

# The National Association of Attorneys General: A Nonprofit That Acts Like a Plaintiffs' Firm

March 2022



**ATRA**

AMERICAN TORT  
REFORM ASSOCIATION

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## Executive Summary

The National Association of Attorneys General (NAAG) was founded in 1907 as a nominally independent association as a way for state AGs to coordinate shared antitrust cases.<sup>1</sup> Historically, the Association has played an influential role in managing multistate investigations and lawsuits. Over time, however, NAAG's focus has shifted from promoting efficiency and coordination to instead promoting entrepreneurial litigation targeting a variety of industries – similar to the mission of the mass torts plaintiffs' bar.

NAAG has had a significant role in some of the most prominent mass tort litigation over the past few decades. Its targets have included manufacturers of tobacco, lead paint, and most recently, opioids. The Association fully participates in settlements reached in multistate lawsuits, just as individual states and their for-profit, contingency-fee counsel participate. Interestingly, this places what once was an independent association in a situation in which it now has profit as a main motive to help initiate and settle litigation, just as the trial bar does.

For example, in March 2021, NAAG received \$15 million as part of McKinsey's \$600 million settlement for the company's role in marketing opioid prescriptions.<sup>2</sup>

NAAG essentially acts as a self-sustaining litigation machine, mainly funded by two revenue sources: yearly dues from state attorneys general of approximately \$70,000 per state, per year<sup>3</sup>; and carveouts from multistate litigation settlements.

NAAG's programs, operated through these funds, seem to be tailored specifically to promote litigation against business – attorneys in state AGs' offices are trained under NAAG programming to bring more cases against other industries.<sup>4</sup> These training sessions are designed to help AGs be more effective in litigation. NAAG's targeted training and support of state AGs offices is similar to that of other activist groups looking to influence and promote litigation in AG offices. For example, the Bloomberg-funded State Energy & Environmental Impact Center at New York University School of Law is designed to further litigation by placing lawyers funded by the Center in the offices of friendly attorneys general across the country, empowering them to bring climate change litigation. However, outside influence, whether it be from NAAG or other activist organizations, creates a concerning lack of accountability and transparency in state attorneys' general offices.

To promote coordinated mass tort litigation, NAAG members also participate in working groups that focus on potential multi-state lawsuits. Their activities include information sharing agreements between state AG offices as well as monthly phone calls to discuss ongoing investigation. NAAG then offers lead states the opportunity to recruit other states to join specific litigation.

Additionally, plaintiffs' lawyers often hold training sessions at NAAG conferences in which they discuss best practices for pursuing mass torts. It is an excellent business development opportunity for these plaintiffs' lawyers because many of them will later look to be hired on a contingency-fee basis once the AGs initiate lawsuits.

In the early stages of litigation, NAAG provides grants to the states to help litigation get off the ground. Currently, NAAG has more than \$200 million in assets. States receive grants to fund research and

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<sup>1</sup> Rachel M. Cohen, "The Hour Of The Attorneys General," *The American Prospect*, Spring 2017.

<sup>2</sup> O.H. Skinner, "Payouts To Victims, Not Special-Interest Groups," *Washington Times*, 3/3/21; <https://www.washingtontimes.com/news/2021/mar/2/payouts-victims-not-special-interest-groups/>.

<sup>3</sup> Sean Ross, "Alabama Becomes First State To Leave National Association Of Attorneys General — 'Going Further And Further Left'," *Yellowhammer News*, 4/26/21.

<sup>4</sup> "Events & Training," [National Association Of Attorneys General](#), Accessed 1/27/22.

other expenses needed to determine participation in a multistate lawsuit. Any state seeking NAAG funding must submit a detailed memo outlining their legal strategy, expenses, and predicted results. States are required to repay the grant if there is a settlement regardless of whether the settlement terms stipulate reimbursement to NAAG.<sup>5</sup>

Utilizing this sort of funding source for litigation allows AGs to avoid using state-appropriated funds – or having to go to the legislature for more funds. This funding side-step weakens potential checks and balances a legislature may want to exercise in these situations.

NAAG continues to find new targets, from the tobacco and lead paint litigation of the 1990s to the opioid lawsuits of today. While the opioid lawsuits begin to wind down, NAAG is now forming working groups on climate change and environmental issues like PFAS, eyeing a new generation of potential mass tort lawsuits.<sup>6</sup> Given the new NAAG focus on mass tort profit motive, it's only a matter of time until they move into new areas of focus.

The following report provides additional information about the innerworkings of NAAG along with supporting background and research.

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<sup>5</sup> “Janssen Settlement Agreement,” Office Of The Texas Comptroller, 7/21/21.

<sup>6</sup> “Clean Energy Issues Are On The Docket For State Attorneys General,” [New York University](#), 10/3/19.

