

## ARTICLES FOR AUGUST 14, 2015 ROUNDUP

### **“Aloha” Means Cybersecurity, Consumer Multistates, and Swimming with Turtles at Conference of Western Attorneys General**

By Martha Coakley

Foley Hoag - Privacy & Data Security

Attorneys General, meeting at the Conference of Western Attorneys General (“CWAG”) on Maui recently, tackled as usual a range of issues from the Rule of Law, an ongoing and important initiative with Mexican police, prosecutors and businesses, to EPA regulatory actions. Through daily multiple panels and Q & A, AGs of several terms’ experience and some still within their first six months of service rubbed shoulders with federal regulators from the FTC as well as the Chief Information Security Officer from Comcast and the General Counsel from LexisNexis.

With some focus on more traditional criminal law enforcement, e.g. how to try a murder case with no body, many of the sessions also addressed cyber issues and consumer enforcement. An update on different state data breach notice laws, noting an uptick on data breaches themselves, and a look at new chip technology in credit cards and payment technologies was a good reminder that AGs are very active in the digital and cyber space and will continue to be.

One presenter from the ID Security Alliance noted that for states, moving to chip and PIN technology, not just chip and signature, would not only provide better security for retailers and consumers but also provide a key tool to permit less fraud and significant savings with SNAP and EBT cards, making sure those entitled get benefits while fraudsters do not.

A lively panel with AG representation and lawyers (some, recent AG staff now in private practice; others with many years of experience with matters before AGOs) discussed the best ways to assist clients to not play ostrich while at the same time not waiving red flags before bullish regulators. Most AGS agreed that a meeting early on can often resolve issues even before a document request or extensive discovery, and that at a minimum a business request to narrow discovery and/or proceed in stages is worth the ask. Pet peeve of businesses? An experienced, focused consumer assistant AG, perhaps not always in direct contact with the AG or first deputy, who may dig in for the long haul or won’t communicate to the subject even if inquiry is winding down or done. Those experienced in representing clients in AG matters found they sometimes did have to go “over the head” of the line assistant and some AGs acknowledged that this practice was not necessarily discouraged. Memo to new AGs: good idea to have a policy and protocol for communication and approval of consumer related investigations to avoid mission creep and keep you advised of what staff is up to.

Note from one panelist:

With new disruptive technologies and business models emerging, AGs should remember that one size does not fit all whether looking at industry-wide issues or just a perceived bad actor. Consumer protection under Unfair and Deceptive Acts or Practices authority needs to keep up with emergent business trends as well as consumer needs. It’s not always as predictable as swimming with turtles in Lahaina Bay.

# Obama Declares Disaster for Typhoon-Devastated Saipan

HONOLULU

By JENNIFER SINCO KELLEHER Associated Press

President Barack Obama has declared the Commonwealth of the Northern Mariana Islands a disaster area and is ordering federal aid to help the U.S. territory in the aftermath of a destructive typhoon.

The White House on Thursday announced the disaster declaration for Typhoon Soudelor, which destroyed homes, snapped utility poles and toppled trees over the weekend on the 48-square-mile island of Saipan.

The commonwealth remains without electricity and water, and residents are rationing fuel. Most major roadways have been cleared of uprooted trees and debris, Saipan resident Glen Hunter said.

The Federal Emergency Management Agency said damage surveys were ongoing. More than 500 people on Saipan were in shelters, according to the Red Cross.

About 50,000 people live on the commonwealth's four populated islands, with most residing on Saipan, which took the brunt of the storm.

Nearby Tinian got some damage, while Rota was spared, said Gregorio Kilili Camacho Sablan, the commonwealth's delegate to U.S. Congress.

As for Pagan, "No idea," he said. "I have no way to contact Pagan."

Ten generators were being shipped from Guam to power water pumps in Saipan, but the harbor was closed Thursday because of a listing boat that was half underwater, Sablan said. Restoring power could take a month or two, he said.

"I haven't seen a storm like this in 20 years," Sablan said. "Unfortunately, the resources we have are hardly enough to get things up."

