STATE ATTORNEYS GENERAL:
THE ROBUST USE OF PREVIOUSLY IGNORED STATE POWERS[1]

I. Historic Overview of Attorney General Investigations: Silo Approach

The Offices of State Attorneys General serve as the law firm to their particular state. Each state Attorney General Office has separate sections or divisions that focus on a particular area of law such as antitrust, Medicaid, consumer protection, and criminal law to name a few. State Attorneys General are charged with protecting the interests and safety of citizens of their state. In carrying out this role, state Attorneys General investigate complaints received from various sources to determine whether businesses or individuals in the state have violated certain laws and regulations of the state and thus caused harm to the citizens.

Over the last 10 to 15 years State Attorneys General have placed increasing emphasis on governmental consumer protections. While many people anticipated that Attorneys General would some day tap into and use all the tools at their disposal, no one could have anticipated the intensity and scope of effort the state Attorneys General put forth in the Master Tobacco Settlement of 1998.[2]

Traditionally, state Attorneys General took a focused, "silo approach" to investigating a company for wrongdoing, focusing on antitrust, Medicaid fraud, consumer fraud, *or* criminal charges. Attorneys General did not use all of these tools at once to investigate a company. Companies responded to these investigations in the same

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[2] Master Settlement Agreement: 1998.

narrow way with a focused defense that did not consider or guard against other possible claims the Attorney General could assert.

For example, a company in Michigan (Company A) sells products nationally. The Attorney General for Oregon begins an inquiry into Company A for consumer protection violations. Company A hires counsel with experience in Oregon with state consumer protection, preferably with significant experience dealing with the state Attorney General in Oregon on these issues. This approach made sense for Company A because state Attorneys General took a one issue approach using only one division of the Attorney General's office to investigate a company. The investigation took place in a "consumer protection" silo of sorts. Companies were reasonably confident that the investigation would be limited to consumer protection in Oregon and did not have to consider other claims, dealing with other sections of the Oregon Attorney General's office, much less Attorneys General of other states.

We saw this approach play out in various consumer protection, antitrust, criminal, and Medicaid fraud investigations. In 1999, the Vermont Attorney General settled a case with Equifax Credit Information Services, Inc. and National Data Retrieval for violation of the Vermont Consumer Fraud Act 9 V.S.A. §2459 *et seq*. for failing to comply with certain fair credit reporting standards, failing to maintain reasonable procedures to assure the maximum possible accuracy of information contained in consumer credit reports, providing consumer credit reports that contained inaccurate information to third parties, and representing to customers and third parties that certain tax lien information contained in the reports was accurate. This was strictly a consumer fraud investigation and no

criminal charges were brought against the companies. It appears that Vermont did not work with other state Attorneys General on this matter.[3]

Similarly, in 1997, the Attorney General of Illinois entered into an Assurance of Voluntary Compliance with Gallagher & Co., the world's fourth largest insurance broker at the time of the Assurance, for providing incentives to its employees to steer business to certain insurance companies, thus maximizing Gallagher's revenues to the detriment of consumers.[4] Gallagher established a $26,962,500 fund to be paid to certain policyholders.[5] Again, the Illinois Attorney General used a single issue approach and worked alone.

There have been numerous well-publicized antitrust investigations in recent history. The merger of Exxon and Mobil and of BP and ARCO spurred state Attorneys General to oppose the mergers and negotiate certain concessions with the companies for their respective states before the merger could proceed.[6] Additionally, state Attorneys General have long investigated companies for anticompetitive behavior.

These are only a few examples of hundreds of cases over the years in which state Attorneys General only tapped into a single section of their office and investigated a

[3] In the Matter of Equifax Credit Information Services, Inc. and National Data Retrieval, Inc. Assurance Pursuant to 9 V.S.A. §2459, State of Vermont, Washington County SS (1993).
[4] Illinois Attorney General Press Release, "Madigan, McRaith Announce Settlement with Illinois Insurance Brokerage Firm Arthur J. Gallagher & Co.; Investigation Uncovered Improper Commission Scheme." 18 May 2005. Available online at http://www.idfpr.com/NEWSRLS/051805Gallagher.asp (last visited April 2, 2008).
[5] Assurance of Voluntary Compliance between Illinois and Arthur J. Gallagher & Co., 18 May 2005.
[6] Oregon Department of Justice Press Release, "Oregon Opposes Merger Between British Petroleum (BP) and ARCO." 2 Feb 2000. Available online at http://www.doj.state.or.us/releases/2000/rel020200.shtml (last visited April 2, 2008); Oregon Department of Justice Press Release, "Lawsuit Filed to Prevent Proposed Merger Between BP Amoco and ARCO." 7 Feb 2000. Available online at http://www.doj.state.or.us/releases/2000/rel020700b.shtml (last visited April 2, 2008).

