

ARTICLES FOR 5-12-16 ROUNDUP

Judge issues stern message to federal government in submerged lands dispute

(Anchorage, AK) – A federal district court this week found the United States acted in bad faith in a lawsuit over the State's ownership of a navigable river.

According to Attorney General Craig Richards, "this decision sends a strong message to the federal government that they need to come to the table and work with the State. Ignoring existing law and delaying decisions to the last moment simply increases tensions. It does nothing to work towards a resolution."

Late Tuesday, U.S. District Court Judge Sharon Gleason ruled that the U.S. Department of Justice advanced frivolous legal arguments in litigation over the ownership of lands beneath the Mosquito Fork, a tributary of the Fortymile River. On that basis, Gleason granted the State's motion for attorney's fees.

"We anticipate that the federal government will follow the court's ruling and work with the State to expeditiously resolve other disputes concerning the ownership of submerged lands in the future," said Brent Goodrum, director of the Alaska Department of Natural Resources' Division of Mining, Land & Water.

When the public seeks to use submerged lands for recreation, hunting and fishing, or economic development, they need to know who owns the land in order to know what laws they have to follow.

Until last summer, the federal government had claimed it owned the land beneath the Mosquito Fork and not the State. For many years the dispute created confusion and hardship for Alaskans seeking to use and navigate the river. The mining community was particularly concerned because miners that had been granted state mining claims were questioning the validity of their claims. At the urging of many Alaskans, the State sued the federal government in 2012 to resolve the longstanding dispute.

After years of preparation and shortly before the case was to go to trial, the federal government in July 2015 finally abandoned any legal claim to the Mosquito Fork. In asking the court for attorney's fees, the State's attorneys argued that the federal government had run up the State's costs in bad faith and made legal arguments that had already been rejected by the 9th Circuit Court of Appeals and the U.S. Supreme Court as far back as 1931.

In her 22-page ruling, Judge Gleason stated that the federal government's "refusal to follow Supreme Court and Ninth Circuit precedent greatly increased the length of this case and its burden to the State." The Department of Law estimates that its attorney's fees in preparing for trial are more than \$750,000. The Court will determine the amount of attorney's fees owed to the State after additional briefing from both parties.

Unlike the award of costs, which are minimal and routinely paid by the losing party, it is rare for a judge to order the federal government to pay attorney's fees. In this case, the State had to show that the federal government acted in bad faith.

To avoid costly litigation in the future, the State has engaged in meetings with the federal government to try and resolve disputes over navigable waters and submerged lands through

recordable disclaimers of interest on the front end. A recordable disclaimer of interest results in the federal government abandoning any legal claim to the land. The State is hopeful that these meetings will lead to quicker resolution on these issues.

For more information, please contact Brent Goodrum, Alaska Department of Natural Resources, 269-8625, brent.goodrum@alaska.gov or Mike Schechter, Alaska Department of Law, 269-4179, mike.schechter@alaska.gov.

Attorney General's Response to Recommendation to Significantly Reduce or Decriminalize Controlled Substance Use in South Dakota

PIERRE, S.D.- Attorney General Marty Jackley responds to the Urban Institute recommendation that South Dakota reduce possession and ingestion of a controlled substance to a misdemeanor.

“As South Dakota’s Attorney General, I have and will continue to strongly support crime prevention efforts and opportunities to avoid incarceration when it does not place the public at risk, which includes drug and DUI courts and our state’s 24/7 Sobriety Program. I joined with our States Attorneys, Sheriffs, and Chiefs of Police to support Senate Bill 70 reforms, because it presented the opportunity with proper implementation to improve our justice system. However, any attempt to decriminalize or turn serious felony drug possession or ingestion into a low level misdemeanor would unnecessarily place the public’s health and safety at risk. The public would be better served by strengthening our prevention, enforcement and treatment efforts including focusing on a strong anti-meth and heroin campaign,” said Jackley.

“The further attempt to extend presumption probation to the more serious felony crimes in the wake of EB-5 and GEAR UP financial misconduct is similarly out of touch with what South Dakota must do to improve the public’s trust on conflicts-of-interest and government programs,” Jackley further stated.

“The vast majority of serious crimes committed in South Dakota are chemically propelled. Homicides, robberies, burglaries and numerous other felony offenses are driven by illicit drug use and addiction. Individuals that buy, sell, and use these drugs are dangerous. One can't possess illegal drugs internally, without having previously possessed them externally. Individuals that have ingested these dangerous poisons are proven to be more of a danger to society than non-using individuals. Watering down our drug laws any further would have serious consequences to public safety and the quality of life in South Dakota. I am adamantly opposed to decriminalizing drug use in the name of reducing prison populations and saving money. To do so, would lead to more serious felony offenses and be counterproductive,” stated Minnehaha County States Attorney Aaron McGowan.

