

Consumer Finance Monitor (Season 3, Episode 23): An Interview with Colorado Attorney General Phil Weiser

Speakers: Chris Willis, Matt Morr, and Phil Weiser

Chris Willis:

Welcome to The Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers and the industry. I'm your host, Chris Willis, Vice Chair of The Consumer Financial Services Group at Ballard Spahr and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, consumerfinancemonitor.com. We've hosted the blog since 2011, so there's a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those of us in the industry.

Chris Willis:

So to subscribe to our blog or get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, please let us know. Leave us a review on Apple Podcasts, Google Play or wherever you get your podcasts. Today we have a very special program for you that originally aired as part of our webinar series. You're going to hear a conversation between my partner, Matt Morr from our Denver office, he's one of our consumer financial services litigators there, and the current Attorney General of Colorado, Phil Weiser. The Attorney General is going to discuss his consumer protection priorities and accomplishments during his time in office and it's a fascinating discussion that I know you'll enjoy. So, let's not waste any more time and get right to the interview.

Matt Morr:

Well, first of all, thank you very much for being here. We had originally talked about doing this last week, but you ended up being very busy on a phone call with the Supreme Court. I know many people had an opportunity to listen to that and I just wanted to start by saying congratulations on an argument well done.

Phil Weiser:

I appreciate it. It was a new experience. The Court had never done this by telephone before, nor had they allowed people to listen in real time. I don't know that I would have taken the bargain of giving up being there in person, but I will say there a lot of offsetting benefits the way it turned out.

Matt Morr:

Well, it was very interesting and fun to watch and you know some of the people on the bench very well. Isn't that right?

Phil Weiser:

Yes. I had the pleasure of working for Justice Ruth Balder Ginsburg, the hardest boss I'll ever have, and being able to argue in front of her was a special treat. I had the similar treat arguing in front Judge David Ebel here in Denver via Court Four. So not everyone gets to argue before two different judges that I worked for. I had that experience and they both are role models and mentors. Neil Gorsuch and I are also contemporaries. He'd court for Justice Byron White two years before I did. So I've known Neil for 25 years, now Justice Gorsuch. And then, he joined me out in Colorado beyond the Tenth Circuit, also became adjunct professor at the University of Colorado, and a small world story, when he got appointed to the Supreme Court, I picked up his antitrust class, thereby disappointing the members of that class who went from having a Supreme Court Justice-to-be to a law professor who picked up the class, but I did my best.

Matt Morr:

Well it was good of you to pick up the class. We're really honored to have you on here today, and as someone that's watched your campaign, and watched you on your first year and a half in office. A major emphasis that you've made is protecting consumers. So when you ran, you talked a lot about student loans, mergers that reduce competition, giving customers guidance and confidence on what companies they can trust. And so today, what we're hoping to do is discuss those issues relating to consumers and consumer finance, like student loans, mortgages. And then also, we need to talk about the pandemic, which is looming over everything we do and is impacting everything. So I'm hoping that this can be a really good opportunity for you to speak directly to some of the consumer finance companies that do work in Colorado. For those that don't know you, I thought I'd be a good place to start if you could give us just some additional background in addition to clerking for Justice Ginsburg about what you did prior to coming AG, and what inspired you to run.

Phil Weiser:

So I went to law school because of my commitment and calling for public service, and was fortunate. Graduated without any debt, and have been able to pick jobs based on what called to me. That first courtship with David Ebel, here in Colorado was the best job I've ever had. And then went to work with Justice Byron White, and Justice Ruth Balder Ginsburg at the Supreme Court, quite an incredible experience. From there I went to the Antitrust Division, I was hired by Joel Klein, who was then acting head of division, and Joel had me focus on telecommunications matters, among others. I also did work on an Antitrust investigation on credit card industry that was really a terrific education about that industry, and got me into Antitrust in a significant way.

Phil Weiser:

Two years at that department led to a job at the University of Colorado, where I took this position in academia on the theory that I could stay engaged and be involved in public service, and I did it through a number of ways. At the state level, I was co-chair of the Innovation Council set up by then Governor Ritter, working on technology issues. I also did a bunch of consulting public policy, and then also some pro bono civil rights work, including Tenth Circuit cases since David Ebel. And then of course at the law school, I really wanted to set up what would become a center for law technology and then entrepreneurship to elevate the discourse around these topics competition, innovation, and that center is now known as the Silicon Flatirons Center for Law, Technology, and Entrepreneurship. It just celebrated its 20th anniversary, and all of that brought me to the orbit of the then candidate Senator Obama, which led me to work on his transition and then as a deputy assistant Attorney General to his administration as well as the advisor in his National Economic Council.

Phil Weiser:

Coming back from that tour of duty in Washington I rejoined the law faculty this time as Dean of the law school. That would probably be the most challenging job I've ever had. I did it right as the law school world was melting down during a very difficult time, like what we're in right now. And for five years as dean, really worked hard to support our students and again do this as an extension of my commitment to public service. Had a sabbatical that I thought might come before a third tour of duty in the federal government, but the world changed, and I wasn't going to have that opportunity and decided that I should run to be Colorado's Attorney General, and that was the campaign you referred to, and it worked out, and here I am.