company based on a single area of law without consideration to other areas of law that may apply to the companies.[7]

Companies structured their entire defense of these investigations and any ensuing litigation based on this structure. Companies were able to launch aggressive defense strategies against these investigations because possible exposure was limited to a single topic such as consumer protection, and a single state. Companies did not see these investigations as potentially fatal because the outcome, even in the worst case scenario, was a change in state regulation to modify their conduct or perhaps the state. Because of the single issue focus and the relatively low risk associated with these investigations, companies were much more willing to litigate these cases to verdict. The traditional single issue defense structure is no longer a workable model for companies to defend Attorney General investigations. Companies who use the "silo approach" do so at their own peril.

II. The New World with the Same Law: A Multi-front Approach

Today, the trend for these investigations is heading toward a "war on all fronts" with state Attorneys General using more of the power and resources they have always had to investigate companies. State Attorneys General are using a multi-faceted and often multi-state strategy to launch high pressure investigations against companies. For example, Medicaid fraud usually implicates a consumer protections law provision that historically was left unaddressed by the Attorneys General. Today, Attorneys General activate the Medicaid fraud unit and the consumer protection unit to investigate a

[7] Examples include, among others: (i) Settlement Agreement and Release between Texas and Shering-Plough Corporation, Nov 2006; (ii) Consent Order of Court for Permanent Injunction and Monetary Settlement between Virginia and Medco Health Solutions and Merck-Medco Managed Care, LLC, 26 Apr 2004; and (iii) Assurance between Vermont and Equifax and National Data Retrieval, 21 May 1999.

company. By using this approach, state Attorneys General are maximizing the monetary and non-monetary settlements they receive.

State Attorneys General are increasingly taking the lead in investigating antitrust, Medicaid fraud, criminal, and consumer protection issues instead of waiting for federal agencies and officials to initiate the investigations. State Attorneys General conduct bi-weekly conference calls of their various sections including consumer protection, antitrust, and Medicaid fraud. These calls enable the states to share information and to collaborate to identify subjects to investigate.

Additionally, the state Attorneys General have robust associations including the National Association of Attorneys General (NAAG), the Democratic Attorneys General Association (DAGA), and the Republican Attorneys General Association (RAGA) through which they can exchange information and collaborate on investigations. NAAG often forms work groups with representatives from across the country to investigate certain issues, industry conduct, and even specific companies. Pharmaceutical companies,[8] credit reporting companies, and Pharmacy Benefits Management companies[9] have all been the target of these investigations.

Practitioners and companies alike first began to take notice of this strategy in the big tobacco litigation of the 1990s which resulted in a massive nationwide settlement agreement known as the Tobacco Master Settlement (MSA).[10] Since the MSA, there has been an increasing trend toward multi-pronged and multi-state Attorney General

[8] Berenson, Alex. "Lilly Considers $1 Billion Fine to Settle Case." *New York Times* 31 Jan 2008. Available online at http://www.nytimes.com/2008/01/31/business/31drug.html (last visited April 2, 2008).
[9] Attorney General Martha Coakley Reaches Settlement with Pharmacy Benefits Manager Caremark for $1M. Press Release, Office of the Attorney General of The Commonwealth of Massachusetts. February 14, 2008. Available at http://www.mass.gov/?pageID=pressreleases&agId=Cago&prModName=cagopressrelease&prFile=2008_02_14_caremark_settlement.xml (Last visited April 3, 2008).
[10] Master Settlement Agreement: 1998.

investigations. State Attorneys General across the country have become more aggressive in their investigations using resources from two or three of their subdivisions at one time to launch a multi-faceted investigation that defendants often see as unmanageable.[11] With more and more frequency, Attorneys General are joining forces to investigate industries using a multi-state and multi-pronged approach. These investigations are more complex and can be overwhelming for companies to defend.

A. Tobacco: Master Settlement Agreement

The tobacco litigation garnered headlines because of the size of the settlement; however, for practitioners the size of the settlement was not as significant as the regulatory approach taken by the state Attorneys General. The Mississippi Attorney General's office initiated a consumer protection and Medicaid subrogation claims that no one at the time believed they would win because the tobacco industry had been very successful in defending multiple plaintiff's claims in numerous states, winning more cases than not.