Wind speeds during the storm were between 100 mph and 120 mph. In an area that's used to typhoons, Sablan said he and others were expecting it to pass with maybe 80 mph winds.

That there were no reports of deaths or serious injury "seems almost impossible," Hunter said.

There was a \$20-per-vehicle limit on buying gasoline, which meant motorists could get only about four gallons, Hunter said. Some easily burned through that amount while waiting in long lines at the pumps. On Thursday, the limit was increased to \$50, Sablan said.

Gov. Eloy Inos was on vacation visiting his children on the U.S. mainland.

"He's doing everything he can to come back home. ... He's very anxious," Sablan said.

But Sablan said he told Inos to stay put: "Just remain there. Things here aren't necessarily working."

## **Attorney General Reyes Issues Statement Following Briefings with Colorado & New Mexico Attorneys General on Gold King Mine Spill**

SALT LAKE CITY—August 12, 2015—Utah Attorney General Sean Reyes today joined Colorado Attorney General Cynthia H. Coffman and New Mexico Attorney General Hector Balderas in Durango, Colo., to share information and discuss the immediate and possible long term impacts of the Environmental Protection Agency's (EPA) Gold King Mine spill with concerned citizens and press.

“One of the reasons I am in Durango today is to discuss with my colleagues from Colorado and New Mexico legal options to ensure the EPA lives up to its promise to be fully accountable and transparent, and to make our citizens and environment whole,” said Utah Attorney General Reyes. “It is premature to say what legal action will be taken until we better understand the damage that has already occurred and also learn what the EPA is willing to compensate. In that process, we will ensure the EPA, and any other potentially liable entities, are held legally responsible not just for short term effects but for damage that may not be known or understood for years to come.”

Upon notice of the disaster, a team of lawyers from the Office of the Utah Attorney General lent support to the vitally important actions of its clients including the Utah Departments of Environmental Quality and Public Safety – and their Divisions of Water Quality and Emergency Management. These agencies began immediate monitoring of impacts to Utah's waters and evaluating short and long-term health, environmental and recreational impacts to Utah citizens and tribal nations along the San Juan River.

Currently, citizens can make compensation claims directly to the EPA and the Utah Attorney General's Office will advocate for timely and fair review of such claims.

“I am here today to ensure Utah has a voice in this process because Utah citizens need an advocate,” continued Reyes. “While I cannot represent citizens directly as a private lawyer, I can work to make sure there is a proper system to assess harms and claims.”

State, county and local officials are collaborating to protect and assist Utah citizens in this emergency while attempting to get answers from the EPA and hold the agency fully accountable for its actions.

“Utah has welcomed collaboration with neighboring states to share expertise, resources, information and possibly costs moving forward. Utah, along with its sister states, is evaluating all legal options and will do everything within its power to ensure our citizens are protected and that our states are made whole for any damages caused,” concluded Reyes. “And, we are supportive of an independent review of the circumstances leading to the mass release in addition to any internal review by the EPA.”

## **El Salvador Attorney General Issued About 300 Arrest Warrants for Gang Members**

In response to the rampant gang violence plaguing El Salvador for years, Attorney General Luis Martinez has issued around 300 arrest warrants for gang members suspected of what are being called "terrorist acts."

In July gang members put a stop to public transportation when they ordered drivers to go on strike. In order to enforce the strike, the gangs set fire to buses and in the end killed at least seven drivers who would not go along with their demands.

The violence between rival gangs has left El Salvador with one of the highest murder rates in the world. In June there were almost 700 murders.

In 2012 the Mara Salvatrucha and the Barrio 18 gang made a truce and the murder rate dropped by 40 percent. By 2014 the truce was over and the number of the dead rose again.

Speaking with Al Jazeera, Roderigo Avila, the 2009 presidential candidate for the conservative ARENA Party, insisted the government did not see the actual seriousness of the gang problem, saying that, "What the government has tried has not worked."

