

Articles + Publications | January 13, 2023

# Troutman Pepper State Attorneys General Monitor – January 2023

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## REGULATORY OVERSIGHT PODCAST

### THE EVOLUTION OF STATE ATTORNEYS GENERAL

By [Ashley L. Taylor, Jr.](#)

In this episode of *Regulatory Oversight*, Ashley Taylor welcomes Professor Paul Nolette from Marquette University to discuss the evolution of state attorneys general and how their roles in government have shifted over the years.

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### HOW LAW FIRMS AND LOBBYISTS CAN WORK TOGETHER: A LOOK INTO LOBBYISTS' ROLE AMONG STATE AGS

By [Stephen C. Piepgrass](#) and [Ryan J. Strasser](#)

In this episode of *Regulatory Oversight*, Stephen Piepgrass welcomes Regulatory Investigations, Strategy + Enforcement Partner Ryan Strasser and Williams & Jensen Partner Matt Hoekstra to discuss how law firms can work with firms like Matt's on behalf of clients during congressional inquiries with parallel AG investigations or consumer litigation.

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## REGULATORY OVERSIGHT BLOG

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

*Regulatory Oversight* will provide in-depth analysis into regulatory actions by various state and federal authorities,

including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

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## REGULATIONS IN AI

### OUTGOING DC ATTORNEY GENERAL USHERS IN ERA OF REGULATED AI

By [Stephen C. Piepgrass](#), [Ashley L. Taylor, Jr.](#), [Sadia Mirza](#), and [Daniel Waltz](#)

In recent months, there has been an explosion of artificial intelligence (AI) tools that have given even technophobes an opportunity to test AI's power from the comfort of their favorite web browser. From DALL-E's ability to generate digital images from natural language prompts to ChatGPT's ability to answer questions, write blog posts, essays, poetry, or even song lyrics, today's AI tools can be used by anyone who can use a web browser.

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## FTC UPDATES

### PREPARE FOR RENEWED FTC REGULATORY FOCUS ON HIDDEN AND JUNK FEES

By [Clayton Friedman](#), [Chris Carlson](#), and [Namrata Kang](#)

The Federal Trade Commission seems poised to regulate hidden fees in services from a range of industries, joining state attorneys general and the CFPB to act on behalf of consumers, Troutman Pepper attorneys Clayton Friedman, Chris Carlson, and Namrata Kang say. They advise companies to take steps now to avoid regulatory scrutiny.

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## TOBACCO UPDATES

### PARSING THE NEW WAVE OF STATE TOBACCO SETTLEMENT SUITS

By [Agustin Rodriguez](#), [Chris Carlson](#), and Christina Sava

*Published in [Law360](#) on January 10, 2023. © Copyright 2022, Portfolio Media, Inc., publisher of Law360. Reprinted here with permission.*

In late November, the New Mexico attorney general announced a lawsuit in the Santa Fe County First Judicial District Court against Philip Morris USA Inc., R.J. Reynolds and other signatories to the tobacco master settlement agreement alleging their violation of the MSA and various state and common laws due to their withholding of payments to the state.

[Read more](#)

## FDA IMPLEMENTS MORE AGGRESSIVE APPROACH TO ENFORCEMENT OF ENDS PREMARKET REQUIREMENTS

By [Bryan Haynes](#) and [Nick Ramos](#)

In October 2022, the U.S. Food and Drug Administration (FDA) [announced](#) that the Department of Justice (DOJ), on its behalf, filed complaints against six electronic nicotine delivery system (ENDS) companies in federal district courts, seeking permanent injunctions. These cases are important because they mark the first time the FDA has litigated against companies to enforce the Federal Food, Drug, and Cosmetic Act's premarket review requirements for new tobacco products.

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## AG UPDATES

### NY AG SUES FORMER CELSIUS CEO FOR MISLEADING INVESTORS

By [Troutman Pepper State Attorneys General Team](#)

On January 5, York Attorney General Letitia James [sued](#) Celsius founder and former CEO Alex Mashinsky for making repeated misrepresentations about the company's financial products and asset holdings to investors. AG James [describes](#) the now bankrupt crypto-lending platform Celsius as "a cryptocurrency lending platform where investors could deposit their cryptocurrency in return for promises of high yields on those digital assets."