South Dakota law enforcement continues to see an increase in drug activity in marijuana, methamphetamine, heroin and other controlled substances in our state that are often tied to violent crime. High Intensity Drug Trafficking Area (HIDTA) numbers indicate that in 2015 9.023 grams of heroin was seized compared to the 30.89 grams seized in the first three months of 2016. Methamphetamine pounds seized has more than doubled since 2003 from 14 pounds to 31 pounds in 2015.

Violence associated with drug use affects public safety and extends to officer involved shootings. Since becoming Attorney General in 2009, Attorney General Jackley has investigated 24 officer involved shootings and of those, 12 subjects tested positive for either marijuana and/ or a controlled substance.

Arizona Wins Court Victory in Medical Marijuana Act Lawsuit

Arizona Wins Court Victory in Medical Marijuana Act Lawsuit

PHOENIX— Attorney General Mark Brnovich announced today a major victory in litigation involving the scope of physician immunity under the Arizona Medical Marijuana Act or AMMA.

The Arizona Supreme Court unanimously ruled the AMMA does not immunize a physician against prosecution for falsely attesting that he or she reviewed a patient's medical records from the previous twelve months before providing a written certification authorizing medical marijuana use.

“Arizona voters never intended for our medical marijuana laws to give criminal immunity to anyone who breaks the law in order to operate marijuana mills aimed at maximizing profits rather than providing good patient care,” said Attorney General Mark Brnovich.

“Today, the Supreme Court sent a clear message; if doctors commit a crime while issuing medical marijuana certifications they will be held accountable,” added Brnovich.

In 2012, a Navajo County Grand Jury indicted Dr. Robert Gear on one count of Forgery and one count of Fraudulent Schemes and Artifices. Dr. Gear allegedly signed a medical marijuana certification for a police informant before receiving a year's worth of the patient's records. The trial court dismissed the indictment, ruling ARS 36–2811(C) immunized Dr. Gear against prosecution on those charges. The Court of Appeals affirmed.

In today's ruling written by Justice Clint Bolick, the Arizona Supreme Court vacated the opinion of the Court of Appeals, reversed the trial court's order of dismissal, and returned the criminal case against Dr. Gear back to the trial court in Navajo County.

Solicitor General John R. Lopez IV argued the case before the Arizona Supreme Court.

Assistant Attorney General Maria Syms authored the Amicus Curiae Brief on behalf of the State of Arizona.

For additional information, members of the media may contact Mia Garcia, Director of Media Relations at (602) 339-5895 or Mia.Garcia@azag.gov.

Kilmartin out front on debates over legalizing marijuana and fantasy sports betting

Attorney General Peter F. Kilmartin runs his office like a business – and with 236 employees, it's the largest law firm in the state.

Kilmartin, in the fifth year of his term-limited tenure, discusses his views on issues ranging from the legalization of recreational marijuana and fantasy sports betting, to arson investigations and identity theft.

"One of the beauties of being attorney general is [I'm] constantly in motion. No two days are alike, no two issues are alike," he said.

In the past you've strongly opposed legalization of marijuana. Do you still feel the same, even with the millions of dollars in potential tax revenue it could generate?

I think there is a role for [legalized marijuana for] people who have cancers or hospice issues or significant, legitimate pain.

The conversation in this state, so far, has been driven by your point, but in states that have legalization there are a lot of ancillary issues that need to be addressed first. [For example], youth use. Colorado is No. 1 in marijuana use among youth. ... The top 10 states in this country that have the highest use among youth are all states that have a form of legalization, either medical or recreational. [Rhode Island ranks third, at 10.69 percent, according to a report by the Rocky Mountain High Intensity Drug Trafficking Area.] The bottom 10 states, that have the lowest use among youth, have no form of [legalization].

Also, there is a lack of regulation. [Colorado's] marijuana-enforcement division in 2013 was about 10 or 13 people. Now it's upwards of 70 and they're asking for more. There is a definite diversion of resources into a whole new industry that, if you listen to the folks out there, is under-regulated. [Legalization] has not done away with the black market. Two states tried to sue Colorado in the U.S. Supreme Court because of the overflow of drugs coming into their states. If you sell a pound of marijuana on the black market in Colorado, it's worth \$2,000. On the East Coast, that same pound coming out of Colorado is \$5,500.

The U.S. attorney general [recently] announced the prosecution of a butane hash oil lab, and I have legislation to ban the manufacture of BHO, except at a compassion center under regulations promulgated by the state [regarding the legalization of marijuana].

