



KANSAS ATTORNEY GENERAL

Derek Schmidt

Consumer Protection & Antitrust Division

Annual Report

January 1 – December 31, 2012

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Message from Kansas Attorney General Derek Schmidt



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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June 2013

Dear Fellow Kansans:

It is my pleasure to present the 2012 annual report for our Consumer Protection Division as required by K.S.A. 50-628.

The Consumer Protection Division combats fraud and other illegal business practices. As required by law, we work closely with local prosecutors and private litigants, but the bulk of consumer protection work in our state – more than 4,000 cases in the past year – is handled by our office. Consumer protection is one of our critical priorities, and I am proud this year to represent Kansas as co-chair of the Consumer Protection Committee of the National Association of Attorneys General.

Kansas consumers can expect from us fair, consistent and even-handed enforcement of the consumer protection laws. From the telemarketing laws to door-to-door sales, our goal is to enforce the law in a way that provides justice and ensures that the law is followed. In addition to helping consumers, this approach to enforcement is good for the Kansas economy by ensuring regulatory certainty for businesses.

During 2012, our office recovered nearly \$50 million for Kansas consumers and taxpayers. That is the largest single-year recovery in Kansas history. We also have improved our process for screening complaints so that consumers more quickly are put in contact with the agency best able to help them.

Thank you for the privilege of serving.

Best wishes,

A handwritten signature in black ink that reads "Derek".

Derek Schmidt
Kansas Attorney General

2012... By the Numbers

Consumer Savings

\$650,002.31 – without litigation
\$24,741,601.12 – through litigation
\$25,391,603.43 – Total Consumer Savings

Penalties, Fees and Recoveries

\$23,709,496.92 – Civil penalties and fees awarded
\$61,500.00 – No-call penalties awarded
\$78,405.60 – Antitrust recoveries
\$15,000.00 – False claims recoveries
\$23,864,402.52 – Total Penalties, Fees and Recoveries

**Total Savings and Recoveries:
\$49,256,005.95**

Investigative Requests

4,550 Investigative Requests Received

Top Categories

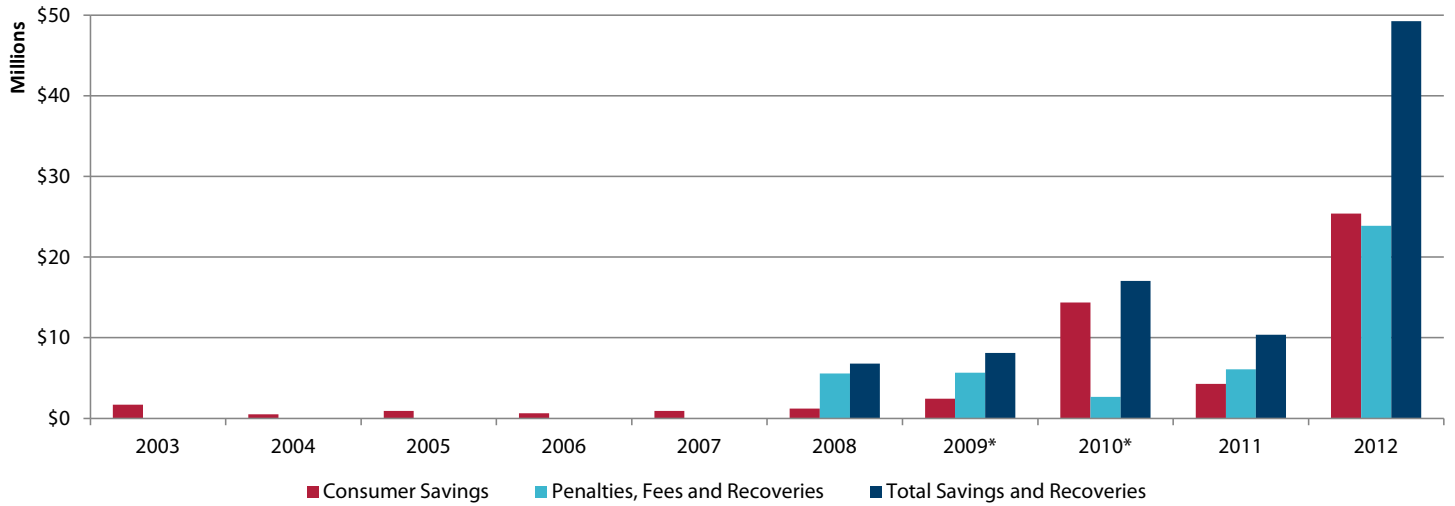
1. No-Call
2. Collection by Agencies
3. Auto - Used Car Sales Practices
4. Cellular Phones and Pager Services
5. General Services
6. Credit
7. Account Access Ruse
8. Mortgages
9. Advertising
10. Home Improvement - Roofing

