

I N F O C U S

CORPORATE LITIGATION WEBSERIES

Navigating the Waters of State and Multistate Attorneys General Investigations

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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.



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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.



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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



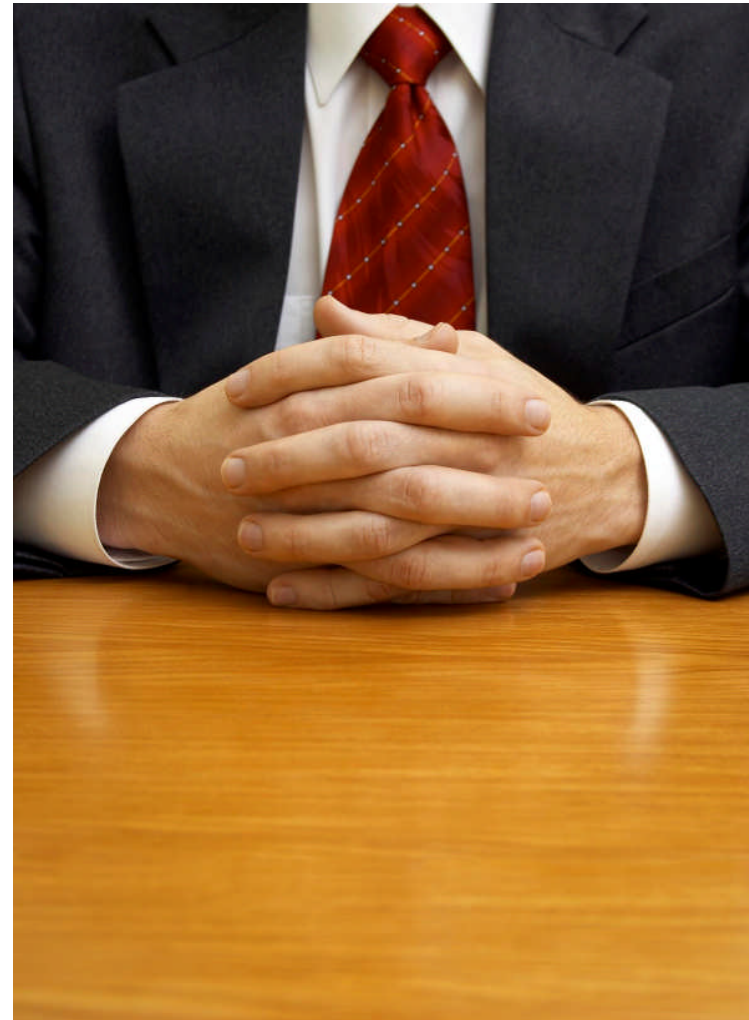
- Protect documents produced to the AG, i.e. confidentiality agreement, FOIA. May not be anything in the state's laws which protects documents produced.
- Consider hiring an expert. In many cases, states have hired experts to assist with investigation long before the inquiry.
- Try to negotiate producing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

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5. Settlement & Penalties

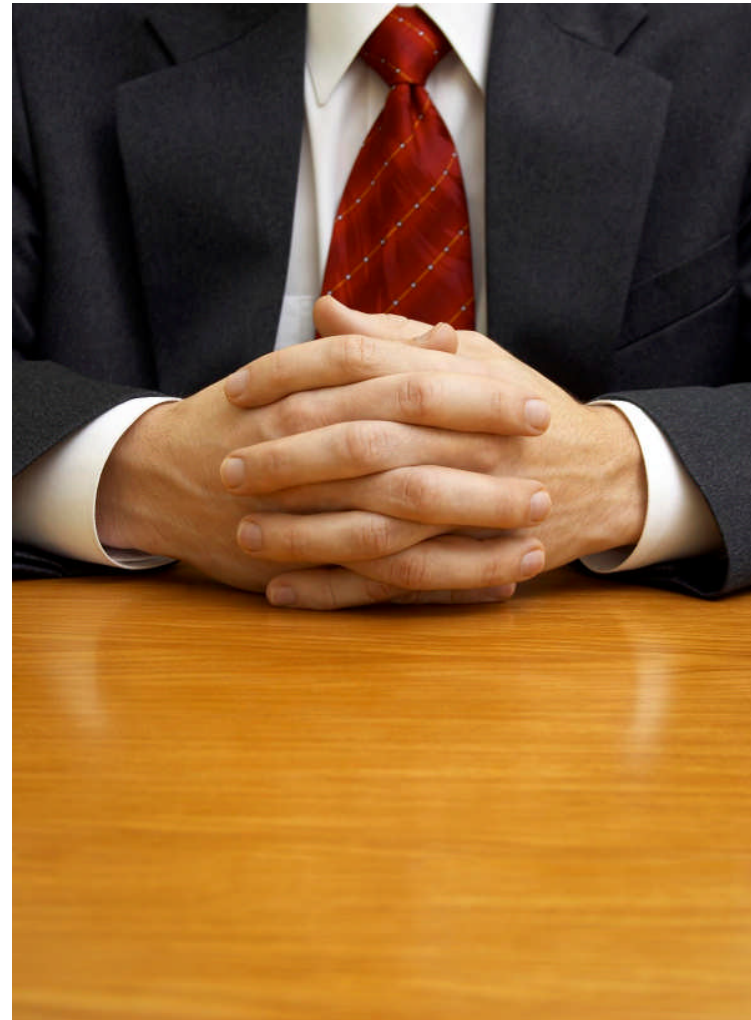
Settlement & Penalties

- 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



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