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Regulating the Sweepstakes Industry  
Multistate Litigation  
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## Introduction

*“Congratulations!!”  
“You are a Finalist!!”  
“You are a Winner!!”  
“We will come to your house to award you your fabulous prize!!”<sup>1</sup>*

The mailings and e-mails are filled with exciting words like “winner” and “congratulations,” not to mention the coveted dollar sign followed by big numbers. However, as the saying goes, if it sounds too good to be true, it probably is. Fake lotteries and sweepstakes have swindled many Americans out of thousands of dollars, costing weeks of stress and financial hardships. For example, seventy-one year old Alexander Mirowski believed, albeit for what turned out to be only a brief moment in time, that he was “one of the luckiest men alive.”<sup>2</sup> Mirowski thought for sure that he was a million dollar sweepstakes winner, based on a stack of official looking documents he had received in the mail from a non-profit organization.<sup>3</sup> He had received two separate “Official Registration Certificates” which identified him as a one million dollar winner.<sup>4</sup> He convinced himself that his years of entering sweepstakes, sometimes getting up well before sunrise to fill out the various forms and attach the stickers guaranteeing bonus prizes for making the “early bird” deadlines, had finally paid off.<sup>5</sup> Mirowski already had plans to give money away to his family and help his son build a dream home.<sup>6</sup> However, when the

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<sup>1</sup> <http://www.ago.state.ma.us/sp.cfm?pageid=1092> (last visited May 3, 2005)

<sup>2</sup> See Diana Griego Erwin, *Enter and Win a Big Headache*, Sacramento Bee, Mar. 9, 1999, at B1.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

money did not arrive, Mirowski became skeptical.<sup>7</sup> Believing that the founder of the non-profit organization had “stolen” his money, he wanted his local newspaper to investigate and the FBI to get involved.<sup>8</sup>

In reality, Mirowski had won nothing.<sup>9</sup> Mirowski is not alone, however, in being deceived by promotional mailings from companies running sweepstakes. Just about every consumer receives mail with these claims, or similar language, in bold print.

Moreover, internet usage, and sweepstakes promotions therein, continue to grow at exponential rates with marketers and consumers embracing the new media in increasing numbers. Unfortunately, the law has not kept pace with the internet’s rapid growth and expansion. Issues continue to emerge, including the legal operation of sweepstakes. Thus, it is unsurprising that the numbers of people taken by the schemes may be growing, as consumer advocates say more and more citizens are complaining about the con.

This paper examines the role of state Attorneys General in trying to curb the deceptive tactics used by sweepstakes promoters. In the 1990’s, numerous actions against sweepstakes operators illustrated the inadequacies of existing state and federal law. Enforcement in the courts began with a few angry consumers bringing private lawsuits.<sup>10</sup> Then, state Attorneys General commenced national involvement when consumer complaints began to flood the offices of their state governments, and victims’ stories began to garner the attention of the media. This resulted in multi-state lawsuits against the two biggest sweepstakes promoters, Publisher’s Clearinghouse (“PCH”) and American Family Publishers (“AFP”). Although neither suit resulted in legal

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<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See Jane Bryant Quinn, *You're a Big Winner! (Not): Why Dick Clark, Ed McMahon and the Sweepstakes Business Should Blush*, Newsweek, Sept. 27, 1999, at 49.

liability, each settled for sizable amounts of money and agreements for self-regulation.<sup>11</sup> However, Attorneys General have not rested on their laurels; rather they have continued investigating and challenging bogus sweepstakes conducted both through the traditional media as well as the internet. Part I sets forth an overview of the sweepstakes industry. Part II briefly reviews the Attorneys General successes against PCH and AFP, the innumerable victories after these watershed cases, and the criticism they faced for their “aggressive agendas.” Part III analyzes the unique issues posed by the internet in sweepstakes promotions and the possibility for the Attorneys General call to action. Finally, Part IV provides recommendations for methods by which Attorneys General may remain vigilant by creating and maintaining educational initiatives.

## I. The Sweepstakes Industry

### A. Overview

Sweepstakes have been around for a long time. Some companies use sweepstakes mailings to sell magazines or other merchandise, while others use them to raise funds or promote various services.<sup>12</sup> Over sixty percent of American companies that promote use sweepstakes.<sup>13</sup> Major corporations such as McDonald’s and Pepsi have been operating sweepstakes with great success.<sup>14</sup> Magazine promoters, led by AFP, PCH, Reader’s Digest, Inc., and Time, Inc.,

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<sup>11</sup> *Preventing Consumers from Getting Swept Away: A Look at States’ Sweepstakes Laws*, Nat’l Ass’n of Att’ys Gen.: *Consumer Protection Rep.*, Sept. 1998 [hereinafter NAAG], available in Westlaw, 1998-SEP NAAGCPR 1.

<sup>12</sup> Julie S. James, *Regulating The Sweepstakes Industry: Are Consumers Close To Winning?*, 41 Santa Clara L. Rev. 581, 583 (2001) (citing Deceptive Sweepstakes Mailing: Hearings Before the Subcomm. on the Postal Service of the House Comm. on Government Reform, 106th Cong. (1999) (testimony of Linda A. Goldstein, Promotion Marketing Association)).

<sup>13</sup> *See id.*

<sup>14</sup> *See* Anthony N. Cabot & Louis V. Csoka, *The Games People Play: Is It Time For A New Legal Approach To Prize Games?*, 4 Nev. L.J. 197, 204 (2003/2004) (citing Stephanie Thompson, Frito-Lay Reports Doritos On-Line Ad Success, AdAge.com, <http://www.adage.com/news.cms?newsId=36574> ).

comprise the bulk of the sweepstakes industry.<sup>15</sup> “These companies flood America’s mailboxes with over one billion pieces of mail per year. Americans spend an estimated seven billion dollars annually on magazine subscriptions alone, and between twenty and thirty-three percent of those sales derive from sweepstakes promotions.”<sup>16</sup>

Sweepstakes, whether offline or online, are governed by a variety of federal and state laws that often change due to evolving interpretations issued by Attorneys General and the courts.<sup>17</sup> Types of laws include state lottery and sweepstakes laws (e.g., Cal. Penal Code §§ 319 to 329; Illinois Prizes and Gifts Act, 815 Ill. Comp. Stat. 525; Colorado Sweepstakes and Contests Act, Colo. Rev. Stat. §§ 6-1-801 to 6-1-804), state prize notification statutes (e.g., Ala. Code § 8-19D), state registration statutes (e.g., Fla. Stat. § 849.094), the federal sweepstakes law (39 U.S.C § 3001) and various state deceptive practices statutes (e.g., New York General Business Law §§ 349, 349-c, and 350).<sup>18</sup>

Most states permit sweepstakes, provided that several conditions are present. Specifically, the promoter may not require participants in the promotion to wager anything that may be deemed “consideration.”<sup>19</sup> Under the majority rule, incidental expenses or inconveniences undertaken to enter a contest promotion are not consideration.<sup>20</sup> For example, mailing in an entry form, listening to the radio, watching a television program, completing a simple survey, or calling a toll-free number do not constitute consideration.<sup>21</sup>

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<sup>15</sup> James, *supra* note 12, at 583.