## Background on the National Association of Attorneys General

The National Association of Attorneys General (NAAG) is a nominally independent association founded in 1907 as an umbrella organization for state attorneys general to coordinate shared antitrust cases against Standard Oil.<sup>7</sup> This group was staffed by the official offices of state attorneys general until 1936, when it fell under the umbrella of the Council of State Governments, before once again becoming a nominally independent entity in 1980.<sup>8</sup>

NAAG currently plays an influential role in coordinating the states in multistate investigations and lawsuits.<sup>9</sup> For example, NAAG will often send out information to the states on behalf of certain state AGs beginning to take the lead on a specific case and has a process for delegation of resources for large, multi-state litigation, with certain states with core competencies taking the lead on certain types of lawsuits.<sup>10</sup>

Beginning in the 1990s<sup>11</sup> and continuing into 2022, the National Association of Attorneys General (NAAG) has begun to benefit financially from state attorneys general (AGs) suing private industry and obtaining large cash settlements.<sup>12</sup> Using these funds, NAAG hires numerous employees who then work to help train attorneys in the state AGs' offices to bring more cases against other industries.<sup>13</sup>

Using the funds from these large settlements, NAAG expends considerable resources helping train assistant state AGs throughout the country.<sup>14</sup> Under the umbrella called the National Attorneys General Training & Research Institute (NAGTRI), NAAG uses its resources to train the state AGs' offices in various areas of the law, including consumer protection, antitrust, cybersecurity, to name a few.<sup>15</sup>

In addition to the NAGTRI trainings, NAAG houses and coordinates an organization known as the National Association of Medicaid Fraud Control Units, ("NAMFCU").<sup>16</sup> According to its website,<sup>17</sup> NAMFCU serves to:

- Provide a forum for the mutual exchange of views and experiences on subjects of importance to the state Medicaid Fraud Control Units.
- Foster interstate cooperation on legal and law enforcement issues affecting the Units.
- Improve the quality of Medicaid fraud and resident abuse investigations and prosecutions by conducting training programs and providing technical assistance for Association members.
- Facilitate communication among the state Medicaid Fraud Control Units that are Association members.
- Provide the public with information about the Medicaid Fraud Control Units.

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<sup>7</sup> Rachel M. Cohen, *The Hour of the Attorneys General*, The American Prospect (March 22, 2017), <https://prospect.org/power/hour-attorneys-general/>.

<sup>8</sup> *Id.*

<sup>9</sup> National Association of Attorneys General, NAGTRI Center for Consumer Protection, <https://www.naag.org/our-work/nagtri-center-for-consumer-protection/> (last visited Jan. 27, 2022).

<sup>10</sup> Danielle K. Citron, *The Privacy Policymaking of State Attorney General*, 92 Notre Dame L. Rev. 747, 761 (2016). <https://scholarship.law.nd.edu/ndlr/vol92/iss2/5/>

<sup>11</sup> Juan A. Arteaga And Jordan Ludwig, "The Role Of US State Antitrust Enforcement," *Global Competition Review*, 11/19/19.

<sup>12</sup> Daniel Fisher, *The House Tobacco Built*, Forbes (Aug. 14, 2008, 10:20 PM), <https://www.forbes.com/forbes/2008/0901/098.html?sh=54c1c9471aaa>.

<sup>13</sup> National Association of Attorneys General, Events & Training, <https://www.naag.org/events-training/> (last visited Jan. 27, 2022).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> "National Association Of Medicaid Fraud Control Units," [National Association Of Medicaid Fraud Control Units](https://www.namfcu.org/), Accessed 1/26/22.

<sup>17</sup> *Id.*

As is evidenced by the numerous lawsuits and settlements, NAMFCU often targets pharmaceutical companies for the marketing of their drugs.<sup>18</sup>

Recognizing this troubling trend, Alabama Attorney General Steve Marshall recently announced that his office revoked its membership with NAAG.<sup>19</sup> According to the article, General Marshall pointed to the organization's shift to the left and using its resources to go after businesses.<sup>20</sup>

## How Money Flows Into and Out of NAAG

The NAAG is mainly funded by two revenue sources: yearly dues from state attorneys general of around \$70,000 per state per year<sup>21</sup> and carve outs from multistate litigation settlements overseen nominally by NAAG.<sup>22</sup> By a state paying dues to the NAAG, that state attorney general office gets access to all the resources of the NAAG, including the trainings and working groups mentioned above.<sup>23</sup>

The settlement carve out process is a less direct means of NAAG cash flow as they are dependent upon case results.<sup>24</sup> The NAAG receives some money each year from the results of lending money to various states to pursue corporate legal action<sup>25</sup> (which will be discussed elsewhere in this summary) while the rest of the money received by the NAAG comes from carve outs in big, multi-state settlements facilitated by the NAAG.<sup>26</sup> Some of these settlement carve-outs run in the tens of millions of dollars.<sup>27</sup>

This year alone NAAG received a \$15 million charitable payment from McKinsey as part of a settlement deal over the work the company did in the past in marketing opioid prescriptions.<sup>28</sup> Thanks to these massive payouts, NAAG currently has over \$200 million combined in net assets in their various charitable kitties combined.<sup>29</sup>

NAAG has three main expenses each year: 1) grants to states for lawsuits;<sup>30</sup> 2) lavish retreats for state attorneys general several times a year;<sup>31</sup> and 3) general overhead to help with the first two

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<sup>18</sup> Global Case Press Releases by National Association of Medicaid Fraud Control Units, <https://www.namfcu.net/press-releases.php> (last visited March 7, 2022).