There is an issue regarding [use of] pesticides. Some say, 'We use pesticides on fruits and vegetables,' [why not on marijuana?]. The last I checked you don't smoke an apple. You're inhaling the marijuana and thankfully, the court has ruled the state had a justifiable position against the use of pesticides on marijuana due to health and safety concerns.

We're dealing with zoning issues because of [legalization]. We have people with high-intensity lights in older homes that do not have the capacity to handle the electrical loads.

These are the ancillary issues people are not looking at. What I'm trying to get people to realize is that it isn't all rainbows. We need to take a step back and take a breath – don't inhale – and really look at the issues.

How do you think legalization would affect Rhode Island's business and tourism agendas?

I do think marijuana, if it becomes legal, will end up being a big business. From the business-community [perspective], if I'm an employer, especially in a place like a defense firm, or in the health care industry, or somewhere harm can be done to a client or a consumer, I don't want my employee to be high at work, despite the fact that it is legal. What if there is a manufacturer or producer of marijuana in an industrial park and I have a multistate firm or a company where folks travel in to visit me and see our production and all they smell is marijuana next door? Alcohol we can test for, and test for very easily. If I suspect my employee is stoned I cannot do the test because my employee might say, 'I did smoke pot last night, at home.' Well guess what? That THC is still going to be in the person's bloodstream.

Employers need to ask: 'How are we going to get a handle on this? What's the effect on our workforce? How do I test for it? How do I evaluate it?' ... I find it ironic [that] we have done such a good job in this country educating people about the dangers of tobacco, [yet] tobacco is a not a

drug that affects your mind. Here we are 50 years later and we finally have done a good job cutting down on youth usage, identifying real problems like lung cancer and cutting usage utilizing the tax scheme to do so. But, now we're going to go and authorize another tobacco product for widespread usage without looking at the tobacco model.

If Rhode Island legalizes usage, how will that impact how we teach youth about its hazards?

Just because it's legal does not mean it's safe, does not mean someone with a young, developing mind should do it when there are studies out there that say marijuana affects the IQs of young people. If other states are [legalizing marijuana], let's learn from them before we go down the road. Whether you are pro or con, let's take an educated approach.

Describe the differentiation made between "skill" and "chance" in fantasy sports betting and how that vocabulary helped you form your decision regarding the legalization of the activity?

Rhode Island doesn't, per se, have a definition of gambling in statute. The [R.I.] Supreme Court case said chance needs to be the "dominant factor" and in New York, which was the first state challenging fantasy sports, the court had ruled [chance] had to be a "substantial factor." Chance is not dominant because you do have a layer of skill. You are choosing players based on their skill, performance, statistics, and you are hopefully making an informed decision when you engage in fantasy sports.

Those are two different legal analyses, but you are making a decision and factoring in, hopefully, a lot of criteria. In this state we came to the conclusion that fantasy sports is a legal activity. That being said, my suggestion for the legislature was to get the regulatory structure in place so we can keep kids out of fantasy sports, ensure people don't bet their houses away, keep bad actors out of the business, and [make sure] it's legitimate businesses involved and not organized crimes or organizations.

Any industry that has the potential for the downsides mentioned needs proper regulation. Not onerous regulation, but proper regulation followed by proper enforcement.

Are you a fan?

I don't possess the skill, so I know better.

Was it your experience as a former state legislator that led you to anticipate the legalization of fantasy sports betting as an issue lawmakers would tackle here in Rhode Island?

Increasingly, attorneys general are stepping up, not just as individuals, but collectively, to address some of these issues. I deal often with attorneys general from throughout the country, and we collectively identify issues that may be occurring in one state but we can see coming down the line. Rhode Island isn't insular. A lot of the issues we deal with are national in scope. Thankfully, you don't see the partisan rancor that you might in Congress with attorneys general because we all have different jurisdictions, but, at the end of the day we all need to work together because one of our core missions is prosecution and ensuring the health, safety and well-being of our citizenry. What is the status of the criminal investigation over 38 Studios? Are you still involved and when should voters expect a decision on whether charges will be filed?

First and foremost, the R.I. State Police, with the assistance and cooperation of our office, have been investigating it, obviously, for a while now. That investigation continues to be active with the release of public documents in the civil case that provided us yet another opportunity to

compare notes. While civil cases take time, it allows us to gather more information and potential evidence as we look forward. I know it's a priority at the state police because [Col. Steven G. O'Donnell] and I discuss it often. It's a priority in this office, but I never want to predict when an investigation is going to close. We are doing our best to gather as much [evidence] that exists, wrap up and come to a decision.

How concerned are you are about the effects of continually rising health care and electricity rates on consumers?

