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## Tips for Avoiding or Responding to a State Attorney General Inquiry

State attorneys general (AGs) are the chief legal officers of their states and have the authority to bring actions on behalf of consumers or the public. AGs pay particular attention to advertising claims, but they also investigate and bring actions under their states' unfair, deceptive, and abusive practices laws (UDAP laws) in almost any area of the law. UDAP laws tend to broadly prohibit "deceptive" or "unconscionable" acts against consumers.

### FIRST, AVOID AN AG INQUIRY:

- *Stay in compliance and avoid an inquiry.* Knowing the laws and potential risks and penalties can avoid the time and money spent on an AG investigation. For example, in many states the penalties for violating the UDAP law is "per violation." In some instances, UDAP penalties are increased if the deception is against an at-risk population, such as the elderly.
- *Monitor your company's social media sites and calls to your 800 number for consumer complaints.* Complaints should be taken seriously and resolved immediately. AGs do the same and so should you. AGs often talk to AGs in other states to see if there is a trend in consumer complaints, and if a trend is found, a multi-state investigation can be encouraged. An AG is more likely to take action if there are numerous consumer complaints about a company. Multi-state investigations can lead to significant costs for a company when they have to defend against and settle an investigation. Settlements are often based on per-unit sales in each state – which can be costly.

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- **Be responsive.** AGs often make an informal inquiry before issuing a subpoena. An open, honest conversation with your outside counsel and company executives may resolve the issue.

## IF AN AG INVESTIGATES:

- **Know the state's open record laws and negotiate a confidentiality agreement with the AG office.** Negotiate an agreement that will protect sensitive company information and documents.
- **Treat every AG inquiry as if it is litigation – preserve documents (paper, electronic documents, and emails) from the moment there is an inquiry.** A document hold should be sent out to all those who may have responsive documents and to the company's IT department. Maintain open communication with an AG office on things such as document collection, ESI issues, custodians, search terms (many AG offices question the use of computer-assisted review), document review, and timelines for completing production of documents. Many AG offices expect a privilege log to be prepared and provided at the end of the document production. Treating the AG investigation like litigation can ultimately save time and money.
- **Be responsive.** This can help narrow the inquiry and assist in lowering the cost of defending against the investigation, ultimately reducing the cost of the inquiry and settlement. If your company receives an inquiry from an AG, either formally or informally, you should obtain counsel that is experienced with AG offices. Your counsel can ensure responsiveness and help narrow the scope of the inquiry.

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