There are around 70,000 active gang members in El Salvador. As reported by the BBC, in August, Salvadoran police put the number of people being killed through gang violence at about 24 a day. So far this year 41 police officers, one prosecutor and 14 soldiers have been killed due to gang violence.

Describing the daily carnage, Attorney General Luis Martinez said the gangs had "gone too far, they attack the police and prosecutors, they intimidate the population and force people to leave their homes."

The arrest warrants were, according Martinez, all part of "a new strategy to impose order" to El Salvador. President Ceren has reportedly ruled out any negotiating with gangs.

Visually reporting on the deadly atmosphere in the Central American country, The New York Times has just published a powerful photo essay called "In El Salvador, Gangs Hold on to Power" which shows jailed gang members staring out on to the streets, and victims of gang-related violence wrapped in plastic in a morgue.

## **Attorney General Patrick Morrissey's Office to Co-Host Truckers Against Trafficking Event**

CHARLESTON — Attorney General Patrick Morrissey's Office will co-host a Truckers Against Trafficking event tomorrow, Tuesday, Aug. 4, from 10 a.m. to 2 p.m at the NiSource Building Auditorium in Charleston.

The event aims to educate West Virginia trucking industry leaders, including general managers of West Virginia truck stops, about issues related to adult/child sexual exploitation and human trafficking.

"This event is a great opportunity to hear from law enforcement and other leaders on how they are working to combat this very important issue," Attorney General Morrissey said. "We are also hoping to receive input from attendees as to how law enforcement and the trucking industry can collaborate to combat sex trafficking right here in West Virginia."

The information provided at the event will equip the trucking industry leaders with important information about identifying and halting sexual exploitation and human trafficking in and around their place of business.

“Most people don’t immediately associate human trafficking with West Virginia, but with three major interstates running through Charleston, and major highways running through our panhandles, we are as vulnerable as any other state,” Attorney General Morrissey said. “Our hope is that educating our state’s leaders on the issues of human trafficking will help prevent these types of crimes from happening.”

The event is a joint effort by Attorney General Patrick Morrissey, the West Virginia Intelligence Fusion Center, the West Virginia Trucking Association, and Truckers Against Trafficking.

Truckers Against Trafficking (TAT) began as an initiative of Chapter 61 Ministries in 2009. TAT exists to educate, equip, empower and mobilize members of the trucking and travel plaza industry to combat domestic sex trafficking. Since the conception of the National Human Trafficking Hotline, over 1,100 truckers have made calls to the hotline and over 360 potential cases of human trafficking came from those calls.

For more information on the program and Truckers Against Trafficking, please visit <http://www.truckersagainstrafficking.org>.

For questions about the event, contact Lia Palmer at 304-741-8442.

## **AG Rosenblum Settles with Pharmaceutical Company Insys over Unlawful Promotion of the Powerful Opioid Subsys®**

Oregon Attorney General Ellen Rosenblum today reached a \$1.1 million settlement with Insys, the company that manufactures the schedule II opioid drug Subsys, to resolve allegations that the powerful drug approved by the Food and Drug Administration (FDA) to treat cancer pain was marketed in Oregon for off-label uses such as non-cancer neck and back pain. The Assurance of Voluntary Compliance (AVC) also resolves allegations that the company provided improper financial incentives to some doctors to increase Subsys prescriptions, targeted doctors for aggressive promotion of Subsys when the doctor was not qualified to prescribe the drug, and deceptively promoted Subsys for treatment of mild pain. Oregon is the first government entity to settle with Insys for this alleged misconduct.

“Subsys is a very powerful narcotic that has been approved for only a very specific and narrow use,” said Attorney General Rosenblum. “Schedule II drugs have a very high potential for abuse and addiction, and it is unconscionable that a company would promote such a powerful drug for off-label uses as well as misrepresent to doctors the benefits of the drug.”

