

I N F O C U S

CORPORATE LITIGATION WEBSERIES

Navigating the Waters of State and Multistate Attorneys General Investigations

Carrie Di Santo
*Vice President and Global Chief
Compliance Officer*
Aon Corporation

Ty Fahner
Partner
Mayer Brown LLP

June 30, 2009

Hector Gonzalez
Partner
Mayer Brown LLP

Debra Nodiff
Associate General Counsel
Incisive Media

Mayer Brown is a global legal services organization comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia.

Agenda

1. Attorney General Basics
2. The Inquiry
3. The Multistate Investigation
4. Responding to an Investigation
5. Settlement & Penalties

Agenda

1. Attorney General Basics

Attorney Generals: Who are they?

- Generally, elected officials
- Reelection concerns
- Often aspires to higher government office – Governor or Senator



Attorney Generals: What is their agenda?

- Consumer protection
- Industry change
- Some AGs are more aggressive than others:

Spitzer raised the bar.

AGs are now more involved in issues that not only affect consumers in state, but nationally as well.



Agenda

2. The Inquiry

The AG Inquiry



AG seeks and obtains information via:

- Subpoena: Power to issue based on statute.
- Civil Investigative Demand (CID): Same thing as a subpoena.
- Letter request for information.

The AG Inquiry



- When subpoena or CID is issued, investigation has already started. In some instances, the AG has reason to believe that corporate conduct is harming consumer or state. There may be a whistleblower.
- State may be working in conjunction with DOJ.

Agenda

3. The Multistate Investigation

The Multistate: What is it?

- A number of states AGs working together.
- Executive committee/working group negotiates on behalf of other states.
- Because investigation is of national scale, Industry change will be primary focus.



The Multistate: Handling the Investigation

- Understand the needs of each state.
- Determine the lead states of the executive committee.
- Develop relationships with influential states.



The Multistate: Special Considerations

- Must convince entire group that corporation did nothing wrong.
- Major players in an industry may be investigated for same conduct, so be ready.
- Sometimes there may be more than one multistate group. If so, be prepared to negotiate with two executive committees.



Agenda

4. Responding to an Investigation

Responding to Investigation: Response within the Company



- Preserve relevant documents.
- Have public statements ready in case of leak.
- Review consumer complaints and past responses to the same.

Responding to Investigation: Response within the Company



- Conduct internal investigation?
 - Identify employees who can best answer questions regarding corporate practices and identify documents.
 - Consider hiring outside counsel.
- Go on the offensive: gather information/data that paints corporation in favorable light.

Responding to Investigation: Responding to the AG



Deciding to cooperate:

- More likely to get best possible result.
- Less media scrutiny.
- Gives appearance that corporation wants to be a good citizen and comply with the law.
- Sometimes investigation will go away without any expressed closure.

Responding to Investigation: Responding to the AG



Deciding not to cooperate:

- AGs may get more aggressive.
- Not good for public relations in some cases.
- Unwillingness to extend courtesies.

Responding to Investigation: Responding to the AG



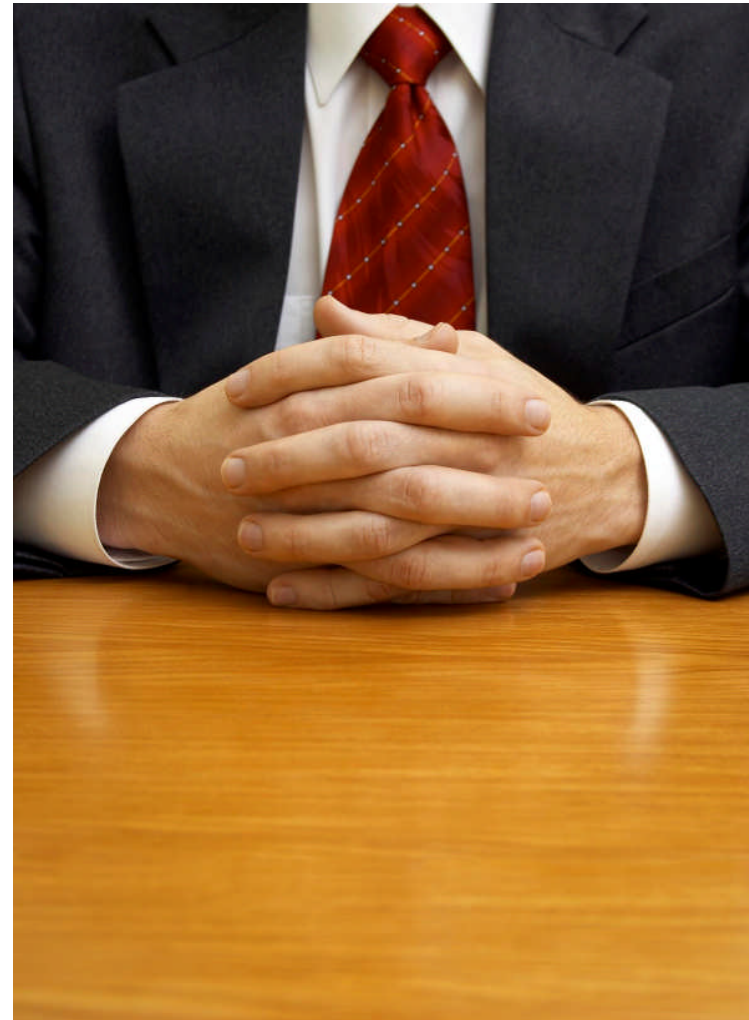
- Protect documents produced to the AG, i.e. confidentiality agreement, FOIA. May not be anything in the state's laws which protects documents produced.
- Consider hiring an expert. In many cases, states have hired experts to assist with investigation long before the inquiry.
- Try to negotiate producing to only one state.