4,803 Investigative Requests Closed

Top Categories

1. No-Call
2. Collection by Agencies
3. General Services
4. Cellular Phones and Pager Services
5. Used Car Sales Practices
6. Credit
7. Advertising
8. Telephone Service and Long Distance Carriers
9. Account Access Ruse
10. Health Services

Recovery Trends

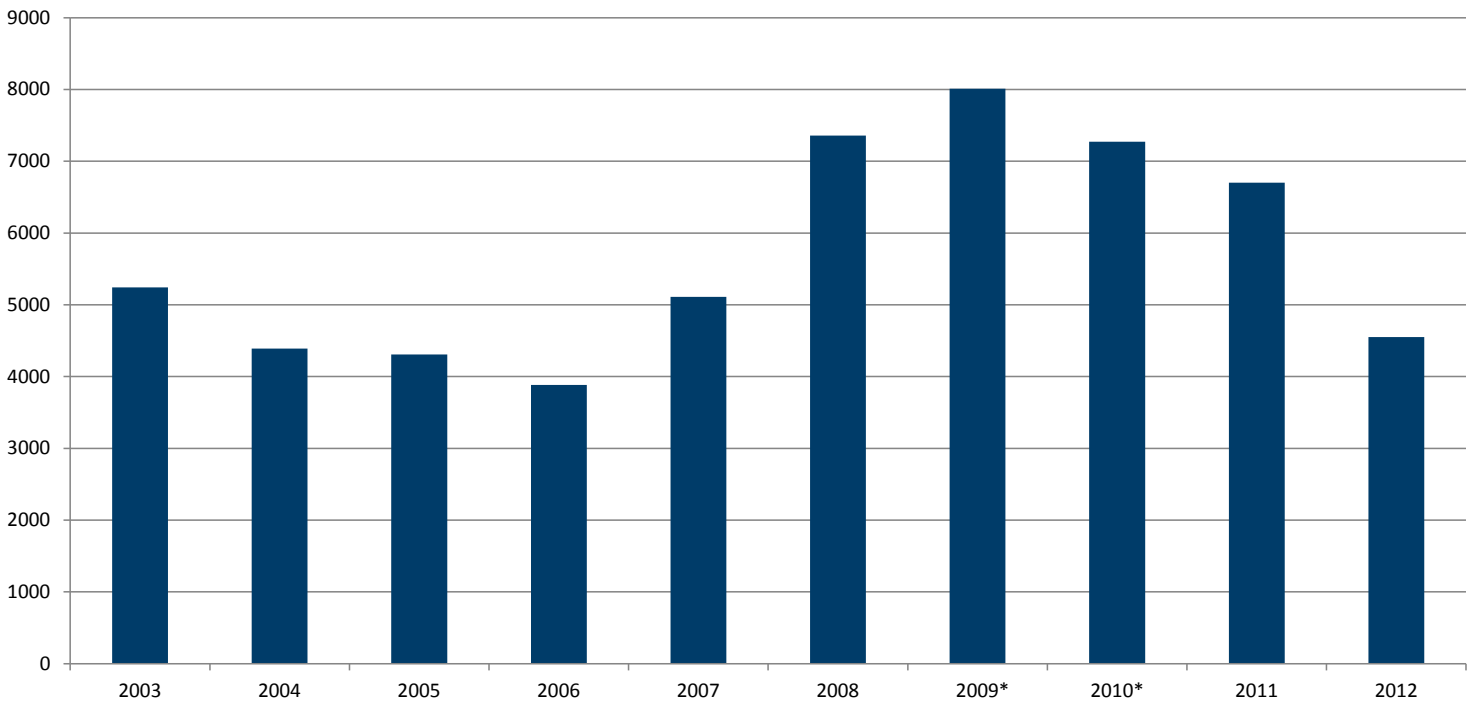


Consumer Savings includes savings without litigation, and restitution ordered.