Matt Morr:

Well, thank you. In the time you've been the attorney general, we've had a couple updates in Colorado law. I want to talk first about the changes to the Consumer Protection Act, and specifically, it's broader now than it was before.

Phil Weiser:

Yeah, we pushed for changes that were the first in, really generation, last session. The reason is, we had this cork of our law, couple corks really, maybe even three corks that had us ranks among the least effective consumer protection laws in the United States. One cork is that even we as the government bringing a case had to show something on the order of I think

significant public impact, which meant if you tried to address a fraud or a scam in its infancy, you actually, by definition, couldn't win because it hadn't had enough impact and that struck me as just crazy. Our goal should be to be watchdogs, and when we see something bad happening, we should be able to stop it in its infancy. Now, I recognize that the motivation for that may have been concerns about class action or other individual cases. That rule that got fixed and didn't end up addressing private cases, it's just direct public cases.

Phil Weiser:

A second issue that was a real concern to me in the law was you had to make some claim that the violations were knowing and recklessness will not be sufficient as long as called CNC requirement. That was another concern to recklessness, the example of you have a warehouse and you have reason to know it's about to flood and you basically don't take any of the equipment out of the warehouse, you allow the flood happen and then you never inspect your equipment, you just go out and sell it. And you say to people, Oh, it's working, even though you have pretty good reason to believe it's been damaged, but you didn't know it was damaged because you actually never checked. That shouldn't be a defense to my view. And then the third, we hadn't updated our penalties in quite some time. And so that happened in this law.

Phil Weiser:

And then finally, and this was obviously important because our law used to be, if you get something wrong, it would then get put into our code as offense under our unfair trade practices. But we never had a catch-all provision like almost every state we now do. If you do something which is an unfair or unconscionable trade practice, it doesn't have to be previously a numerated in the law as such. We can claim that based upon what we know, this is action that should be deemed as an unfair or unconscionable trade practice. So for example, now we don't have a specific price gouging provision, but like a number of states, we think we can go after price gouging under a casual, unfair, or unconscionable trade practice. Those are four types of changes that we were able to make last spring. And we do think it has modernized our law.

Matt Morr:

And is price gouging something that you've been focused on during the pandemic?

Phil Weiser:

It is. I recognize the price gouging is a delicate area because I often explain there is ordinary supply and demand. Demand shoots way up it doesn't take someone to be a PhD economist to recognize that prices are likely to go up. And what I often do find is there's a normal give and take of supply and demand. And then there's what I'll call opportunistic sound, which is knowing you've got someone who's vulnerable, who's desperate. And you act in a way that is very different than a reputable, unreasonable seller in the same situation at the same time would act that strikes me as unconscionable and unfair. And if we can find the right appropriate case with such conduct, we would absolutely go after it.

Matt Morr:

Right. I'll add as well. I believe that the new amendments to the Consumer Protection Act added some additional penalties for violations against older adults.

Phil Weiser:

Yes, you are very in the wee on this, I mentioned that modernizing the penalties in doing so they took specific care to provide enhanced penalties for taking advantage of vulnerable older Coloradans.

Matt Morr:

The next piece I want to talk about. And you mentioned when you were giving your background that you were fortunate enough not to have student loan debt when you got out of law school. And it was a major part of your campaign was student

loans and there's a new while in Colorado related to student loans that makes the attorney general a little more active in that area. Can you tell me about that?

Phil Weiser:

Yeah, I appreciate you, Matt, starting with my personal story, not only did I have the benefit of not having personal loans and I'd saved a lot coming up and my grandmother and parents are really helpful, but I was the Dean of a law school when we saw a huge increase indebtedness. Just if you graduated law school in the year 2000, you might've had \$30,000 in debt. If you graduated law school when I took over, it was 2011, you had \$116,000 in debt. So that was a huge increase over basically a decade. And it had incredible ramifications for people and their personal and emotional states. So I saw this up front and one of my goals as Dean was to do something about it. We were able to really hold the line intuition, increased scholarships, and we actually lowered average indebtedness to \$100,000 by the time I was done.

Phil Weiser:

What I can say is it's really important that we be able to be transparent, that people understand the choices they're making and when there's promises that are made to them, they're able to be kept, one painful, again, challenge out there is the public service longer payment plan, where there have been promises that people were given let's say 10 years of their lives to public service, they'd have their debts forgiven. Unfortunately, many people have found that much more difficult to access. And so now on top of that. In Colorado what we did is as a state, give our office in particularly consumer credit office, the ability to have a student loan ombuds person who could investigate, educate and advocate on behalf of people with student loans. And one of these we've been able to do with our office this time is there are some student loans that are not owned by the federal government and were not covered by the recent Cares Act, grace provisions.