Mississippi's action was one of the first times a state Attorney General used the same wrongful conduct to assert two claims against a major industry with two divisions of the Attorney General's office working together to increase strategic leverage within the office. Three more states, Texas, Minnesota, and Florida, followed a similar approach to Mississippi. These four states are now known as the four "non-settling" states.

[11] Examples include, among others: (i) Assurance of Voluntary Compliance between Alabama, Arkansas, Colorado, Delaware, Georgia *et al*. and Cellco Partnership d/b/a Verizon Wireless, June 2004; (ii) Lawsuit Filed to Implement Insurance Settlement between Hawaii, California, Florida, Maryland, Massachusetts *et al*. and Zurich, 2006; (iii) Assurance of Voluntary Compliance or Discontinuance between Alabama, Alaska, Arkansas, Arizona, California *et al*. and US Sales Corp., 3 Apr 2000; and (iv) Assurance of Voluntary Compliance or Discontinuance between Alabama, Alaska, Arizona, Arkansas, Connecticut *et al.* and Sony BMG Music Entertainment, 20 Dec 2006.

Thereafter, this trickle of investigations became a full fledged flood of investigations and lawsuits against tobacco companies across the country. State Attorneys General from across the country joined forces to launch a full scale, multi-state, multi-issue approach. The state Attorneys General and the tobacco companies recognized that the most efficient approach to the litigation was a multi-state coordinated negotiation process.

Ultimately, 46 U.S. states and several (6) U.S. Territories sued tobacco companies for Medicare costs associated with smoking related diseases.[12] Philip Morris, RJ Reynolds, Lorillard, and Brown & Williamson were the four major tobacco manufacturers involved in the initial Master Settlement Agreement in late 1998.[13] The Master Settlement Agreement was eventually joined by more than 40 tobacco companies. The Master Settlement Agreement pays out over $206 billion more than 25 years to the states and territories. At the end of the 25 year period, the companies must pay $9 billion per year in perpetuity.[14] To this day, this is the largest civil settlement ever reached in the United States.[15]

The final settlement combined consumer protection claims and Medicaid fraud claims including unlawful labeling, marketing, failure to warn, reimbursement for diseases caused by their product and a new approach to Attorney General investigations took hold.[16] State Attorneys General began to join forces and to tap into multiple sections within their own offices to investigate companies for wrongdoing. The historical

[12] Master Settlement Agreement: 1998.
[13] *Id*.
[14] *Id*.
[15] Milo Geyelin. "Forty-Six States Agree to Accept $206 Billion Tobacco Settlement", *Wall Street Journal*, November 23, 1998.
[16] Master Settlement Agreement: 1998.

model of using a single section of an Attorney General's office to pursue a claim based on a single area of law was over.

B. United States v. Microsoft

In *United States v. Microsoft*,[17] the United States Department of Justice (DOJ), the District of Columbia, and 20 states joined together to prosecute Microsoft for antitrust violations related to Microsoft's bundling of Explorer with Windows as an anticompetitive tactic to gain and maintain a monopoly. For a long period of time before this suit, Microsoft proudly ignored the state Attorneys General and their investigative efforts. When it became the target of this suit, Microsoft responded with an aggressive defense that was often marred by poorly prepared witnesses, factual discrepancies and evasive, even untruthful testimony. The Microsoft case ultimately resulted in a settlement after a verdict for the plaintiffs was overturned in part on appeal. The Microsoft case is just one example of the ever increasing collaboration among state Attorneys General and federal prosecutors to assert an aggressive case against a defendant.

C. OxyContin

In 2007, Purdue Pharma agreed to pay $19.5 million to 26 states for off-label marketing of its popular drug OxyContin.[18] This settlement was the result of a multi-front approach in which state and federal civil consumer protection allegations and federal criminal allegations were launched almost simultaneously against a company. Purdue paid more than $700 million in federal criminal and civil fines for misleading and

[17] 87 F.Supp.2d 30 (D.D.C. 2000).
[18] Lindsey, Sue. "OxyContin Maker, Execs Guilty of Deceit." *ABC News* 11 May 2007. Available online at http://abcnews.go.com/Business/wireStory?id=3160486 (last visited April 2, 2008).

defrauding physicians and patients.[19] The CEO, General Counsel, and Chief Medical Officer of Purdue pled guilty to misdemeanor charges for misbranding OxyContin and agreed to pay more than $34 million in fines.[20] The states entered into a settlement agreement with Purdue on May 8, 2007, the same day they filed their complaint. On the federal level, civil and criminal charges were brought and settled within a matter of days.[21]

This case is an example of extensive collaboration among the state Attorneys General and the federal level investigators to achieve a swift and extensive settlement against a company and its core leadership.