Data for penalties and fees was not reported separately prior to 2008.

*2009 and 2010 data were reported based on Fiscal Years.

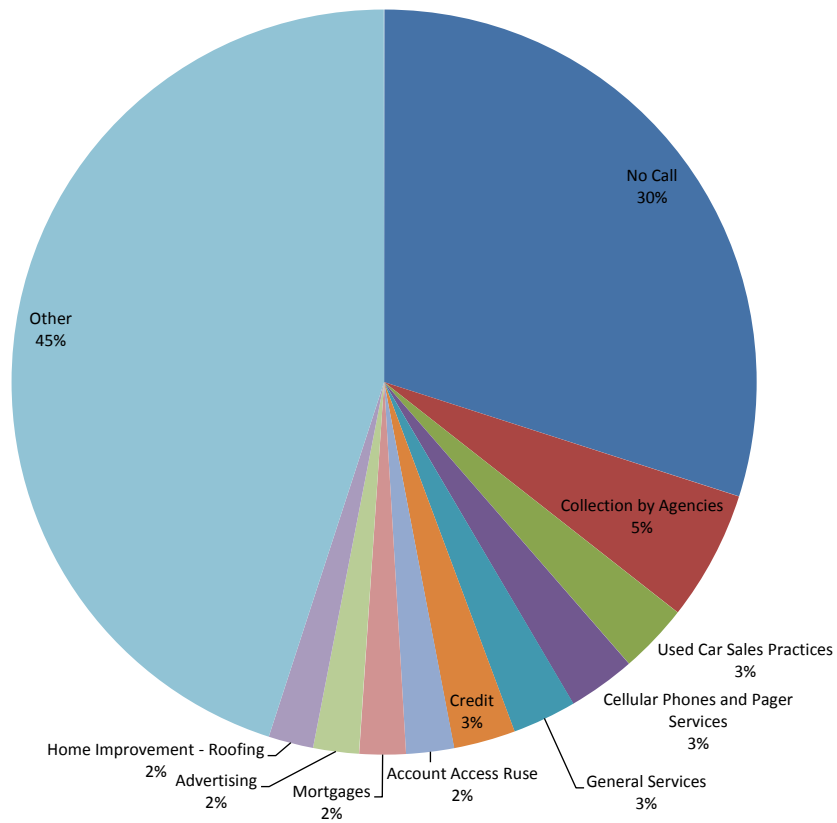
Investigative Requests Received: Trends



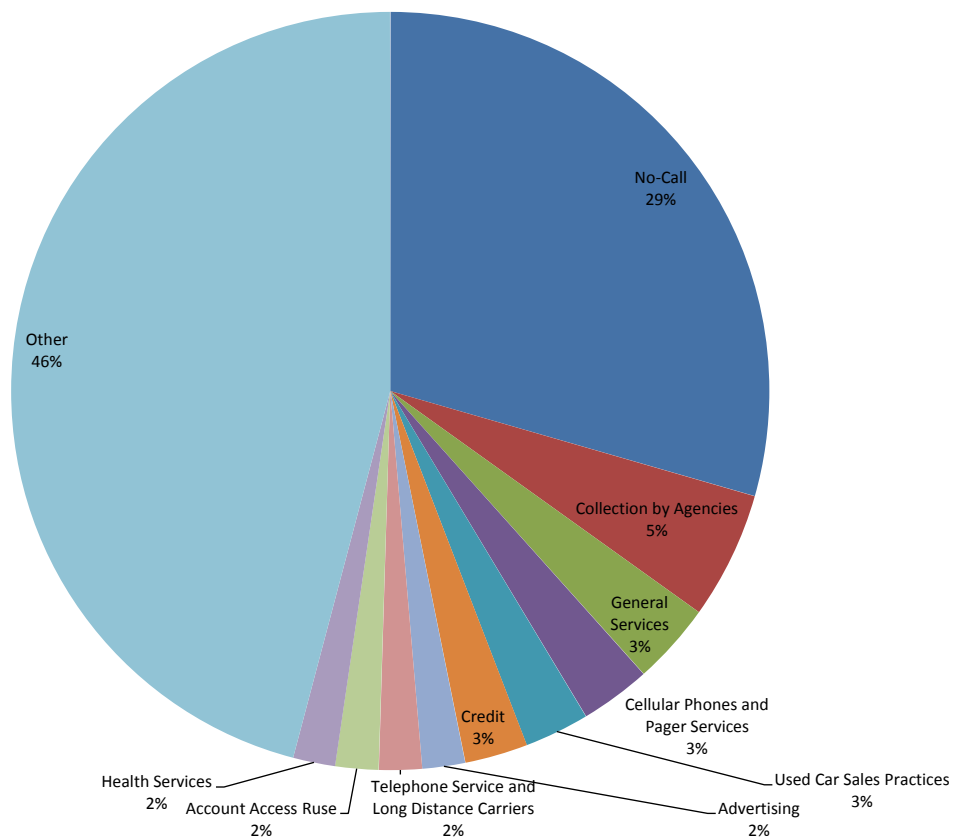
*2009 and 2010 data were reported based on Fiscal Years.