Phil Weiser:

We went ahead and worked with those private entities and match to their credit. They agreed to file the same grace provisions that the Cares Act provides. And a number of states who have also as to be part of this, it's really important. And one thing that I know a lot of the companies on the call understand is we are in a very trying time. And it's very important that we be able to be transparent with consumers. I often say that responsible companies deserve to be celebrated for how they operate and when companies acted irresponsible, it's very important that we can hold them accountable, because if you don't, then you basically give irresponsible companies a big advantage in the marketplace where they can break the rules and see it as an option where responsible companies want to make sure they're doing everything on the up and up.

Matt Morr:

The other piece that's relatively new in Colorado is in 2019, there was the Student Loan Servicers Act that was passed, and it has included some new requirements in Colorado for servicers of student loans. And it also allows the UCCC to conduct investigations. Can you talk to me a little bit about how that's going so far?

Phil Weiser:

Well, it's a work in progress it's pretty new. And the idea is student loan servicing is a sector that merits oversight again, to make sure everything is on the up and up. And so we have now comparable authority. We have in some other areas of personal finance to oversee and make sure that again, there is compliance with the law. This is a ... I think promising effort. It's still relatively new and as people have feedback on it, we welcome it.

Matt Morr:

One thing I wanted to ask is you've really put together an impressive team. The resumes of the people that you've hired to run the various divisions and sections are really outstanding. Would you mind just telling me quickly about a couple of the people that you have hired as it relates to consumer finance?

Phil Weiser:

Sure. I'm going to mention three particular hires. There are more, and I will say overall, I'm a big believer in this team. There's a great saying, which is if you want to go fast, go by yourself. If you want to go far go as part of the team. And so I believe it's all about building a team and we talk a lot about the culture that we need to build, and I am really proud of what we're doing and we're going to continue to do on that. I can talk more about culture in a little bit, but as far as the team, Steve Kaufman came back to Colorado, partner Morrison, forest stir, actually National Litigation had who frankly belongs here in Colorado. He's like a fifth generation Coloradan and to use the Yiddish real mensch. And so he came back to head up our consumer protection section.

Phil Weiser:

We hired during my time to just rock stars who are working in the bladed areas. Martha Fulford had been at the Consumer Financial Protection Bureau, she is a dynamo and is really providing great leadership in our consumer finance area. And Diane Hazel, who had also worked in Federal Trade Commission in Washington and who is again, amazing lawyer is now the head of our Antitrust Unit. The three of them are all new to our office and represent a level of talent that candidly private sector firms or companies would be extremely lucky to have. And all of them are working on our team because of their commitment to public service.

Phil Weiser:

And one of the elements that today is noted, but probably even understated is how important states are. Our federal government right now is not in a good place. Great book by Michael Lewis called the Fifth Risk talks a little bit about it. We've seen some of this during the coronavirus situation just from a functional or effective governance. Whether you're talking about either the legislative branch or the executive branch, it's not a moment of glory for the United States of America. However, at the state level, what we're doing in Colorado is not unique. A lot of state AGs office in particular, with state governments more generally are really about serving people and creative effective ways and building great teams. And that's what we're doing here in our office.

Matt Morr:

Phil, you mentioned a little bit about the culture, any more that you wanted to add on that point?

Phil Weiser:

I am a huge believer in culture. One thing that many of the firms who are on this call probably know is that every single organization has a culture, whether you know it or not. And obviously people don't think about culture are probably places that may have the ones that could be even toxic or problematic. And what that meant to me is we had to start with our mission and our values. And our mission is together we serve Colorado, advancing the rule of law, protecting our democracy and promoting justice for all. And the core values that we all hold are, we are principals, we're public servants, we're innovative and we're better together. And there's a lot in there, but it's why we do what we do and how we do what we do. And it's not about us. It's about the people of Colorado. And what we can do is always ask, is there a better way to accomplish these goals? How do we work together? And with others? I'm a big believer in that.

Phil Weiser:

We're now living in an age of networks, not an agent hierarchy. And so if you want to solve problems, you can't do it yourself. There's a great statement by Bill Joy, who founded Sun Microsystems, the smartest person working on your problem is not working for you. So whether it's student loan issues, whether it's the opioid epidemic, whether it's criminal justice reform, priorities that we take on, you very much want to think creatively and think collaboratively to get the best solution.

Matt Morr:

Thank you. I was going to move on to another major campaign point that you had related to robocalls, but before I went on, was there anything else that you wanted to talk about student loans and your work in that area?

Phil Weiser:

I did mention this point about the volunteer agreement we got, and I do think it's worth underscoring this, this is something that's again, under emphasized, which has government as a convener. Government can often help solve problems by bringing people together and saying, can we come up with a joint commitment to how we address an issue? We were able to do that with student loan servicers and student loans that were held by the private sector in a pretty impactful way. I give Martha a ton of credit for her leadership. And we'll keep thinking about those sorts of solutions, because it's not only can you pass legislation, can you bring a case? It's also, how do we work together in the collaborative way I mentioned.

