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EXAMPLES OF IMPORTANT CASES BROUGHT BY STATE ATTORNEYS GENERAL

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TOBACCO

In partnership with private attorneys, AGs in 46 states settled with the tobacco industry in 1998, whereby the tobacco industry paid more than \$200 billion. The attorneys and AG's were not only able to force the tobacco industry to reimburse state funds expended to deal with one of the biggest public health disasters in modern times, they were also able to expose the industry's corrupt practices, uncovering for the first time how it promoted addiction through manipulation of nicotine levels, engaged in a secret campaign to hook teens and even pre-teens and lied to government officials and the public.

Had state AGs not joined forces with private counsel, cases against the tobacco industry would have never succeeded. In a famous memo, R.J. Reynolds lawyer J. Michael Jordan, explained: "[T]he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his."¹

Many retainer agreements between AGs and private firms were made public, usually showing a standard contingency fee of around 15 percent, lower than typical 1/3 arrangements, despite the huge risks and the small likelihood of a plaintiff win.² Yet when the industry began to settle these cases, most private counsel gave up the contracted fee and amiably agreed, along with the tobacco industry, to arbitrated fee decisions. In announcing the first fee award to attorneys in Florida, Texas and Mississippi in December 1998, to be paid by the tobacco companies over a minimum of 10 years, labor mediator and panel Chairman John Calhoun Wells said, "[N]otwithstanding all the efforts by individuals who committed years of their lives to achieving progress on this issue, without these outside counsel, there would be no multibillion-dollar settlements for the states to reimburse tobacco-related health expenses and provide funds for educational efforts to reduce youth smoking."³

POULTRY FARMS

In June 2005, then-Oklahoma Attorney General W.A. Drew Edmondson sued Arkansas poultry farmers, including industry giant Tyson Foods, Inc., for polluting the Illinois River with chicken waste and hazardous chemicals.⁴ The suit was brought under the federal Superfund law and other state statutes.⁵ Edmondson brought on a consortium of outside firms on a contingency fee basis because his office could not undertake the expense of handling such major litigation.⁶ When the defendants' challenged this arrangement, the court dismissed the motion, allowing the suit to continue with the help of outside counsel.⁷ The case is still pending.⁸

HYTRIN

In July 2005, 18 Attorneys General settled charges of antitrust and consumer protection law violations brought against Abbott Laboratories and Geneva Pharmaceuticals Inc. for \$30.7 million.⁹ Of that amount, \$28.7 million went to consumers and third-party payers. The remaining \$2 million reimbursed state agency claims and litigation costs incurred by Florida, Kansas and Colorado, states that led the investigation and initiated the AG suit.¹⁰

REMERON

In August 2005, a federal court approved a \$36 million settlement between Attorneys General from 50 states, the District of Columbia and other U.S. territories and Organon USA Inc. and parent company, Akzo Nobel N.V., over the anti-depressant drug Remeron.¹¹ Of the \$36 million, \$8.6 million compensated consumers for amounts they overpaid for Remeron.¹²

PREDATORY LENDING

In January 2006, 49 states and the District of Columbia entered into a settlement agreement with Ameriquest Mortgage Company over alleged illegal lending practices.¹³ Under the settlement, Ameriquest agreed to pay \$295 million to consumers and \$30 million to the Attorneys General to cover costs and fund consumer education and consumer protection enforcement programs.¹⁴ The agreement also compelled Ameriquest to make sweeping reforms of its business practices.¹⁵

LEAD IN CHILDREN'S JEWELRY

In April 2006, then-California Attorney General Bill Lockyer announced a settlement with U.S. retailers and distributors over lead levels in costume jewelry.¹⁶ Under the agreement, retailers and suppliers had to stop sales in California of any product not meeting the strict lead-content standards.¹⁷ The retailers also pledged to pay a total of \$1.9 million, with \$325,000 earmarked for consumer education about the dangers of heavy metal exposure and \$250,000 set aside for a jewelry-testing fund.

PAYDAY LENDERS

In November 2006, West Virginia Attorney General Darrell McGraw reached settlements with 18 Internet-based lenders who allegedly made "payday loans" to West Virginia consumers without being licensed to do business in the state.¹⁸ Under the settlements, the companies agreed to quit doing business in West Virginia, pay refunds to consumers and cancel their debts.¹⁹

BILLING PRACTICES

In December 2006, 16 Attorneys General, led by then-California Attorney General Bill Lockyer, settled a lawsuit with JPMorgan's Chase Bank and Trilegiant Corp. over deceptive billing practices.²⁰ Under the \$14.5 million settlement, Trilegiant and Chase agreed to clearly disclose all terms of any free trials and were barred from characterizing future advertising solicitations as "reward" or "rebate" offers.²¹ Chase and Trilegiant also pledged to pay the settling states for attorneys' fees and investigation and litigation costs, and/or consumer protection enforcement funds, consumer education, litigation or local consumer aid and other uses permitted by state law, at the discretion of each state Attorney General.²²

BAYCOL

In January 2007, 30 Attorneys General settled with Bayer Corporation over its marketing of Baycol, a dangerous "statin" drug.²³ An \$8 million settlement was reached, with the monies used by the states for attorneys' fees and other costs of investigation and litigation, consumer protection enforcement funds, consumer education, litigation or local consumer aid funds or other purposes.²⁴