A new online investigation request system introduced in 2012 reduced the number of investigation requests by more accurately directing requests to other agencies in areas where the Attorney General's Office does not have jurisdiction.

Investigative Requests Received by Category (Total: 4,550)

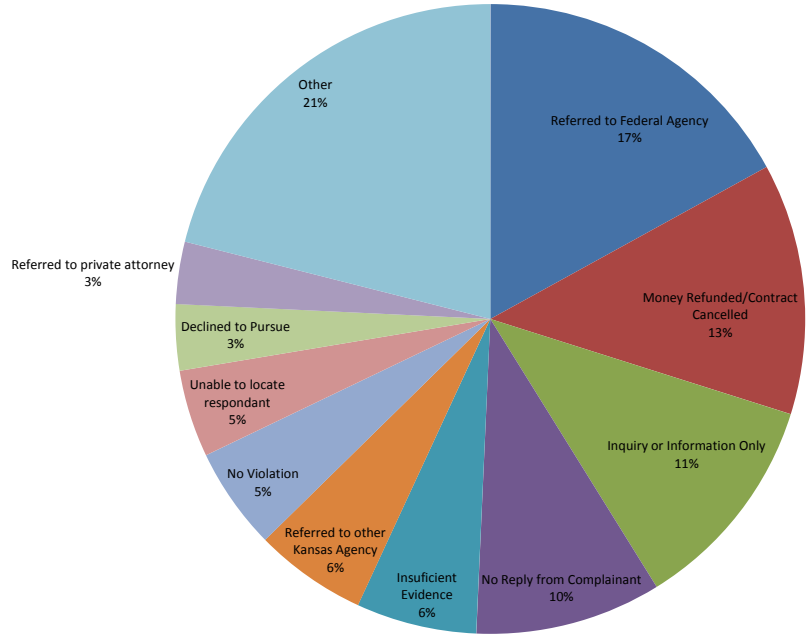


Investigative Requests Closed by Category (Total: 4,803)



Disposition of Complaints

1. Referred to Federal Agency
2. Money Refunded/Contract Canceled
3. Inquiry or Information Only
4. No reply from complainant
5. Insufficient Evidence
6. Referred to Other Kansas Agency
7. No Violation Found
8. Unable to Locate Respondent
9. Declined to Pursue
10. Referred to Private Attorney



Consumer Education and Outreach

While our office takes pride in helping consumers who fall victim to scams and other violations of the Kansas Consumer Protection Act, we also make strong efforts to prevent consumers from becoming victims in the first place.

In accordance with K.S.A. 50-629, the Attorney General's Office conducts outreach and educational programs for consumers at events throughout the state. In 2012, the office hosted or participated in 60 events that provided information to consumers on how to avoid becoming the victim of scams, identity theft and other consumer-protection topics.

The Attorney General's website contains a large number of articles, tips and consumer publications. The site received 198,968 unique visits during 2012. Attorney General Schmidt also submits a monthly consumer protection column to newspapers across the state, keeping consumers informed on how to protect themselves from the latest scams and other timely consumer issues.