Matt Morr:

From a practical standpoint, is there anything you that you attribute to getting the student loan servicers to agree? Because they did make some pretty significant agreement about 90 days forbearance and waiver of late fees, and as it relates to the credit reporting. So I'd be interested in what you think was a deciding factor for those private companies to enter this deal, which is very helpful for borrowers have been harmed right now.

Phil Weiser:

Well, let me first underscore why this is so valuable and then see if I can speculate although honestly, you have to ask for them to know why they were thinking it. The reason it's so valuable is the following. And this is something that a lot of companies I believe could benefit from learning. It's easy to say, Oh, we'll work with our customers one-on-one to develop solutions, but what's missing in that mindset is a lot of customers don't know what to ask for. And it was a great benefit that the Cares Act sets this default rule, giving broad protections for everyone and allowing a communicated norm, just like what you said, 90 days, you're held harmless. This is a grace period. That was a powerful message to get out to people.

Phil Weiser:

We wanted that message to hold through for all lenders. And so we went to the others and said, "Hey, can you join this?" And to their credit they said, yes, because they recognized there was a fundamental fairness in providing that. And my conjecture so why they did it was they got this point about fundamental fairness and that we are in this together and that they would benefit by making sure their customers weren't put in this situation where it could be confused because they're not necessarily to every loan they had and or this one do the right thing. So I'm really grateful that they rose to that commitment. And we're out of a situation, give people grace that they so desperately need.

Matt Morr:

In addition to the student loans, you also talked a lot about on the campaign and had a fair amount of press releases and talked about a robocalls. And that being one of the top complaints that your office receives from consumers, can you talk to me about as the attorney general, what you're trying to do to stop robocalls, but also with robocalls, there's always attention of a legitimate debt collectors, right to collect money that's owed to them under a contract versus illegitimate spam and things like that.

Phil Weiser:

It is indeed the case that our number one complaint is robocalls, or other calls and during the campaign as attorney general, I knew this was a scorch. My background's in telecommunication so I had some ability to engage directly with the telecommunication providers. And part of the challenge is the illegitimate scam fan type calls are largely coming from abroad. So what we needed and what we are in the process of implementing under this recent law that was called the Trace Act is technology that makes clear when a call is coming from a dubious source, and that gives people, and some people might see it

on their cell phones, potential spam calls, more control over what types of calls are getting, and they can be programmed to go right to voicemail. We also then get better Intel from our federal partners, "Hey, this is a case you can go ahead and bring."

Phil Weiser:

With that this is a good example of the point I mentioned earlier is if you're a legitimate company calling for legitimate reasons, you basically been credited as marketplace because there's so much spam or scam calling that no one's pick up the phone anymore. So this scorch is bad for everyone. And I don't know that we're going to put the genie back in the bottle because our device now, just from a self-protective standpoint is, if you don't recognize the number, let it go right to voicemail. Now, legitimate companies, debt collectors wants relationships with individuals. They can and will leave a message. And those may or may not call back. But the fact that there's so many illegitimate and messages out there, again, a lot of is targeting older Coloradans has become a big challenge. And so we've worked on it through every angle we can.

Matt Morr:

It is a very interesting problem. I've worked on a number of TCPA cases and with that listened to a number of call recordings of legitimate companies, talking to borrowers, and very often the borrowers want to make their payments. And we'll even thank the people for calling and reminding them. So there is a tension there of how do you protect the good calls and get rid of the bad calls. Can you tell me where the Trace Act is at this point?

Phil Weiser:

So it's been enacted into law. It is now incumbent on companies to adopt the technology, which is actually known as shaken and stir. I often joke whoever developed this must be a James Bond fan. And as that gets implemented, we'll have more ability to track calls. And we actually recently read a letter I think it was almost all 50 AGs to a number of entities who were a little bit slower to adopt this technology, pushing them to do so. And ultimately there'll be penalties for people who don't adopt the technology.

Matt Morr:

And will those penalties be at a state level, or will that be at the federal level or both.

Phil Weiser:

Federal. The state level is enforcement. And so far as we get leads of people who are engaging in this deceptive scam marketing, and those leads can come from the feds or they can come from consumers. If consumers know of scams, go to StopFraudColorado.gov, again, it's StopFraudColorado.gov we will be able to take reports there. We also can provide alerts. So as we learn about certain scams that are, let's say popular, we can actually get the word out to people saying that themselves.

Matt Morr:

And I want to come back to the second for the James Bond, Shaken and Stirred. Do you know what that means? What those, is it an acronym or is it differentiated.