As seen by the titles of the different press released from 2020 and 2021.

<sup>19</sup> Carrie C. Severino, *Steve Marshall's Example*, National Review (Apr. 30, 2021, 10:01 AM), <https://www.nationalreview.com/bench-memos/steve-marshalls-example/>.

<sup>20</sup> *Id.*

<sup>21</sup> Sean Ross, *Alabama Becomes First State to Leave National Association of Attorneys General- 'Going Further and Further Left'*, Yellowhammer (Apr. 26, 2021), <https://yellowhammernews.com/alabama-becomes-first-state-to-leave-national-association-of-attorneys-general-going-further-and-further-left/>.

<sup>22</sup> *Id.*

<sup>23</sup> National Association of Attorneys General, NAAG FAQs, <https://www.naaq.org/about-naaq/naaq-faqs/> (last visited Dec. 2, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> [Janssen Settlement Agreement](#) at 136, *State of Texas v. Janssen Pharmaceuticals, Inc. et al.*, Cause No. D-1-GN-19-005458 (July 21, 2021).

<sup>26</sup> *Id.* at 78-79.

<sup>27</sup> *Id.* at 18-19.

<sup>28</sup> O.H. Skinner, *Payouts to Victims, Not Special-interest Groups*, The Wash. Times (March 2, 2021), <https://www.washingtontimes.com/news/2021/mar/2/payouts-victims-not-special-interest-groups/>.

<sup>29</sup> 2020 [Nat'l. Ass'n Att'y Gen. Ann. Rep.](#) 23.

<sup>30</sup> *Id.* at 21.

<sup>31</sup> Michael Van Sickler, *Complaint: D.C. Law Firm Illegally Lobbied Florida Attorney General Pam Bondi*, Tampa Bay Times (Oct. 31, 2014), <https://www.tampabay.com/news/politics/stateroundup/complaint-dc-law-firm-illegally-lobbied-florida-attorney-general-pam-bondi/2204616/>.

expenses.<sup>32</sup> The grant process for states allows for state attorneys general looking to participate in a multistate action gain funding to pursue the research and litigation required without having to dip into the state appropriation process directly.<sup>33</sup> In order to receive said money, the state attorney general requesting the funds would have to specify the money that will be required, how it will be used and what the end goal of the litigation would be.<sup>34</sup>

Assuming the lawsuit is successful, the state attorney general receiving the funds would also have to pay back the grant from NAAG regardless of whether a direct payout to NAAG is included in the settlement.<sup>35</sup> These grant funds are also relatively segmented by type of lawsuit (antitrust, charity, etc.), with specific payouts often being earmarked in the settlement process for specific segmented funds.<sup>36</sup> NAAG also receives revenue for managing these funds, although comparatively speaking this is nowhere near as profitable for the group than the revenue sources listed above.<sup>37</sup>

Beyond the cash flows out of NAAG via the grant process, NAAG is also well known for throwing luxury bashes several times a year around the country for state attorneys general to meet up and talk shop.<sup>38</sup> Some recent travels include nearly yearly trips to the Ritz Carlton in Washington DC and events at the Big Sky Resort in Big Sky, MT and an event at the Hilton Torrey Pines Resort in La Jolla, CA.<sup>39</sup>

## How NAAG Cases Are Generated

Multidistrict lawsuits are generated by NAAG via two routes: training seminars and the working group process.<sup>40</sup> For the training seminar route, NAAG holds many training seminars and classes each year, often through their National Attorneys general Training and Research institute (NAGTRI) training arm.<sup>41</sup> These classes range in focus from best practices for filing lawsuits to instructional classes on using new software and analytics to gin up new leads.

These training seminars also functionally serve as a means to get state attorneys general in a low-pressure environment together to exchange case notes on various legal proceedings going on in other states.<sup>42</sup> Thanks to the knowledge gained at NATGRI trainings, state Attorneys General learn how to be more effective at filing large, class action and mass torts lawsuits against corporations and also find additional states to join them in multi-district torts either about to be filed or currently in process.

While the NAGTRI training route to case generation is mainly an indirect process, the working group process has a direct line between its establishment and certain cases being filed. These working

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<sup>32</sup> *Id.*

<sup>33</sup> [Memorandum](#) of Understanding Regarding the Rules and Regul. Governing the 'Fin. Serv. and Consumer Prot. Enft'. Natl. Ass'n Att'y Gen. (June 11, 2019) at 2.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> *Id.* at 5

<sup>36</sup> *Id.* at 2-3.

<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.*

<sup>39</sup> "National Association Of Attorneys General Mission Foundation Inc.," [ProPublica](#), (Accessed 3/8/22).