Very. We are ever-vigilant on proposed rate hikes – be it in health care, where we do have a role, and energy costs because we are that watchdog agency. About two years ago a Connecticut governor put forward a budget proposal that was going to tax energy in that state. The net result of that bill would have meant a \$4 million rise in Rhode Island rates. I informed the governor and, thankfully, that proposal was pulled out of that budget article.

How successful has the Veteran's Court initiative been?

All the early results are beyond anyone's wildest dreams. One just needs to look at the history of this country to see there are not very many periods of time where we are not involved in some conflict. There will always be a place for the VFW and the American Legion. ... I am very happy there is recognition of PTSD. When I came into office one of my goals was to help establish the Veteran's Court in this state. The last thing I would want to do as a prosecutor is send a veteran into the criminal-justice system because of mental health issues due to their service to this country. A veteran speaking to a veteran is better than a prosecutor speaking to a veteran, or even a social worker. The last graduation I went to not one veteran who had gone through the [program] had re-offended – a 100 percent success rate.

How much time does your office spend protecting consumers, including businesses, from scams?

This problem is ever-present. We do over 70 presentations a year in the community, to businesses especially, and education is the best prevention.

Internally, we were concerned about potential ransomware a few weeks ago and sent a notification to all of our employees. We are vigilant because it would be an embarrassment for us. I've invested a lot of money in our IT; I made it a priority over the course of the past five years. We have a lot of personal data on people, and, candidly, if you're someone we've prosecuted, we want to prosecute you for what you've done, but you still have a right to your privacy.

It is incumbent on businesses to invest in IT to the best of their ability. At the end of the day, I want to go to that retailer or that restaurant where I can feel safe giving over my personal information.

How has the implementation and enforcement of credit card-chip readers fared in Rhode Island? I'm seeing the technology more and more. My personal credit card has a chip and I am seeing more retailers utilize it. In fact, attorneys general have been pushing both credit card agencies and retailers to move toward chip technology. As I understand it, in Europe it's very successful and far more secure. Yes, it's a cost, [but] it's a cost of doing business. The good businessperson is going to know the consumer will have confidence in you and your product and their ability to purchase from you.

In 2014 you named a special prosecutor to help combat the growing problem of arson, which costs Rhode Islanders millions of dollars each year – are you able to quantify the success of that effort?

We're almost a victim of our own success on that one. Special Assistant Attorney General John Dean not only was a prosecutor, but a volunteer firefighter. He saw a problem in this state and wanted to [solve it]. I sent him and a second prosecutor for training. Thankfully, I [sent two] because the fire marshal's office hired Jay away from me. ... This is a benefit to Rhode Islanders because now you have someone who is passionate on the issue and has the prosecutorial experience who is now in the fire marshal's office. Rhode Islanders are getting a great bang for their buck because of the initiative we took here.

Is there a larger task force in the future?

I wouldn't say it's a task force, but I want to develop the in-house expertise and make sure we have sufficient personnel that know what to look for in an arson investigation and how to properly prosecute arson. There [are] a lot of positives that come out of specialties. We did [the same with] child-abuse cases and child sexual-assault cases and were very successful. We have a core staff with many prosecutors and support staff [and it is] one of our bigger caseloads that often goes to trial. We have developed an in-house expertise on that issue.

You've served as a local police officer, a House member and are now in your second term as attorney general. What's next? Do you want to stay in politics?

Honestly, what's next for me is continuing what I'm doing with the attorney general's office. I have a lot of projects in the pipeline and because I am term-limited I want to continue to make this place the best I can in the time I have left.

In April 2008, I was running for my 10th term as state representative. Which means, had I been successful, and I was, it would have been 20 years as a state representative. I knew then that I was not going to run for another re-election after that. However, I did not know I was going to run for attorney general, and my wife reminds me of that.

There are a lot of options out there – I could run for another office; I could practice law. Honestly, one of the best jobs I had was working at a supermarket, I loved it. My lesson learned is to keep all my options open and follow whatever my passion may be. I'm not closing the door on anything.

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Police and Tech Giants Wrangle Over Encryption on Capitol Hill

By CECILIA KANGMAY 8, 2016

WASHINGTON — Cyrus R. Vance Jr., the district attorney of Manhattan, visited Washington late last month to argue his case on a pressing issue: encryption.

In a string of meetings with members of Congress, Mr. Vance told central lawmakers that encryption needed to be diminished during criminal investigations. During a 45-minute session with Senator Angus King, an independent from Maine who is on the Senate Intelligence Committee, Mr. Vance said his office had 230 iPhones that might contain crucial information for cases but were useless because Apple refused to help the police break the encryption on the devices.

“I wanted to express a sense of urgency around resolution of this issue,” Mr. Vance said in an interview about his Washington visit.

