

GIBSON DUNN

State Attorneys General (AG) Task Force Update

July 10, 2025

## National Association of Attorneys General Highlight Consumer Protection Enforcement Trends

*The conference provides valuable information on trends coming from Attorneys General on consumer protection issues, including in fintech and AI.*

The National Association of Attorneys General (NAAG) recently convened its biannual consumer protection conference to share best practices, strategies, and challenges. NAAG is a non-partisan organization that serves as a national forum for fifty-six state and territory Attorneys General. The NAAG biannual conference on consumer protection, which aims to address pressing and relevant issues in the field and encourage collaboration, is attended by Attorneys General and their staff, representatives of the Federal Trade Commission, and private sector participants. The conference provides valuable information as to the trends likely coming from Attorneys General in the near future on consumer protection issues.

### ***Expect An Increase in State AG Enforcement Activity***

The biggest takeaway from the conference is that state Attorney General activity is likely to increase. The conference opened with a warning from John Formella, New Hampshire's Attorney General and NAAG President, and Kwame Raoul, Illinois's Attorney General, that they perceive a need for state Attorneys General to increase enforcement to counteract what they view as ongoing uncertainty around federal enforcement. This was a trend during the first Trump Administration, during which state Attorneys General increased consumer protection activity, particularly in states with Democrat Attorneys General.

## ***Fintech – Earned Wage Access***

There were four public panels at the conference, and the one that gained the most attention was the panel that addressed an emerging financial product known as an Earned Wage Access (EWA) app, a lending product that enables employees to access some of their accrued wages before their scheduled payday. This panel was moderated by Maryland Assistant Attorney General Wilson Meeks, and other members of the panel included Kyle George, National Political Director at EarnIn (an EWA app); Phil Goldfeder, President, American Fintech Council (fintech advocacy group supportive of EWA apps); Ellen Harnick, Executive Vice President, Center for Responsible Lending; and Lauren Saunders, Associate Director, National Consumer Law Center. Mr. Meeks identified the following questions: “Are these products loans and are the fees interest? Is there a regulatory gap? Are the providers being transparent about the products?” Advocates for EWA on the panel, Mr. George and Mr. Goldfeder, described EWA apps as an essential lifeline for low wage workers. Critics of EWA on the panel, Ms. Harnick and Ms. Saunders, labeled EWA apps as high interest pay day loans. EWA apps, and fintech products in general, will be a focus of state Attorney General consumer protection efforts. Some state Attorneys General have already brought suit against EWA app providers, as in New York.[\[1\]](#) Other states like Utah and Arkansas have passed laws to regulate EWA.[\[2\]](#)

## ***AI Companion Chat Bots***

A second panel was convened on AI chat bots, a conversational AI which leverages large language models. The panel, moderated by Mississippi Assistant Attorney General Crystal Utley-Secoy, included Camille Carlton, Policy Director, Center for Humane Technology; Megan Garcia, Parent Advocate, Megan L. Garcia Law Firm; Meetali Jain, Executive Director, Transformative Justice Law Project; and Robert Mahari, JD-PhD Student at Harvard Law School. To start the discussion, Ms. Utley-Secoy warned that AI chat bots may result in consumer protection issues and, “as enforcers, we need to be aware of the dangers.” As an example the panelists discussed a [complaint](#) filed by a private plaintiff against the creator of a companion bot app following the death of a teenager who was a user of the app. The complaint alleges strict product liability, negligence per se, negligence, unjust enrichment, and violations of Florida’s Deceptive and Unfair Trade Practices Act based upon the premise that one of the companion bots encouraged the teenager to commit suicide. The panelists also discussed the potential liability for chatbots that impersonate therapists or celebrities. For impersonating therapists, the panel discussed potential liability premised on a theory of fraudulently impersonating a medical provider without a license. For impersonating celebrities without their permission, the panel discussed potential right to publicity claims. AI applications, and particularly those that may be viewed as providing advice to consumers, is another area where we expect to see increasing Attorney General activity.

## ***Psychology of Fraud***

A third panel was held on psychology of fraud. The panel, moderated by Brandon Garod, Senior Assistant Attorney General and Chief of the Consumer Protection Bureau in New Hampshire’s Attorney General Office, included Dr. Jessica Choplin, professor of psychology at DePaul University, and Doug Shadel, current managing director of Fraud Prevention Strategies, LLC. The panelists discussed what is known about the psychology of fraud and how people,

regardless of demographic, fall victim to fraud. They discussed a unifying theory of fraud: “putting people under the ether”— the process of putting a victim in a heightened emotional state, or taking advantage of a current life state, before asking for money. This “psychology of fraud” is frequently described in consumer protection complaints, and its being highlighted to Attorneys General offices means it will likely be seen more frequently in complaints and claims.

### ***Navigating State Regulator Investigations***

Last, a panel was held on navigating state regulator investigations. This panel included Jeff Hill, Executive Counsel, Tennessee Attorney General’s Office; Paul Singer, Partner, Kelley Drye & Warren LLC, formerly at the Texas Attorney General’s Office; Meghan Stoppel, Counsel, Foley & Lardner LLP, formerly at the Kansas Attorney General’s Office; and Jessica Whitney, Deputy Attorney General, Minnesota Attorney General’s Office, formerly with the Iowa Attorney General’s Office. Together, the panel with over 90 years of combined Attorney General experience, shared insights that companies should understand when dealing with state Attorney General investigations. Among other items, the panel discussed best practices for handling an investigation. For example, Minnesota Deputy Attorney General Jessica Whitney warned that attempting to go directly to the Attorney General without first working with the staff member conducting the investigation can destroy credibility. To that end, she further emphasized the importance of building relationships between company counsel and Attorneys General offices. Executive Counsel for Tennessee’s Attorney General’s Office, Jeff Hill, also stressed the benefits of engaging directly with the Attorney General staff member conducting the investigation. And all panelists underscored the importance of cooperation and clear communication for engaging with an Attorney General office.

In sum, the conference was informative and helpful as we look for state Attorney General trends. From the conference, companies can expect increased Attorney General activity in general, including in fintech and AI.

*Gibson Dunn has built close working relationships with state AGs and their teams and regularly work to proactively dissuade them from pursuing investigations. Having spent time in senior roles in multiple state AG offices, we understand how AG offices work and how to best advocate for our clients. Our team members have served as the Executive Deputy Attorney General, Deputy Solicitor General, Assistant Solicitor General, Assistant Attorney General, Bureau Chief, and line level attorneys within state AG offices nationwide. We also have had occasion to represent AG offices themselves.*

*Gibson Dunn’s [State AG Task Force](#) assists clients in responding to subpoenas and civil investigative demands, interfacing with state or local grand juries, representing clients in civil and criminal proceedings, and taking cases to trial.*

[1] See [DailyPay](#) and [MoneyLion](#) complaints.

[2] [Arkansas House Bill 1517](#) and [Utah House Bill 279](#)

The following Gibson Dunn lawyers prepared this update: James Zelenay, Winston Chan, Chris Chorba, Mylan Denerstein, Nick Hanna, Natalie Hausknecht, Poonam Kumar, Eric Vandeveld, Debra Wong Yang, Theo Takougang, Greg Boden, and Billy Malmed.

Gibson Dunn lawyers are closely monitoring developments and are available to discuss these issues as applied to your particular business. If you have questions, please contact the Gibson Dunn lawyer with whom you usually work or any of the following members of Gibson Dunn's **State Attorneys General (AG) Task Force**, who are here to assist with any AG matters:

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