[Read more](#)

### COLORADO AG ANNOUNCES TWO MORE SETTLEMENTS IN GAP REFUND CASES

By [Troutman Pepper State Attorneys General Team](#) and [Troutman Pepper Consumer Financial Services Team](#)

On January 4, Colorado Attorney General Phil Weiser [announced](#) that his office had reached settlements with Bellco and Canvas credit unions which will provide \$4 million in refunds of unearned guaranteed automobile protection (GAP) premiums to consumers that the credit unions failed to provide previously. In June 2022, we posted [here](#) about the five prior settlements reached by the state AG over GAP refunds. Based on the AG's comments in the press release, we expect continued scrutiny in this area. "When hardworking Coloradans pay for GAP coverage, they deserve to receive what they are owed ... My office will continue to hold accountable companies that violate the law and leave Coloradans without the money they were due."

[Read more](#)

### MARYLAND AG TARGETS MISLEADING MAILERS

By [Troutman Pepper State Attorneys General Team](#) and [Daniel Waltz](#)

Just before the new year, Maryland Attorney General Brian Frosh announced a \$250,000 settlement with Caliber Homes, Inc. to resolve allegations that Caliber attempted to mislead approximately 220,000 consumers into

thinking that its mailings actually came from the customers' current mortgage companies by sending advertisements that displayed the name and mailing address of the consumers' original mortgage company instead of Caliber's. AG Frosh alleged that Caliber's conduct violated Maryland law, which prohibits licensed lenders from advertising under any name or address that is not their own.

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## **WASHINGTON AG TARGETS FALSE ONLINE REVIEWS**

By [Troutman Pepper State Attorneys General Team](#)

On December 29, 2022, Washington Attorney General Bob Ferguson [sued](#) Seattle-area plastic surgery provider Allure Esthetic and its owner for falsely inflating Allure's online ratings in violation of HIPAA, the Washington State Consumer Protection Act, and the Consumer Review Fairness Act. Specifically, AG Ferguson alleged that Allure and its owner:

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## **NJ ATTORNEY GENERAL REACHES SETTLEMENT WITH MERCHANT CASH ADVANCE COMPANY OVER ALLEGED UNFAIR AND DECEPTIVE PRACTICES**

By [Troutman Pepper State Attorneys General Team](#) and [Troutman Pepper Consumer Financial Services Team](#)

On December 27, the New Jersey Division of Consumer Affairs (the Division) entered a [consent order](#) with Yellowstone Capital LLC (Yellowstone) and several related companies to resolve allegations that, in violation of the New Jersey Consumer Fraud Act, the company engaged in abusive lending practices in connection with Merchant Cash Advances to small business owners (MCAs). Pursuant to the settlement, Yellowstone must forgive all outstanding balances for customers who entered MCAs, which is estimated to be approximately \$21.7 million, and pay more than \$5.6 million to the Division for purposes that may include, restitution, attorneys' fees, costs of investigation and litigation and costs of administering restitution, and penalties up to \$250,000. The order also imposes additional requirements regarding Yellowstone's agreements and collections activity discussed below.

[Read more](#)

## **NEW JERSEY AG LAUDS NJDCA'S SIXTH CONSUMER PROTECTION SETTLEMENT WITH CAR DEALERSHIPS**

By [Troutman Pepper State Attorneys General Team](#)

Since July 2022, the New Jersey Division of Consumer Affairs (NJDCA) [secured](#) six settlements — totaling over \$260,000 — with six different New Jersey car dealerships for allegedly violating consumer protection laws by:

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## **NEW YORK ATTORNEY GENERAL JAMES SECURES THIRD SETTLEMENT WITH HOME HEALTH AGENCY**

By [Troutman Pepper State Attorneys General Team](#)

The New York Office of the Attorney General (OAG) recently announced two agreements with White Glove Community Care, Inc. (White Glove). One [agreement](#) reached with OAG's Labor Bureau involved unpaid wages to White Glove's workers. The [second agreement](#) entered with OAG's Medicaid Fraud Control Unit concerned false claims the company allegedly submitted to Medicaid.

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## **FORTY-FIVE ATTORNEYS GENERAL URGE PERMANENT NATIONWIDE TELEHEALTH ACCESS FOR OPIOID TREATMENT**

By [Troutman Pepper State Attorneys General Team](#)

Recently, 45 state attorneys general sent a [joint letter](#) to the Drug Enforcement Agency and Substance Abuse and Mental Health Administration, requesting the permanent extension of nationwide "telemedicine" prescriptions for opioid treatment buprenorphine made possible under a soon-to-expire 2020 pandemic rule. Sent on the National Association of Attorneys General's letterhead, the letter signals many of the AGs' willingness to continue working together despite recent controversies.

