

U.S. Insurance Investigators Go it Alone.

The Standard, China's Business Newspaper

New York Attorney-General Eliot Spitzer and United States federal officials have stopped cooperating in parallel probes of the insurance industry. Each appears to have made separate deals with witnesses that render the witnesses less useful to the other side.

State and federal officials jointly interviewed insurance executive witnesses until around the end of April. Since then, cooperation has stopped, and they conduct interviews separately.

At one point, a scheduled joint interview was canceled after federal officials learned Spitzer staffers had met separately with the witness's lawyer and discussed a deal, a source said.

"Everyone is all smiles when it comes to cooperation between the agencies," said Jacob Frenkel, a former Securities and Exchange Commission enforcement lawyer and now a partner in a law firm. "But in truth, the competition for convictions and civil settlements is so intense that each regulator is putting its interest ahead of the public good."

Interagency tensions were exacerbated by news leaks from a high-profile interview April 11 with Warren

Buffett, head of Berkshire Hathaway.

Buffett's General Re Corp unit is part of a wide-ranging probe into a product known as a finite reinsurance, which has been used by some buyers to make their earnings look better. Investigators have said Buffett is not a target of the investigation.

Accounts of the closed-door session were published by news organizations the same day and federal officials suspected Spitzer staffers of leaking information about the meeting.

The three-hour session in New York, included federal prosecutors from the Justice Department and the Eastern District of Virginia, SEC lawyers and Spitzer's staff.

Michele Hirshman, Spitzer's top deputy, said any suggestion that state officials leaked information from the Buffett meeting is "inaccurate and ridiculous."

She described the insurance investigations as separate but complementary and said prosecutors on both sides are experienced in dealing with parallel probes by other agencies.

Evidence of the breach surfaced soon after the Buffett interview. In a speech to business writers and editors

in Seattle May 2, Spitzer blasted the Bush administration for failing to investigate illegal practices in the insurance industry after Spitzer-led probes led to 10 guilty pleas from insurance executives and industry fines and restitution of more than US\$1 billion (HK\$7.8 billion). Spitzer is running for the Democratic nomination for governor of New York.

Since then, state and federal prosecutors have struck separate deals with key witnesses involved in the insurance probes. A key transaction to the investigations is a US \$500 million finite reinsurance deal between General Re and insurance behemoth American International Group.

Spitzer filed a civil complaint May 26 against AIG and its top two former officials that, among other things, revealed that Joseph Umansky, former president of AIG Reinsurance Advisors, had given testimony compelled under New York's criminal code.

That disclosure makes it extremely difficult for federal officials to prosecute Umansky. Under a 1972 US Supreme Court ruling, federal prosecutors must prove their evidence comes from a source "wholly independent"

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of the compelled testimony. Umansky has not been charged with any wrongdoing.

US Attorney for the Eastern District of Virginia Paul McNulty announced June 9-10 that two General Re executives had pleaded guilty in federal court to a single count each of conspiracy to violate federal securities laws in connection with the General Re-AIG deal. Both defendants, John Houldsworth, a former chief executive of an Irish subsidiary of General Re, and Richard Napier, a former senior vice-president of the Stamford, Connecticut, company, agreed to cooperate with prosecutors.

New York state laws against double jeopardy impair Spitzer's ability to prosecute the two men for the same underlying acts, experts said.

The state and federal probes of insurance differ in important ways. Federal officials have been investigating the possible misuse of finite reinsurance since at least mid-2000, when the SEC first asked AIG for records relating to its deals with Indiana telecommunications provider Brightpoint. The probe ended last year with AIG agreeing to pay US\$126 million to the SEC and the Justice Department.

The pace of the probe quickened in October after Spitzer filed a suit accusing insurance brokers of bid-rigging, then turned his attention to other problems in the industry and to AIG and General Re. Joint interviews with witnesses began early in the year.

Cracks in the alliance soon appeared. Berkshire disclosed December 30 that the SEC had made a "request" for information on finite reinsurance. A week later, it disclosed that Spitzer's office issued a subpoena seeking "virtually identical documents and information."

Spitzer and the SEC issued subpoenas to AIG the same day, February 14. The announcement and subsequent developments sent AIG's share price plummeting and led to the ouster of AIG's longtime chairman and chief executive, Maurice "Hank" Greenberg, the next month.

Called to a deposition before SEC lawyers, federal prosecutors and Spitzer's staff April 12, Greenberg invoked his Fifth Amendment right against self-incrimination.

The Players:

Spitzer, Greenberg and Buffett