<sup>40</sup> *Id.*

<sup>41</sup> National Association of Attorneys General, NAGTRI Center for Consumer Protection, <https://www.naag.org/our-work/nagtri-center-for-consumer-protection/> (last visited Jan. 27, 2022).

<sup>42</sup> Michael Van Sickler, *Pam Bondi Has Close Ties with Law Firm Whose Clients Have Had Suits Dropped in Florida*, Tampa Bay Times (Oct. 30, 2014), <https://www.tampabay.com/news/politics/stateroundup/records-reveal-close-ties-between-pam-bondi-and-lobbyists/2204314/>.

groups, which are often convened under the purview of the NAAG, are focused on specific legal topic areas such as antitrust and charities fraud.<sup>43</sup> These working groups allow for collaboration between state attorneys general in various states by facilitating the conversations and sharing of notes among subject matter experts in each state attorney general office.<sup>44</sup>

Unlike the NAGTRI process, the working group case generation process often only involves multi-state litigation, with the NAAG working group acting as a sounding board for case generation.<sup>45</sup> Using the NAAG Privacy Working Group as an example, the state Attorneys General in the working group meet via phone at least once a month to discuss ongoing investigations of note in their states.<sup>46</sup> Once a multi-jurisdiction target is found, there is a delegation of resources as to which states take the lead on which cases, which appears to be segmented by special core competencies in each state.<sup>47</sup> The states are then allowed to trade information on this litigation via information sharing agreements.<sup>48</sup>

Another NAAG-affiliated working group is the National Association of Medicaid Fraud Control Units (NAMFCU), which was initially founded in the 1970s as a clearinghouse for states on Medicaid fraud.<sup>49</sup> Unlike the other NAAG working groups, which receives its funding directly from state dues and lawsuit settlements,<sup>50</sup> the NAMFCU receives 75 percent of its funding directly from the federal government, with the rest coming from state dues.<sup>51</sup>

In recent years, NAMFCU has gotten more aggressive in seeking to pursue mass tort cases, which is in line with other NAAG working groups.<sup>52</sup> NAMFCU has seen a decrease in recoveries in traditional bread and butter cases such as Medicare Part D lawsuits, managed care and off-label in the last several years,<sup>53</sup> leading to NAMFCU to seek additional types of lawsuits.<sup>54</sup> As such, NAMFCU has made it an explicit focus to pursue opioid lawsuits.<sup>55</sup> This focus is already delivering results for NAMFCU's bottom line, with NAAG receiving a \$15 million payout from a \$600 million settlement against McKinsey for their work in marketing opioids.<sup>56</sup>

## Conclusion

While NAAG represents itself as a non-partisan organization serving the state AGs, in essence, the NAAG has largely turned into an organization that has only one goal: suing businesses for profit. Far from being a neutral entity, the NAAG massively benefits financially from these lawsuits, and in turn uses its considerable resources to help coordinate and facilitate even more lawsuits. From its initial

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<sup>43</sup> [Press Release](#), State of Connecticut, The Office of Attorney General George Jepsen, *Attorney General Jepsen Elected Eastern Region Chair of National Association of Attorneys General* (June 13, 2012)(on file with author).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Office of Jason S. Miyares Attorney General of Virginia, MFCU- Frequently Asked Questions, <https://www.oag.state.va.us/13-resource/510-mfcu-frequently-asked-questions> (last visited Jan. 26, 2022).

<sup>50</sup> *Id.*

<sup>51</sup> National Association of Medicaid Fraud Control Units, *About Medicaid Fraud Control Units*, <https://www.namfcu.net/medicaid-fraud-control-units1.php> (last visited Jan. 26, 2022).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> [PowerPoint Press Release](#), Randy Close, Update Medicaid Fraud Control Units to Nat'l Ass'n of Medicaid Program Integrity at 2019 Annual Conference, (Sept. 4, 2019) at slides 15-17.

<sup>55</sup> *Id.* at 17

<sup>56</sup> *Id.*

founding as a means to deal with complex antitrust lawsuits, the NAAG has shifted its mission in the last three decades to pure asset accumulation.

# APPENDIX: BACKGROUND SUPPORTING RESEARCH

## NAAG Settlement Carve-out Process

### Settlements Between Attorneys General and Corporations Often Have Carve-Outs That Send Money to NAAG

- **A Settlement Between State Attorneys General and McKinsey for the Company's Role in Marketing Opioid Prescriptions Worth Almost \$600 Million Earmarked a \$15 Million Payment to NAAG**

"In an example of this, look no further than the almost \$600 million settlement that consulting giant McKinsey just inked with the nation's state attorneys general, led by Attorney General Xavier Becerra President Biden's nominee for Health and Human Services Secretary. McKinsey settled allegations that its consulting services helped contribute to the opioid crisis, allegations that arose from documents showing McKinsey urging opioid manufacturers to focus marketing efforts on doctors who were writing the most opioid prescriptions, a key group that is thought to have turbocharged the epidemic. ... Instead of sending money to victims, the McKinsey deal starts off with the type of arrangement only a politician could love \$15 million to the nonprofit National Association of Attorneys General, known as NAAG."