<sup>16</sup> *Id.* at 583-584.

<sup>17</sup> See Terri J. Seligman, *Marketing Through Online Promotions*, 21 NO. 4 Computer & Internet Law. 22 (April, 2004).

<sup>18</sup> *Id.*

<sup>19</sup> See Cabot & Csoka, *supra* note 14, at 204.

<sup>20</sup> See *Cudd v. Aschenbrenner*, 377 P.2d 150 (Or. 1962).

<sup>21</sup> See Seligman, *supra* note 17; see also Cabot & Csoka, *supra* note 14, at 204 (the cost of a postage stamp or the need to go to a store to obtain a contest entry form do not constitute consideration). However, the minority rule, which may be followed in only a few states based on older case law, would find consideration in any activity that

One of the most popular sweepstakes is tied to the sale of particular retail products. For example, people buying a certain type of soda may have the chance to win a prize. These sweepstakes are designed to promote a legitimate business objective: increased sales.<sup>22</sup> However, there are costs associated with these benefits that are born by the promoter and competitor. For example, when Coke holds a sweepstakes promotion where the purchaser has a 1 in 12 chance to win a free soda, both Pepsi (in lost product sales) and Coke (in the cost of purchasing the prizes), and not the general public (in entry fees paid), pay the costs.<sup>23</sup> When tying sweepstakes with products, a company promoting the product will typically integrate a game piece or information about whether the patron won the prize into the product's packaging. In the Coke hypothetical, the purchaser need only "look under the cap." Thus, the consumer may obtain a game piece or determine if he or she won the prize simply by purchasing the product.

The cost of the product itself is consideration in most states.<sup>24</sup> In order to avoid illegality, the sponsor also must provide an alternative method of entry that does not require consideration.<sup>25</sup> There must be "equal dignity" for those using the alternative method of entry, meaning that entrants using the alternative method of entry are given an equal chance to win and that the alternative method is not too onerous.<sup>26</sup> For example, in the label on the aforementioned bottle of Coke provides an address where requests for free chances may be sent.

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requires participants to incur any effort or expense. *See, e.g., Seattle Times Co. v. Tielsch*, 495 P.2d 1366 (Wash. 1972) (finding that the effort required to pick teams is sufficient consideration).

<sup>22</sup> *See Cabot & Csoka, supra* note 14, at 204.

<sup>23</sup> *See generally Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co., Andalusia*, 534 So. 2d 295, 297 (Ala. 1988).

<sup>24</sup> *See 1995 Fla. Op. Att'y Gen. No. 95-21* (Mar. 21, 1995) (stating that consideration may exist where there is a benefit to the promoter); *see generally 1996 Va. Op. Att'y Gen. 1* (Apr. 19, 1996) (explaining that promotions involving the sale of products with little or no value are illegal lotteries), available at [http://www.oag.state.va.us/media% 20center/Opinions/1996opns/apr964.htm](http://www.oag.state.va.us/media%20center/Opinions/1996opns/apr964.htm) (last visited Feb. 20, 2004).

<sup>25</sup> *See Seligman, supra* note 17.

<sup>26</sup> *Id.*

## B. Elderly: The “At-Risk” Population

In the underworld of consumer scams, none are as heartbreaking as those that target the elderly.<sup>27</sup> Arguably, senior citizens are particularly susceptible to falling prey to these deceptive sweepstakes promotions.<sup>28</sup> Consumer Reports estimates that “hundreds of thousands of consumers, often elderly, are bilked out of at least tens of millions of dollars a year.”<sup>29</sup> For example, an eighty-four year old California woman spent about \$1000 per year on magazines and other items just to enter sweepstakes.<sup>30</sup> To settle her accounts, her husband was forced to sell off their retirement investments.<sup>31</sup> Richard Lusk flew to Florida to collect the grand prize in the Publisher’s Clearinghouse Sweepstakes.<sup>32</sup> He clutched a letter that read in part, “Richard Lusk, final results are in and they’re official: You’re our newest \$11 million winner.”<sup>33</sup> At eighty-eight years of age, he bought a plane ticket in California to fly to Florida and arrived at the address printed on the envelope: a distribution center where employees laughed at him and guards turned him away.<sup>34</sup> Dorothy Edouart, a self-proclaimed sweepstakes fanatic stated, “I haven’t won yet, but I’ve got the letters saying I won, and I’ll be getting my winnings very soon .... All I have to do is send in my entries and my checks.”<sup>35</sup> In a five-year period, the eighty-eight

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<sup>27</sup> Pamela Yip, *Preying on financial worries; Elderly prime targets in bilking plots*, The Dallas Morning News, December 17, 2001, at 1D.

<sup>28</sup> Becky M. Brooks, *You’re [Not] Our Newest Winner!: Chapter 20 Keeps Sweepstakes Advertising Honest In California*, 30 McGeorge L. Rev. 443, 444 (1999)(“Consumer groups indicate that senior citizens are especially victimized by deceptive sweepstakes marketing.”).

<sup>29</sup> *Id.* at 444-445.

<sup>30</sup> *See Use of Mass Mail to Defraud Consumers: Hearing Before the U.S. Senate Subcomm. on International Security, Proliferation and Federal Services, Comm. on Governmental Affairs*, 105th Cong. 62 at 61 (1998) (remarks of Attorney General Bob Butterworth)[“Mass Mail”].

<sup>31</sup> *Id.* An elderly Florida gentleman who suffers from dementia spent \$30,000 in eighteen months on a magazines sweepstakes, and his apartment was full of his purchases, but he never received the prize. *Id.*

<sup>32</sup> *See Magazine Seller’s Prize Pitch ‘Unethical,’ Suit Says*, SACRAMENTO BEE, Feb. 3, 1998, at A7 [hereinafter *Prize Pitch Unethical*] (describing Mr. Lusk’s experience and subsequent lawsuit).

