Office of Attorney General
Responses for the Justice Systems Appropriation Subcommittee
Multistate Activities in Calendar 2018
February 19, 2019

At its meeting on February 7, 2018, members of the Justice Systems Appropriations Subcommittee asked Attorney General Tom Miller several questions about the multistate activities of the Office of Attorney General ("Office").

1. How many lawsuits did the Office file against the Trump Administration in calendar 2018?

The Office joined six multistate lawsuits as a named party challenging actions of the Trump administration. Other states drafted the pleadings, appeared in court, and coordinated the states' efforts. The involvement of the Office was to review and join the pleadings and participate in conference calls. Office attorneys did not travel in connection with these lawsuits.

<u>3D Guns</u>

- *State of Washington et al vs United States Department of State et al.*
- Washington, Connecticut, Maryland, New Jersey, New York, Oregon, Massachusetts, Pennsylvania, DC, California, Colorado (*joined when GOP*), Delaware, Hawaii, Illinois, Minnesota, North Carolina, Rhode Island, Vermont, Virginia.
- A bipartisan group of States claim the federal government's policy change to allow for dissemination of computer plans for 3D printable guns violates the Administrative Procedure Act and the Tenth Amendment.
- Litigation costs: $231 -Pro hac vice fee – needed to appear before this court.

<u>Census</u>

- *State of New York et al v. United States Department of Commerce et al.*
- New York, Connecticut, Delaware, Illinois, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, Massachusetts, Pennsylvania, Virginia, DC.
- The States claimed that the addition of a question about citizenship on the 2020 census violated the Administrative Procedure Act in multiple ways and also violated the US Constitution's requirement of a decennial "actual Enumeration" of the "whole number of persons" in the United States.
- The States won at district court on January 15, 2019. U.S. Supreme Court has agreed to hear case on an expedited basis.
- Litigation costs: $210 - pro hac vice fee.

<u>Family Separation</u>

- *State of Washington et al. vs. United States Department of State et al.*
- Washington, Massachusetts, California, Maryland, Oregon, New Mexico, Pennsylvania, New Jersey, Illinois, Minnesota, Rhode Island, Virginia, New York, Vermont, North Carolina, Delaware, DC.

- The States claim the federal government's policy and practice of separating asylum-seeking children from their parents violates the Fifth Amendment, the Administrative Procedure Act, and US asylum laws.
- Costs: $231 – pro hac vice fee.

<u>EPA Green House Gas Emission Standards</u>

- California, et al. v. EPA, No. 18-1114 (D.C. Circuit).
- California, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington.
- EPA conducted a mid-term evaluation of its greenhouse gas emission standards for model year 2022-2025 vehicles and concluded that the standards were too stringent. The States challenged the EPA's decision, arguing that it was arbitrary and capricious under the Administrative Procedure Act.
- Ruling: None.
- Litigation Costs: None.

<u>EPA Failure to Establish Methane Emission Standards</u>

- New York, et al. v. EPA, No. 18-cv-00773 (D. D.C.).
- New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, District of Columbia, and City of Chicago.
- The States challenged EPA's failure to comply with its nondiscretionary duty under the Clean Air Act to establish guidelines for limiting methane emissions from existing sources in the oil and natural gas sector.
- Ruling: None.
- Litigation Costs: None.

<u>FCC Net Neutrality Repeal</u>

- New York, et al. v FCC, No. 17-18-1013 (D.C. Circuit).
- New York, California, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, District of Columbia.
- The States challenged the decision of the Federal Communications Commission to repeal net neutrality rules that prevented internet service providers from slowing or blocking digital flow of content and applications.
- Ruling: None
- Costs: $241 (updated 2/19/2019)

In addition to joining lawsuits as a named party, the Office joined amicus briefs and letters concerning the actions of the Trump administration during 2018. The Office did not draft any of these amicus briefs or letters. The Office's involvement was to review the amicus briefs and letters to determine whether or not to join.

In 2018, the Office joined approximately 26 amicus briefs challenging actions of the Trump administration as follows:

- EPA/Environmental issues – 5 amicus briefs.
- Civil rights/constitutional issues – 6 amicus briefs.
- Immigration issues – 7 amicus briefs.
- Criminal justice funding issues – 7 amicus briefs
- Consumer Finance Protection Bureau – 1 brief.

In 2018, the Office joined approximately 50 letters to federal agencies commenting on the actions of the Trump administration as follows:

- EPA/Environmental issues – 21 letters.
- Department of Education/student lender issues – 11 letters.
- Office of Comptroller of Currency/community reinvestment issues – 1 letter.
- Department of Labor/labor issues – 2 letters.
- Department of Commerce/census issues – 2 letters.
- Department of Housing and Urban Development/fair housing – 2 letters.
- Department of Homeland Security/immigration issues – 4 letters.
- Centers of Medicare and Medicaid Services/nursing home issues – 1 letter.
- Consumer Financial Protection Bureau/consumer protection issues – 2 letters.
- Health and Human Services/health services – 1 letter.
- Federal Communications Commission – 1 letter.
- Department of Justice /ADA/3-D guns – 2 letters

2. **How much did the Office expend on these activities?**

In addition to the pro hac vice litigation costs described above, the Office expended minimal staff time on the multistate efforts described above. The Office does not keep contemporaneous time records. The Office's best estimate is that value of the staff time (salary and benefits) was in the range of $7,500-$10,000 in 2018.

