

Defending Companies and Industries in State AG Investigations



Following up on their successes against the tobacco industry in the 1990s, state attorneys general (AGs) have significantly broadened their role in investigating and regulating businesses and industries. Aided by the enactment of state false claims statutes and other legislative initiatives, state AGs are now aggressively investigating and pursuing claims against companies in new ways and areas. With states now routinely combining efforts and resources on multistate investigations — often working hand in hand with the Department of Justice or other federal agencies such as the Federal Trade Commission — or employing high-profile private practitioners to serve as special assistant AGs for certain matters, state AGs have raised the stakes for companies and entire industries, both in terms of the level of activity and potential risks and damages.

The National Law Journal named King & Spalding to its “Defense Hot List” for two consecutive years.

King & Spalding has been at the forefront in representing clients who have found themselves the targets of state AG investigations or claims for almost 30 years — beginning in the 1980s with our representation of Brown and Williamson Tobacco Company and continuing through our representation of a major pharmaceutical manufacturer at trial in June 2008 in drug pricing litigation in Alabama. Over these three decades, King & Spalding lawyers have represented and assisted clients in investigations, litigation, and regulatory matters involving all 50 states and the District of Columbia.

Proven Experience

King & Spalding lawyers have significant experience in serving as “national” or “coordinating” counsel in multiparty, multistate investigations and are veterans of the document production and discovery wars that frequently come with such investigations. In fact, for more than 20 years, we have been at the forefront of developing high-quality, cost-effective solutions to the challenges of collecting, reviewing, and producing documents in complex investigations and litigation.

We always do what we can to help clients avoid or minimize the impact of state AG investigations and litigation whenever possible, but we are not afraid to vigorously contest those investigations when appropriate or to try cases when necessary. We offer the unusual combination of big firm litigation resources and lawyers who routinely try high-exposure and mission-critical cases.



Lawyers in our eight domestic offices have experience in state AG investigations across a wide range of practice areas, including Special Matters/Government Investigations; Environmental & Toxic Tort Litigation; Business Litigation; Healthcare; Antitrust; and Public Finance. Following is a short but representative sample of specific matters we have handled:

- **Tobacco:** In addition to our trial work for Brown & Williamson, we handled the complex discovery phase of the Minnesota state AG tobacco case from 1994 to 2000, including preparing motions and conferring on case strategy. We also handled all discovery matters, both document production and written discovery responses, for two of the six major tobacco companies in all 50 states.
- **Pharmaceutical/Biotechnology/Medical Device:** In June 2008, we represented a major pharmaceutical manufacturer at trial in drug pricing litigation brought on behalf of the Alabama AG by that state's highest-profile plaintiff's lawyer. We also have defended major pharmaceutical companies in multiple suits brought by the New York state AG related to issues surrounding the disclosure of results of clinical trials and a case brought by Kentucky's AG seeking injunctive relief and damages for alleged "excessive prescription costs." We coordinated another major pharmaceutical company's interaction with the multi-state steering committee during a 26-state AG investigation, for which we also handled discovery. We have defended medical device manufacturers in state AG suits in California, Texas, Nevada, New Jersey and New York, and health care providers in numerous states.
- **Healthcare:** We have represented multiple healthcare providers and institutions in state AG cy pres reviews of dispositions of nonprofit hospitals and/or assets of non-profit corporations and intramural disputes between non-profit private universities and affiliated teaching hospitals. We have represented multiple health care providers in responding to state AG civil investigative demands, state FCA investigations, licensure actions/sanctions, and other health care investigations. And we have represented multiple academic medical centers, public hospitals, and other health care providers in Medicaid payment disputes including self-disclosures, administrative appeals, and state district and appellate court litigation for which the state AG's office participated on behalf of the state Medicaid agency. In addition, we have both worked with and litigated against state AGs to help protect numerous clients' trade secrets from disclosure pursuant to Public Information Act requests.
- **Energy:** The firm successfully represented both Chevron U.S.A. Inc. and Shell Oil Company in multistate price-gouging investigations in the wake of Hurricane Katrina, none of which uncovered evidence of illegal conduct.
- **Toxic Tort:** We successfully represented Chevron U.S.A. Inc. in cases brought by the AGs in New Mexico, New Jersey, New Hampshire, and Puerto Rico alleging MTBE groundwater contamination.
- **Consumer Fraud/Financial Services/Insurance:** We successfully represented financial services institutions in matters related to subprime lending in Georgia and credit reporting in West Virginia. We defended a large bank and a major accounting firm in AG actions, including activities related to subprime lending. We have also represented companies in state AG investigations involving securities and insurance claims.
- **Antitrust:** The firm represented a large bank in connection with a multistate AG task force on municipal derivatives. We represented a vitamin producer and multiple pharmaceutical companies in antitrust actions filed by state AGs throughout the country, including several significant trials.

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