<sup>33</sup> *Id.*

<sup>34</sup> *See id.* (quoting Florida Attorney General Bob Butterworth explaining the plight of these mistaken consumers).

<sup>35</sup> Douglas Frantz, *You Have Won \$10,000,000!\* Unwary People Make Sweepstakes Industry Huge Money Machine*, Portland Oregonian, July 31, 1998, at A23.

year-old woman spent \$60,000 on unread magazines and unused products.<sup>36</sup> She moved to another state when her family objected to these expenses.<sup>37</sup> The sweepstakes obsession ultimately exhausted her funds, and she sued for the right to sell the family home in order to have the money to keep playing sweepstakes and placing orders.<sup>38</sup> Most people throw away such mail because they recognize the deception and do not have the time to read it. “Yet many of our citizens do have the time, and these are, disproportionately, our senior and disabled citizens.”<sup>39</sup>

## II. State Attorneys General Strike

### A. AFP and PCH: Targets of Multi-State Litigation

Numerous actions against sweepstakes operators began with a few angry individual consumers bringing private lawsuits.<sup>40</sup> However, these private lawsuits relying on breach of contract<sup>41</sup> and common law fraud<sup>42</sup> did not meet much success. “As consumer complaints began to flood the offices of their state governments, and victims’ stories began to garner the attention of the media, state attorneys general began to get involved.”

Traditionally, in exercising their broad prosecutorial powers, state attorneys general brought legal actions against private parties on an individual and intrastate basis. That is, an attorney general would act as a single plaintiff and sue private parties in the courts of that attorney general’s state to enforce, for example, state consumer protection and antitrust laws ... Beginning early in the 1980s, and without much public attention, state attorneys general began cooperating with each other in ways they never had before. Faced with the daunting prospect of prosecuting large, wealthy, and well lawyered corporations--defendants that often

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<sup>36</sup> *Id.*

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

<sup>38</sup> *See id.* (noting that the family is countering the suit by moving for an incompetency declaration).

<sup>39</sup> *Mass Mail* at 77.

<sup>40</sup> *Quinn*, *supra* note 10.

<sup>41</sup> *See Fazio v. Time, Inc.*, 142 F.3d 443 (9th Cir. 1998) (unpublished table decision), 1998 WL 225062, at \*1; *Workmon v. Publishers Clearing House*, 118 F.3d 457 (6th Cir. 1997); *Freeman v. Time, Inc.*, 68 F.3d 285, 286 (9th Cir. 1995).

<sup>42</sup> *See Fazio*, 142 F.3d at 443, 1998 WL 225062, at \*1; *Sharpe v. American Family Publishers*, 25 F.3d 1040 (4th Cir. 1994) (unpublished table decision), 1994 WL 224180, at \*1; *Miller v. American Family Publishers*, 663 A.2d 643 (N.J. 1995).

have many times the financial and legal personnel resources of even a large attorney general's office--for violations of state law, state attorneys general began to reach across state lines for help.<sup>43</sup>

"Multi-state actions have brought a 600-pound gorilla into the courtroom. One AG going alone may not get the attention of a company or may not cause a company to change its practices."<sup>44</sup>

Although state Attorneys General sue under their own statutes and in their own courts, a group of Attorneys General, consolidating resources and sharing talent can effectively take on large cases like a national law firm.<sup>45</sup>

Unsurprisingly, AFP and PCH, the two biggest sweepstakes promoters, became the main targets of this Attorneys General "collective interest." First, in 1994, after the Attorneys General of fourteen states charged PCH with deceptive practices, the company agreed to modify the language of its mailings, publish the huge odds against winning its big prize (up to 200 million to one), and various other reforms.<sup>46</sup>

Next, in 1998, AFP entered into a settlement agreement with the Attorneys General of thirty-two states and the District of Columbia.<sup>47</sup> The settlement followed a lawsuit alleging that AFP's sweepstakes promotions violated the deceptive and unfair trade practices acts of the participating states by misleading consumers into believing that they could win the \$11 million dollar prize.<sup>48</sup> The case settled for \$1.25 million.<sup>49</sup> AFP also agreed that its future solicitations

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<sup>43</sup> Jason Lynch, *Federalism, Separation Of Powers, And The Role Of State Attorneys General In Multistate Litigation*, 101 Colum. L. Rev. 1998 (2001 Notes) (citations omitted).

<sup>44</sup> Caroline Mayer, *Attorneys General Crusade Against Corporate Misdeeds; States Often Sue When the Federal Government Won't*, The Washington Post, February 19, 2003 at E01 (quoting Virginia Attorney General Jerry W. Kilgore).

<sup>45</sup> *Id.* (quoting Attorney General J. Joseph Curran Jr.).

<sup>46</sup> See Patricia Ward Biederman, *Elderly Subscribe to Contest Obsession, Some Elderly People Take Literally those Envelopes that Scream "You're a Winner!," Others Become so Wrapped up in the Sweepstakes that it Threatens their Savings and Disrupts their Families*, L.A. Times, Feb. 7, 1998, at A1.

<sup>47</sup> *Preventing Consumers from Getting Swept Away: A Look at States' Sweepstakes Laws*, Nat'l Ass'n of Att'ys Gen.: Consumer Protection Rep., Sept. 1998, 1998-SEP NAAGCPR 1.