3. **What other multistate activities (not dealing with the Trump administration) did the Office carry out in 2018 and how does the Office decide to participate in multistate cases?**

Beginning in the late 1980s, state attorneys general began collaborating on consumer protection and antitrust cases. The concept was to combine resources to effectively stop consumer fraud and anti-competitive practices by large corporations. There is long history of states working in a bi-partisan fashion on these multi-state efforts. Small states like Iowa benefit by teaming up with larger states with more resources. Defendants benefit by being able to negotiate one settlement with many states, as opposed to facing litigation in many jurisdictions.

The Office has taken the lead in areas where Attorney General Miller believes Iowans will benefit those most. Areas of emphasis for the Office include fraudulent practices by for-profit colleges and universities, mortgage and credit card abuses, debt collection and opioids. The Office's involvement varies from just monitoring multistate cases led by other states to being the lead state, as in the Wells Fargo settlement. Typically, states in a leadership role receive a greater share of the settlement.

Below is a table with the multistate consumer protection cases resolved by the Office in 2018:

2018 Consumer Protection Multistate Settlement Summary							
Defendants	**Settlement Date**	**# States**	**Iowa Involvement**	**Total $**	**Iowa $**	**Consumer Restitution**	**Alleged Wrongdoing**
Citibank	6/13/2018	42	Participating State	$100 Million	$0	$95 Million to impacted counterparties	LIBOR rate manipulation
Encore/Midland	12/4/2018	43	Participating State	$6 Million	$96,243 to Consumer Education and Litigation fund	$187,503 in debt forgiven. Additional $25,000 set aside to forgive debt.	Debt collection violations
Ocwen	6/11/2018	9	Lead State	$500,000	$45,454.55	None	Violations of 2016 Letter of Agreement
PHH Mortgage	5/10/2018	50	Lead State	$45,279,725 (includes the amount for the state mortgage regulators)	Still in settlement administration process. Received $550,000 in attorney's fees.	$30,456,210	Mortgage servicing and foreclosure abuses
TK Holdings/Takata	2/14/2018	45	Participating State	Investigative costs and $650 million in Civil Penalty	Likely $0 due to bankruptcy	$125 Million restitution fund	Violations of consumer fraud laws related to the failure to report safety concerns with their airbags
Uber	9/27/2018	51	Participating State	$148 million	$612,950.24 to Consumer Education and Litigation fund	None - no Iowa drivers suffered ascertainable loss	Data breach notification violations
UBS	12/21/2018	40	Participating State	$68 Million	$0	$65.6 Million to impacted counterparties	LIBOR rate manipulation
Wells Fargo	12/28/2018	51	Lead State	$575 Million	$6,180,941.33 to the Consumer Education and Litigation Fund	None (restitution was provided in multiple other federal orders and in a private class action)	Creation of unauthorized and fraudulent accounts, improper force placed auto insurance, inconsistent application of mortgage rate lock extension fee policy

The Office joined approximately 31 amicus briefs in 2018 (not related to the Trump administration). Except for a brief Iowa drafted with Texas, the briefs were drafted by other states. Many of these briefs were bi-partisan in nature:

- Civil rights/constitutional issues – 13 amicus briefs.
- Labor law issues – 2 amicus briefs.
- State taxation issues – 3 amicus briefs.
- Criminal law issues – 3 amicus briefs.
- State authority/preemption issues – 6 amicus briefs.
- Antitrust issues – 4 amicus briefs.

The Office joined 20 bi-partisan multistate letters in 2018 (not related to the Trump administration). Most of these letters are distributed by the National Association of Attorneys General. Each letter must have a Democratic and a Republican sponsor. A great majority of the letters are letters asking the Congress to take action. Topics included data breaches, criminal justice reform, child pornography restitution, corporate transparency, funding for drug addiction and overdose prevention, funding for crime victim programs, and combating robocalls.

4. **Can the Office provide more information about the Wells Fargo settlement?**

The Office press release concerning the Wells Fargo agreement is attached.