Attorney General Schmidt speaks to consumers at the Tribune Senior Center about protecting themselves from scams and identity theft.

Litigation Summary

State v. Advocate Auto Claims, LLC

Shawnee County, 12 C 293

Filed March 16, 2012

Default Judgment obtained May 7, 2012

The Attorney General received a default judgment against the Defendant for violations of the KCPA related to the unauthorized practice of law in Kansas and the solicitation and sale of negotiation of “diminished value” insurance claims in the state of Kansas. The default judgment awards to the Attorney General \$30,000 in civil penalties, declaration that the alleged violations of the Kansas Consumer Protection Act are “deceptive” and “unconscionable,” and a permanent injunction against Advocate Auto Claims, LLC.

State v. Allied Paving and Construction

Shawnee County, 12-C-001101

Filed October 11, 2012

Judgment for State obtained December 13, 2012

The Attorney General entered into a consent judgment with the Defendant, Morris Herrin for violations of the KCPA related to the sale asphalt door to door in the state of Kansas. Defendant Herrin paid \$4,000.00 in consumer restitution and \$21,000 in civil penalties and investigative fees. He also agreed to abide by certain injunctive measures regarding business practices.

The Attorney General also obtained a default judgment against the Defendant, Scott Gilmer for violations of the KCPA related to the sale asphalt door to door in the state of Kansas for \$40,000 civil penalties and \$35,000 for investigative fees and costs. Attempts at collection of the judgment are ongoing.

State v. Bailey’s Construction/CTC Construction, et al.

Leavenworth County, 2012-CV-148

Filed March 27, 2012

The Attorney General filed suit against Defendant for violations of the KCPA relating to asphalt paving services at Kansas residences. The case remains pending.

State v. Centro Migratorio

Wyandotte County, 12-CV-1049

Filed July 13, 2012

Permanent Injunction entered July 20, 2012

The Attorney General filed a petition seeking a temporary restraining order alleging Defendant failed to obey and adequately respond to subpoenas issued by the Attorney General. Defendant failed to appear at hearing on July 20, 2012, and the Court entered a Permanent Injunction prohibiting the Defendant from conducting business in the State, until it substantially complies with the subpoenas. Defendant vacated its premises and has not submitted a subpoena response to date.

State v. Countrywide Shingle & Siding LLC

Shawnee County, 12-C-319

Filed March 22, 2012

Default Judgment obtained June 20, 2012

The Attorney General filed suit against the Defendant for violations of the Kansas No Call Act. When the Defendant failed to answer the allegations made in the Attorney General’s petition, the Court entered a default judgment against the Defendant. The Court awarded \$40,000.00 in No Call penalties and \$1,500.00 in investigative fees to the Attorney General.

State v. CTCI, Corp DBA ComputerTraining.com Inc. et al.

Shawnee County, 10-C-1180

Filed August 20, 2010

Consent Judgment obtained January 20, 2012 and February 21, 2012

Default Judgment obtained February 21, 2012

The Attorney General filed suit against the Defendants for violations of the KCPA related to the sale and fulfillment of computer training programs in Kansas. Defendant David Rau entered into a consent judgment, in which he agreed to abide by certain injunctive terms; the Court suspended payment of \$50,000 in civil penalties due to Defendant Rau's represented inability to pay. Defendant Chuck Lang also entered into a consent judgment, in which he agreed to pay \$12,000.00 in consumer restitution and to abide by certain injunctive terms. When the remaining defendants failed to answer the allegations made in the Attorney General's petition, the Court entered a default judgment against CTCI, Corp, ComputerTraining.com, LLC and ComputerTraining.com at Kansas City, Kansas, LLC for \$240,000.00 in civil penalties, \$6,500.00 in investigative fees, and \$98,899.00 in consumer restitution.

State v. K. Simon Construction Inc. et al.

Shawnee County, 12-C-732

Filed June 29, 2012

The Attorney General filed suit against the Defendants for violations of the Kansas No Call Act. The case remains pending.