<sup>48</sup> *See id.*

<sup>49</sup> *See id.* (New York Attorney General Dennis Vacco reached a separate \$800,000

would not: 1) call consumers winners or tell consumers they belong to a select group with a better chance of winning unless such statements are true; 2) fail to tell consumers that they need not purchase an item to win; and 3) fail to explain how to enter without placing an order.<sup>50</sup>

Following this settlement, Attorney General Bob Butterworth of Florida announced another suit, claiming AFP had “clearly stepped over the line from advertising hype to unlawful deception.”<sup>51</sup> Butterworth and five other state Attorneys General had rejected the prior settlement that 35 other states had earlier reached with AFP as too lenient.<sup>52</sup> Wilting under the pressure in May 1999, AFP agreed to a settlement of \$4 million and an agreement to change its practices.<sup>53</sup> With regards to this settlement, people who bought magazines through the company's sweepstakes promotions in the four states will share \$3 million, while the remaining \$1 million will cover the cost of investigation by the states.<sup>54</sup> However, AFP did not admit guilt or any wrongdoing in either of these settlements.<sup>55</sup>

A class action lawsuit had been filed against AFP simultaneously with Butterworth's multi-state action. Just prior to the settlement with the Attorneys General, AFP paid \$ 33 million

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settlement with AFP in August, 1998. The settlement incorporates many of the conditions imposed on AFP from the multistate accord reached in March. Participating in the March settlement were Attorneys General Bill Pryor of Alabama, Winston Bryant of Arkansas, Grant Woods of Arizona, Daniel E. Lungren of California, Margery S. Bronster of Hawaii, Alan G. Lance of Idaho, Jim Ryan of Illinois, Carla J. Stovall of Kansas, A.B. ABen@ Chandler III of Kentucky, Scott Harshbarger of Massachusetts, Frank J. Kelley of Michigan, Hubert H. Humphrey III of Minnesota, Mike Moore of Mississippi, Joseph P. Mazurek of Montana, Don Stenberg of Nebraska, Philip McLaughlin of New Hampshire, Peter Verniero of New Jersey, Tom Udall of New Mexico, Frankie Sue Del Papa of Nevada, Michael F. Easley of North Carolina, Betty D. Montgomery of Ohio, Drew Edmondson of Oklahoma, Hardy Myers of Oregon, Mike Fisher of Pennsylvania, Jeffrey B. Pine of Rhode Island, Mark Barnett of South Dakota, John Knox Walkup of Tennessee, Dan Morales of Texas, William H. Sorrell of Vermont, Mark Earley of Virginia, James E. Doyle of Wisconsin, Christine O. Gregoire of Washington and John M. Ferren of the District of Columbia.)

<sup>50</sup> *See id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See* Larry Dougherty, *State Sues Over Sweepstakes Mail*, St. Petersburg Times, Sept. 23, 1999, at 1B.

<sup>53</sup> *See* Douglas Frantz, *Top Sweepstakes Promoter Settles Suit for \$4 Million*, N.Y. Times Abstracts, May 29, 1999 (AFP agreed to notify people who buy large numbers of magazines that no purchase is necessary, to clearly and conspicuously print on its forms that no purchase is necessary and chances of winning are not enhanced by purchases, and to print sweepstakes rules in type that is at least one-ninth of an inch high.)

<sup>54</sup> *Id.*

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

to settle claims from people who bought magazine subscriptions in hopes that doing so would increase their chances of winning its American Family Publishers sweepstakes.<sup>56</sup> The company also agreed that future sweepstakes mailings will disclose odds of winning, clearly state that no purchase is necessary and print the rules in 8-point type and the sweepstakes mailings will not say that purchases improve the chances of winning or appear to be government documents.<sup>57</sup>

The agreement ended a class-action lawsuit that charged AFP with using aggressive sales techniques and misleading consumers.<sup>58</sup> Plaintiffs' counsel paid credence to the Attorneys General stating, "Our settlement dovetails with similar measures taken by various state Attorneys General who also took a leadership role in this effort."<sup>59</sup>

Despite these suits, PCH got in trouble again in 1999. In September, it agreed to settle a nationwide class-action lawsuit for roughly \$4 million.<sup>60</sup> Under the terms of the agreement, the company was required to send out notices of the settlement to about forty million households.<sup>61</sup>

Following reports of this settlement, several Attorneys General announced a suit against PCH alleging unfair and deceptive trade practices.<sup>62</sup> Shortly thereafter, twenty-four Attorneys General joined in the suit.<sup>63</sup> According to the Attorneys General, PCH's mailings misled consumers into believing that they were on the verge of winning a major prize, and that

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<sup>56</sup> Sara Nathan, *American Family will pay \$33M settlement Sweepstakes will refund money to many subscribers*, USA Today, December 10, 1999, at 1B.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *American Family Enterprises Settles Class Action Suits; Company Reaches Agreement to Resolve Litigation; Major Step in Reorganization Completed*, PR Newswire, December 9, 1999, at Financial News.

<sup>60</sup> See Dee-Ann Durbin, *Granholm Files Suit Against Publishers Clearing House: The State's Attorney General Accuses the Sweepstakes Company of Deceptive Marketing*, The Grand Rapids Press, Oct. 13, 1999, at D2.

<sup>61</sup> See *Marketer Will Pay to Settle Suit, Sweepstakes Offers will be Revised*, Sacramento Bee, Aug. 27, 1999, at E2. PCH also agreed to provide for at least three automatic entries in future sweepstakes for those who sent in entries, allow magazine subscribers an opportunity to cancel their subscriptions and get a refund, and allow those who bought other merchandise through the company the chance to return the items for a refund. *See id.*

<sup>62</sup> *Twenty-Four Additional States File Suit Against Publishers Clearing House*, Consumer Protection Report, January 2000, at 6 (Arizona, Connecticut, Florida, Indiana, Michigan, Missouri, Texas, Washington, and Wisconsin).

<sup>63</sup> *Id.*

additional purchases were necessary to ensure their winnings.<sup>64</sup> Specifically, the Attorneys General alleged that PCH misrepresented in its sweepstakes mailings that recipients had won a prize or were “guaranteed winners.”<sup>65</sup> PCH also allegedly misrepresented special relationships between PCH and consumers or actions taken by PCH employees on behalf of consumers to ensure their winnings.<sup>66</sup> Lastly, PCH allegedly misrepresented that consumers were more likely to win a major prize if they made a purchase when, in fact, that was not the case.<sup>67</sup> In June 2001, the company agreed to pay \$ 34 million and a permanent injunction to settle charges.<sup>68</sup> The settlement prohibited PCH from using a variety of tactics, including:

- making any false, deceptive or misleading representations or omitting or concealing important facts regarding a sweepstakes;
- making any representation that a recipient of a sweepstakes mailing will win, is likely to win, or that winning is imminent;
- making any representation that the recipient is receiving individualized attention from PCH or its executives in connection with winning a prize;
- using simulated checks or legal wording representing the recipient as a winner or as one who is likely to win a prize;
- representing that the Prize Patrol is coming to the recipient’s house to award a prize or any other misrepresentation relating to the Prize Patrol;
- representing that a purchase is necessary to enter the sweepstakes or that ordering improves the recipient’s chances of winning; and
- Misrepresenting that PCH employees, real or fictitious, have personal feelings or a personal relationship with the recipient.<sup>69</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Yip, *supra* note 27.