D. Attorneys General Collaboration to Increase Investigative Powers

Although state Attorneys General did not always collaborate on investigations as often as they do today, they have participated in federal efforts to strengthen their legal powers and remedies over the years. Two examples of this collaboration are the Hart Scott Rodino Act (HSRA) of 1976[22] and the Class Action Fairness Act (CAFA) of 2005.[23] Both HSRA and CAFA improved the regulatory authority state Attorneys General through federal legislation and have enhanced their ability to work together to launch multi-state investigations.

1. The Hart Scott Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a).

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[19] Childs, Dan. "The OxyContin 'Conspiracy' – Is $700 Million Enough." *ABC News* 11 May 2007. Available online at http://abcnews.go.com/Health/PainManagement/story?id=3162393&page=1 (last visited April 2, 2008).
[20] Meier, Barry. "In Guilty Plea, OxyContin Maker to Pay $600 Million." *New York Times* 10 May 2007. Available online at http://www.nytimes.com/2007/05/10/business/11drug-web.html?hp (last visited April 2, 2008).
[21] Lindsey, Sue. "OxyContin Maker, Execs Guilty of Deceit." *ABC News* 11 May 2007. Available online at http://abcnews.go.com/Business/wireStory?id=3160486 (last visited April 2, 2008).
[22] 15 U.S.C. §18a *et seq*.
[23] 28 U.S.C.S. §1332(d),1453, and 1711-15.

The Hart Scott Rodino Antitrust Improvements Act of 1976 (HSRA) is a set of antitrust laws that require parties to a merger, tender offer, or acquisition to file with the Federal Trade Commission a "Notification and Report Form" in which the proposed transaction and the parties to the transaction are described.[24] Once the form is filed, there is a 30 day waiting period during which the FTC reviews the form and has the opportunity to request additional information from the parties to determine whether the transaction violates U.S. antitrust laws.[25] The transaction is on-hold during this 30 day period and is thus prohibited from closing. The FTC has the authority to terminate the waiting period early or extend the waiting period upon request of federal regulators. The dollar amount of the transaction and the size determines whether a form must be filed.[26]

The Act also allows states to sue companies in federal court for damages under antitrust violations.[27] This act marked a major change in antitrust law in the U.S. and was the first time that anyone other than a party harmed by antitrust conduct could sue for damages for such antitrust violations.

A key aspect of HSRA was seed money for the states' Attorneys General offices to establish an antitrust division in each office.[28] Some of the larger states did not take their full amount of money because they already had antitrust sections. They saw the advantage in giving the money to other states that did not have this section so that antitrust investigations would have a national impact. While they did not begin fully to exploit their collective power until years later, state Attorneys General were beginning to see the value of collaboration and pursuing investigations nationwide.

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[24] 15 U.S.C. §18a *et seq.*.
[25] *Id*.
[26] 15 U.S.C. §18a *et seq.*
[27] *Id*.
[28] *Id.*

2. Class Action Fairness Act of 2005: 28 U.S.C. § 1332(d), 1453, and 1711-15

The Class Action Fairness Act of 2005 (CAFA) requires parties to notify the state Attorneys General when they settle a case. The purpose of this Act was to curb abuse of state class action suits including forum shopping and junk lawsuits. The law requires all class actions suits demanding $5 million or more to be moved to federal court. The federal court may decline jurisdiction over the case if "greater than one-third but less than two-thirds of the members" of the class and the primary defendant are citizens of the same state in which the action was originally filed.[29]

State Attorneys General supported the passage of this Act not because it moved many cases to federal court, but because it created a provision that requires the state Attorney General's office to be notified when class action cases are settled. Specifically, defendants participating in a class action settlement must notify, within 10 days of a proposed settlement, the proper state official with the primary regulatory or supervisory power for each state in which a class member resides of the settlement.[30] Defendants participating in the settlement must file a copy of the complaint, all materials filed with the complaint, notice of scheduled hearings in the class action, all proposed or final notices to plaintiff regarding exclusion rights, and a copy of the proposed or final settlement and the final judgment or notice of dismissal.[31] Where feasible, defendants must also provide the names of the class members and their state of residence.[32]

These notice requirements give the state Attorneys General the opportunity to comment on the class action and provide easy access to information that may be used to

[29] 28 U.S.C.S. §1332(d), 1453, and 1711-15.
[30] *Id.*
[31] *Id.*
[32] *Id.*

launch an independent investigation into the defendants for consumer protection, fraud, Medicaid, criminal, antitrust, or other violations.[33]

3. Collaboration is not always possible

Sometimes the Attorneys General are not able to come together on an issue. For example, the northern states petitioned the Environmental Protection Agency (EPA) for air quality issues for power and the southern states did not join in on the investigation. In some instances, for various political or circumstantial reasons, certain state Attorneys General are not interested in the type of conduct, or the company being investigated and will not get involved.

