

KICKBACK

by Scott Johnson

It's March 12, 2008. Eliot Spitzer is on TV...again!

His structured chin, dark brows and protruding ears consume the close ups. The stern shroud is on almost every channel on virtually every television in America during a media "mea culpa" sure to confirm him as one of the most hypocritical public figures of all time. The purpose...closure, perhaps, to an unrelenting media frenzy; the result of an FBI investigation exposing New York's governor as a preferred client of a high-end brothel known among its fabulously wealthy international clients as the Emperors Club.

Unlike previous photo-ops where Spitzer surrounded himself with lawyers, advisers and high-profile political figures--to give credence for attacks on numerous hand-picked corporate victims du jour--the former crusader Attorney General, was by himself this time. Alone, with just a podium and half page of notes. Alone that is, except for a dutiful wife whose Mona Lisa persona featured blank eyes lasered to the notes her man had painstakingly scribbled the night before; as though she had no idea what he was going to say.

Over the past nine years, eight as attorney general and one as governor, I have tried to uphold a vision of progressive politics that would rebuild New York and create opportunity for all.

We sought to bring real change to New York, and that will continue.

Today, I want to briefly address a private matter.

I have acted in a way that violates my obligations to my family, that violates my -- or any -- sense of right and wrong. I apologize first, and most importantly, to my family. I apologize to the public, whom I promised better.

I do not believe that politics in the long run is about individuals. It is about ideas, the public good and doing what is best for the state of New York.

But I have disappointed and failed to live up to the standard I expected of myself. I must now dedicate some time to regain the trust of my family.

I will not be taking questions. Thank you very much. I will report back to you in short order.

Thank you very much.

It may have been all about a man but I couldn't help thinking what this had done, or appeared to have done, to a woman. The Harvard-educated lawyer, Silda Wall Spitzer, had foregone a legal career to support her husband's candidacies and to raise three daughters who, at the time, ranged in age from 14 to 18. "Devastated" is the word that came to mind. She had done a good job with the girls, and still squeezed enough time to found, and chair the board of, New York-based Children for Children, a nonprofit organization ironically preaching the virtues of responsible behavior in young people. Now, she was seeing the man she had trusted and loved as he really was. Or worse, she was seeing the world see her and her man for what they really were.

Unable to muster even a glance at the room full of vultures, she never looked up.

How could she?

Court documents of her husband's now widely exposed tryst(s) truly enlighten, particularly to the breadth of Spitzer's hypocrisy. He had, on this occasion, orchestrated a series of phone calls to choreograph a meeting in Room 871 at the Mayflower Hotel with a hooker named "Kristen". She was to take a train from New York to Washington DC, take a cab to the hotel, get an envelope from the concierge desk which contained a key whose number would lead her to a room that would already have the door opened--details for a curtain of deceit to obscure a few hours of extra-marital sex with an \$8,000 an hour whore.

And, it was apparently an exercise Spitzer was familiar with. Enough to have a revolving account. Enough to become known to the sex brokerage firm as "client 9"; the latest moniker which would replace the previous "Sheriff of Wall Street." After this encounter, the club's top CSR said "client number 9" sometimes asked for things that, in her words...weren't "all that safe." FBI inquiries would later show the Emperor's Club "bookers" had even labeled New York's Governor as... "difficult."

Spitzer's victims, of course, were giddy over the news. They saw the fallen "sheriff" as arrogant and greedy; shamelessly ignoring regulatory legal restraints for self aggrandizement and political gain. Whenever he fancied, he'd trample the purview of the SEC and other agencies, to extort settlements and advance his private agenda. That was the charge. At the time, U.S. Chamber President Thomas J. Donohue said Spitzer used threatening tactics that were the "most egregious and unacceptable form of intimidation that we have seen in this country in a long time."

End-zone celebrations were the biggest on Wall Street, where he had prosecuted securities fraud and other white-collar crimes. A Democrat, Spitzer aggressively used his office resources after the Enron and WorldCom scandals and after the "dot com" collapse. Sometimes, with only speculative evidence, he publicly accused brokerage analysts of inflating their companies values and falsifying earnings reports of their clients. He went out of his way to attack Dick Grasso, the former chairman of the New York Stock Exchange. Arrogantly ignoring the irony, he chided that Grasso was paid too much to do too little; as though his own silver-spoon inheritance of multi-millions was exempt from such a charge.