<sup>69</sup> *National Association of State Attorneys General, 26 Attorneys General Win \$34 Million Settlement From Publishers Clearing House as Restitution for Consumers*, at <http://www.naag.org/features/pubhousereres.cfm> (on file with the Columbia Law Review).

Importantly, the permanent injunction required PCH to make the restitution money available for distribution immediately.<sup>70</sup> The Attorneys' General investigation showed that most of the consumers injured by PCH's past practices were elderly, to whom time was of the essence.<sup>71</sup>

## B. The Aftermath – Single-State and Multi-Level Actions

These widely publicized actions against sweeps mailers have led to a decline in the use of sweepstakes lists - and in the number available for rental.<sup>72</sup> "Overall use of sweepstakes lists is down maybe 35% from two years ago when the state attorneys general started cracking down," stated Carolyn Woodruff, executive vice president of Direct Media Inc., Greenwich, CT in 2002.<sup>73</sup> "The universe has also declined and sweepstakes lists are few and far between."<sup>74</sup>

And the Attorneys General crusade marched on. Although few sweepstakes cases have gone to trial, most nonetheless have ended in settlements that include big payouts and substantial limitations to the wording that can be used in the mailings.<sup>75</sup>

### 1. Single-State Action

Attorneys General have instituted individual actions and obtained single-state judgments/settlements against deceptive sweepstakes, including:

- In 2002, North Carolina Attorney General Roy Cooper obtained a temporary restraining order against Publishers Sweepstakes, alleging the defendant engaged in deceptive telemarketing practices and sweepstakes offers.<sup>76</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Larry Riggs, *Mailers Cope With Sweeps List Slump*, Direct, March 15, 2002, at 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> National Association of Attorneys General, *North Carolina Sues Publishers Sweepstakes*, Telemarketing Fraud Bulletin, October 2002, at 9.

- Ohio Attorney General Betty Montgomery announced the indictment of two Floridians on charges of operating a fake sweepstakes promotion, alleging that the defendants operated a business named “Robin Leach’s National Clearinghouse,” without evidence that TV personality Robin Leach was involved. The defendants allegedly informed consumers they won a second prize in a sweepstakes, and would have to send money to cover the “taxes” on their winnings.<sup>77</sup>
- In 2004, New York state Attorney General Eliot Spitzer announced a settlement with the maker of Tylenol, McNeil Consumer and Specialty Pharmaceuticals, in which the company agreed to stop running advertising that makes it seem a purchase is needed to enter any of its sweepstakes.<sup>78</sup> The television and print ads for the sweepstakes, in which McNeil offered a grand prize trip to the Survivor season finale, made it appear a purchase was necessary to enter, in violation of state law.<sup>79</sup> This agreement followed similar sweepstakes settlements with CVS Corp., the second-largest U.S. drugstore chain, and the Great Atlantic & Pacific Tea Co., owner of A&P supermarkets, over claims that all consumers must be allowed to enter and win sweepstakes even when they don’t buy a product.<sup>80</sup>

## 2. Multi-State/Level Action

In the immediate wake of PCH and AFP, the Attorneys General banded together again to halt the deceptive practices of another leader in the sweepstakes industry: Reader’s Digest Association, Inc., (“Reader’s Digest”).<sup>81</sup> In 2001, Reader’s Digest entered into an agreement with 32 states and the District of Columbia to pay \$6 million in restitution and make significant changes in its sweepstakes mailings to settle allegations that its sweepstakes promotions were misleading and deceptive.<sup>82</sup> The “Assurance of Voluntary Compliance” established a fund of

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<sup>77</sup> National Association of Attorneys General, *Ohio Announces Indictments in Sweepstakes Scam*, Telemarketing Fraud Bulletin, April 2002.

<sup>78</sup> *News In Brief*, New York Law Journal, September 13, 2004, at 1; *see also* Part IV (online discussion).

<sup>79</sup> *Id.*; *see also* Part IV (online discussion).

<sup>80</sup> Bloomberg News, *JOHNSON & JOHNSON: N.Y. secures \$52,000 in Tylenol ad case*, Chicago Tribune September 11, 2004, at 2; *see also* Part IV (online discussion).

<sup>81</sup> Mark S. Herr, *Reader's Digest Enters Into Multi-state Sweepstakes Agreement Agrees to Pay \$6 Million in Consumer Restitution*, New Jersey Office of the Attorney General Press Release, available at <http://www.state.nj.us/lps/p10309a.htm> (last visited May 3, 2005).

<sup>82</sup> *Id.*

\$6,081,000 to be used by the Attorneys General for restitution payments to consumers in their states who were “High-Activity” sweepstakes customers in any one of Reader’s Digest’s fiscal years ending 1998, 1999 or 2000.<sup>83</sup> In addition, the agreement required Reader’s Digest to:

- either refrain from mailing its skill contests, games that require consumers to make a purchase or payment to participate, into the participating states or advise consumers that these games are void;
- establish a “Do Not Contact List” and refrain from soliciting any future “high-activity” customers unless and until Reader’s Digest actually makes contact with that customer and determines that the customer is not buying because he or she thinks that the purchase will improve his or her chances of winning.
- send letters to individuals who spend more than \$1,000 in a six-month period telling them that they are not required to make purchases to win the sweepstakes, that making a purchase will not improve their chances of winning and that, in fact, all entries have the same chance to win whether or not the entry is accompanied by a purchase.<sup>84</sup>

The Attorneys General joined in on yet another successful multi-state cause in 2004. Thirty Attorneys General<sup>85</sup> participated in “Operation Roaming Charge,” claimed the most successful and extensive multinational enforcement operation ever directed at telemarketing fraud schemes.<sup>86</sup> The schemes uncovered in this operation included every major category of telemarketing fraud, including bogus lottery and sweepstakes schemes.<sup>87</sup> Operation Roaming Charge investigations and actions led to the discovery of more than one million victims, who suffered losses totaling more than \$1 billion.<sup>88</sup> The action began on Jan. 1, 2004, and involved

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Arkansas, California, Colorado, Florida, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Washington, West Virginia and Wisconsin.