O.H. Skinner, *Payouts to Victims, Not Special-interest Groups*, The Wash. Times (March 2, 2021), <https://www.washingtontimes.com/news/2021/mar/2/payouts-victims-not-special-interest-groups/>.

- **NAAG Received \$140 Million from a 2008 Jury Verdict Against Lead Paint Manufacturers In Rhode Island**

"The air was thick with self-congratulation at the summer meeting of the National Association of Attorneys General in Providence, R.I. In a town infamous among industrial executives for handing the state a \$2.4 billion jury verdict against lead-paint manufacturers, the AGs hailed their biggest litigation win so far: the \$260 billion-plus tobacco settlement signed in 1998 to end lawsuits over tobacco-related medical costs. ... Left unremarked upon was one of the largest beneficiaries of the settlement: NAAG. As part of the settlement, it ended up with \$103 million, since grown to \$140 million."

Daniel Fisher, *The House Tobacco Built*, Forbes (Aug. 14, 2008, 10:20 PM), <https://www.forbes.com/forbes/2008/0901/098.html?sh=54c1c9471aaa>.

- "The earnings from that pot supplied most of the Organization's \$26 million in revenue last year." (*Ibid.*)

- **A \$25 Billion Settlement Between State Attorneys General and Mortgage Lenders Included a Clause Requiring \$15 Million of the Settlement Go to NAAG**

"The attorneys general of 49 states filed the legal documents backing their \$25 billion mortgage settlement today and they contained few surprises. There's no further detail on what misdeeds, exactly, Bank of America, Ally Financial, Citi and other lenders committed to earn themselves such a whopping penalty, but the filings outline a number of potential violations of state and federal consumer laws and protections for service members. There's also one detail I was waiting for, but which wasn't announced in any of the press releases trumpeting the settlement: \$15 million will go to the professional association representing the AGs, the National Association of Attorneys General."

Daniel Fisher, *NAAG Gets Its Slice of the Mortgage-Settlement Pie*, Forbes (Mar. 12, 2012, 4:43 PM), <https://www.forbes.com/sites/danielfisher/2012/03/12/naag-gets-its-slice-of-the-mortgage-settlement-pie/?sh=45eac0377e07>.

- 1989: NAAG Received Money From a Milk Bid-Rigging Settlement to Create a “Milk Fund” to Investigate Antitrust Cases**

“In addition to cost-sharing arrangements, state antitrust enforcers sometimes seek to fund enforcement actions through grants from the NAAG’s ‘milk fund’, which was established in 1989, and helps cover expert fees in antitrust investigations and litigation. This fund was set up using portions of the settlements that were secured in a series of bid-rigging cases involving school milk contracts in New York.” Juan A. Arteaga & Jordan Ludwig, *The Role of U.S. State Antitrust Enforcement*, Glob. Competition Rev., Nov. 19, 2019. <https://www.lexology.com/library/detail.aspx?g=d423301d-f4d1-4550-a99c-1880869e67e7>.
- 1997: NAAG Received \$335,000 from a \$2,176,000 Settlement by Toys ‘R’ Us to Settle an Antitrust Case**

“On October 13, 1998, the Federal Trade Commission (‘FTC’) issued a final Order and comprehensive opinion approving the findings of an administrative law judge, rendered on September 25, 1997, that Toys ‘R’ Us (‘TRU’) had engaged in anti-competitive conduct that violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 5 of the FTC Act, 15 U.S.C. § 45. ... The Settlement Agreements provide a total of \$2,176,000 in compensation to the States. \$310,000 is allocated to the National Association of Attorneys’ General (NAAG) Milk Fund, which funds the costs of expert witnesses in multistate antitrust investigations and litigation, and \$25,000 is allocated to the NAAG Litigation and Training Fund for training of state antitrust lawyers.” *In re Toys R Us Antitrust Litigation*, 191 F.R.D. 347 (E.D.N.Y.,2000).
- 2000: NAAG Received \$300,000 from a Settlement Between States and Nine West for Alleged Price Fixing**

“WHEREAS, the States will file a Complaint against Nine West and John Does 1 through 500 for damages, penalties and injunctive relief, on their own behalf, as parens patriae on behalf of natural person citizens of those States who purchased Nine West products during the period January 1, 1988 through July 31, 1999, and on behalf of any additional states, commonwealths, possessions or territories which join in this Settlement Agreement pursuant to Section IX., alleging an unlawful agreement to fix, maintain or stabilize resale prices of Nine West Products, as defined in Section I.G. below, during the period January 1, 1988 - July 31, 1999, in violation of federal and State antitrust laws; ... The Settlement Agreement provides that the Plaintiff States’ Attorneys General, as Counsel for the Plaintiff States, will receive a monetary award of up to \$1.6 million for reimbursement of attorneys fees, costs, and/or for use for future antitrust and consumer protection enforcement. This award represents 4.7% of the total cash value of the settlement. The States will also seek a total award of \$300,000 to the National Association of Attorneys General (“NAAG”) for reimbursement of investigative expenses, which represents 0.9% of the total cash value of the settlement. These awards would be paid from the settlement fund. The Attorneys General will not apply separately to the Court for approval of these awards, but these awards must be approved by the Court as part of the settlement process.” [Nine West Settlement Agreement](#) at 44, *States v. Nine West Group, Inc.*, Civ. Action No. 00CIV1707 (Mar. 6, 2000).

