

DOES THIS EXPLAIN DOJ RELUCTANCE TO TURN OVER AIG MONITORING DOCUMENTS?

TPMM has two posts noting that DOJ has been reluctant to turn over to the Oversight Committee the documents pertaining to its Delayed Prosecution Agreement with AIG, whereas SEC has been more forthcoming.

Last month, as we noted at the time, House Oversight committee chair Ed Towns formally asked the Justice Department for records kept by a government monitor, who since 2004 has had access to high-level internal deliberations at AIG.

But DOJ seems to be dragging its heels.

Today – 15 days after Towns made his legally binding request, and 13 days after the deadline he set for Justice to respond – department spokesman Ian McCaleb told TPMmuckraker: "We're working on submitting a response." Asked what was causing the hold up, McCaleb declined to elaborate.

At issue is information compiled by James Cole, a lawyer with Bryan Cave, who was placed as a government monitor inside AIG, as part of a 2004 deferred prosecution agreement after AIG had been charged with helping clients avoid taxes. As Towns put it in his letter, Cole "had a seat at the table" for the string of cataclysmic developments at AIG over the last few years. Whatever reports or other information he compiled could therefore be of great value to investigators, like Towns, who are probing the causes of last fall's financial collapse, which was triggered

by the failure of AIG's Financial Products unit.

There are a couple of data points that might begin to explain DOJ's reluctance to turn over what it has received from Cole.

First, DOJ signed not one, but two deferred prosecution agreements with AIG. The first, in 2004, pertained to a scheme AIG-FP engaged in with PNC to shift assets off its books. The second, in 2006, pertained to a deal with Gen Re, again to shift assets around to hide risk. Now, both these schemes go back to 2000 and 2001; the actions AIG took did not take place while Cole was monitoring it. Nevertheless, AIG got two bites at the Delayed Prosecution Agreement, which does not appear to be true for any other corporations as of May of last year. And, as this article on these early scams make clear, the intent was largely the same with both: to hide risk. So you might think AIG's failure to admit to the second scheme until 2005 would undermine its claim to be cooperating in good faith with the DPA in 2004.

More interesting, though, is the squabble that the Fraud section at DOJ had with the US Attorney's office in CT a few weeks back. In the last year, DOJ has won convictions of five of the executives involved in the Gen Re scheme (that is, prosecutions that arose out of the second DPA). Yet the judge in the case actually awarded all the defendants shorter prison terms than federal guidelines suggest. And since then, prosecutors from CT and Fraud seem to have disagreed whether to force the defendants to remain in custody pending appeal.

In December prosecutors from DOJ in D.C. and the U.S. attorney's office in Connecticut, which handled the case together, filed a motion against giving GenRe's former CEO bail pending an appeal of his conviction. (The defendant, **Ron Ferguson** (pictured, left), was later sentenced to two years

in prison.) Then in January the government *withdrew* its motion, and he was granted bail.

Prosecutors repeated the dance in February, when they filed a 25-page motion opposing bail pending appeal for another defendant, a former AIG executive, who had been sentenced to four years in prison. Two weeks ago, prosecutors *withdrew* the objection. The defendant, **Christian Milton** (pictured, second from right), and the others will now almost certainly remain free.

Apparently in response to the most recent of these head fakes, the prosecutors from DOJ's Fraud section withdrew from the case.

After the second about-face by the government, two prosecutors from DOJ's fraud section, Principal Deputy Chief **Paul E. Pelletier** and Assistant Chief **Adam G. Safwat**, withdrew from the case, signaling that there was a spat between Washington and Connecticut prosecutors over the bail issue.

I'm particularly interested in Pelletier's withdrawal from the case. His name was on the DPAs in both 2004 and 2006, and appears to be the one person who has been involved in the AIG cases from the start. (Note, too, that the several AIG cases involve several jurisdictions, including at least ED VA, Indiana, and CT, so the federal focus seems key to the case.) And of course, Hank Greenberg is understood to be one of the unindicted co-conspirators in this case. Just as significant, I think, the defendants in this case repeatedly tried to get evidence that might have shown how widespread the practices they were indicted for were in AIG—and that various law firms involved should have or did discover the schemes earlier on. In some cases, the defendants asked for materials right up through the restatement of earnings in this case

in 2005—that is, for a time when Cole was already monitoring AIG. For the most part, these requests for discovery were denied.

Now, none of this explains why DOJ would be squeamish about what it got from Cole. It may be they're still protecting a case against Greenberg. It may be DOJ's own turmoil with regards to AIG, particularly with Pelletier having withdrawn from at least this case against AIG.

But it seems there are a number of potential reasons why DOJ would want to shield what they should have known about AIG going back five years.