<sup>86</sup> National Association of Attorneys General, *Telemarketing Fraud; No. 16, Thirty Attorneys General Announce Participation In Operation Roaming Charge*, AG Bulletin, October 2004.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

unprecedented coordination at the state, national and international levels to combat telemarketing fraud schemes, including: the National Association of Attorneys General, 37 United States Attorneys offices nationwide, the Criminal, Civil and Tax Divisions of the Department of Justice, 24 of the FBI's field divisions, 14 of the Postal Inspection Service's field divisions, the Bureau of Immigration and Customs Enforcement, the Royal Canadian Mounted Police, the Federal Trade Commission, the Internal Revenue Service Criminal Investigation, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the North American Securities Administrators Association, and numerous other federal, state, local and foreign law enforcement and regulatory agencies.<sup>89</sup>

This coordination of state, national and international forces met great success and well as praise. In October, the Justice Department (DoJ) announced the arrests of more than 135 individuals worldwide as part of "Operation Roaming Charge" directed at telemarketing schemes.<sup>90</sup> The DoJ said as a result of the operation more than 190 U.S. and Canadian search warrants were executed, and 70 individuals had been convicted in the U.S. to date.<sup>91</sup> In addition, state Attorneys General had brought 279 criminal, civil and regulatory actions against illegal telemarketing operations.<sup>92</sup> Over 100 separate investigations led to the discovery of more than 5 million victims, who suffered losses totaling more than \$1 billion.<sup>93</sup> "Operation Roaming Charge sends the message that law enforcement agencies in the United States and abroad are committed to working together to track down these criminals," said Attorney Gen. John Ashcroft.<sup>94</sup> Chris Swecker, FBI assistant director of criminal investigative division, maintained

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<sup>89</sup> *Id.*

<sup>90</sup> *Wireline*, Communications Daily, October 6, 2004.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*; see also National Association of Attorneys General, *Telemarketing Fraud; No. 16, Thirty Attorneys General Announce Participation In Operation Roaming Charge*, .AG Bulletin, October 2004.

<sup>93</sup> *Wireline*, Communications Daily, October 6, 2004.

<sup>94</sup> *Id.*

that the partnership approach was “a model of how to most effectively address global crime problems facing the international community.”<sup>95</sup>

### C. Criticism of Attorneys General: Top Cops or Aspiring Governors?

The states’ arguably aggressive agenda, including the multi-state assault of the sweepstakes industry, has evoked strong criticism.<sup>96</sup> First, Attorneys General might overstep their regulatory role. Victor E. Schwartz, general counsel of the American Tort Reform Association, which represents businesses, school boards, physicians and other groups that often are defendants, maintained the Attorneys General “are getting away from their role of law enforcement ... Their job is to pursue fraud, go after violations of criminal law and crack down on wrongful behavior that is cited in existing state codes ... We’ve got enough plaintiff lawyers to handle the tort side.”<sup>97</sup> “This has potential for government lawsuit abuse,” said Robin S. Conrad, senior vice president of the National Chamber Litigation Center, the public policy law firm of the U.S. Chamber of Commerce.<sup>98</sup>

Second, many critics have cautioned against multi-state actions for fear that such lawsuits usurp the Legislatures’ role in forming public policy. For example, Alabama Attorney General William H. Pryor Jr. said some of the multi-state settlements overstep the states’ legal authority and sometimes attempt to set national policy.<sup>99</sup> He further stated, “The power of the attorneys general when we join together is serious and we need to make sure we’re exercising that power in lawsuits that are well-grounded in the law ... If we’re wrong, we have a real potential of extortion-like consequences.”<sup>100</sup> Similarly, Sen. Mike Morgan, D Stillwater, the Senate

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<sup>95</sup> *Id.*

<sup>96</sup> Mayer, *supra* note 44.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

Appropriations Committee chairman, maintained, “Unfortunately, in the last decade, many attorneys general across the nation discontent with legislatures actively began to legislate public policy through multi-state litigation ... generally, these activist attorneys general have relied on common law theories rather than statutes created by the Legislature.”<sup>101</sup> Likewise, in a letter distributed to all members of the Oklahoma House of Representatives, State Rep. Fred Morgan said Attorneys General across the country were using lawsuits to circumvent the legislative process and write state law in courtrooms, stifling debate and public input.<sup>102</sup> In fact, “if no restrictions are placed on the use of litigation to develop state policy, the courtroom will soon be the venue for all policy disputes, which will maximize the influence of those who can afford to ‘lawyer up’ and minimize the voices of the poor and those who are not politically connected.”<sup>103</sup>

Third, legal experts are concerned about the Attorneys General incentive to collect large cash settlements.<sup>104</sup> For example, an Indiana University law professor opined, “Many of these cases are brought for noble and good reasons, but there’s also a certain amount of picking low-hanging fruit: After a company is identified as doing wrong, the state AGs come in and file. It’s not always a question of protecting consumers in the state, but of divvying up the pie to make sure they share in the damages.”<sup>105</sup>

Finally, Attorneys General often are called “aspiring governors” because many use their offices as stepping stones.<sup>106</sup> Critics argue that instituting such high-profile consumer cases is merely a method to attract voter attention.<sup>107</sup>

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<sup>101</sup> Capitol Bureau, *Medicine bills advance*, The Daily Oklahoman (Oklahoma City, OK), March 15, 2005, at 5A.

<sup>102</sup> Oklahoma House of Representatives, Media Division, *Lawmaker Urges Colleagues to Oppose Use of Litigation to Develop State Policy*, <http://www.lsb.state.ok.us/house/news7360.html>

<sup>103</sup> *Id.*

<sup>104</sup> Mayer, *supra* note 44.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

### III. Online Sweepstakes: The next PCH/AFP?

Online sweepstakes are everywhere. Many commercial sites offer instant win sweepstakes (e.g., click on the image of a bottle cap to see if you win) or provide online entry forms for one or more drawings.<sup>108</sup> Sweepstakes that allow one entry per day encourage repeat visits.<sup>109</sup> Some require entrants to enter a UPC code from a product and most require entrants to provide personal information that can be used for marketing purposes.<sup>110</sup>

Generally, online sweepstakes are subject to all of the same laws and regulations that apply to promotions conducted through traditional media.<sup>111</sup> When an online element is added to a sweepstakes promotion, there are specific legal and technical issues to consider. For example, online promotions are generally available worldwide, and unless a promotion is limited to a geographic area, a sponsor of a promotion would have to comply with the laws of every state and country.<sup>112</sup> The applicable standards often differ.<sup>113</sup>

Moreover, the availability of the internet as a delivery vehicle may change the debate about consideration. Recall that although most states permit sweepstakes, the promoter may not require participants in the promotion to wager anything that may be deemed “consideration.”<sup>114</sup> The issue of whether internet access to a free website constitutes consideration is unsettled. However, the majority of today’s on-line promotions are conducted without an off-line entry method and regulators have not yet objected.