State v. Leslie Edwin Snell

Johnson County, 99-C-10402

Filed May 10, 2000

Default Judgment for State obtained February 3, 2012

The Attorney General filed a civil penalties motion against Defendant for numerous violations of the injunctive provisions of an original court order entered by the Court on May 10, 2000. A motion for prejudgment garnishment was concurrently filed to preserve known assets for recovery purposes. Defendant failed to answer the allegations made in the Attorney General's motion, and the Court entered a default judgment against the Defendant. The Court awarded civil penalties and investigative fees, costs and expenses of \$420,000.

State v. Michael Maddox DBA Asphalt Paving

Republic County, 11-CV-06

Filed May 5, 2011

Dismissed June 26, 2012

The Attorney General filed suit against the Defendant for violations of the KCPA related to door-to-door asphalt paving services in the state of Kansas. Because the Defendant was unable to be located and successfully served the summons and petition, it was requested that the Court dismiss the allegations against the Defendant.

State v. Nationwide Debt Services, LLC et al.

Shawnee County, 11-C-823

Filed July 14, 2011

Default Judgment obtained February 8, 2012

The Attorney General filed suit against the Defendants for violations of the KCPA related to the offering of debt management services to Kansas consumers. At the Attorney General's request, the Court dismissed Defendant George Russo & Associates, PC on January 19, 2012. When Defendant Nationwide Debt Services LLC failed to answer the allegations made in the Attorney General's petition, the Court entered a default judgment against the Defendant. The Court awarded \$30,000 in civil penalties and \$5,000 in investigative fees to the Attorney General.

State v. The Pisa Group, Inc.

Shawnee County, 12-C-1399

Filed December 28, 2012

The Attorney General filed suit against the Defendant for violations of the Kansas No Call Act. The case remains pending.

State v. South Auto Sales

Douglas County, 2012-CV-657

Filed December 21, 2012

The Attorney General filed suit against the Defendants for violations of the Kansas Consumer Protection Act. The case remains pending.

State v. The U.S. Mitigation Service, LLC (CP-11-006590)

Shawnee County, 11 C 1444

Filed December 21, 2011

Default Judgment obtained February 27, 2012

The Attorney General received a default judgment against the Defendant for violations of the KCPA related to the solicitation and sale of mortgage modification services in the state of Kansas. The default judgment awards to the Attorney General \$30,000 in civil penalties, \$3,495 in consumer restitution to one Kansas consumer, \$50 as an investigative fee, declaration that the alleged violations of the Kansas Consumer Protection Act are “deceptive” and “unconscionable,” and a permanent injunction against The U.S. Mitigation Service, LLC.

State v. Vandell Communication, LLC et al.

Shawnee County, 11-C-1114

Filed September 23, 2011

Consent Judgment obtained December 12, 2012

The Attorney General entered into a consent judgment with the Defendants for violations of the Kansas No Call Act. The Defendants agreed to pay \$10,000.00 in No Call penalties and investigative fees to the Attorney General, and to refrain from certain business practices.

State v. Walley’s Heartland Construction Inc.

Shawnee County, 12-C-526

Filed May 14, 2012

Consent Judgment obtained May 21, 2012

The Attorney General entered into a consent judgment with the Defendant regarding violations of the Kansas No Call Act related to the telemarketing of home repair and restoration services. The Defendant agreed to pay \$10,000.00 in No Call penalties and investigative fees to the Attorney General, and to refrain from certain business practices.

Multi-State: Abbott Laboratories

Shawnee County, 12-C-498

Filed May 7, 2012

Consent Judgment obtained May 7, 2012

The Attorney General entered into a consent judgment with the Defendant to resolve a multi-state investigation concerning the sale of the prescription drug Depakote®. The Defendant agreed to pay \$1,418,336.00 to the Attorney General, and to abide by a number of injunctive terms.

Multi-State: GlaxoSmithKline, LLC

Shawnee County, 12-C-1242

Filed November 15, 2012

Consent Judgment obtained November 21, 2012

The Attorney General entered into a consent judgment with the Defendant to resolve a multi-state investigation concerning the sale of the prescription drug Avandia®. The Defendant agreed to pay \$1,546,905.52 to the Attorney General, and to abide by a number of injunctive terms.