A day after Mr. Vance was on Capitol Hill, tech executives including Kent Walker, the general counsel of Google, and Brad Smith, president of Microsoft, also met with lawmakers — but with

a very different message on encryption. Tech executives at the meetings said they were concerned about any laws that would force companies to weaken the security of their technology, according to news officials representing these companies.

This kind of behind-the-scenes lobbying has become de rigueur in Washington as the battle over encryption shifts to Capitol Hill. It is the next phase of a bitter divide that spilled into public view this year when Apple refused to comply with a court order to help bypass security functions on an encrypted iPhone used by an attacker in the San Bernardino, Calif., mass shooting last year. Doing so would have let the F.B.I. gain access to the phone. That case ended after the F.B.I. found an alternative way into the device.

Yet the standoff between the United States government and Silicon Valley tech companies continues — and the flurry of activity around the issue is broadening. Last month, a Senate draft encryption bill, written by Richard M. Burr, Republican of North Carolina, and Dianne Feinstein, Democrat of California, rallied the attention of both sides. The bill would require tech companies to give access to encrypted data with court orders.

Law enforcement officials immediately announced their support of the bill and began to push lawmakers to back it. Trade groups representing tech companies like Apple and Facebook have flooded into congressional offices, sent letters expressing concerns that the bill weakens consumer privacy and security, and delivered scorching speeches about the proposals.

“This is an escalating fight,” said Robert D. Atkinson, president of the Information Technology and Innovation Foundation, a research firm based in Washington that is funded by tech companies including Google and Microsoft. “It’s become the focus now in Washington, with hearings and legislative activity.”

Law enforcement officials blame tech companies for creating the impasse.

“There’s no question our relationship with the tech industry has gotten worse, and now it seems like the tech industry is taking every opportunity they have to put up obstacles in our way, including trying to derail legislative efforts that would give law enforcement what they need to keep people safe,” said Terrence Cunningham, president of the International Association of Chiefs of Police.

Facebook, Google and Microsoft declined to comment on their lobbying activity. An Apple spokesman said the company has met regularly with members of Congress on encryption and other issues.

A reporter took a photo of encrypted smartphones held as evidence by the New York City Police Department. Credit Bryan R. Smith for The New York Times

The amount of lobbying on the encryption bill is unusual at this early stage of a bill’s life, showing the stakes involved. Tech companies are reluctant to give access to encrypted information from their users, for privacy reasons and because it may affect their businesses. Law enforcement officials say their efforts to prevent and solve crime are hampered if they cannot see digital data on phones, messaging services and other technology services.

“Today, terrorists and criminals are increasingly using encryption to foil law enforcement efforts, even in the face of a court order,” Senator Feinstein said in a statement about the draft bill. “We need strong encryption to protect personal data, but we also need to know when terrorists are plotting to kill Americans.”

The rhetoric in Washington around encryption has grown increasingly sharp. Last month, when the contents of the draft encryption bill were leaked, the president of the Consumer Technology Association, a trade group that counts Apple, Google, Facebook and Amazon among its 4,000 members, spoke to an audience filled with government officials at a lunch hosted by the Media Institute.

The bill is “dangerously overreaching and technically unsophisticated,” said Gary Shapiro, president of the association. “This bill would essentially make effective cybersecurity illegal in the United States, pushing companies that take cybersecurity seriously offshore.”

Other tech trade groups, including Reform Government Surveillance and the Business Software Alliance, have also waded into the fray, sending critical letters and meeting with senators to warn of the dangers of the bill. And Silicon Valley executives have, in increasing numbers, made the trek to Washington to make their cases directly.

Bob Lord, chief information security officer at Yahoo, visited several members of Congress in late April to talk about the technology behind encryption and to warn of the “unintended consequences” of legislation that could weaken security. While he did not specifically mention the Burr-Feinstein bill, he emphasized how consumers and human rights activists worldwide depend on encrypted technology for their safety and privacy.

“The notion that we would weaken encryption or provide back doors, those suggestions will have unintended consequences,” Mr. Lord said.

Law enforcement officials, in turn, have frequently met with the same lawmakers in the Senate and House intelligence, judiciary and commerce committees who are being targeted by the tech companies, according to congressional staff members. Chief Cunningham and other members of the police chiefs’ group have talked with Mr. Burr and Ms. Feinstein, given opinions during the drafting of the legislation and hosted panels on encryption for House and Senate lawmakers.

Tech companies have turned to certain politicians to champion their cause, such as Senator Ron Wyden, a Democrat from Oregon. On the day the draft encryption bill was introduced, Mr. Wyden, who voted against the 2012 copyright bills known as the Stop Online Piracy Act and the Protect Intellectual Property Act, which were also opposed by the tech industry, said he had been flooded with calls from tech companies wanting to know what he would do.