He went after the investment-banking industry and Midwestern polluters, gun manufacturers and giant pharmaceutical companies, as well. Nothing, no one, was off limits. But...Spitzer's

comeuppance was welcomed by no group more than the most powerful family in the insurance industry, the Greenberg's--Maurice "Hank" Greenberg, former chairman of the world's largest insurance company, AIG, and his two sons, one of whom left AIG to become CEO of the world's largest insurance broker, Marsh-MacLennan.

It was March 30 four years earlier when a letter arrived at the New York AG's office personally addressed in blocked print to Elliot Spitzer. Not so unusual for the Sheriff of Wall Street to receive anonymous, communique's, but this close to 911 kid gloves were used for anything that could be anthrax. Nonetheless, with remarkably little fan fare, this two page, single-spaced, missive, made its way to the overstuffed in-box of David Brown IV, the head of Spitzers Investment Protection Bureau and his former classmate at Harvard Law. The envelope stapled to its contents was postmarked Westchester. There was no return address.

No one knows who sent it. Those still speculating sometimes look to the Washington Legal Foundation ("WLF")--a free-market non-profit that only a month earlier filed a written complaint with the state insurance commissioners and attorneys general of both New York and California concerning the practices of large brokers such as Marsh. In its complaint, the WLF said that "contingent commissions" paid by insurers to brokers based on the brokers' achievement of premium volume and profitability goals "*can compromise the broker's fiduciary duty to represent the best interests of their clients, and create incentives for brokers to refer business to companies that will make them more money.*"

But the kidnap-style letter sent thirty days later was not only from someone who was concerned; it was signed "Concerned" and had one line that appeared to justify the signature...

"The point is to appear as if Marsh is providing a service to the insurance market rather than the reality which is that Marsh is receiving major income for directing business to preferred providers/insurance markets,"

Brown had been an energetic cog in many of Spitzers Wall Street crusades. Fresh from settling several mutual-fund investigations including the largest foray of the \$7 trillion industry in 60 years he was, like his boss; tough, relentless. Refuse his first settlement offer and you're not likely to receive the traditional split-the-difference response. Offers to settle weren't seeds of a negotiation; not from Brown, or Spitzer's office generally, for that matter. They were terms of unconditional surrender to a war they knew how to win. Counter offer and the public drubbing continues--and any response could be higher than the original offer.

An expert at employing a "get something from nothing" regulatory assault, Brown had to have known this to be not only a shocking allegation but also an opportunity right up his bosses alley. It's risk/reward ratio was favorable too. If true, the allegation was hardly nothing. If not true it could easily be threatening enough to force a settlement--a public statement perhaps; one that could fuel his bosses aspirations and thus, maybe, his own.

Either way the core charge was biblical. Simply; the world's largest insurance broker was taking two payments when it had, in essence, promised to take and was legally entitled to, only one. Marsh first got a fee from its clients, commercial customers seeking a good faith

recommendation for the best deal on million dollar insurance premiums. Then, unknown to clients it brokered back end deals from the insurance companies that wrote the very policies the broker had previously recommended for its clients. The WLF argued that a broker's leveraging of its ability to refer primary insurance business to obtain reinsurance brokerage engagements from insurers could lead to a similar conflict of interest.

Unlike the WLF letter of concern to an insurance commissioner, the one signed "Concerned" required the attention of someone who knew how to be "difficult". Spitzer immediately demanded an expedited meeting with Marsh execs.

There was an air of dispatch with everything Spitzer did, or wanted done. Finding fault was his mantra but, full speed ahead was his modus operandi; just ask the Emperors Club. In this case, he was hardly an appointed commissioner requesting a chat with a domestic auto carrier's CEO. And he knew it. He was the Attorney General of the world's financial capital. He had the will of the populace; barely. And, he had subpoena power. All Brown had to do was print one out, fill in the blanks and Spitzer would sign it, which he did. It took only three days for service of process and to track down Marsh's general counsel William Rosoff in Asia. A week later Rosoff was sitting in the attorney general's office in Manhattan. Subpoena's were also sent to Marsh competitors Aon and Willis. Within a month, Spitzer's office expanded the investigation issuing subpoenas to several large property and casualty insurers as well.