Multi-State: Janssen Pharmaceuticals, Inc. et al.

Shawnee County, 12-C-974

Filed August 30, 2012

Consent Judgment obtained September 4, 2012

The Attorney General entered into a consent judgment with the Defendant to resolve a multi-state investigation concerning the sale of certain prescription drugs. The Defendant agreed to pay \$4,874,356.00 to the Attorney General, and to abide by a number of injunctive terms.

Mortgage Multi-State Settlement

US District Court for the District of Columbia, 1:12-CV-00361-RMC

Filed March 12, 2012

Consent Judgments obtained April 4, 2012

The Attorney General entered into consent judgments with the nation's five largest mortgage servicers (Bank of America, JP Morgan Chase, Citibank, Wells Fargo, and GMAC) to resolve a multi-state investigation concerning residential mortgage servicing misconduct. The Defendants agreed to pay \$13,778,401.00 to the Attorney General, abide by new mortgage servicing standards, provide relief to thousands of Kansas homeowners, and make cash payments to qualifying victims of foreclosure in Kansas. In 2012, the servicers self-reported a total of \$24,420,341.00 in relief to distressed Kansas homeowners under the terms of this settlement with additional relief to be provided in 2013 and 2014. Relief amounts have not been verified by the Monitor at the time of this publishing. Cash payments to qualifying Kansas consumers will be distributed during the summer of 2013. Updated information can be found through the Monitor's website at:

www.mortgageoversight.com

Multi-State: Pfizer, Inc.

Shawnee County, 12-C-1339

Filed December 12, 2012

Consent Judgment obtained December 13, 2012

The Attorney General entered into a consent judgment with the Defendant to resolve a multi-state investigation concerning the sale of the prescription drugs Zyvox® and Lyrica®. The Defendant agreed to pay \$796,450.00 to the Attorney General, and to abide by a number of injunctive terms.

Multi-State: Skechers USA, Inc.

Shawnee County, 12-C-544

Filed May 16, 2012

Consent Judgment obtained May 17, 2012

The Attorney General entered into a consent judgment with the Defendant to resolve a multi-state investigation concerning the advertisement of Defendant's toning shoes. The Defendant agreed to pay \$83,876.00 to the Attorney General, abide by a number of injunctive terms, and pay qualifying consumer claims for restitution.

Multi-State: US Fidelis Inc. et al.

Shawnee County, 10-C-646

Filed April 28, 2010

Consent Judgment obtained September 25, 2012

The Attorney General entered into a consent judgment with Defendant US Fidelis, Inc. to resolve a multi-state investigation concerning the solicitation and sale of auto warranty programs. The Defendant agreed to pay \$40,000.00 in investigative fees to the Attorney General, abide by certain injunctive terms, and pay qualifying consumer claims for restitution.

Antitrust Enforcement Actions

Multi-State: E-books Multistate Investigation

S.D.N.Y., Civil Action No. 11-md-02293 (DLC)

State, et al. v. Penguin Group (USA) Inc. et al., 12-cv-03394-DLC

Proposed Second Amended Complaint Filed May 5, 2012

The Attorney General, with Attorneys General from 32 other states and territories, filed a second amended antitrust action against three Defendants—Penguin Group (USA) Inc., Holtzbrinck Publishers, LLC d/b/a Macmillan, and Apple, Inc.—alleging the publishers and their co-conspirators entered into an agreement to raise the retail price of electronic books (“e-books”), and Apple acted as facilitator of the conspiracy. A trial date is set for June 3, 2013 to proceed jointly with the U.S. Department of Justice. At the close of 2012, litigation and discovery was ongoing, as to these three Defendants.

State, et al. v. Hachette Book Group et al., 12-cv-06625-DLC

Motion for Settlement Approval Filed August 20, 2012

Preliminary Approval of Settlements Granted September 13, 2012

The Attorney General, along with 49 states and six territories, agreed to settle with the other three conspiring publishers, Hachette Book Group, Inc., HarperCollins Publishers, L.L.C., and Simon & Schuster, Inc. The settlements were filed with the court for approval on August 20, 2012. The Court preliminarily approved the settlements on September 13, 2012. Final approval was not yet granted at the end of 2012.