Mr. Wyden said he intended to filibuster the proposal. He has since met with Intelligence Committee members to persuade them to kill the bill.

“I have not filibustered many issues, but I think the stakes are enormous,” Mr. Wyden said in an interview. “The bill as written is a lose-lose, because it will create less security, American families will be less safe, and your liberty and privacy will be damaged.”

For all the lobbying, few lawmakers have expressed their views on the encryption bill.

“I’m reserving judgment,” said Senator King, who met with Mr. Vance last month. “The issues are so complex, it’s like trying to nail Jell-O to the wall.”

Attorney General and Director of Banking Announce Settlement with Western Sky

Attorney General Doug Peterson and Director of the Department of Banking and Finance Mark Quandahl Announce Settlement with Western Sky Financial, CashCall, et al. for Predatory Internet Loans

Nebraska Attorney General Doug Peterson and Director of the Department of Banking and Finance Mark Quandahl announce today that they have reached a settlement that requires unlicensed internet loan companies to pay restitution, forgive current debts, notify credit reporting agencies for credit history repair, and discontinue lending in Nebraska.

In the State's action against CashCall, Inc., Delbert Services Corporation, WS Funding, LLC, and their owner J. Paul Reddam, and Western Sky Financial, LLC, and its owner Martin A. Webb, the State alleged that Western Sky Financial, LLC worked with CashCall, Inc. as an unlicensed lender, making usurious internet loans to over 2,400 Nebraskans with annual percentage rates ranging from 89 to 342% and charging unlawful origination and other fees.

"Nebraskans need to be protected from unscrupulous lending practices," said Attorney General Peterson. "This settlement will provide relief for many of our hard-working citizens who were taken advantage of by a predatory online lender."

Director Quandahl stated "We are proud of this outcome that will help the Department of Banking and Finance fulfill its mission of protecting and maintaining the public confidence in the state regulated financial service industries.

Under the terms of the settlement, the companies and their owners shall establish a \$950,000 restitution fund to repay, pro rata, excess interest and fees paid by Nebraska consumers and pay \$150,000 to the State. Further, \$557,066 in loans taken out by Nebraska consumers and currently held by one of the named companies will be forgiven, credit reporting agencies will be notified to remove all history of these loans, and the companies and their owners are prohibited from lending in Nebraska until they comply with the law.

Restitution will be managed by a third party fund administrator who will contact eligible Nebraska consumers on behalf of the State. In addition, a website will be established in the near future to provide consumer information and to allow eligible consumers to file a claim for restitution. For more information, affected consumers can call (800) 727-6432.

White House, Consumer Groups Say Credit Card Chips Don't Equal Security

Posted to Finance May 03, 2016 by Giuseppe Macri

Credit card fraud has gone down in the six months since Visa and Mastercard made retailers and banks liable for fraudulent transactions if they haven't implemented chip credit cards, but chips alone aren't enough to secure Americans' transactions, White House and consumer group representatives said Tuesday.

"The chip alone is not enough for security," Camille Fischer of the White House Economic Council said during a panel on Capitol Hill Tuesday.

Panelists from numerous consumer groups agreed the industry is headed in the right direction with the widening adoption of credit and debit card chips, which generate a unique, single-use numeric code to send alongside an account number to the issuer for verification during a transaction.

But to achieve true credit card security in the U.S. market — home to half the world's credit card fraud despite only accounting for about a quarter of all transactions — banks need to implement a PIN number system with each card in place of a simple signature, according to Debra Berlyn, president of Consumer Policy Solutions, a consumer interest firm.

Berlyn, who organized Tuesday's panel, said signatures — which serve as a second form of authentications — are “widely ignored” by retailers and “easily forged” by fraudsters.

Instead, Berlyn and others said credit card issuers should enable a PIN system for credit cards similar to the one frequently used for debit transactions, establishing a truly digital form of the multi-factor authentication widely endorsed by the cybersecurity community.

In the wake of major retail credit card theft in recent years like those against Target and Home Depot, Mastercard and Visa gave retailers and banks until last October to upgrade their payment terminals before putting into effect the “liability shift,” which stipulates in the event of fraud the entity with the older payment technology — the retailer or the bank — will be liable for the fraudulent charge.

“So if a merchant is still using the old system, they can still run a transaction with a swipe and a signature. But they will be liable for any fraudulent transactions if the customer has a chip card,” Mastercard's Carolyn Balfany told the Wall Street Journal about the new Europay, Mastercard, and Visa (EMV) credit card standards in 2014. “And the same goes the other way – if the merchant has a new terminal, but the bank hasn't issued a chip and PIN card to the customer, the bank would be liable.”

