

State Attorneys General: Civil Investigative Demands

PAUL SINGER

Partner
Co-Chair, State Attorneys General

BETH BOLEN CHUN

Senior Associate
Advertising, State Attorneys General

ABIGAIL STEMPSON

Special Counsel
Advertising, State Attorneys General

KEVIN ANDERSON

Senior Counsel for Consumer Protection and
Multistate Litigation, Office of the North
Carolina Attorney General

STEPHANIE GUYON

Deputy Attorney General, Office of the Idaho
Attorney General



Triggers to State and Multistate Investigations



Triggers to State and Multistate Investigations

- **Multistate**

- Further development of the law
- Shared resources
- Ensure consistent enforcement or standards across jurisdictional lines
- Avoid unnecessary duplication of effort
- Avoid subjecting business to repeated investigation and/or litigation and provide global resolution
- Allow consumers to benefit from injunctive or other relief that may be otherwise unavailable
- Ensure level playing field on a regional or national basis for legitimate businesses

Civil Investigative Demands (CIDs) and Other Pre-Suit Investigatory Authority

- Letter Request
- Pre-Suit Investigatory Authority
 - Require statement or report in writing under oath
 - Examine any person under oath
 - Examine any property, record, book document, account or paper
 - Require attendance of witnesses
 - Conduct hearings in aid of the investigation
 - Issue a cease-and-desist order
- Subpoena Authority Outside of CID Authority

Civil Investigative Demands (CIDs)

CIDs - Statutory Grant of Authority

Broad

Broad Pre-Litigation Investigation Authority

- **Idaho Consumer Protection Act:** The Attorney General must have reason to believe that a person has engaged in, is engaging in, or is about to engage in any actor or practice declared to be unlawful by the Act.
- **North Carolina General Statutes on Monopolies, Trusts and Consumer Protection:** The Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations or persons doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations or persons in North Carolina doing business in violation of law;...

Civil Investigative Demands (CIDs)

- What is the specific name used for a CID in your statute?
- Who can issue a CID?
- Who can a CID be issued to?
- What can be demanded?
- Can a state issue a CID for material outside of the statute of limitations (if there is one)?
- Does the CID have required contents?
- Who pays for the costs of production?
- How much time does the recipient have to respond?

Civil Investigative Demands (CIDs)

- What is the process for a CID recipient to quash or modify a CID?
 - If court, which one?
 - Time period?
- What happens if the recipient doesn't respond to the CID?
- Are CIDs discoverable through a public records request? What about responses to a CID?
- Any special confidentiality protections for trade secrets? Other types of proprietary information?

Civil Investigative Demands (CIDs)

- Can an AGO share CID responses with another AGO?
- In a multistate, which state(s) issues a CID?
- Will AGOs agree to a confidentiality agreement with respondents?

Types of Objections to CIDs

- Unreasonable search and seizure
- Investigation falls outside the scope of statutory authority
- Unreasonable burden on the recipient
- Overbroad
- Relevancy
- Vague
- Jurisdiction
- Good faith belief

CID Caselaw

- Can a state's dilatory conduct estop the state from pursuing available remedies?
- Can the recipient of a CID challenge it anonymously?
- Can the court impose monetary sanctions on the CID recipient?
- Does the AGO have to prove to a CID recipient that documents requested are a necessity for the investigation if the company considers those documents trade secrets?

CID Caselaw

- Can a CID be enforced after litigation has commenced?
- Can an AGO seek information through a civil subpoena from a company registered in-state about complaints that originate outside of the state?
- Who determines whether an investigation is “in the public interest”?
- Does information an AGO receives from another AGO about unfair acts and practices of a company in the receiving AGO’s jurisdiction create a sufficient factual basis for an AGO investigation?

What to Expect During AG Investigation

State
Perspective

Respondent
Perspective

Strategies for Avoiding an AG Inquiry

Follow the law

Avoid activities that draw consumer complaints

Be responsive to AG inquiries

Proactively introduce your business to AGs and AGO staff

Don't be the "least" actor in your industry

Subscribe to AG Chronicles

A promotional graphic for 'AG Chronicles' on a dark blue background with a subtle grid pattern. In the top left, a red starburst contains the word 'NEW' in white. To its right, the text 'AG Chronicles:' is in large white font, followed by 'Consumer Protection News' and the subtitle 'An Insider's Perspective and Analysis to Help Navigate the Landscape of AG Enforcement' in a smaller, italicized white font. Below the text is a map of the United States where each state is represented by a 3D paper folder icon, colored in a gradient from light blue to green. To the right of the map is a red rectangular button with the word 'SUBSCRIBE' in white capital letters.

NEW

AG Chronicles:
Consumer Protection News
*An Insider's Perspective and Analysis to Help
Navigate the Landscape of AG Enforcement*

SUBSCRIBE

THANK YOU!



PAUL SINGER

Partner
psinger@kelleydrye.com
(202) 342-8672



ABIGAIL STEMPSON

Special Counsel
astempson@kelleydrye.com
(202) 342-8678



BETH BOLEN CHUN

Senior Associate
bchun@kelleydrye.com
(202) 342-8671