature of the investigation, the date on which the investigation was commenced, and the status or disposition of the investigation,
  10. Provide a brief statement regarding all sanctions, suspensions, reprimands, censures, disciplinary actions and/or disbarments imposed upon Applicant or any of its attorneys by any professional or regulatory body in any state within the last 10 years.

#### **F. Potential Conflicts of Interest.**

1. For each pending case in which Applicant represents one or more plaintiffs asserting a claim against an insurance company in the Receiver's receivership and/or one or more of its insureds, set forth the case name, venue, index number and type of claim.
2. For each pending case in which Applicant represents one or more defendants in an action brought by an insurance company in the Receiver's receivership and/or one or more of its insureds, set forth the case name, venue, index number and type of claim.
3. Insurance Company Affiliations.
  - a. Disclose whether Applicant is currently house counsel, in-house counsel or captive law firm to any insurance company and, if so, identify the insurance company.

- b. Where Applicant currently provides legal services to an insurance company and/or its insured(s), provide a list of all such insurance companies.
  - c. For any attorney of Applicant currently possessing a greater than five percent ownership interest in any insurance company, set forth the name of the attorney and the name of the insurance company.
4. Provide a list of all insurance regulators, insurance receivers, guaranty associations, guaranty funds, security funds or insurance industry organizations currently represented by the Law Firm.
  5. If Applicant is applying to provide labor and employment legal services, specify whether the Law Firm represents management or union.
  6. List all of Applicant's employees who are related by blood or marriage to and/or are living in the same household as any Bureau employee(s).
  7. List all of Applicant's current employees who were previously employed by Bureau.
  8. List all Bureau current employees who were previously employed by Applicant.
  9. If Applicant has been involved in litigation against the Bureau within the last 10 years, it must disclose such involvement.

**G. Miscellaneous Information.**

1. For informational purposes only, set forth Applicant's specific fee schedules (for governmental entities, not-for-profit companies and private industry). If Applicant's fee schedules vary by area of practice, set forth the fee schedule for each area of expertise which Applicant has selected.
2. Provide a brief statement describing any *pro bono* work that Applicant has performed over the last five years.
3. Set forth whether Applicant has any unsatisfied judgments against it or has ever been the subject of a bankruptcy or receivership action or proceeding.
4. Provide any additional pertinent information not already provided in response to the above.

**H. EEO/Diversity/MWBE Status**

1. Set forth facts sufficient to demonstrate that Applicant is an equal opportunity employer and complies with all relevant federal, state and municipal equal employment opportunity and non-discrimination laws, regulations and executive orders. Applicant may attach hard copies of any equal employment opportunity policy statements or other relevant official firm documents.
2. Is Applicant certified as an MWBE with the New York State Department of Economic Development? If yes, please provide a copy of your certification. If no, please list any other jurisdictions and/or certifying bodies that have deemed the Law Firm to be minority or women owned. Please provide a copy of any such certification.

3. If Applicant has applied for, but has not, as of the date of this RFP, been certified as a MWBE by the New York State Department of Economic Development, please submit proof of a pending application, including the filing date thereof.
4. Please provide any additional information that may demonstrate Applicant's commitment to equal employment opportunity and diversity in the workplace.

## **V. ADDITIONAL TERMS AND INFORMATION**

The information contained herein shall be used for the sole purpose of responding to this RSI. The Bureau will not, and is not under any obligation to, pay the costs, in whole or in part, incurred during the preparation of a Statement of Interest.

The Bureau, in its sole discretion, reserves the right to accept or reject any or all Statements of Interest, to utilize any or all ideas expressed within the Statements of Interest, and/or to adopt any or all parts of the Statements of Interest submitted. All Statements of Interest shall, upon receipt by the Bureau, become the property of the Bureau.

The Bureau may in its sole discretion: (a) request additional information or clarification from any Applicant; and/or (b) invite any Applicant to appear for an interview.

The Bureau may, in its sole discretion, rescind, modify or provide an addendum to this RSI and, in connection therewith, allow Applicants to revise their responses or supply additional information.

Upon completion of the selection process, the Bureau will notify in writing all Applicants that have been selected for the Panel. The Bureau will endeavor to notify all Applicants that have not been selected for the Panel.

This RFP does not commit the Bureau to select an Applicant or enter into a contract with an Applicant.

**SCHEDULE A**  
**WORKERS' COMPENSATION FEE SCHEDULE**

	<b>Routine Hearings/Section 32 Settlement</b>	<b>Routine Hearings With Lay Witness**</b>	<b>Routine Hearings With Expert Witness**</b>	<b>Additional Witnesses**</b>	<b>Depositions (Including Preparation, Set-Up Time &amp; Reports)</b>	<b>Federal Longshore &amp; Harbor Workers' Act Appearances</b>	<b>No Show Fee</b>	<b>Hourly Rate***</b>	<b>Paralegals (Including Drafting Subpoenae)</b>
Region One Appearances*	\$160.00/hearing	\$250.00/hearing	\$300.00/hearing	\$150.00/each additional witness	\$650.00/deposition	\$180.00/hr.	\$75.00	\$160.00/hr.	\$60.00/hr.
Region Two Appearances*	\$140.00/hearing	\$200.00/hearing	\$250.00/hearing	\$125.00/each additional witness	\$550.00/deposition	\$180.00/hr.	\$75.00	\$140.00/hr.	\$60.00/hr.

\* Region One Appearances include appearances in Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk & Westchester Counties. Region Two Appearances include appearances in all other counties.

\*\* You must designate whether your first witness is a lay witness or expert witness. The additional witness fee applies for both lay and expert witnesses.

\*\*\* The hourly rates are to be used for all matters that are not specifically delineated above, including working on appeals.