

Eliot Spitzer's Last Admirer

Though he keeps losing in court, Andrew Cuomo won't drop the case against Hank Greenberg.

You can't blame New York Attorney General Andrew Cuomo for decisions made by his predecessor, Eliot Spitzer. But with another famous Spitzer case ending in another embarrassment for the AG's office, and with still more evidence of prosecutorial misconduct, New Yorkers can raise a fair question: Why is Mr. Cuomo unwilling to break with the Spitzer past?

Judge Deborah Batts in the Southern District of New York will soon decide whether to approve the settlement of a class-action shareholder lawsuit against AIG and its former CEO, Hank Greenberg. Members of the class were allegedly harmed by actions that led to the company's 2005 financial restatement. Both the restatement and the 2005 firing of Mr. Greenberg were demanded by Mr. Spitzer, who also forced a \$1.6 billion settlement on the company and filed civil charges against Mr. Greenberg.

Regular readers of this space know the dubious nature of the Spitzer charges, the most serious of which collapsed years ago. But what's significant about the pending settlement is that, assuming the judge signs off, there will not even be a theoretical damages claim on which New York can continue to sue Mr. Greenberg. He settled with the investors, and the investors have now settled with AIG.

Under the unanimous 2008 *Applied Card* decision (another Spitzer defeat) at New York's highest court, the Attorney General can't seek damages under the state's Martin Act on behalf of victims who have already agreed to a settlement over the same set of alleged offenses.

And yet Mr. Cuomo shows no signs of dropping the remaining Spitzer claims against Mr. Greenberg. His office has even continued the Spitzer policy of stonewalling requests for documents.

Under New York's Freedom of Information Law, former AIG employee and current Greenberg associate Howard Smith has sought records of contacts between Mr. Spitzer's office and AIG, as well as documents related to Mr. Spitzer's communications with the press. Such documents certainly exist. And unlike conversations Mr. Spitzer had with his staff lawyers about policy or prosecutions, his contacts with AIG, his discussions of media strategy and his leaks to reporters generally cannot be considered privileged. Yet so far New York hasn't produced a single email or other communication written by Mr. Spitzer.

One would think that Mr. Cuomo would want to end the era of stonewalling, especially after the defeat his office sustained last month on still another Spitzer-created prosecution. Manhattan Supreme Court Justice James A. Yates vacated the felony convictions of two former employees

of Marsh & McLennan Companies because the Attorney General's office had failed to turn over potentially exculpatory evidence to the defense.

Although prosecutors had earlier assured the court that "We don't want to be accused of hiding anything," Judge Yates found that the Attorney General's office had failed to turn over more than 700,000 pages of documents, plus deposition testimony from key witnesses.

Once the evidence came to light, defense lawyers argued that many of the documents directly contradicted the testimony of government witnesses at trial, and Judge Yates appears to agree. "While each item of evidence taken individually may present a reasonable possibility that the verdict would have been different, taken as a whole, the evidence raises not only a possibility, but a probability that its disclosure would have produced a different result," he said.

By now, most reasonable people have concluded that the Spitzer method is to be shunned, not emulated. A genuine government reformer might also wish to shine the light on the way the AG's office operated during the Spitzer era. But Mr. Cuomo can't seem to let go of the Spitzer cases, nor turn the page on his predecessor's penchant for secrecy.

Mr. Cuomo is now running for Governor, promising to clean up Albany and make New York a more inviting place for business and investment. Those are worthy ambitions. The Democrat also has a huge lead in the polls and can't possibly think that breaking with the Spitzer method would give his opponents an opening. His refusal, so many years and legal setbacks later, to let go of the Greenberg case doesn't speak well of Mr. Cuomo's reform sincerity.