Rosoff knew Brown. They'd actually been at the same firm for awhile--Brown an associate and Rosoff a partner. Rosoff may have been concerned about the need for a subpoena but, he promised Brown he'd take care of the problem, whatever it was, and that there was no harm to the clients because the brokers who place the insurance never knew about the [back end] commissions and therefore couldn't be influenced by them. He also suggested that though Marsh did indeed take the back-end cash, there was no harm and thus no foul if the customers always got the best deal.

But Brown wasn't as easily distracted as, say, a state insurance commissioner statutorily charged with, but woefully incapable of, regulating the largest insurance broker on planet earth. Indeed, New York state's insurance department had looked into similar allegations several years earlier and was, apparently, still doing so. Brown, on the other hand, was quoted saying Rosoff's assertions were "...complete nonsense!"

The insurance commissioner's delay was, for a crusader like Spitzer, the perfect excuse for ignoring traditional regulatory protocols between bureau's.

Besides, in the absence of subpoena power and with no smoking gun, the commissioner's inaction could be understandable to some. This author for example. My first brush with the Marsh "affair" was a conversation with Jeff Grady, my boss and president of the Florida Association of Insurance Agents (FAIA). I was in his office, next to mine, at FAIA's Tallahassee headquarters, when he first broached with me the news of "kickbacks" opining..."things could get ugly for independent agents--they could lose their contingency commissions."

After 34 years lobbying for independent agents, I didn't hesitate, launching into a thorough review of the difference between brokers and agents--how the twain could never meet and why most states, except New York and California, didn't allow brokering at all. "Independent agents are unique" I said, " They legally work for, and are paid by the company, up front, and on the back end, and the customer knows, understands and accepts this." In fact, Florida law, as in most states, requires an agent approach and prohibits brokering except under certain limited circumstances. I reminded him of what I thought few had known, that FAIA itself had entertained moving towards a brokerage state; where policies are sold net of commissions and agents are paid only what they can collect from consumers in the form of up-front "fees". "I don't see this turning into much" I said, completely failing to assuage even a fraction of what would prove to be Grady's well placed skepticism.

Throughout the early stages and at the first "sweat room" meeting, Rosoff had done likewise, suggesting Brown research the complicated and rich evolution to the industry's present day marketing system as a gateway to understanding how "ho-hum" the whole "Marsh" thing might be. Without a real reason to distrust Rosoff, Brown may have been tempted to consider his suggestion or at least to consider he might not fully understand the context. Inside though, beat the heart of Eliot Spitzer's legal wing man--a rare breed of crusader that must have wondered *...how can someone promise to represent only the consumer, also get paid by the retailer, and assert with a straight face that no laws have been broken?*

The following month, under field general Brown, Spitzer's army crawled over boxes of records and executive emails like kitchen cockroaches when the lights go out. Their focus was on Marsh's global-brokerage unit, which administered the so called back-end commissions. And, the emails were shocking. They revealed that what Marsh was doing was hardly the natural evolution of an industry. Insurers were involved and complicit in what appeared to be criminal bid rigging. In one email, the insurer who got the business was the one Marsh producers were "... steering business to" and were "...steering business from." In another the attached document was from Munich-American RiskPartners, executives who lamented that... "this idea of 'throwing the quote' by quoting artificially high numbers in some predetermined arrangement for us to lose is repugnant to me . . ."

Repugnant, maybe. Illegal, undeniably. But...not enough of either to disassociate from the world's largest broker.

Another email from the Greenville County, South Carolina, school district was from Marsh to CNA directly requesting a bogus bid. Marsh wanted Zurich, to win the bid so its execs at the global-broking unit told an exec at CNA... "I want to present a CNA program that is reasonably competitive, but will not be a winner."