EMV cards have already made a dent in fraudulent transactions, falling more than 18 percent across five U.S. retailers among the 25 most-inundated with fraud between fourth-quarter 2014 and 2015, according to Visa.

“We're seeing EMV is having a positive impact on counterfeit fraud,” Stephanie Ericksen, vice president of risk products at Visa told USA Today in April. “Merchants who implement chip, their counterfeit fraud is going down, while those still finalizing plans, their counterfeit fraud is going up.”

Counterfeit transactions could be reduced even further, Berlyn argued, if banks would implement PINs — something they have little incentive to do, having already met the liability requirement with chip cards.

“They incorrectly believe that requiring a PIN for credit card transactions could burden consumers who may have difficulty remembering another passcode – a baseless argument that does not give Americans enough credit,” Berlyn wrote in a Hill op-ed Monday. “The microchip coupled with the individual PIN make tampering and counterfeiting the cards, along with using stolen financial data, nearly impossible.”

The PIN could be even more useful for the growing percentage of transactions occurring online.

“The technology is out there,” Berlyn said. “It is just not widely used.”

Berlyn said the move to chip-and-PIN, adopted in most major markets outside the U.S., would not only render stolen credit card numbers unusable, but reduce the incentive for hacking retail networks in the first place, since the account information gleaned would be useless.

“Despite the overwhelming body of evidence that demonstrates its effectiveness, the financial services industry has thus far been unwilling to deploy these security measures in the U.S.,” Berlyn said.

Some are already making the switch. Last week Discover CEO David Nelms said the credit card company will begin transitioning to chip-and-PIN.

“I think we may be missing an opportunity to go to the higher level of security with EMV, which is how chip cards are handled in the rest of the world and what merchants in other countries expect when they see a U.S.-issued EMV card,” Nelms said.

Schuette Files Ceases and Desist against Utah Fundraiser for 23 Violations of the Public Safety Solicitation Act

LANSING - Michigan Attorney General Bill Schuette today announced a Notice of Intended Action and Cease and Desist Order against professional fundraiser Corporations for Character, located in Murray, Utah for violating the Public Safety Solicitation Act. Violations included sending pledge forms to those who had not pledged and taking advantage of vulnerable call recipients.

“Deceptive fundraising will not be tolerated,” Schuette said. “My office works daily to protect Michigan residents. You also can help by protecting yourself—research the charity before you give—and reporting suspected violations to my office. Trust your gut.”

Following a consumer complaint, the Attorney General required Corporations for Character—a licensed professional fundraiser under the Public Safety Solicitation Act—to produce call recordings and pledge forms to review for violations. The recordings revealed that Corporations for Character used sophisticated, pre-recorded messages controlled by a human operator that led call recipients to believe they were talking to a live person.

While many of the recordings included unsavory and aggressive solicitation tactics, the Notice of Intended Action only addresses clear violations of the Act, of which the Attorney General’s review found twenty-three.

The Notice of Intended Action orders Corporations for Character to cease and desist these violations and gives Corporations for Character twenty-one days to resolve the matter or face a civil action in court.

Schuette also reminded the public that some telemarketers keep 85% or more of each donation, encouraging donors to research their own charities and to give directly to the charity they have selected. For more information, see the Attorney General’s 2015 Professional Fundraising Charitable Solicitation Report.

Background

In September 2015, the Attorney General’s office received a complaint from a Michigan resident regarding a Corporations for Character solicitation on behalf of the Michigan Fraternal Order of Police (FOP). The complainant alleged that she had not agreed to pledge to the Michigan FOP, yet

received a pledge form in the mail requesting that she fulfill her “promised pledge” of \$15 by a “due date.” The Attorney General’s office forwarded the complaint to Michigan FOP, which forwarded it to its professional fundraiser, Corporations for Character. Corporations for Character responded by producing the recording of the call conducted by its solicitor. The recording confirmed that the complainant never agreed to a pledge. Concerned that Corporations for Character’s misconduct may have extended beyond the complainant, the Attorney General’s office requested additional call recordings.

Corporations for Character produced 850 call recordings. The office’s review of these recordings confirmed twenty-three violations. The violations fell in four categories: (1) the call recipient received a pledge form from Corporations for Character falsely stating that the call recipient had pledged, i.e., violations of the same sort made to the Attorney General’s complainant; (2) the call recipient did not pledge but was sent an informational pledge form with a form showing a pledge amount and a due date; (3) the call recipient’s spouse agreed to pledge, but the form was addressed to the non-pledging spouse stating falsely that that person had pledged; and (4) the call recipient was elderly or otherwise unable to understand and was taken advantage of by the professional fundraiser.