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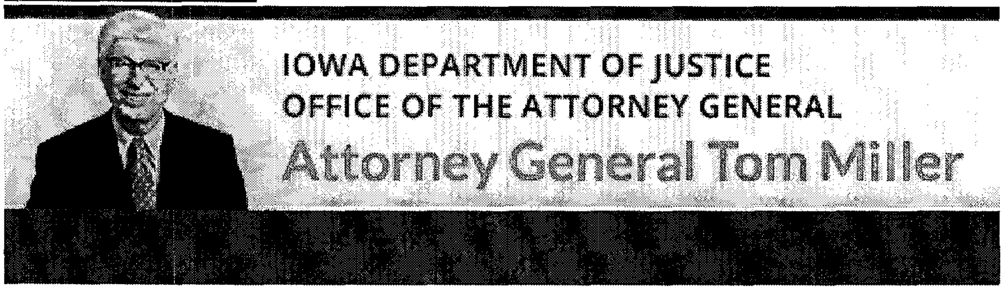

Main Content

December 28, 2018

Miller joins 50 AGs in $575 million settlement with Wells Fargo

Agreement resolves state consumer protection claims for alleged unfair and deceptive trade practices

DES MOINES — Iowa Attorney General Tom Miller announced Friday that Wells Fargo Bank N.A. will pay $575 million to resolve claims that the bank violated state consumer protection laws over several sales practices, including creating unauthorized accounts, and other actions that affected millions of customers. Iowa joined Arizona, Connecticut and Pennsylvania in leading the investigation into Wells Fargo's practices.

The settlement with 50 states and the District of Columbia addresses allegations that Wells Fargo:

- opened millions of unauthorized accounts and enrolled customers into online banking services without their knowledge or consent;
- improperly referred customers for enrollment in third-party renters and life insurance policies;
- improperly charged auto loan customers for force-placed and unnecessary collateral protection insurance;
- failed to ensure that customers received refunds of unearned premiums on certain optional auto finance products;
- incorrectly charged customers for mortgage rate lock extension fees.

Wells Fargo will also create a consumer restitution review program. Consumers who have not been made whole through restitution programs already in place can seek review of their inquiry or complaint by a bank escalation team for possible relief.

To date, this settlement represents the most significant engagement involving a national bank by state attorneys general acting without a federal law enforcement partner.

“This agreement is unique and one of the largest multistate settlements with a bank since the National Mortgage Settlement in 2012,” Miller said. “This significant dollar amount, on top of actions by federal regulators, holds Wells Fargo accountable for its practices.”

Iowa’s share of the settlement is $6,180,941.33, which will go to the state’s Consumer Education and Litigation Fund.

Details of the allegations

Wells Fargo has identified more than 3.5 million accounts where customer accounts were opened, funds were transferred, credit card applications were filed, and debit cards were issued without the customers’ knowledge or consent. The bank has also identified 528,000 online bill pay enrollments nationwide that may have resulted from improper sales practices at the bank. In addition, Wells Fargo improperly submitted more than 6,500 renters insurance and/or simplified term life insurance policy applications and payments from customer accounts without the customers’ knowledge or consent.

The states alleged that Wells Fargo imposed aggressive and unrealistic sales goals on bank employees and implemented an incentive compensation program where employees could qualify for credit by selling certain products to customers. The states further alleged that the bank’s sales goals and the incentive compensation program created an impetus for employees to engage in improper sales practices to satisfy such sales goals and earn financial rewards. Those sales goals became increasingly harder to achieve over time, the states alleged, and employees who failed to meet them faced potential termination and career-hindering criticism from their supervisors.

The states also alleged that Wells Fargo improperly charged premiums, interest, and fees for force-placed collateral protection insurance to more than two million auto financing customers, despite evidence that the customers’ regular auto insurance policy was in effect, and despite numerous customer complaints about such unnecessary placements. (Many of those customers may not have suffered financial harm, however, because the policies were cancelled before the customers paid the charges). Wells Fargo has agreed to provide remediation of more than $385 million to approximately 850,000 auto finance customers. The remediation will include payments to more than 51,000 customers whose cars were repossessed. The CFPB and OCC are working to ensure that the auto finance customers are fully remediated by Wells Fargo.

Protection (GAP) products sold as part of motor vehicle financing agreements. As a result, the bank has agreed to provide refunds totaling more than $37 million to certain auto finance customers.

Finally, the states alleged that Wells Fargo improperly charged residential mortgage loan consumers for rate lock extension fees even when the delay was caused by Wells Fargo, a practice contrary to the bank's policy. Wells Fargo has identified and contacted affected consumers and has refunded or agreed to refund more than $100 million of such fees.

Other settlements

Wells Fargo has previously entered consent orders with federal authorities — including the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau — related to its alleged conduct. Wells Fargo has committed to or already provided restitution to consumers in excess of $600 million through its agreements with the OCC and CFPB as well as through settlement of a related consumer class-action lawsuit and will pay more than $1 billion in civil penalties to the federal government. Additionally, under an order from the Federal Reserve, the bank is required to strengthen its corporate governance and controls and is restricted from exceeding its total asset size.

As part of its settlement with the states, Wells Fargo has agreed to implement within 60 days a program through which consumers who believe they were affected by the bank's conduct, but fell outside the prior restitution programs, can contact Wells Fargo to be reviewed for potential redress. Wells Fargo will create and maintain a website for consumers to use to access the program and will provide periodic reports to the states about ongoing restitution efforts.

More information on the restitution review program, including phone numbers and a dedicated website address for the program, will be available on or before Feb. 26, 2019.

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