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<sup>107</sup> *Id.*

<sup>108</sup> Seligman, *supra* note 17.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Linda A. Goldstein, *Conducting Innovative Advertising Without Violating the Law*, 196 PLI/Pat 259, 272 (July 2004); Linda A. Goldstein, *Online Advertising: Rules of the Net*, 822 PLI/Pat 291, 296 (March 2005) .

<sup>112</sup> Seligman, *supra* note 44.

<sup>113</sup> Heather Dewar, *Sweepstakes-related letter generates some complaints; Recipients asked to pay \$12 for ‘cash prize data,’* The Baltimore Sun, October 20, 2003, at 1B (Missouri statute outlawing misrepresentations in the advertising of goods and services is broader than Maryland’s).

<sup>114</sup> *See* note 20.

Sweepstakes operators offer these electronic sweepstakes partly because, when sweepstakes participants answer questions about themselves, this provides the operator with tremendous data mining opportunities.<sup>115</sup> Such data can be the source of extremely valuable marketing information to operators.<sup>116</sup> Moreover, answering an extensive survey online could also be deemed consideration because it requires the effort of participants.<sup>117</sup> Thus, it is unclear whether an online sweepstake that provides the promoter with data mining opportunities constitutes a legal “sweepstakes” or an illegal “lottery.”<sup>118</sup>

Further, while the majority of companies today are conducting online promotions without a free alternate method of entry, “companies are also increasingly integrating internet usage into what are essentially offline promotions therefore raising new challenges as to the role of internet access in sweepstakes promotions.”<sup>119</sup> To the extent that a promotion that is being offered through offline distribution channels, such as at retail, and also requires internet access to fully participate, arguably the requirement to access the internet in order to participate is a material condition of entry.<sup>120</sup> Therefore, separate and apart from any potential consideration issues, it is crucial that the internet access requirement be clearly and conspicuously disclosed to consumers at the outset of the offer.<sup>121</sup> Failure to disclose the internet access requirement could be deemed a material omission in violation of federal and state laws.<sup>122</sup>

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<sup>115</sup> See Cabot & Csoka, *supra* note 14, at 220.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Goldstein, *supra* note 111, at 274.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

As recent as 2002, it was reported that Attorneys General had so far stayed away from the online sweepstakes world.<sup>123</sup> Indeed, in 1999, Florida, one of the more aggressive states in prosecuting traditional sweepstakes companies, dropped an inquiry into online sweepstakes.<sup>124</sup> A sweepstakes, by definition, must be free to enter, and the state initially was looking at whether the money people paid for their Internet Service Provider accounts qualified as a cost to enter.<sup>125</sup> However, the Florida Department of State and Attorney General's office decided to drop the matter, without a shot fired, since most people could access the Internet for free through public libraries.<sup>126</sup>

Nonetheless, marketers have been cautioned to be vigilant about ensuring that every promotion adheres to legal requirements.<sup>127</sup> Thus, it is unsurprising that New York Attorney General Eliot Spitzer began the attack when he recently challenged various promotions in which the internet was used as the alternate method of entry.<sup>128</sup> First, CVS Corporation settled allegations that its sweepstakes failed to provide an in-store method of entering the sweepstakes for customers who did not make a purchase.<sup>129</sup> The pharmacy chain conducted a sweepstakes in which consumers who visited a CVS store, purchased digital camera prints and used their CVS ExtraCare Card were automatically entered in the sweepstakes.<sup>130</sup> However, CVS did not make

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<sup>123</sup> *16 Ways To Capture Customer And Prospect Email Addresses*, Circulation Management, October 2002, at 10; see also James Heckman, *Online, but not on trial, though privacy issues loom large*, Marketing News TM, December 6, 1999, at 8 (The traditional sweepstakes' online cousin, by contrast, has so far remained free of the bad-press and state-lawsuit stigma.).

<sup>124</sup> James Heckman, *Online, but not on trial, though privacy issues loom large*, Marketing News TM, December 6, 1999, at 8.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *16 Ways To Capture Customer And Prospect Email Addresses*, *supra* note 123; see also Heckman, *supra* note 123 (The traditional sweepstakes' online cousin, by contrast, has so far remained free of the bad-press and state-lawsuit stigma.).

<sup>128</sup> Goldstein, *supra* note 111, at 296.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

entry forms available at its stores for any other consumers.<sup>131</sup> The only method of entering the sweepstakes made available to people who did not purchase digital camera prints with a CVS ExtraCare Card was online at [www.cvs.com](http://www.cvs.com).<sup>132</sup> In addition to a payment of \$77,000 in costs and penalties, CVS agreed to:

- Make entry forms readily available at participating CVS retail locations, regardless of whether the consumer has made a purchase;
- Conspicuously post contest rules and regulations at participating CVS retail stores;
- Ensure that staff at participating retail locations are familiar with ongoing sweepstakes promotions and are capable of directing consumers to non-purchase methods of entry; and
- Set forth with equal prominence an alternate non-purchase method of entry in any advertisement that promotes a sweepstakes which affords automatic entry to a consumer who makes an in-store purchase.<sup>133</sup>

Similarly, A&P failed to provide or disclose adequate free methods of their sweepstakes and paid \$36,000 in penalties.<sup>134</sup>

The most significant action, however, was brought against Tylenol in relation to a sweepstakes that directed consumers to purchase Tylenol, log onto a web site and enter the UPC code from the Tylenol bottle.<sup>135</sup> Although the Tylenol sweepstakes provided consumers with a non-purchase entry method by visiting the sweepstakes web site, Spitzer argued that a consumer could only learn of such entry method by visiting the web site.<sup>136</sup> Tylenol paid \$50,000 in penalties.<sup>137</sup> This case suggests that a mail-in alternate entry method should have been provided

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Joseph J. Lewczak and Michael S. Abitbol, *Advertising, Marketing And Promotions 2004 Year In Review: Don't Cross The Line In 2005*, The Metropolitan Corporate Counsel, available at <http://library.findlaw.com/2005/Jan/18/133687.html> (last visited may 3, 2005).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

and disclosed in advertising.<sup>138</sup> In any event, the recent actions in New York could generate similar actions in other states during 2005. Online promotions clearly raise a number of unique issues which a sponsor must be sensitive to and Attorneys General will undoubtedly investigate.