Under the AVC filed in Multnomah County Circuit Court, the company may not make any false or misleading claims when marketing Subsys in Oregon and must comply with all laws relating to the marketing and promotion of prescription drugs, including federal anti-kickback laws. The company may also not market Subsys in Oregon as a treatment for mild cancer pain, or mild pain of any kind, unless the FDA expressly approves the promotional claim.

The settlement requires Insys to pay \$533,000 to the state of Oregon. An additional \$567,000 will be paid to a non-profit or governmental organization identified by the Oregon Attorney General to help prevent opioid abuse and misuse in the state. Total Oregon Subsys sales for the time period of the investigation were \$511,000.

In addition to the Insys settlement, Attorney General Rosenblum also announces a \$2.1 million grant to the National Association of Attorneys General to help combat the misuse and abuse of opioids. The grant, which will be administered by the Oregon Department of Justice, comes from the \$28 million Neurontin Settlement Grant program created from the 2004 Neurontin multi-state settlement that was led by the Oregon Department of Justice.

Rosenblum commended the work of Assistant Attorney General David Hart and his investigative team at the Oregon Department of Justice.

## **AG Brnovich files lawsuit against "Notario Publico" for alleged consumer fraud targeting spanish-speaking community**

Phoenix, AZ - Attorney General Mark Brnovich today announced the filing of a consumer fraud lawsuit against a Tucson business accused of offering fraudulent legal services. The complaint alleges Ofelia Olivas Lizarraga, who did business as Multiservicios Olivas, LLC, falsely represented that she was qualified and authorized to provide legal advice and prepare legal documents on immigration, divorce, and other legal matters.

“The Arizona Attorney General’s Office has zero tolerance for individuals or businesses that prey on our Spanish-speaking community,” said Attorney General Mark Brnovich.

Lizarraga was a commissioned notary public until December 2014 when the state revoked her commission. She allegedly continued to advertise in Spanish that she was a “notario publico.” The term “notario publico” denotes a person who is a legal professional. Arizona law requires a notary public who advertises in a language other than English to conspicuously state, in both English and the language used in the advertisement, the following: “I am not an attorney and cannot give legal advice about immigration or any other legal matter.” The complaint alleges that Lizarraga failed to disclose that she was not qualified or authorized to provide legal advice or legal document preparation services in immigration and naturalization matters, or in any other legal matter.

The complaint also alleges a consumer hired Lizarraga to prepare and file the paperwork necessary to obtain permanent legal residency in the U.S. in exchange for payment of nearly \$1,000. Lizarraga allegedly failed to perform the promised services or to refund the consumer’s money. The complaint requests that the court prohibit Lizarraga from engaging in the activity alleged by the State, that it order her to pay civil penalties, costs, attorney’s fees, and consumer restitution, and that she be required to release to the State all monies that she received as the result of her alleged illegal activities.

Brnovich added, “I encourage the public to contact my office if they believe they have fallen victim to fraudulent legal advisors or any deceitful or unfair business acts or practices.”

You can file a consumer complaint by contacting the Attorney General's Office in Phoenix at (602) 542-5763, in Tucson at (520) 628-6504, or outside the Phoenix and Tucson metro areas at (800) 352-8431. Bilingual consumer protection advocates are available. Consumers can also file complaints online by visiting the Attorney General’s website at [www.azag.gov/complaints/consumer](http://www.azag.gov/complaints/consumer)

This case is being handled by Assistant Attorney General Cherie Howe. For more information, contact Mia Garcia (602) 339-5895 or [Mia.Garcia@azag.gov](mailto:Mia.Garcia@azag.gov).

## **Revere Attorney Ordered to Pay More Than \$625,000 for Unfair and Deceptive Foreclosure Relief Services**

BOSTON – A Revere attorney and his two businesses have been ordered to pay more than \$625,000 for targeting homeowners with deceptive advertisements and demanding thousands in illegal advance fees for mortgage modification and foreclosure relief services they failed to deliver, Attorney General Maura Healey announced today.

