

Business Better (Episode 41): Hot Topics In Enforcement – State Attorneys General

Speakers: Hank Hockeimer, Stephen Stigall, and Adrian King

Hank Hockeimer:

Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host Hank Hockeimer. I'm a lawyer with Ballard Spahr, and Ballard Spahr Philadelphia office. We're a full service law firm with offices throughout the country. And I'm also the group leader of the white collar defense internal investigations group. This podcast is an occasional podcast in a series of podcasts talking with people involved in different areas of regulatory enforcement, both state and federal. Today, I'm very excited to welcome two members of our white collar internal investigations group, who recently formed a team of lawyers with experience handling a wide variety of state attorneys general investigations, Adrian King and Stephen Stigall. Before I pass it over to them and we have a nice dialogue, we're going to do one or two, just give you a little background of both of their experiences.

Hank Hockeimer:

Adrian, one time was the deputy chief of staff to governor Ed Rendell. Adrian was also head of the Pennsylvania's emergency management agency, and also was the deputy attorney general for the Commonwealth of Pennsylvania. Interestingly, Adrian also in 1984, rowed in the Henley Regatta, which is a fun fact. Stephen Stigall has deep experience as a long time federal prosecutor in New Jersey. He was the attorney in charge of the Camden US attorney's office. In his spare time with five children, he also competes in triathlons. And in fact, he is on his way to a triathlon today as we are recording this podcast. So there'll be a subsequent podcast when Stephen talks about time management, which I will certainly subscribe to, but two great lawyers, great guys, friends and happy you guys are doing this, so welcome.

Adrian King:

Thanks Hank.

Stephen Stigall:

Thanks Hank.

Hank Hockeimer:

So Adrian, what was the impetus to the formation of this state AG group?

Adrian King:

Well, I think the primary impetus is just to make people more aware of it, primarily. When we look at the expertise of the firm in the litigation department, in the consumer financial services group, in the white collar group, we realized we have a wealth of experience representing corporations, businesses, individuals in state attorney general investigations. It really runs the gamut, all kinds of different matters from consumer protection to antitrust, to healthcare related issues, to the oversight by state AG's of nonprofits and charitable organizations. And also with respect to criminal investigations, while that comes up with respect to environmental matters, public corruption, things of that nature. And so we decided we needed to put more of a highlight on that, this wide depth and breadth of experience. And that was the idea of forming the group.

Hank Hockeimer:

Stephen, anything to add on that?

Stephen Stigall:

Yeah, I think I would also add to Adrian's excellent points that we are seeing trends of continued escalation by state attorneys general over the past several years. And so really for client service, it's important to cover all of the needs of clients beyond sort of just federal or just state. I mean the state attorneys general really are becoming very, they have a deep bench when it comes to regulating business conduct. And so we saw a need of our clients in many spaces, which is why we have formed the group.

Hank Hockeimer:

Well, let me just quickly follow up on that, Stephen. I mean, you had spent several years with US attorney's office and have worked jointly with attorneys general, primarily New Jersey, but probably other states as well. When you say the deep bench, have you seen an increase both in volume of hiring at the AG level, but also the type of matters and lawyers who are hired as state AGs?

Stephen Stigall:

The answer is yes, on both fronts Hank. In terms of state attorneys general offices, we have seen very much increased hiring of deputies attorney general across all of the states, but in addition to that, they are getting involved in far more complex matters. One area that comes to mind that Adrian already mentioned is antitrust. The antitrust attorneys general group has formed, I mean, we're talking at least 25, maybe 30 of the states where they are working cooperatively to go after companies for alleged antitrust violations. In the financial services, consumer financial services area, they of course continue to grow. And so that is a market change from when I started in the US attorney's office back in 2000 where a lot of the regulation of that conduct really was left to the federal government, but now the state attorneys general have really taken a much more critical approach. And like I said, a deeper dive into those areas.

Hank Hockeimer:

Adrian, as a former first deputy AG, the number two person in the Commonwealth attorney General's office in Pennsylvania, talk a little bit about the sophistication of the work and the interaction you would have with your peers around the country. I know there are annual meetings where you guys exchange ideas, network, you often have multi-state investigations, but address a little bit about the evolution of the sophistication of the kind of matters that AGS are doing that Stephen has referenced.