## NAAG Lending to State Attorneys General Process

### NAAG Gives Grants to Fund Lawsuits, Then Takes In Money and Receives Repayment from Grantees If Lawsuits Succeed

- **NAAG Gives Grants to States for Lawsuits, But Requires Them to Repay the Grant If There Is a Settlement**

“The State Cost Fund Administrator shall, in accordance with such guidelines, receive from Settling States records sufficient to demonstrate the incurrence and/or payment of each expense attributable to investigation or litigation related to the opioid litigation, including any outstanding National Association of Attorneys General grant. ... Costs shall be paid in the following order: (a) the reasonable costs of the State Cost Fund Administrator, if any; (b) repayment of the National Association of Attorneys General grants connected to opioid litigation;...” [Janssen Settlement Agreement](#) at 132, State of Texas v. Janssen Pharmaceuticals, Inc. et al., Cause No. D-1-GN-19-005458 (July 21, 2021).

- **Order of Disbursements from NAAG State Cost Fund (From Janssen Settlement):** [Janssen Settlement Agreement](#) at 133, State of Texas v. Janssen Pharmaceuticals, Inc. et al., Cause No. D-1-GN-19-005458 (July 21, 2021).

- “The Reasonable Costs Of The State Cost Fund Administrator, If Any...”
- “Repayment Of The National Association Of Attorneys General Grants Connected To Opioid Litigation...”
- “Costs Incurred Or Paid By Outside Counsel For A Settling State Litigating Against Janssen Apart From Any Fee Owed...”
- “Litigation-Related Costs Attributable To The Janssen Case Incurred Or Paid By A Settling State Litigating Against Janssen...”
- “Pre-Suit Investigation-Related Costs Attributable To A Janssen Investigation Incurred Or Paid By Either A Settling State Outside Counsel...” “Pre-suit investigation-related costs attributable to a Janssen investigation incurred or paid by either a Settling State outside counsel (not including any amount of fees or any costs which have already been reimbursed pursuant to clause (c), above) or a Settling State investigating Janssen.”
- “Costs Incurred Or Paid By A Settling State Or Outside Counsel Litigating Against Another Opioid Defendant Other Than A Cost Share Entered Into By A Settling State...” “Costs incurred or paid by a Settling State or outside counsel litigating against another opioid defendant other than a cost share entered into by a Settling State, which costs have not yet been paid under a preceding clause of this paragraph.”
- “The Amounts Paid By A Settling State As Part Of Cost Share Related To The Filing Of A Proof Of Claim In The Purdue Pharma, L.P. Bankruptcy...”
- “The Amounts Paid By A Settling State As Part Of Any Other Cost Share, Including, But Not Limited To The Cost Share Entered Into By The Non-Consenting States In The Purdue Pharma, L.P. Bankruptcy.”

- **A Settlement Between State Attorneys General and Janssen Pharmaceuticals Stipulated That Any Money Left Over in the “State Cost Fund” Would Go to NAAG to Fund Grants**

“This settlement agreement dated as of July 21, 2021 (the ‘Agreement’) sets forth the terms of settlement between and among the Settling States, Participating Subdivisions, and Janssen (as those terms are defined below). Upon satisfaction of the conditions set forth in Sections II and VIII, this Agreement will be binding on the Settling States, Janssen, and Participating Subdivisions. ... If the State Cost Fund has additional monies after payment of the State Cost Fund Administrator’s and all Settling States’ submitted costs, then the remaining funds will be provided to the National Association of Attorneys General to be placed in the Financial

Services Fund for the purpose of funding grants for consumer protection or healthcare-related enforcement or training activities.” [Janssen Settlement Agreement](#) at 133, *State of Texas v. Janssen Pharmaceuticals, Inc. et al.*, Cause No. D-1-GN-19-005458 (July 21, 2021).