Phil Weiser:

That's a good question. Is it an acronym? I do not know. It is a set of protocols that enable the authentication that a call is coming from where it says it is, what many people here on the call know because I know we're going to just get a group. Is that the scammers have gotten really good at making it look like the robocalls come from somewhere else. So anytime I get a call with the first three digits of my local number, I know it's a scam because they're trying to make it look like it's in my neighborhood. Now that is because of this technology called spoofing. What Shaken and Stirred does is it gets behind the spoof to say, wait a minute, this call isn't coming from where people say it is, this is actually boost. And that helps detect these fraudulent calls.

Matt Morr:

And are there efforts to educate either companies or consumers about what to do about these calls?

Phil Weiser:

Yeah, there is an ongoing effort and what is at least I think that basic process is going to be the major wireless companies are equipping their systems to quickly call all such calls, potential spammers or spam calls. And some of them have started labeling the calls that way. So that's a service people can get. There are also apps that people can get that help them with this, including ones that those sorts of calls go right to voicemail. So there has to be a consumer education campaign around this.

Unfortunately, this is a little bit of a game of cat and mouse. It's not like we're going to be great at eliminating all spam or scam calls, but we want to do the best we can to minimize them, to identify them and to help protect consumers.

Matt Morr:

Are you working with other AGs on these efforts?

Phil Weiser:

We are, there's an executive committee as part of the national association of AGs, that I'm a part of that is continuing to work on how we develop solutions and get them implement.

Matt Morr:

Well, as we're going through this pandemic, there's many people that are in bad positions where they're short on cash, where they've ran out of the stimulus money or they've tapped out their friends and family. And what will we see is that it's times like these, that people may seek loans from payday or short term lenders. And I'm interested to hear what your take is on those kinds of loans and what you're doing to try and protect consumers.

Phil Weiser:

In Colorado we passed a payday lending limit, which is 36% tap, for me this is a religious issue. And I recognize it's also an obligation on us as a state. It's religious, because I am, let's say, having to believe that we can get people credits and limit that credit for 36%. And I recognize there's a lot of challenges where people are, let's say under banked or otherwise, not equipped with the rights to chance institutions. So in terms of what are we trying to do, how do all of us having a collective responsibility, how do we get people the right sources of banking, resources, connections to get them on a better road for their personal finance. We're investing a lot in their office and financial literacy starting even in high school, there's a Burton called money wiser. They actually called wiser different from my last name, but the principles are the same.

Phil Weiser:

We need our next generation to be better prepared, to be better coached choose a Michael Lewis phrase from those who are familiar with his podcast against the rules. So we're trying to work on that as a long-term solution, as a measure of last resort, we want to try to make sure that we're not having people engaged in this payday lending. And then we also want to make sure that those who are taking, what other steps might be predatory are held accountable and not getting away with it. This is a project that again is super important right now with many people here on this call know, and it's hard to have the level of personal empathy unless you're sitting in those shoes. Half of Americans are literally a mild, tragic event away from being, having their personal finances rack to, or put differently. Half of Americans don't have \$400 at the ready for an emergency expense.

Phil Weiser:

This level of stress of living on the edge. This is part of a fundamental challenge to our resilience as a society, because so many people are at risk. And as you just said, Matt, some of those people got temporary reprieve, whether it's unemployment benefits or the stimulus checks, but we're in a very difficult, delicate situation. And I definitely want to work with the industry

to make sure that we are acting responsibly. I want to work every way I can, of Colorado to help people operate in a safer and founder way because the people who get in a deep and ever increasing cycle of debt are really seeing tremendously bad second order effects their physical health, their mental health, their ability to be citizens, to be part of our economy. The more we can help people out of these ongoing bad cycles, the more we can build a better economy that works.

Matt Morr:

And so you mentioned that Colorado had a limited 36%. Was there a limit before? Do you know why it decreased significantly?

Phil Weiser:

It was a significant decrease. Yeah, I'm trying to remember Matt, with the prior cap was, there was a cap, but it was considerably higher and Colorado passed this. I'm going to get the numbers wrong, but it's directionally correct. There was a real opposition, obviously there were payday lenders who liked lending left 36%, despite their efforts we campaign against predatory payday lending path, like 77% were for the limits that we adopted.

Matt Morr:

And have you seen changes in the way the industry's operating since then.

Phil Weiser:

Our impression is we are seeing compliance. If companies know of others who are not compliant, this is again where we need responsible companies to help us police irresponsible ones. Please let us know, like I said, this is a real priority for me, it's a religious issue if you will. And if people have concerns that within the 36% cap were, let's say, limiting access to credit we would very much like to find ways to address those concerns and better enable access to credit during this challenging time.

Matt Morr:

We also see situations where a tribal lender may have a website and loan to people. And they'll take the position that is not subject to that 36% cap or pick a cap. It may be another state. Have you done anything as it relates to tribal lenders? Or do you have any concerns or thoughts?

Phil Weiser:

I've got a few thoughts, including one of things that Judge Bell taught me, which is I'm not afraid of what I know I'm afraid of what I think I know. What I vaguely know here is that tribes, qua tribes have a certain level of community from state regulation, in this area. It thus means, do you have a true tribe or do you have entity who is trying to unfairly benefit from the tribe to otherwise escape generally applicable laws. And I believe Colorado has had some cases in the past in this area. But I think I've now exhausted my awareness about exactly where those cases lie and what the challenges are bringing such cases.