Adrian King:

Sure. You know, there's an old sort of observation. It may or may not be true. That Republican AGs typically are more focused on their criminal investigatory powers and Democratic AGs are more focused on consumer protection and those sorts of issues. I think that's a little unfair to both AGs of each party, but there may be some truth to it. But we've certainly seen in Democratic attorney general offices a much more enhanced focus on consumer protection matters in recent years. I think that while a lot of the Democratic AGs were somewhat distracted during the Trump administration on some of the things that that administration was doing, that they were opposed to, I think their focus is now coming squarely back into consumer protection. And so they've put a lot of focus there. To Stephen's point, they've brought in a lot of new staff and in Pennsylvania in particular, they went out and they hired an alum of the CFPB to basically, they will tell you, create their own form of a mini Pennsylvania version of the consumer financial protection bureau.

Adrian King:

Going to your point about coordination, the AGs are talking to each other all the time. Typically through, when it's a very bipartisan issue, through the National Association of Attorneys General. The AGs of both stripes, both have a Republican group and a Democratic group, but there is a lot of cross pollination. A lot of idea sharing. NAAG provides, that's the National Association of Attorneys General, a platform for that to occur. And they're regularly having meetings and events in which they can pass along ideas about cases that can be brought either individually or together.

Hank Hockeimer:

Tell us a little bit about the team and the depth that you guys have with the team that you just formed.

Adrian King:

Stephen, do you want to take a crack at that?

Hank Hockeimer:

Either one.

Stephen Stigall:

I'm happy to start. So Hank, we have a number of individuals that formerly served in government service, whether in the state like Adrian, for example, and in the state of Utah, for example, New York State, but also at the federal level. But we also partner with our consumer finance section and our litigation department, which has deep ties either through the CFPB, having served in those capacities as well as other litigators who just are routinely before the attorneys general. So the partnership between really the initiative and the consumer financial sector of our litigation section really covers all of the gambit that one would need. And we have a lot of people that have tremendous experience.

Hank Hockeimer:

Thank you, Adrian?

Adrian King:

No, I don't think it can be stressed enough. I mean, our consumer financial services group is obviously nationally ranked one of the top groups in the entire country. I don't think there's any dispute about that. And obviously they handle things with respect to private actions, with respect to class actions and things of that nature. But Stephen's point, a lot of them are alums of the CFPB, very deep experience there. And that is often of great benefit to our clients when matters are brought by state AGs. And particularly there are matters where state AGs are partnering with their federal counterparts and the CFPB in particular. To that point, just this morning, I was on a conference call involving allegations of discriminatory lending practices. And there were attorneys on that call from the CFPB, from DOJ and three state AG offices. And it is good that we have all the expertise and consumer financial services that we do.

Hank Hockeimer:

So let me follow up on that. You touched on the fact that some of these investigations involve multiple agencies, both state and federal, talk a little bit about the challenges that that poses, when you've got a state AG looking at an issue, you've got Department of Justice looking at the issue, you've got CFPB looking at it and you may have other state AGs looking at it as well. How do you coordinate? And I know this is could be the subject of an entirely other podcast and maybe multiple podcasts, but just generally that the experience that you guys have, how does your experience translate in the ability to sort of navigate those kinds of multi-agency investigations when a client is faced with that?

Adrian King:

Well, I guess I'll start. I think, a client is never happy about this kind of situation, because typically it means that it's a very significant case and it could have some very adverse ramifications. That said, you've got to take adversity and attempt to find benefits or advantages for your client at the same time. And I think the biggest benefit is if you know that there are allegations or assertions that are going to draw the attention of multiple agencies at the same time, it's certainly preferable to attempt to get all together in one place and take them out in one settlement, if possible. And of course I'm talking about settlement. If it proceeds to trial, it's very different

Hank Hockeimer:

Stephen, anything on that?