## CASE STUDY – NAAG Grant Process in the Charities Enforcement Fund

### **NAAG Charities Enforcement Fund’s Two Purposes:**

- 1. Funding the Investigation and Litigation of Civil and Criminal Cases Involving Charities**
- 2. Educational Programs for Training Attorneys General**

“In accordance with the NAAG Charities Committee’s stated mission to facilitate cooperation among the attorneys general with respect to charities registration and enforcement, to conduct trainings in coordination with the National Association of State Charity Officials (NASCO), and to promote the development of effective charities registration and enforcement programs and education for the protection of citizens, a fund known as the NAAG Charities Enforcement and Training Fund (Fund) is hereby established and shall be used for the following purposes: To pay for expenses relating to the investigation and litigation of civil and criminal cases involving charitable assets, charitable organizations and/or charitable solicitations including but not limited to potential violations of state and federal consumer protection laws and state charitable registration laws. Illustrative examples include, but are not limited to, travel costs, expert witness and consulting fees, expenses associated with document review platforms, and other routine costs.; To pay for training and educational programming made available to both the attorneys general and NASCO members, including but not limited to the annual NAAG/NASCO Charities Conference. For scholarship recipients to any program or training, the number of non-attorney general recipients shall not exceed twenty-five percent (25%) of the total number of potential recipients.” National Association of Attorneys General, [Rules And Regulations of the NAAG Charities Enforcement And Training Fund](#), (June 11, 2019) at 1.

- **On Top of Requesting a Set Amount, Attorneys General Must Tell NAAG How the Money Will Be Used and the “Contemplated/Pending Action” They Are Seeking**

“Grant applications must also include a recitation of the following questions, with answers to each question set forth separately: A description of the purposes for which the monies sought will be used and how these purposes comply with the purposes for which grant funds can be used (see Section A of the Rules and Regulations).; A description of the contemplated/pending action.; A statement whether the action is actively or currently being pursued by any other attorney general, secretary of state, or other government charity regulator.; The amount requested.” (*Id.* at 4)
- **Attorneys General Who Receive Grants from the Fund Must Pay Back Their Grants “In the Event the State Is Successful in the Litigation or Action for Which Funds Have Been Appropriated.”**

“To the extent applicable and permitted by law, each attorney general or applicant whose grant application is favorably acted upon shall promise to pay back to the Fund all of the amounts received from the Fund in the event the state is successful in the litigation or action for which funds have been appropriated.” (*Id.* at 3)

  - **NOTE: If the Judgment Is Not Sufficient to Repay the Grant or There Are Terms Limiting Grant Repayment Amounts, the Grantee “Shall Pay Back As Much As Is Permitted by the Recovery.”**

“In the event that the monetary recovery, if any, obtained is not sufficient to pay back the entire amount of the grant or is otherwise limited by the terms of any judgment, that

attorney general or applicant shall pay back as much as is permitted by the recovery.”  
(*Ibid.*)

- **NAAG Receives a Yearly Management Fee of 1% of the Value of the Fund Each Year**  
“A fee of 1% of the total value of the Fund at the Fund’s inception and annually thereafter shall be paid to NAAG each year out of the Fund to cover all administrative costs and third-party fees related to the maintenance of the Fund.” (*Ibid.*)

## NAAG Case Generation and Working Group Process

### NAAG Holds Trainings to Help Teach Attorneys General Best Practices for Corporate Litigation

- **NAAG Promotes the Fact They Have Over 130 Meetings and Trainings Every Year**  
“NAAG convenes more than 130 meetings and trainings each year throughout the U.S.: These events are an opportunity for attorneys general and their staff to discuss ideas, learn about the latest legal developments, and gain professional skills. Many of these programs offer continuing legal education (CLE) credit. Some are open to the public and some are limited to attorney general staff.” National Association of Attorneys General, Events & Training, <https://www.naag.org/events-training/> (last visited Jan. 27, 2022).
- **Attorneys General Receive Trainings by the NAAG’s Training Arm, the National Attorneys General Training and Research Institute**  
“The Attorney General and staff members receive important training sponsored by the National Attorneys General Training and Research Institute, an arm of The National Association of Attorneys General, which facilitates cooperative leadership that helps attorneys general respond effectively – individually and collectively – to emerging State and federal issues.” Office of Leslie Rutledge Attorney General of Arkansas, Arkansas’s Lawyer, <https://arkansasag.gov/arkansas-lawyer/> (last visited Jan. 27, 2022).
- **“Most NAGTRI Trainings Are Eligible for Continuing Legal Education (CLE) Credit...”**  
National Association of Attorneys General, NAGTRI Trainings, <https://www.naag.org/events-training/nagtri-trainings/> (last visited Jan. 27, 2022).
- **EXAMPLE: The NAGTRI Center for Consumer Protection Promotes Their Support, Technical Assistance and Information Provided to States for Lawsuits As Well As Conducting Trainings to Exchange Best Practices**  
“The NAGTRI Center for Consumer Protection (CCP) is the nation’s only entity dedicated to providing support to attorney general staff who are committed to protecting the public against consumer fraud and abuse. The CCP’s mission is to: Assist and enable state and territory attorneys general in protecting the public in the areas of consumer protection and charitable asset and entity oversight by providing information, technical assistance, and support. Facilitate cooperation among attorney general staff through open dialogue and advanced communication systems. Plan, organize, and conduct training and seminars for the exchange of ideas and information on relevant matters. Promote the development of effective programs and education for the protection of the public.” National Association of Attorneys General, NAGTRI Center for Consumer Protection, <https://www.naag.org/our-work/nagtri-center-for-consumer-protection/> (last visited Jan. 27, 2022).