Matt Morr:

I understand part of what we've talked about is situations where you're working with other attorney general and you also made a comment that our federal government is not in a good place. And I think the message you were putting forward was a picking up of some of the work that the federal government wasn't doing. Now, can you talk to me more about what you mean by that and what you're trying to do and what you see going forward?

Phil Weiser:

It is always my preference to be able to work with the federal government as a partner, and to have the federal governments acting as engaged and active consumer protector, where the federal government declined to act the states have to pick up the Slack. I'll give you a very close to home example. We were looking at a merger involving healthcare entities in Colorado that

was going to hurt competition in the Medicare Advantage market. This is in Colorado Springs, and there was a merger that threatened to Falster United, who was the dominant firm and undercuts Humana who had been in a successful disruptive entrant. We were talking to the Federal Trade Commission and they basically said, "You know what? This is a so-called vertical merger, we are going to take a pass on this. You guys, if you want to act on your own." And we said, "Yes," we do want to act.

Phil Weiser:

We believe that the Colorado Springs consumers deserve the benefits of ongoing competition. So we will act by ourselves. And we brought this case by ourselves, the first time that our office had ever brought a merger case on its own without the heads, without another state. And it's really important. This is part of building a great team that we are willing and able to act on our own on behalf of the people of Colorado, where necessary. I'm not sure the act with the federal government, whether it's in a consumer finance context or whether it's in a merger context, but if we have to act by ourselves, we will.

Matt Morr:

Well, and one of the places we've seen this is for example, in the CFPB, they had put in some regulations related to payday lending, vehicle title lending, and other practices that they didn't like. And they delayed the implementation until November 2020. I understand you were part of a group of attorney generals that objected to that delay of the implementation of those proposed regulations. Can you tell me a little bit about that and what you see going forward with the CFPB?

Phil Weiser:

The CFPB has acted in a remarkable way as a new agency. I actually personally got a check back from a mortgage that was not compliant. And I had no idea that I was being taken. Rich Cordray is a friend and a role model. He also clerked for Justice White. He was the attorney general for the state of Ohio. He then went on to be the first head of the CFPB. And part of the challenging moment we're in is the CFPB has done a number of things that does not appear to be data-driven, does not appear to be engaged around how to help consumers. The case you're mentioning is indeed one of those where they are seeking to defer or avoid acting in ways that previously they had been.

Phil Weiser:

And what we have said is whether it's this public service, loaner payment issue, that's a real concern of mine or other protections. We have both the obligation to pick up the Slack where we can, as well as the obligation to hold the CFPB accountable, to follow the rule of law. And so we have written to them saying, this is your responsibility, please do so. And there's obviously an implicit warning in there that if they don't as we've had to do in some other contexts, we're willing to bring a suit to protect the people of Colorado.

Matt Morr:

I believe right now that the regulations are supposed to go in effect now in November 2020, as opposed to previously in 2019. Do you have any thoughts on whether that will happen or whether there'll be further delays? And if there is delays, do you have any ideas of what you might do?

Phil Weiser:

Your case is probably better than mine. I will say the CFPB is an important institution. We American people need it to operate as it should, and I'll keep working whatever angles I can to help push in that direction.

Matt Morr:

I want to turn now to the data privacy and security. And I think your background is interesting because you do have a technology background. I recall you were professor when I was at CU law school and you were running the technology journal. And so I think you come from an interesting background and more so than many, you have a very deep understanding of the technology that's involved. So I'd like to hear your take on what Colorado's doing in the data privacy and

security area, particularly because we have on this call, a lot of companies that hold a ton of people's private information that comes with applying for mortgages or students loans.

Phil Weiser:

This is an important area, and I've got several thoughts. So let me start with my service and the Obama administration. When I was in the White House, we were working on something that was then called the Consumer Privacy Bill of Rights. And part of the challenge right now is that consumers aren't often given transparency and awareness of who's collecting information about them. Is that information stored securely? Is it being sold to others? How long is it being collected?

Phil Weiser:

We need more transparency and accountability along those dimensions. What is also true is that you can overdo this in ways that are overly prescriptive technologically specific requirements that can become outdated and could actually be counterproductive. I've heard a lot of concerns about the California model as problematic. I do believe what we will do in Colorado is going to be a Colorado model. There've been some hope that we could have a reform this session, even like many things, COVID-19 has pretty much illustrated by any such hope. And now we are again putting this on the back burner and maybe next year we can come back to data privacy and security. What I point out is we have had a prior Hollar Law, which was a really, well-crafted Colorado solution involving data security, which says all those who hold data need to do so in a reasonable fashion and giving us an inability to both advise companies about what reasonable protections look like as well as police after the fact to see if companies have acted in ways that were inappropriate.