Multi-State: Municipal Bonds

Out-of-Court Settlements

Settlement with Bank of America Corporation entered on December 7, 2010

Settlement with UBS AG entered on May 4, 2011

Settlement with JP Morgan Chase & Co. entered on July 7, 2011

Settlement with Martin Kanefsky entered on July 27, 2011

Settlement with Wachovia Bank N.A. entered on December 8, 2011

Settlement with GE Funding Capital Market Services, Inc. entered on December 23, 2011

The Attorney General, along with additional Attorneys General from various] states and territories, has entered into settlements with various financial institutions and a broker, accused of participating in a nationwide scheme to rig bids and engage in other anticompetitive conduct that defrauded state agencies, municipalities, school districts and not-for-profit entities in their purchase of municipal bond investments. Settlement agreements with Bank of America Corporation, UBS AG, JPMorgan Chase & Co., Wachovia Bank N.A., a wholly-owned subsidiary of Wells Fargo & Company, GE Funding Capital Market Services, Inc. and Martin Kanefsky, an individual broker, were entered into in 2010 and 2011. Settlements were also entered into between many of the financial institutions concurrently with the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Internal Revenue Service and the Federal Reserve.

Bank of America settlement restitution checks, totaling \$202,866.12, were sent to five Kansas entities on or about March 30, 2012. Settlement restitution checks payable to 19 affected Kansas governmental and not-for-profit entities from settlements with GE Funding, Wachovia, and JP Morgan will be sent out in 2013. No Kansas entities were found to be harmed by UBS or Kanefsky under the settlements. Kansas also received \$392,028 for fees, costs, and enforcement in June 2012.

Antitrust Investigations

The State of Kansas conducted investigations of companies for potential antitrust violations in the following areas:

- *Healthcare Services*
- *Financial Rate Setting*
- *Retail Gasoline*
- *Retail Ice Sales*
- *Telecommunications*

Kansas False Claims Act

State v. Nationwide Enviroserv Inc. DBA Nationwide Environmental Services

Leavenworth County, 2012-CV-139

Filed March 23, 2012

Consent Judgment obtained March 26, 2012

The Attorney General filed suit against the Defendant for violations of the Kansas False Claims Act for submitting false invoices for products not ordered nor delivered to Kansas municipalities. The Defendant agreed to pay \$10,618.95 restitution and \$4,381.05 in investigative fees, in addition to injunctive measures as to business practices.

Other Amicus Filings

Miranda L. Day v. Persels & Associates, LLC, et al.

Eleventh Circuit, No. 12-11887

Amicus Brief Filed June 25, 2012

The Attorney General joined 25 states and territories in filing an amicus brief asking the Court to reverse a lower court decision finding a class settlement, which provided no monetary relief and superficial injunctive relief to consumers, was “fair, reasonable, and adequate.” The court relied on inappropriate factors in assessing the adequacy of the proposed settlement and failed to protect the interests of absent class members. Under the proposed settlement, the absent class is left in a worse position that if the lawsuit had not been brought, since they get no benefit and are required to surrender their right to pursue any other remedy. Oral arguments are set for April 2, 2013.

Consumer Protection Division Staff

(January 1, 2012 through December 31, 2012)

DEREK SCHMIDT
KANSAS ATTORNEY GENERAL

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Robert Hiatt	Assistant Attorney General
Adrian Serene	Assistant Attorney General
Meghan Stoppel	Assistant Attorney General
Jackie Williams	Assistant Attorney General
*Whitney Casement	Law Clerk
*Beth Schilling	Law Clerk
*Jerry W. Howland	Special Agent Supervisor
Tonya Hutchings	Director of Investigations
*Natalie Hogan	Special Agent
*Sheila Krohe	Special Agent
*Samuel Jake Owen	Special Agent
*Teresa Salts	Special Agent
Patrick Firebaugh	Investigator
Maggie Provost	Investigator
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Nancy Tellez	Investigator
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*Megan Henry	Director of Outreach
*Nicole Finley	Administrative Assistant
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Arin Turvey Evans	Administrative Assistant
*Kayla Smith	Office Specialist Intern
Nyvya Walsh	Office Specialist Intern

* Denotes that staff member is no longer with the Consumer Protection Division.