Stephen Stigall:

Sure. I sort of analogize this almost like playing chess. We are experienced in trying to figure out if a move that we make, how that will be seen or what the effect of that move will be with respect to three or four different agencies down the road. And so we're constantly forming strategies. We may be addressing a state attorney General's office in, say New Mexico that will have a direct impact on what we're doing in New Jersey. And at the same time wondering and making sure that that doesn't detrimentally harm the client with respect to the CFPB. So it's a constant watching over all of the various regulators and handling that. And in many times, if we're representing, for example, there may be criminal overtones to some of the conduct. So then it's a question of strategizing, does the individual client, for example, assert his or her fifth amendment privilege, because that will of course create an adverse interest in a civil litigation or enforcement action. And we're constantly trying to basically maneuver around all of those issues and foresee them.

Hank Hockeimer:

So there's one school of thought that during the Trump administration, because certain priorities were not in the forefront of that administration, it was kind of the heyday for a lot of AG's offices to kind of fill that void, whether it's environmental or consumer protection or whatever. And a lot of people thought, well if the Biden administration comes in and it's a democratic administration, there will be a more robust enforcement regime in federal agencies and AG's offices may not have the same kind of dominance that they would have, or that they had previously. But what it seems to me that's happening is that the AGs are teaming up and working more collaboratively with the administration. Talk a little bit about that. Maybe I'm wrong on that. And maybe you guys disagree with that, but what's your reaction to that?

Adrian King:

I personally think you're spot on. I think that the Biden administration, with respect to its version of the CFPB and DOJ, they are hitting their stride right now. It's been a little bit more than five months coming on six months since they've taken office, they've gotten people in the seats and they are raring to go on a lot of different issues regarding consumer protection, discrimination claims given the environment that we're in, I would say very much at the forefront. And I think that they welcome the involvement of state AGs, cases that state AGs can bring to their attention. And I think the state AGs welcome the firepower that the federal agencies can bring to the table. So I think your observation is absolutely correct.

Stephen Stigall:

Hank, I agree 100%. And I think it's more than the CFPB joining forces with state attorneys general, one example that comes to mind is the federal trade commission. Certainly is joining with the state attorneys general in the areas of marketing and advertising, mortgage loans, any type of lending, student loans, payment processing, consumer disclosures, credit scores, and the use of financial technology. And of course, many of the federal laws, there is parallel investigatory power where states have not been precluded from investigating. And so when the state attorneys general have the power of the federal law behind them, it really standard for a recipe for joint investigation and joint enforcement efforts.

Hank Hockeimer:

And I think also, I mean you touched on this Adrian, but I think you're seeing a greater kind of cross pollination of people who had served in a federal agency have moved over to State AGs and with that kind of background and experience and connections and working collaboratively with those agencies, I think you're seeing more of these sort of teamed up situations. You see that as well?

Adrian King:

Yeah. Without question. And I think that it has done nothing but make the state AGS more effective, brings new experience to the offices, not to say that state AG offices are not full of talented people, they certainly are. But I think clearly when you bring in new people, who've had substantive experience in any of the federal agencies that we've talked about, that does nothing but improve the capabilities and skills in the state AG offices as well.

Hank Hockeimer:

Yeah. It just seems like in the last few years, there's just been a shift towards a greater sophistication of work and experience within state AG offices when they used to be more about somebody got ripped off by a roofer. I mean, not that those aren't important cases, they are, but I just think we've seen a shift into more sort of significant high dollar, more impactful cases, I guess, if that's the right word.

Adrian King:

Yeah. Look, I think every state AG office is different in terms of its capabilities, its resources, both in terms of personnel and funding. But I think the overall trend is there is no fear of taking on complex and novel investigations. Look, some state AG offices are not going in that direction, but many are.

Hank Hockeimer:

And not that this is necessarily connected, but I'm sure people who listen, will think that like next point is connected. Talk a little bit about the sort of political aspect of it. I mean, it's not uncommon, that's probably an understatement, that state AGS often run for higher office. You mentioned the National Association of Attorneys General that's sometimes referred to as the national association of aspiring governors. So talk a little bit about how that political aspect can sometimes enter into your approach, perhaps ultimate resolutions of a particular AG investigation, if at all.

