Spitzer: Crusader or Tyrant?

By Dick Goff

A currently visible public figure was criticized after his 1998 election for possibly circumventing political campaign finance laws in borrowing several million dollars from his father to pay off debt from his unsuccessful 1994 campaign.

It wasn't until news media asked New York Attorney General Eliot Spitzer about the loan that he admitted receiving it. Recently the New York Daily News asked whether he had paid off the loan and within days, according to the newspaper, he reported selling $4 million in municipal bonds to do so.

If you want to play by his own rules of engagement, you would call a press conference to ask Spitzer why the loan had never been reported in campaign disclosure documents and perhaps accuse him of sidestepping campaign finance rules.

Spitzer, the poll-leading candidate for New York governor in 2006, has thrived by just that tactic: attacking various targeted industries and individuals in the news media over financial irregularities. But don't look for his confrontations to occur in a New York courtroom; he's too busy tracking his next victim to get bogged down in prosecuting long trials.

He won his battle against AIG and Hank Greenberg – who should be knighted not ostracized for all he's contributed to our industry – in the news media and the boardroom. Who needs a legal judgment when you can pull that off? Eliot has moved on to new highly publicized showdowns in the securities, music and pharmaceutical fields.

The problem with Spitzer is that he's a man without a boss. New York's population is more than 18 million but no one person's influence on Spitzer is greater than another's. In a world where nearly everyone else has a boss, Spitzer is accountable to no one for his actions.

He's even winning in the court of public opinion. Spitzer is the overwhelming favorite to become the Democratic nominee for governor of New York. While incumbent Republican George Pataki hasn't announced whether he'll run for a fourth term, Spitzer already leads him in the polls by 15 to 20 percent. Popular guy.

Recently there has been increasing pushback against Spitzer by people who don't fear his wrath. Ernst Csiszar, former Director of the South Carolina Insurance Department, past president of NAIC and now president of the Property Casualty Insurers Association of America, deplored Spitzer's tactics of pushing investigations through the news media:

"This is corporate terrorism, using the threat of indictment. There is no due process and he is ravaging the industry," Csiszar said in a discussion session following his remarks at an insurance industry conference reported by P&C National Underwriter magazine.

“What punishment is there for that?” Csiszar asked. “This smacks of McCarthyism,” (a reference to the late Senator Joseph McCarthy who in the 50’s became synonymous with unsubstantiated media attacks that destroy reputations without evidence).

Writing in the Wall Street Journal, Alan Reynolds of the Cato Institute wrote, “Mr. Spitzer has no authority to dictate how insurance brokers are paid. Improving disclosure is unobjectionable, but meddling with market-based incentive schemes is risky. If New York’s elected legislators want to ban this variety of sales commissions, that’s their business. It’s not Mr. Spitzer’s job to regulate entire industries through threats of endless litigation.”

Also in the Wall Street Journal, John C. Whitehead, former chairman of Goldman Sachs, said of Spitzer, “His increasingly relentless crusade against boards and senior executives, particularly when they are unfairly singled out because they have antagonized him, goes too far. These actions fuel recession, not growth.”

In our little corner of the world, we’re getting the first scent of a kind of recession, and it’s not fragrant. As major insurers pull in their horns for fear of politically-motivated decapitation, coverage funding options are dwindling, particularly in the case of ART where creativity is most required.

If the insurance companies let their billions in capital sit idle in their accounts, it’s you and me and our clients that will be most damaged.

None of this is to be taken as excusing the few actual illegal acts those recent investigations turned up. As we have written previously, bid rigging should be no part of our industry and all transactions should be completely transparent. Financial transparency, in fact, is beneficial to ART structures because it provides full opportunities for profitable participation by insurers, intermediaries and clients alike.

But to undermine a centuries-old industry because incentive compensation exists? What’s next for Spitzer: attacking car dealers and clothing stores for paying commissions to salespeople? I don’t understand why Spitzer can get away with tyrannical actions like that.

And I don’t understand why his 18 million bosses in New York State aren’t catching on.

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