In some cases, individual state Attorneys General initiate independent investigations in the face of federal regulatory schemes such as the Food and Drug Administration (FDA), the Securities and Exchange Commission (SEC), and the Federal Trade Commission (FTC) that other state Attorneys General are hesitant to challenge. One former state Attorney General who was well known for this approach is Eliot Spitzer.[34] Spitzer relentlessly investigated the banking practices of Merrill Lynch and the trading practices of mutual funds and hedge funds. General Spitzer also went after pharmaceutical manufacturer GlaxoSmithKline (GSK) for concealing drug information.[35] With regard to such investigations, General Spitzer rarely looked to collaborate with other states to investigate corporate conduct. During his tenure as Attorney General,

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[33] *Id.*

[34] Eliot Spitzer: How New York's Attorney General Became the Most Powerful Man on Wall Street, Daniel Gross. Slate, October 21, 2004. Available at http://www.slate.com/id/2108509/#sb2108525 (Last visited April 3, 2008).

[35] Major Pharmaceutical Firm Concealed Drug Information: GlaxoSmithKline Misled Doctors About the Safety of Drug Used to Treat Depression in Children. Press Release, Office of the New York State Attorney General, June 2, 2004.

Spitzer used his broad powers as Attorney General to initiate investigations into companies whose products or conduct had already met strict federal requirements.[36]

This concept has been embraced by the state Attorneys General who have come together to investigate the pricing, labeling and marketing practices of the pharmaceutical industry. State Attorneys General have launched aggressive investigations into the marketing and labeling practices of pharmaceuticals that have been approved by the FDA. In September, 2007, Bristol-Myers Squibb agreed to pay $515 million dollars to settle "a broad array of civil allegations involving their drug marketing and pricing practices."[37]

In December 2007, a paper was presented to NAAG titled, *State Attorneys General and Pharmaceuticals: Writing a New Prescription to Curtail Drug Costs.* The paper resulted from a national symposium concerning pharmaceuticals and examined pharmaceutical marketing and pricing and evaluates Medicaid fraud, antitrust, and consumer protection enforcement in the pharmaceutical industry.[38] State Attorneys General are very focused on the pharmaceutical industry and its practices and have effectively come together to investigate numerous manufacturers on a wide range of issues including Medicaid fraud, antitrust, and consumer protection. There are numerous multi-state investigations going on today in various stages of investigation, litigation, and settlement.

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[36] Eliot Spitzer: How New York's Attorney General Became the Most Powerful Man on Wall Street, Daniel Gross. Slate, October 21, 2004. Available at http://www.slate.com/id/2108509/#sb2108525 (Last visited April 3, 2008).

[37] Bristol-Myers Squibb to Pay More than $515 Million to Resolve Allegations of Illegal Drug Marketing and Pricing, USDOJ Press Release. September 28, 2007. Available at www.usdoj.gov/opa/pr/2007/September/07_civ_782.html (last visited April 3, 2008).

[38] State Attorneys General and Pharmaceuticals: Writing a New Prescription to Curtail Drug Costs, Julie Brill, Vermont Assistant Attorney General and Ano Lobb, M.P.H., December 2007.

III. Looking Forward: Investigations to Watch

In early March 2008, the makers of Airborne, an over the counter cold remedy, settled a class action alleging false advertising for $23.3 million and are now facing Federal Trade Commission and state Attorney General investigations for misleading and false advertising practices.[39] It is too soon to tell what the outcome of these investigations will be; however, it is almost certain that the state Attorneys General will work collaboratively to investigate the company using consumer protection and possibly even criminal allegations to achieve a high dollar settlement for the states. Interestingly, less than a year before the class action suit was filed, Airborne was acquired by a private equity firm that apparently failed to conduct sufficient due diligence on Airborne.