Michigan’s Public Safety Solicitation Act governs solicitations on behalf of public safety organizations and requires professional fundraisers to be licensed by the Attorney General. It prohibits misleading and deceptive acts and taking advantage of the vulnerable, and also requires licensed fundraisers to record their calls.

The Attorney General also regulates charitable solicitations under the Charitable Organizations and Solicitations Act, likewise requiring registration for soliciting organizations and their professional fundraisers. Corporations for Character is also registered with the Attorney General under this Act and has contracts to solicit for five charitable organizations: VietNow National HQ, American Childrens Society, Breast Cancer Outreach Foundation, Soldier’s Angels, and Disabled Police and Sheriffs Foundation. The Attorney General is reviewing Corporations for Character’s solicitations on behalf of these charitable organizations.

Listen to example phone calls: Phone call 1. Phone call 2. In each call, the call recipient did not agree to a pledge; nevertheless, Corporations for Character followed the call by sending the call recipient a pledge form informing of his or her “promised pledge” and requesting payment by a “due date.”

Judge Orders \$100,000 Consumer Fraud Default Judgment against New Jersey Man for Role in Defrauding Elderly Iowans

Robert Schneider, d/b/a Schneider Creative, behind fraudulent sweepstakes and psychic mailings that preyed upon susceptible Iowa consumers

DES MOINES – A Polk County judge Thursday ordered the owner of a design services company to pay \$100,000 for his role in designing mail solicitations that misled and cheated elderly Iowans.

District Court Judge Lawrence McLellan ordered the default judgment against Robert C. Schneider, doing business as Schneider Creative, of Englewood, New Jersey, following a consumer fraud lawsuit filed in March.

The lawsuit alleged that Schneider’s solicitations enabled scammers to cheat susceptible Iowans on fixed incomes who could not easily absorb the losses.

“The mailings Schneider designed were slick and predatory, intended to trick vulnerable people into sending money,” said Miller. “Schneider was evidently the go-to person for a range of scammers – operators who were ready and willing to defraud the elderly, but who didn’t necessarily have the skills to craft mailings that generated enough victims to be profitable.”

Case Began with Elderly Eastern Iowa Victim

Consumer Protection Division investigators were led to Schneider after learning of a 91-year-old eastern Iowa widow who was the target of a host of fraudulent mail solicitations. Many of the mailings appeared to notify her that she had won a big sweepstakes prize, which would be released to her upon payment of a \$25 processing fee. In fact, the \$25 was payment for a virtually worthless list of advertised sweepstakes that anyone could enter, and the consumer had won nothing. The woman was depleting her savings as she responded to these mailings by repeatedly sending checks to scammers.

Miller said that Schneider also designed psychic scam solicitations of the sort that helped drain the Iowa woman’s bank account and cheated other older Iowans. The highly personalized mailings typically expressed the supposed psychic’s deep interest in each recipient, and pledged to deliver wealth and protection from harm – for a fee.

Miller’s consumer fraud lawsuit had included an example of a deceptive sweepstakes mailing that Schneider designed for scammers. Titled “Important Advisory,” the mailing appeared to confirm a “prize account balance” of \$1,150,000 that would be released to the consumer once the “acquisition form” was submitted along with the “research fee” of \$25. Miller noted that a key disclosure that the consumer had “not won any money” was ineffective, buried in a dense block of capital letters on the back of the mailing.

Default Judgment

The default judgment, obtained after Schneider chose not to defend the lawsuit, requires him to pay \$50,000 to be used to reimburse Iowa victims, \$40,000 as a civil penalty, and \$10,000 to repay the state investigation and litigation costs. The judgment further prohibits Schneider from any role in future mailings that violate the Iowa Consumer Fraud Act or misleading Iowa consumers.

“Frankly, we may never see a dime of that,” Miller said. “Although Schneider collected fees from scammers for years, he now claims to have so little money and property as to be judgment proof. That’s a claim we may put to the test.”

General Cautions

Miller cautions Iowans to be wary of mailings highlighting prize winnings, and personalized letters in which so-called psychics promise winning lottery numbers or other good fortune. In particular, caregivers of older Iowans should look out for predatory mailing or telemarketing campaigns making too-good-to-be-true promises.

“We know that scammers buy and sell lists of susceptible people,” Miller warned. “This allows them to zero in on a single Iowan who has shown vulnerability, and they can deplete the victim’s resources pretty quickly.”

For more information or to file a complaint, contact the Consumer Protection Division through the Attorney General’s website at www.iowaattorneygeneral.gov or email directly to consumer@iowa.gov. Consumers can also call the Consumer Protection Division at 515-281-5926, or outside the Des Moines area, toll free, at 1-888-777-4590.