#### IV. Recommendations

The Pennsylvania Bureau of Consumer Protection reported that the number of sweepstakes scam reports increased from 741 in 2000 to 1,390 in 2001, ranking among the top five complaint categories.<sup>139</sup> Some considered that good news, since it meant more people were becoming aware of being conned and wouldn't stand for it.<sup>140</sup> "They probably thought they were duped and were too embarrassed to say anything about it until the attorney general took action against Publishers Clearing House and other sweepstakes," stated Frank Donahue, director of the Bureau.<sup>141</sup>

However, despite the apparent rise in awareness, Attorneys General ought to continue their vigilance. The very fact that despite promises to change their deceptive practices both AFP and PCH found themselves under attack every couple of years for misrepresentations demonstrates that the sweepstakes industry is not to be trusted. The elderly will likely continue to be an "at-risk" population, on account of their loneliness and availability to spend time participating in the sweepstakes, and as such remain susceptible to these disingenuous tactics. Moreover, although the elderly may not constitute a significant portion of the online community at the present time, given the lightning speed of technological advances, the number of

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<sup>138</sup> *Id.*

<sup>139</sup> Gail Rippey, *You may already be a winner...; Contest offers make losers, too; Local prize takers, experts say if you have to pay, don't play*, SUNDAY NEWS (LANCASTER, PA.), April 28, 2002, at D-1.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

individuals with internet access will continue to rise at exponential rates. Protecting the “non-computer-savvy” population will undoubtedly become a concern.

As the efforts following the PCH and AFP cases show, the Attorneys General have the capacity to remain attentive to their efforts clean up the sweepstakes industry. For example, the Attorneys General must continue to place tips on avoiding sweepstakes scams on their websites and issue warnings to their residents regarding the sweepstakes scams.<sup>142</sup> Top government and business officials should renew their effort to educate consumers about telemarketing fraud and ways to protect themselves against such scams as illegitimate sweepstakes offers.<sup>143</sup> These educational initiatives should continue to include such efforts as:

- Statewide curricula to educate consumers, and particularly senior citizens, on the warning signs of offers that may not be legitimate;<sup>144</sup>
- Other state and federal educational initiatives such as Project Know Fraud, a multi-agency campaign initiated in November 1999 headed by the U.S. Postal Inspection Service, designed to educate consumers about telemarketing and direct mail fraud;<sup>145</sup>
- Joining with various other organizations, such as AARP, Family and Community Education, Volunteers of America, and District Attorneys in sponsoring a month-long statewide campaign to educate seniors about sweepstakes fraud;<sup>146</sup>
- Forming specific watch-dog groups, such as the Pennsylvania Senior Crime Prevention University and Task Force for the Protection of Older

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<sup>142</sup> See [www.ag.state.il.us/](http://www.ag.state.il.us/), [www.michigan.gov/ag](http://www.michigan.gov/ag), [www.ag.state.il.us/consumers/consumer\\_publications.html](http://www.ag.state.il.us/consumers/consumer_publications.html), <http://www.oag.state.md.us/seniors.htm>, <http://www.ago.mo.gov/newsreleases/2000/021500b.htm>

<sup>143</sup> Government Targets Telemarketing Fraud. *Direct Marketing February 1, 2000*, at pg. 9.

<sup>144</sup> *Canadian - U.S. Border Law Enforcement Cooperation*, Federal Document Clearing House Congressional Testimony June 14, 2001 (testimony of Attorney General Jennifer M. Granholm)

<sup>145</sup> *Id.*

<sup>146</sup> *Attorney General Announces Results Of November Sweepstakes Campaign; Rep. Spradley And Sen. Perlmutter Sponsor Fraud Legislation*, January 26, 2000, available at <http://www.ago.state.co.us/PRESREL/presr100/prsr17.htm> (Senior citizens were encouraged to drop off their sweepstakes and prize promotion mail at collection sites. The “November Sweeps” campaign was designed to accomplish four things: educate consumers, identify and hopefully assist victims of sweepstakes fraud, identify and prosecute the most egregious sweepstakes fraud cases, and to provide the impetus for sweepstakes legislation. Such legislation was one of the recommendations in Attorney General Salazar's Senior Fraud Action Plan released in November.)

Pennsylvanians, to educate our seniors to be aware, alert, and avoid becoming the victims of fraud; and<sup>147</sup>

- Continuing to fund the Protecting Seniors from Fraud Act, passed by Congress in November 2000. The program, sponsored at the national level by the National Sheriffs' Association (NSA), provides advice, training, and technical assistance to community-based crime prevention programs for senior citizens but does not fund them. These community-based groups typically are partnerships among local law enforcement officials, seniors, and sometimes other community members to develop and expand crime prevention programs for seniors in their communities. NSA has sponsored the Triad program with funds provided by various Department of Justice (DOJ) grants. In August 2004, Office of Community Oriented Policing Services approved a no-cost extension of the NSA grant agreement through August 2005 in order to complete the Triad program objectives over a longer time period and produce additional resource materials beyond those originally agreed to in the implementation plan.<sup>148</sup>

## Conclusion

One of the biggest sources of complaints to the Attorneys' General Offices involves sweepstakes offers that don't seem to live up to their promises. Accordingly, Attorneys General have made it priority to terminate the deceptive tactics pervading the sweepstakes industry. Although often criticized, multi-state litigation, whereby the Attorneys General of various states join together to share resources and gain power, has proven to be the most successful vehicle for attacking the large sweepstakes corporations. The unique issues posed by the internet in sweepstakes promotions may prompt Attorneys General to shift their multi-state attack on the sweepstakes industry into the internet realm. Finally, the Attorneys General should continue to educate their citizens about these misleading activities in order to ensure that the sweepstakes industry does not lapse into its former practices.

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<sup>147</sup> <http://www.attorneygeneral.gov/ppd/bcp/SCPU.cfm> (last visited May 7, 2005).

<sup>148</sup> This is the accessible text file for GAO report number GAO-05-146R entitled 'The Protecting Seniors from Fraud Act: Status of the Triad Program' which was released on November 23, 2004, available at <http://www.gao.gov/htext/d05146r.html> (last visited May 7, 2005).