Adrian King:

Well, I think aspiring governor, or the other phrase is almost governor. I think it's very hard to avoid at least thinking about these issues carefully. I think that when you're running for political office, you are looking for ways to get your name out in public and you want to be a champion of the public. And if you're a state AG, that gives you a very substantial and significant platform to do that in whatever state you're in. And so I think that AGs who have expressed an interest in running for higher office, be it governor, maybe US Senator, things of that nature, there are times when it does occur certainly to our clients, but also to us, that perhaps things are motivated by that context of running for office. There's not a lot you can do about it, but it's certainly something that, it does cross our minds.

Hank Hockeimer:

Stephen, anything to add? And maybe you can bring a perspective to this question too, having worked collaboratively with the AG's offices when you were a federal prosecutor.

Stephen Stigall:

Yeah. I mean, well, first I agree with all of Adrian's points. I think, some attorneys general are very politically motivated. Others come out very quickly to say that they have no aspiration for higher office. And I think the knowledge of that becomes extremely important for clients. Because if one isn't seeking higher office, it is possible that they really are going to double down and not be persuaded, whether for political reasons or otherwise. So it kind of cuts both ways. I think that's really what I would say on that, but I do think one group at our firm anyway, that can be very helpful in this regard is our government relations group. And I don't by that mean to suggest that that is in any way improper, but our government relations group enjoys great relations with both Republicans and Democrats in the various states and know how to navigate and talk at a level that politicians would understand. And I think sometimes we do partner with our government relations group where it becomes necessary to assist a client.

Adrian King:

One just point on that. It's hard I think for the government relations regulatory affairs group to have a lot of positive effect once the ball is rolling. So if an investigation is launched, a complaint is filed, these offices are very, very professional, these state AG offices. They try to shield themselves from politics.

Hank Hockeimer:

Well, let me just jump in just for a second. I don't mean to interrupt, but I think you're absolutely right on that because keep in mind that the people who are working these cases day in and day out, they're going to be there whoever the AG is. AGs are elected, they leave, then new ones come in. But the AGS, deputy AGs, assistant AGs who are working these cases, they're just working the cases. I mean, if there is any political aspect to it, that's above their pay grade. But go ahead.

Adrian King:

That's absolutely true. I agree with 100%, the career staff are the utmost in terms of their professionalism. But I do think where it can be helpful is in a prophylactic sense. So in terms of relationships that the government regulatory affairs group has with some of these elected officials, elected AGs, that can be helpful in terms of getting in before there's a problem. So let's say I'm a bank. And obviously one of the things that's going on is matters involving ransomware, people hacking into systems.

Adrian King:

And let's say, I as the bank, I want to at least get in there before there's ever a problem. And I want to meet with people who regulate me or oversee me at a state AGs office or the department of banking, or what have you. And I want to know what they're worried about. And if there are things they're worried about, I want to tell them what I'm doing to take care of those things in terms of privacy, data security. So that if there is a problem down the road, we already have a relationship. And at least maybe they have some trust that we're professionals trying to do the right thing as well. So I do think that's an area that's very helpful. To help clients try to develop relationships, appropriate relationships, in advance of there being an issue or a problem.

Hank Hockeimer:

Yeah, totally agree. And I think if you're in Pennsylvania, like we are, it makes sense to, if you can, on behalf of the client, work collaboratively and proactively with local prosecutors, whatever. If there is ever an issue down the road, you can get it addressed. Stephen, anything on that?

Stephen Stigall:

Well, I agree. And I think the point of clarification that both Adrian and Hank you have made are excellent ones. That, it really is a prophylactic measure, but it is something that Ballard brings to the table.

Hank Hockeimer:

Okay. Anything further on the group before we sign off and before Stephen has to like jump in the water or run or whatever, or bike, I think those are the three things. Anything else guys, before we wrap up?

Adrian King:

No, I don't think I have anything else at this point.

Hank Hockeimer:

Okay. Well, thank you both for doing this. It was fun and have a great weekend.

Adrian King:

Great. Thanks Hank.

Hank Hockeimer:

Thanks Adrian.

Adrian King:

Good luck Stephen.

Stephen Stigall:

Thank you.