Agenda

5. Settlement & Penalties

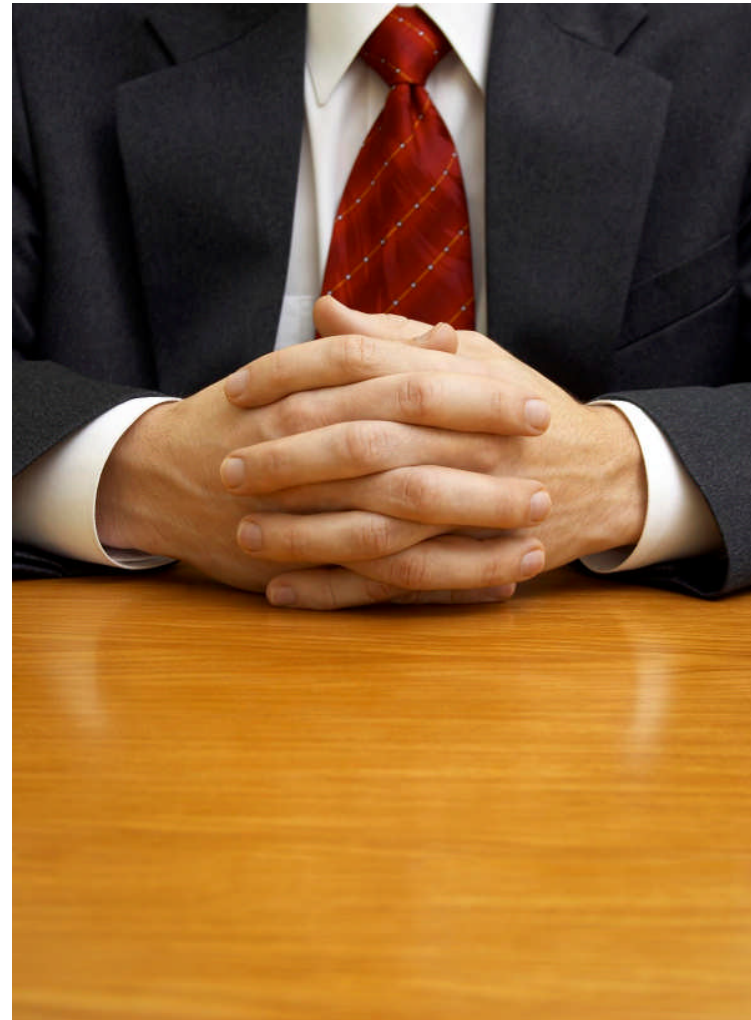
Settlement & Penalties

- Consent Decree
 - Terms are negotiated
 - Ultimately filed with court
- Assurance of Voluntary Compliance or Assurance of Discontinuance (NY)
 - Not filed with court
- Restitution
 - May include cy pres
- Injunctive relief



Settlement & Penalties

- Penalties and fines
 - Attorneys general fees
 - Costs
- Most favored nations clause
- Public apology and disclosure to victims
 - AG will want a good press release
- Ongoing monitoring



I N F O C U S

CORPORATE LITIGATION WEBSERIES

Navigating the Waters of State and Multistate Attorneys General Investigations

Carrie Di Santo
*Vice President and Global Chief
Compliance Officer*
Aon Corporation

Ty Fahner
Partner
Mayer Brown LLP

June 30, 2009

Hector Gonzalez
Partner
Mayer Brown LLP

Debra Nodiff
Associate General Counsel
Incisive Media