“At a time when homeowners were struggling to afford their mortgages, this attorney abused his clients’ trust and deliberately exploited their financial circumstances by demanding exorbitant fees based on false promises, leaving these homeowners even more vulnerable,” AG Healey said. “This judgment puts an end to these deceptive and unfair practices and confirms that those who seek to capitalize on the foreclosure crisis will be held accountable.”

The final judgment links to PDF file, issued by Suffolk Superior Court Judge Paul Wilson against David Zak and his businesses Zak Law Offices, P.C., and Loan Modification Group, Inc., finds defendants liable under the state’s Consumer Protection Act. The court found that the defendants preyed upon at-risk homeowners throughout Massachusetts who were facing the imminent loss of their homes, took unlawful advance fees based on deceptive guarantees that mortgage loans could be modified to prevent foreclosures.

The judgment requires the defendants to pay more than \$625,000, including \$400,000 in civil penalties, more than \$68,000 in attorney’s fees and costs, and \$157,000 in consumer restitution for approximately 65 former clients who complained to the AG’s Office about the deceptive practices and unlawful advance fees.

As found by the Superior Court, the defendants targeted Spanish and Portuguese-speaking homeowners with misleading radio advertisements guaranteeing dramatic loan modifications and legal representation to avoid foreclosure. The defendants failed to disclose in the advertisements that there was no guarantee of success, when in fact they had failed to obtain the promised modifications for most of their clients.

On the basis of these false promises, and in violation of Massachusetts law, the defendants demanded non-refundable advance fees of \$5,000 or more from distressed homeowners – when foreclosure relief services were available for free elsewhere – only to fail to deliver on their promises, leaving homeowners even more at risk of foreclosure.

Under the terms of the judgment, Zak and his companies are enjoined from engaging in deceptive advertising or soliciting, arranging or accepting advance fees for mortgage assistance or foreclosure-relief services.

In 2007, the AG’s Office issued regulations that prohibit soliciting or accepting an advance fee in connection with foreclosure-related services – with certain limited exceptions for licensed attorneys preparing bankruptcy filings or court proceedings to avoid foreclosure – or advertising services without disclosing exactly what is offered to avoid foreclosure, among other unfair practices.

If you are facing foreclosure, or the foreclosure has already occurred, the AG’s HomeCorps program may be able to help by offering access to a variety of free foreclosure prevention or recovery services. Contact the HomeCorps Hotline at (617) 573-5333 or visit <http://www.mass.gov/ago/homecorps>.

This case was handled by Assistant Attorney General Sara Cable of AG Healey's Consumer Protection Division, with assistance from paralegal Virginia Aprahamian and Investigator David Bolcome.

## **Attorney General Bondi Obtains Temporary Injunction Against Deceptive Debt Management and Credit Repair Companies**

TALLAHASSEE, Fla.—Attorney General Pam Bondi obtained a preliminary injunction against Financial Help Services, Inc., Nation Wide Consumer Debt Relief, Inc. and Bobby Blackmon over allegations that the defendants falsely promised to assist consumers lower their debt and improve poor credit. The complaint and temporary injunction filed by Attorney General Bondi alleges the defendants accepted payments from consumers but did not make promised payments to the consumers' creditors on time, or sometimes even at all.

"These companies promised help and relief but all consumers received was heartache and more debt," said Attorney General Bondi. "Even worse, the defendants targeted consumers who were proactively trying to lower their debt and improve their credit."

According to the complaint and temporary injunction, when consumers inquired about why payments to creditors were not paid, the defendants provided fake invoices claiming that debts were paid. The defendants also told some consumers that it was the creditors' fault and that the payments had been made, but just not posted yet. As a result of defendants' failure to make payments, consumers' credit scores dropped and penalty fees continued to increase.

The defendants also deceptively promised financial counseling services that were never provided. To date, the Florida Attorney General's Office received more than 470 complaints about the defendants. The court also granted the Attorney General's motion for a court-appointed third party to manage consumers' funds until the case is resolved. The complaint seeks restitution for the complainants of more than \$500,000, attorneys' fees, and that the defendants are permanently prohibited from offering debt management and credit counseling services in Florida.