Connecticut Attorney General, Richard Blumenthal, filed suit alleging anticompetitive practices against one of the world's largest reinsurance brokers in October 2007. In a statement to the press, Attorney General Blumenthal stated, "This company and its coconspirators created an illusion of competition. . . [and] we began an aggressive investigation after insurers in Connecticut and nationwide sought to impose unconscionable and unacceptable burdens on consumers. . . ."[40]

Additionally, according to media reports, drug manufacturer Eli Lilly is currently the subject of more than four years of criminal and civil investigations into its marketing of Zyprexa.[41] In early 2008, *The Wall Street Journal* reported that the settlement in this

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[39] "Airborne settles lawsuit for $23.3 million." *CNN News*, 4 Mar 2008. Available online at http://money.cnn.com/2008/03/04/news/companies/airborne_settlement/ (last visited April 2, 2008).
[40] Connecticut Attorney General's Office Press Release. "Blumenthal Sues International Reinsurance Broker for Schemes that Inflated Insurance Costs Nationwide." 8 Oct 2007. Available online at http://www.ct.gov/ag/cwp/view.asp?a=2788&q=397000 (last visited April 2, 2008).
[41] Berenson, Alex. "Lilly Considers $1 Billion Fine to Settle Case." *New York Times* 31 Jan 2008. Available online at http://www.nytimes.com/2008/01/31/business/31drug.html (last visited April 2, 2008).

investigation could be $1 billion. Federal prosecutors and numerous states are involved in this investigation.[42]

On January 10, 2008, the Attorney General for New York, Andrew M. Cuomo, served Intel with what has been described a "wide-ranging subpoena seeking documents and information on Intel Corporation."[43] Attorney General Cuomo stated, "After careful preliminary review, we have determined that questions raised about Intel's potential anticompetitive conduct warrant a full and factual investigation."[44]

Companies in the same industry as these companies mentioned above should monitor the evolution of these investigations and be prepared to respond to similar inquiries in the future.

IV. Defending Cases in the New World

As described above, state Attorneys General have begun to use the powers and remedies that have always been available to them. State Attorneys General are increasingly pursuing investigations on multiple fronts and in collaboration with the state Attorneys General from across the country. The subject of such investigations must respond the same way.

While in the past, the subjects of state Attorneys General investigations could simply retain a firm with the expertise in the narrow area of the law specific to the investigation, this strategy is no longer acceptable. It is inefficient to hire a firm that specializes in defending Medicaid fraud investigations and litigation but that has no experience with consumer protection, criminal, antitrust, or other civil allegations. In fact, such a narrow approach to Attorneys General investigations is counter productive

[42] *Id.*
[43] Available at www.oag.state.ny.us/press/2008/jan/jan10a_08.html (last visited March 27, 2008).
[44] *Id.*

and will inevitably leave the subject of the investigations powerless in defending the investigation and any subsequent litigation.

Increasingly, localities are turning to the state Attorneys General to take the lead in efforts to investigate companies and change their behavior. By way of example, the former Attorney General of California, William Lockyer, who is now the Treasurer of California, and the Attorney General of Connecticut, Richard Blumenthal are currently looking into the ways in which municipal bonds are rated.[45] The ratings firms, including S&P, Fitch, and Moody's rate municipal bonds using a different scale than that used to rate corporate bonds.[46] Lockyer and Blumenthal believe the ratings system unnecessarily increases costs to tax payers and localities. Mr. Lockyer is described as "leading a nationwide campaign to change the way [municipal] bonds are rated."[47]

V. Conclusion

It is clear that Attorney General investigations cannot be taken lightly and that the "silo approach" is no longer feasible; in fact, it is dangerous. Companies should be prepared to respond to extensive inquiries on a wide range of topics and issues and should have the proper legal counsel capable of spotting the motives behind the inquiry and anticipating the strategy. Depending on the size and nature of the company's business, the state Attorney General may communicate with fellow state Attorneys General and collaborate on a multi-state investigation.

It is, therefore, essential that the subjects of a state Attorneys General investigation treat the investigation as a "war on all fronts." Legal counsel for these

[45] New York Times: States and Cities Start Rebelling Over Bond Ratings: Dual Standard is Cited- Billions in Savings Seen if Corporate Standard is Used Uniformly, Julie Creswell and Vikas Bajaj at A1 (Monday March 3, 2008).
[46] *Id*.
[47] *Id*.

investigations should have experience working with the offices of the state Attorneys General across the country to ensure that they are receiving a comprehensive and adequate defense. Legal counsel must be able to provide a full spectrum of expertise and must, from the beginning of the investigation, take a broad spectrum approach to defending the investigation.