When contacted by Spitzers office, the typical reaction from insurers was to blame Marsh. But, that wasn't going to hold water in every instance. In one email, for example, Chubb offered a bribe if Marsh would refrain from shopping existing Chubb accounts; in essence, asking Marsh to guarantee it's renewals without regard to price, in exchange for a million dollars. Worse, Chubb was looking to expand its reputation for writing personal lines of wealthy clients; a

market where competing broker Aon was a major player. E-mails showed that Chubb took extreme exception when Aon showed Ivana Trump's business to AIG.

It was emails like this that expanded the entire investigation from a handful of large brokers to perhaps dozens of extremely large insurers. And, it gave license for New York's Attorney General to do pretty much as he pleased.

While Marsh had been in Spitzer's crosshairs from the beginning, these revelations tossed a match under the tent and, according to court documents, proved to only scratch the surface of a systemic bid rigging problem at Marsh and other large brokers.

Emboldened with raw email conversations never meant to be published or read by an Attorney General, Spitzer would accelerate and expand. While his criminal division would conduct independent investigations and ultimately file criminal and anti-trust charges against executives at the Global Broking Unit as well as a hand full of producers, Spitzer began trying to put Marsh out of business; or put its executives behind bars.

He settled on forcing them to resign.

The irony couldn't have escaped Spitzer. In a previous matter, he'd dealt a blow to the father, Maurice Greenberg at AIG. Now, he would get the son, Marsh CEO, Jeff Greenberg, and for good measure, his General Counsel Rosoff. But, there were hurdles to clear. While he crossed many lines before, the question here was whether Spitzer could preempt the shareholders and the board of directors of a public company.

It didn't matter. Spitzer wanted heads to roll and he was more than capable of finding a way.

First, he announced the guilty pleas of two AIG execs at an October press conference and also said he would sue Marsh in civil court. Then, the coup de gras...Spitzer made clear that he was considering a criminal charge against Marsh & McLennan, essentially alleging the company was a criminal enterprise. If true, the company would be shut down---unless, of course, its top leadership stepped down.

Marsh's board was devoted to Greenberg and may have wanted to fight. But, when your stock loses 43 percent of its value loyalty takes a back seat. Greenberg and Rosoff were both gone in two weeks. The new CEO was Michael Cherkasky, who headed Kroll, an investigative agency recently purchased by Marsh. On paper he wasn't qualified. He'd never run an insurance company or even an insurance agency of any size. But he had at least one appealing credential. He was Spitzer's old boss at the Manhattan district attorney's office and a political supporter who had contributed considerable sums to Spitzer's campaigns.

A few days after Cherkasky was installed, Spitzer announced he wouldn't indict Marsh. Like a good surrogate, Cherkasky abolished the back-end commissions a few weeks later and, in so doing, eradicated the source for half of the company's broking profits.

Events moved quickly after that.

On November 8, 2004, Roger Egan resigned from his position as president and chief operating officer of Marsh Inc and Christopher Treanor resigned as chairman of Marsh Inc and chief of Global Placement. Peter Garvey, president and chief executive officer of Marsh's North American Operations, and William Malloy, president and chief executive officer of Marsh's Europe and Middle East Operations, were promoted to co-presidents of Marsh Inc. Peter Beshar, a litigation partner at the firm of Gibson, Dunn & Crutcher LLP, was named senior vice president, general counsel and corporate secretary of the company. On November 9, 2004, Marsh announced a 5 percent staff reduction to save \$400 million; approximately 3,000 positions. The company's third-quarter earnings fell by 94 percent, as it established a \$232 million reserve to cover potential civil actions. On November 18, 2004, the board announced five of its members had stepped down; leaving Cherkasky and 10 outside directors.

On January 31, 2005, Marsh agreed to pay \$850 million to compensate its U.S. policyholder clients. Under terms of the agreement, Marsh said it neither "...admits nor denies" the allegations. Finally, Marsh implemented reforms in its U.S. brokerage business which included a system of full disclosure.

The "difficult" crusading Attorney General, future New York Governor, and Emperor's Club client number 9, brought down the world's largest insurance broker. Now, for Spitzer, it was on to the Governor's mansion.

For Marsh, other large brokers and thousands of independent agents, it was only the end of the beginning.

##end##

For sources used to compile this rendition of events open the "Library" tab at www.johnsonstrategiesllc.com