- **Recent Panels at NAAG Trainings Include:**
  - **The Dangers of Algorithms and How to Investigate Their Use;**
  - **Best Practices for Settlements;**
  - **Recent Unfair Trade Practices Laws; and,**
  - **The Use of Structured Data and Everlaw to Win Cases.**

The State Center, <https://thestatecenter.org/> (last visited Jan. 27, 2022).

## The Working Group Process via the NAAG Privacy Committee

- **NAAG Convenes Working Groups “On Topics of Mutual Concern.”**  
 “NAAG coordinates state-federal working groups on topics of mutual concern; plans and executes a continuing legal education program for state lawyers; and publishes written reports, monographs, and more than a dozen newsletters on a wide range of substantive topics.” [Press Release](#), State of Connecticut, The Office of Attorney General George Jepsen, *Attorney General Jepsen Elected Eastern Region Chair of National Association of Attorneys General* (June 13, 2012)(on file with author).
- **NAAG’S Privacy Working Group Holds Monthly Phone Calls**  
 “Another strength is the ability of state enforcers to collaborate with each other. Members of the NAAG Privacy Working Group hold monthly telephone calls to discuss best practices and emerging risks.” (Danielle Keats Citron, “The Privacy Policymaking Of State Attorneys General,” [Notre Dame Law Review](#) at 44, 2016)
- **Privacy Working Group Members “Take Turns Leading Multistate Investigations”**  
 “Members of the NAAG Privacy Working Group also take turns leading multistate investigations.” Danielle K. Citron, *The Privacy Policymaking of State Attorney General*, 92 Notre Dame L. Rev. 747, 790 (2016). <https://scholarship.law.nd.edu/ndlr/vol92/iss2/5/>.
  - **Investigations Are Run Either by an Individual Attorney General Office or via a Group of Offices Called an Executive Committee**  
 “Multistate investigations are coordinated through NAAG’s Privacy Working Group. An attorney general’s office or a group of offices (known as the executive committee) will lead an investigation.” (*Id.* at 761)
  - **While States File Separate Lawsuits, “States Issue Similar Requests for Information, Share Information Through Common-Interest Agreements, and Engage In Joint Negotiations”**  
 “In multistate actions, states file separate lawsuits, though offices collaborate on aspects of the proceedings. States issue similar requests for information, share information through common-interest agreements, and engage in joint negotiations.” (*Ibid.*)
- **Certain States Always Take the Lead On Certain Types of Investigations and Lawsuits**  
 “Interviews with attorneys general and career staff have highlighted the importance of multistate efforts to share expertise and conserve resources. The Texas Attorney General’s Office, for instance, often takes the lead in bankruptcy proceedings, while Connecticut and Illinois frequently spearhead data security cases.” Danielle K. Citron, *The Privacy Policymaking of State Attorney General*, 92 Notre Dame L. Rev. 747, 790-793 (2016). <https://scholarship.law.nd.edu/ndlr/vol92/iss2/5/>.

## The National Association of Medicaid Fraud Control Units Told Their Members to Focus on Multi-District Litigation, Specifically Opioid Litigation

- **In 2019, the President of the National Association of Medicaid Fraud Control Units Said States Should “Look Beyond Their Individual State Perspective When Participating in Global Cases”**  
“Global cases or multi-state/federal cases generally involve both the Medicaid and Medicare programs and national defendants, such as pharmaceutical manufacturers ... NAMFCU encourages states to look beyond their individual state perspective when participating in global cases.” [PowerPoint Press Release](#), Randy Close, Update Medicaid Fraud Control Units to Nat'l Ass'n of Medicaid Program Integrity at 2019 Annual Conference, (Sept. 4, 2019) at slide 6.
- **In 2019, the National Association of Medicaid Fraud Control Units President Discussed the Increasing Case Load for Medicaid Fraud Control Units in Opioid Cases**  
“In September 2018, OIG published a Policy Transmittal clarifying the authority of the MFCUs to receive FFP for investigating and prosecuting fraud in the diversion of pharmaceuticals. As a result of increased Medicaid coverage of non-elderly adults receiving outpatient treatment of opioid addiction, MFCUs are handling more drug treatment center cases. In addition, MFCUs are seeing a trend in the illegal prescribing and diversion of opioids.” [PowerPoint Press Release](#), Randy Close, Update Medicaid Fraud Control Units to Nat'l Ass'n of Medicaid Program Integrity at 2019 Annual Conference, (Sept. 4, 2019) at slide 17.
- **NOTE: The National Association of Medicaid Fraud Control Units Reported a Decrease in Global Recoveries In 2019**  
“There are several reasons for the downward trend in global recoveries: Decrease in qui tam filings; Medicare Part D; Managed Care; Fewer off-label cases.” [PowerPoint Press Release](#), Randy Close, Update Medicaid Fraud Control Units to Nat'l Ass'n of Medicaid Program Integrity at 2019 Annual Conference, (Sept. 4, 2019) at slide 8.