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## **FIFTH CIRCUIT SIDES WITH AG PAXTON, FINDING THE HORSERACING INTEGRITY AND SAFETY ACT UNCONSTITUTIONAL**

By [Troutman Pepper State Attorneys General Team](#)

Enacted in 2020, the Horseracing Integrity and Safety Act (HISA) nationalized the regulation of the horseracing industry. HISA delegates power to the Horseracing Integrity and Safety Authority (Authority) — a private entity that operates under the Federal Trade Commission's (FTC) oversight — to establish new rules, issue subpoenas, and enforce regulations with civil sanctions or obtain injunctive relief. In a lawsuit brought by horseracing associations against the Authority and FTC commissioners, [the Fifth Circuit found the HISA unconstitutional](#) because it "delegated government power to a private entity" without sufficient agency supervision.

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## **TIKTOK FACES 'PILE-ON' PRESSURE FROM STATES AFTER INDIANA SUES**

By Ketan Bhirud

Ketan Bhirud, a member of Troutman Pepper's State Attorneys General and Regulatory Investigations, Strategy + Enforcement (RISE) practice groups, is quoted in the *Bloomberg Law* article, "[TikTok Faces 'Pile-On' Pressure From States After Indiana Sues.](#)"

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## FOURTEEN STATE ATTORNEYS GENERAL FILE AMICUS BRIEF IN SUPPORT OF LAWSUIT BY U.S. CHAMBER OF COMMERCE AGAINST THE CFPB

By [Chris Willis](#), [Clayton Friedman](#), [Stefanie Jackman](#), James Kim, [Stephen C. Piepgrass](#), Ketan Bhirud, [Chris Carlson](#), and [Abby Hylton](#)

Yesterday, 14 Republican attorneys general (AGs) filed an [amicus brief](#) in support of a lawsuit brought by the U.S. Chamber of Commerce and other co-plaintiffs against the Consumer Financial Protection Bureau (CFPB or the Bureau), alleging that the Bureau exceeded its statutory authority by amending its examination manual to include discrimination, and in particular disparate impact, as “unfair” practices under the Consumer Financial Protection Act.

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## NEW AG ON THE BLOG

### NEW AG ON THE BLOCK: HAWAII ATTORNEY GENERAL ANNE LOPEZ

By [Troutman Pepper State Attorneys General Team](#)

At Hawaii Governor Josh Green’s [recommendation](#), health care executive Anne Lopez (D) assumed the role of the state’s next attorney general on December 5. AG Lopez succeeds Acting AG Holly Shikada and will serve a five-year term, ending in 2026.

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## NAAG UPDATES

### NAAG INTRODUCES MILLER-WASDEN UNITY AWARD

By [Troutman Pepper State Attorneys General Team](#)

At its December 7 annual *Capital Forum* event, the National Association of Attorneys General (NAAG) [announced](#) its *Miller-Wasden Unity Award* in honor of outgoing Attorneys General Tom Miller (D-IA) and [Lawrence Wasden \(R-ID\)](#). As the award’s namesakes, both AGs received the inaugural award, which recognizes AGs for their service and commitment to bipartisanship and civility.

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## ARIZONA STATE ATTORNEYS GENERAL UPDATE

### ARIZONA ATTORNEY GENERAL RACE RECOUNT UPDATE

By [Troutman Pepper State Attorneys General Team](#)

With Democratic Kris Mayes leading Republican Abe Hamadeh by 510 votes, Arizona law requires an automatic recount in the race for Arizona attorney general.

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## FCA UPDATES

### COULD PPP LENDERS BE LIABLE FOR BORROWER MISREPRESENTATIONS?

By [Amy Pritchard Williams](#), [Ryan J. Strasser](#), and Abbey M. Thornhill

On December 8, the U.S. Small Business Administration (SBA) issued a [statement](#) regarding its intent to investigate certain participants in the Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>[1]</sup> This announcement, just a few months after the U.S. Department of Justice (DOJ) announced its first-ever False Claims Act (FCA) settlement with a PPP lender, raises concerning questions about how far the SBA will go in investigating and enforcing potential fraud in the pandemic relief program and whether it will abide by its own guidance issued at the inception of the PPP in April 2020.

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### MEDI-CAL CALIFORNIA FALSE CLAIMS ACT SETTLEMENT FURTHER EXEMPLIFIES STATES' PURSUIT OF GOVERNMENT CONTRACTORS

By [Troutman Pepper State Attorneys General Team](#) and [Daniel Waltz](#)

California Attorney General Rob Bonta, in partnership with the Department of Justice, [announced two settlements](#) with providers for Medi-Cal (California's Medicaid program), following allegations under state and federal false claims acts that the providers submitted fraudulent claims to the government from 2014 through 2016. Consequently, Dignity Health, Twin Cities Community Hospital, and Sierra Vista Regional Medical Center agreed to pay a total of \$22.5 million to resolve the investigation. The settlement also resolved a whistleblower complaint against the providers, and the whistleblower will receive \$3.9 million for his role in uncovering the alleged fraud.

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