Phil Weiser:

And I've often said, my goal here is compliance and is education and best practice. I recommend a lot of small companies, particularly trying to figure out how to comply. And only in the most extreme cases, do we see ourselves taking enforcement action. But we have obviously as a nation, a big hole here, we don't have any national privacy law. I know there is one in EU. And so a lot of folks international companies have to live under the EU privacy directive. We now have this California law that people are trying to work with. I don't know what happened in Washington. They were trying to also pass a law, we were looking at that as intriguing model on case study as well.

Matt Morr:

And do you see there being a likelihood of a national law about data privacy and security coming into effect, or do you think it will continue to fall on the states? And I ask because as a litigator that deals with these issues, sometimes I think it becomes difficult for clients because they, in some cases have 45 or up to 50 different sets of laws that they need to comply with.

Phil Weiser:

It's a really good question. And I wish I had a more confident answer. There is zero question in my mind that the first best world would be Congress passes a national data privacy law, and Obama put pitch that idea, sometime ago, starting when I was in his administration, whether we get to a functioning Congress that could pass this law. I don't know. I do think it's fair to say that the failure to make progress on this is a sign one of many that we don't have a functional Congress. This is a bipartisan issue. It's one that a lot of companies are increasingly coming to agree, needs to get addressed. And yet we see no action.

Phil Weiser:

So in the real world, I do think we're going to see more and more states acting, which may even have states acting in ways that are different from one another. And ultimately I do believe we will get congressional action. There's a great line, which is that something is ultimately not sustainable. It won't be able to continue, but it may take a lot longer than it should. What I would say in terms of the ultimate law, there's a decent chance that the law that gets passed will have state AG enforcement of that law, which I think is a very healthy safeguard against the federal government, not taking enforcement seriously.

Matt Morr:

I want to shift gears for a second and talk about the types of complaints that your office receives and specifically the complaints your office receives related to consumer finance. We've talked about the robocalls, but we also see in a press release, you put out a little bit ago that the top complaints included complaints about collection agencies, people's mortgages, automobile financing and I'm curious to hear what kind of complaints you are receiving in those areas. And then what type of actions that the AG is doing to try and remedy those complaints, or to educate the companies to eliminate those complaints in the future?

Phil Weiser:

We do get at StopFraudColorado.gov a lot of different complaints. And we investigate them. We can't necessarily do everything about every single one we get, but we often can check in with companies and say, we've heard this, what's your policy? How are you handling it? And often just asking the question can catalyze companies who otherwise might've been a little bit lax and the on top of it to take a look at what they're doing. And you did mention and this is true, that different types of relationships with financial service companies and customers come to the floor. We're often looking at whether there's been deception, whether there's been action that is in any way abusive or illegal. And we do have some investigations from that ongoing and not in position to talk about any of those right now. But I do think if you're a company out there, the way I would strongly recommend you operate is be proactive, be welcoming of questions, and look to have policies and practices that make sure that everyone's being treated fairly in a transparent way.

Matt Morr:

So you answered part of my next question. I have a lot of clients and there's a lot of companies that are attending this right now that are not the bad actors. They are the good actors. But there could be occasions where someone complains to the Colorado Attorney General about a loaner. How a payment was calculated and you may reach out to them, what can those companies do to be the most helpful? What do you guys want to hear back so that the situation can be resolved or figured out that what other next steps need to be taken?

Phil Weiser:

Be responsive, be transparent and truthful, which means if you did make a mistake, admit it, the worst thing companies can do. And I've seen companies do this, including large financial institutions or large financial service companies basically suggest that they've made no mistakes at all. And when you overstate things you are going to hurt your credibility. I think it is important for companies to be open to the possibility that in one situation they made a mistake and it was an isolated situation. And they welcome hearing. If we identify something and they will work to fix it, that is a much better posture than saying we every do everything always, right even when we might be sitting on some pretty compelling evidence that something was done wrong. And that's the surest way to take what otherwise might be an initial inquiry and to escalate the situation from there.

Matt Morr:

Thank you. I know, I appreciate hearing that and I'm sure many in the audience do as well. I want to talk now about the pandemic impact. And we've seen that you've released some statements encouraging financial institutions to act responsibly. And we also talked about that before and act compassionately and a statement urging a statewide pause on evictions. I'm curious what the response to that has been and considering taking further actions beyond those statements.

Phil Weiser:

So a few different points here. And let me just hit these two themes, which I've said before, for us to get through this pandemic, we're going to need both resilience, finding ways to help bounce back and grace, cutting people Slack are hurting. Financial institutions are remarkably well situated to facilitate and support both goals. So resilience means how do we help people get their lives together? One example is many of your companies, people are not working remotely and adjusting to

that as a new normal, one question we have to ask is, are we set up to have our children learn remotely? And a real concern of mine is how do we make sure we have broadband available so that the so-called digital divide or homework app as sometimes called doesn't undermine performance among people who otherwise are already vulnerable, poor people, people from lower socioeconomic backgrounds.