ANNUITIES

In October 2007, Minnesota Attorney General Lori Swanson settled a lawsuit against Allianz Life Insurance Company for marketing and selling \$259 million worth of unsuitable long-term annuities to seniors.²⁵ The settlement, among other things, established a restitution process to review sales to more than 7,000 Minnesota seniors.²⁶

ZYPREXA

In October 2008, 33 State Attorneys General announced a \$62 million settlement agreement with Eli Lilly over its marketing of the anti-psychotic drug Zyprexa,²⁷ with the monies to be used by the states for attorneys' fees and other costs of investigation and litigation, consumer protection enforcement funds, consumer education, litigation or local consumer aid funds or other purposes.²⁸ Under the settlement, Lilly was also required to spend six years implementing major changes in how it marketed Zyprexa.²⁹

Rather than participate in the 2008 settlement, several State AGs achieved justice by pursuing individual lawsuits against Lilly with the help of outside counsel. For example, in October 2009, South Carolina reached a \$45 million settlement over the drugmaker's Zyprexa marketing practices, with Lilly paying over \$37 million for Medicaid/State Health Plan reimbursement and consumer protection and pledging to institute significant changes in how it marketed Zyprexa.³⁰ As then-South Carolina Attorney General Henry McMaster explained when announcing the settlement, "The Eli Lilly case was handled on a contingent basis by special counsel appointed by the attorney general. Special counsel paid and incurred all up front costs associated with bringing the case, and their expertise in similar pharmaceutical litigation was instrumental in its successful resolution."³¹

Similarly, in April 2010, Louisiana Attorney General Buddy Caldwell announced a \$20 million settlement over Lilly's Zyprexa, with nearly \$17 million going to the state's general fund, \$3 million reimbursing the state's Medicaid fund and the company pledging to significantly change the way it marketed Zyprexa.³² Lilly also agreed to pay private counsel's fees in addition to the state's \$20 million recovery.³³

SECURITIES FRAUD

In August 2009, a federal court approved a \$475 million securities class action settlement between then-Ohio Attorney General Richard Cordray and Merrill Lynch, which allegedly, among other things, "made materially false and misleading statements in its financial statements concerning its exposure to residential mortgage-related debt, including subprime and collateralized debt obligations."³⁴ Outside attorneys served as co-lead counsel in the litigation.³⁵

Later that year, AG Cordray announced a \$400 million securities class action settlement for investors harmed by Marsh & McLennan Companies, Inc., Marsh Inc. and former company executives Jeffrey Greenberg and Roger Egan (collectively "Marsh").³⁶ The agreement, negotiated by Cordray and New Jersey's Attorney General, held Marsh accountable for "failure to disclose a scheme that generated substantial earnings from illegal, anticompetitive arrangements with insurance carriers."³⁷ The settlement received final court approval in December 2009.³⁸

In July 2010, Cordray announced a proposed settlement of \$725 million with AIG over investor losses from the company's participation in an "illegal, industry-wide market division scheme involving the payment of improper 'steering' contingent commissions as well as bid-rigging and accounting fraud."³⁹ Private counsel represented the lead plaintiffs (the Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio and the Ohio Police and Fire Pension Fund), along with the Ohio AG, in the class action suit.⁴⁰ The court granted preliminary approval of the settlement in October 2011. As of January 2012, the agreement had not been finalized.⁴¹

TFT-LCD PANELS

In December 2011, a multi-state group of eight Attorneys General and private class action attorneys reached a \$553 million settlement with seven major technology corporations, which allegedly conspired to fix prices of thin film transistor-liquid crystal display (TFT-LCD) screens used in televisions, computer monitors and laptops.⁴² According to New York Attorney General Eric Schneiderman, “Up to \$501 million will be available for partial refunds to compensate consumers residing in 24 states and the District of Columbia who purchased products containing TFT-LCD panels during the period beginning January 1, 1999 and continuing through December 31, 2006.”⁴³

RISPERDAL

In January 2012, Texas Attorney General Greg Abbott secured a \$158 million settlement with Johnson & Johnson over its marketing of the anti-psychotic drug Risperdal.⁴⁴ “Today’s agreement sends a strong message that the State will pursue those who defraud Texas taxpayers,” Abbott said in a statement. “Johnson & Johnson’s scheme to profit from the Medicaid program by overstating the safety and effectiveness of an expensive drug and improperly influencing officials ended up costing taxpayers millions of dollars.”⁴⁵ The settlement will be allocated to the state, the federal government (since it provided Medicaid reimbursements), the whistleblower whose lawsuit served as the basis for the Texas case and his attorneys.⁴⁶

NOTES

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² Stephanie Mencimer, *Blocking the Courthouse Door*. New York: Free Press (2006), pp. 78-79.

³ “Tobacco Fee Arbitration Panel Announces First Decisions,” *PR Newswire*, December 11, 1998.

⁴ Press release from the Office of Oklahoma Attorney General W.A. Drew Edmondson, “AG Sues Poultry Industry for Polluting Oklahoma Waters,” June 13, 2005, found at

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¹⁰ “Between 1999 and 2001, a number of consumers filed lawsuits against Abbott and Geneva. The cases were consolidated into a single lawsuit in federal court in the Southern District of Florida. After conducting their own investigations, the states of Florida, Kansas and Colorado filed their own lawsuit in the same court.” Press release from the Office of Florida Attorney General Charlie Crist, “Crist Announces Settlement, Consumer Refunds in Hytrin Antitrust Case,” March 31, 2005, found at

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