Phil Weiser:

So resilience is a real goal to think about what are we doing to be resilient. And then grace gets back to as I said before, which is people who are already in a vulnerable, delicate situation. If we clamp down on them at this time, we are set up to really have this cycle, vicious cycle take hold. Then so where we can say, we are not going to go ahead and evict people from their homes for a given period of time, we're giving people a level of clarity and awareness that they don't have to worry about where they have place to live. Where I think we're going to start getting to a challenging situation is as we get through this, we need to figure out who is back at work and who is not, and how we craft different solutions for different people. And that's going to require some creativity, some real thoughtfulness, because if we have a massive clamping down, this is part of an action in the great depression, it just cascades and there's more and more damage that happens throughout the economy. More and more people who are hurting.

Phil Weiser:

Whereas if we can find ways to provide grace to those who are vulnerable, not knocking them over the edge, we can actually better get through this difficult time. And so there's going to be different types of solutions. I do think this one where we ask financial institutions to provide you a grace period, like I mentioned, the student loan servicing companies is going to be important. I recognize again that a lot of companies want to take the position. We will work with our customers on a one-on-one basis to those companies I would just say, we just got to be aware that a lot of consumers are not sophisticated. They don't know what to ask for, and if you don't make a more transparent statement of how you can work with them, they may not know to ask. And they may make a whole series of choices based on their perception that they can't get additional grace.

Matt Morr:

And how do you see your role as the attorney general in helping to push forward, the grace that you talk about?

Phil Weiser:

I would offer a couple of different points. The first point that I would say is we are in a situation where all of us can and should do our part to think creatively about what we can do to work together, to come up with solutions that work with people. And that's something that, again, we may not think about as a normal role for an AG, but I'm a big fan of this power to convene and help forge solutions. If you, as a company have ideas of what this looks like, please approach us. And we're happy to talk with you. One of the challenges that concerns me, I've seen this in lots of industries is there's often a resistance to acting outside the pack, not wanting to necessarily show up others.

Phil Weiser:

I recognize that trade associations are often stuck with that dynamic, but I think imageable companies who want to be leaders and want to set an example about what compassion and responsible stewardship and relationships look like. Just know the state AGs are willing to work with you to think about what solutions can be developed and how to get people more aware about options so that they don't end up, as I said, falling over the edge.

Matt Morr:

From a practical standpoint, if a company or someone on here has an idea and they want to work with you on that idea what's the best avenue to go about presenting the state AG office with the idea.

Phil Weiser:

So if people want to reach out to my office the email is I think attorneygeneral@coag.gov, and just mentioned that if you want me to consider an idea, many companies on this call we'll have pretty sophisticated counsel who also will have no problem reaching me and my office. So feel free to go directly, feel free to go through your counsel. We are absolutely great ideas, obviously I mentioned Martha Fulford before reached out to Martha. She's a point person in this area as well.

Matt Morr:

Well, we are getting close to the end of our hour. And I want to reiterate how appreciative we are that you've come on. I think if I had done a Supreme Court argument last week, I'd still be recovered. Are there any other final thoughts or issues you want to touch on? It's a great opportunity to talk to the consumer finance companies out there right now.

Phil Weiser:

I think the spirit that we here in Colorado still is one that our nation needs, which is where in this together, David Brooks has written a bit about weavers as opposed to rippers and our nation during this time and Brooks mentioned, some of this data is showing a lot of signs of wanting to come together to solve problems. And there are lots of people during this time that are hurting. And one of the threats to our republic is that people see each other as outsiders or other, and they don't find common ground. And they don't believe that we're in this together. And these divides are along race, along class, along geography. And the challenge that we all have is to channel the spirit that underlies what our nations about, which is E pluribus unum from many come one. And no matter where you are geographically income wise, where you work, we all recognize that our system that has served this country well is framed some ways.

Phil Weiser:

And in this moment, we have a chance to build trust in our institutions, to work together, to solve problems and help our nation continue to enjoy a mantle of leadership that has been the envy of the world. That includes commitments to institutions and how people treat each other, includes the commitment to support the rule of law and in our office, we're working on all these fronts and we can't do it alone.

Matt Morr:

Thank you very much. I'm going to turn it over to Chris.

Chris Willis:

Thanks a lot, Matt, for leading this discussion and having this discussion with the Attorney General and the Attorney General Weiser, thank you again so much for being on the webinar today. We really appreciate it. Thanks for listening to this special presentation of the conversation that we had with Colorado Attorney General, Phil Weiser, and we hope you enjoyed it. Please be sure to visit our website ballardspahr.com, where you can subscribe to our show in Apple Podcasts, Google Play, Spotify, or your favorite podcast platform. And don't forget to check out our blog, consumerfinancemonitor.com for daily insights about the financial services industry. If you have any questions or suggestions for the podcast, please email us at podcast@ballardspahr.com and stay tuned each Thursday for a great new episode. Thank you all for listening.