

Government Enforcement & Regulated Industries Litigation

At the Intersection of Government and Business – Where It All Comes Together.

At the intersection of government and business, there exist significant government regulation and consumer protection challenges. It is here, where Winstead's Government Enforcement and Regulated Industries Litigation attorneys serve their clients, preventing, prevailing over, or minimizing the effects of any civil enforcement action.

With substantial experience in leading the defense, we represent clients targeted with civil and administrative enforcement actions brought by federal, state, local, and industry regulators. From responding to civil investigative demands and providing structured immigration compliance audits, to defending our clients in court, our comprehensive representation includes:

- **State and Federal Litigation** – Defending clients against complaints involving antitrust and fair trade, environmental, insurance regulatory, securities, and deceptive trade, advertising, and lending practices. We also prosecute challenges to agency and governmental entity actions against our clients that exceed the constitutional or statutory authority of the agency or governmental entity.
- **Civil Investigative Demands** – Responding for clients under a variety of situations, including when our client or its employees are the subject of the investigation or may have information that the government believes relevant to its investigation.
- **Multi-State State Attorneys General** – Working with multiple Attorneys General offices when our clients would benefit from a global resolution of market conduct complaints. As a result, our clients avoid private litigation in multiple venues.
- **Open Records Requests** – Defending against open records requests seeking confidential bid and trade secrets information for clients conducting business with the government.
- **Texas State Regulatory Agency Representation** – Maintaining and nurturing productive relationships with administrators, staff and key personnel because our business clients encounter diverse regulatory challenges. This allows us to prevent the escalation of matters as well as to expedite an efficient and meaningful resolution. Our agency work has included interaction with:
 - **Public Utility Commission of Texas (PUC)**
 - Representing electric and telecommunications service providers, purchasers and sellers of electric utilities, and investor-owned and municipal utilities, as well as other regulated and unregulated clients in certification, investigations, acquisitions and sales, ratemaking, and rulemaking.
 - **Texas Commission on Environmental Quality (TCEQ)**
 - Prosecuting and defending permitting challenges.
 - **Texas Comptroller of Public Accounts**
 - Representing non-insurers, insurers, and insurance-related entities in disputes over assessment of the state premium tax, franchise tax and sales tax.
 - **Texas Department of Insurance (TDI)**
 - Representing insurers, agents, and insurance-related entities in enforcement actions, licensing, ratemaking, receiverships and rulemaking.
 - **Texas Finance Commission (Banking and Savings and Mortgage Lending Departments and Office of Consumer Credit Commissioner)**
 - Representing clients in enforcement and licensing actions.
 - **Texas Licensing Agencies**
 - **Occupational Licensing** – Winstead attorneys have previously worked in the Office of the Texas Attorney General representing many of the examining boards for professionals requiring licensure. Using this insight in our occupational licensing and regulation counseling, our attorneys represent physicians, dentists, accountants, appraisers, architects, engineers, funeral homes, land surveyors, nurses, optometrists, pest control services, pharmacists, physical therapists, real estate agents and veterinarians.
 - **Service Contract Providers** – Representing clients in disputes with the Texas Department of Licensing and Regulation and the Texas Attorney General over service contract provider issues.

Examples of Client Representation:

- Represented a major title insurance underwriter and its affiliate in a hotly contested enforcement action by the Texas Department of Insurance (TDI). TDI sought stiff penalties against the companies for charging Texas consumers for mortgage lien release services. TDI contended Winstead's clients were double charging consumers because the lien release services were part of "closing the title transaction" and therefore already included in the base title insurance premium. The State Office of Administrative Hearings' judge held otherwise, agreeing with Winstead's legal briefing that the charges were entirely proper. The court's opinion provides clarity to the title industry on what services are included in "closing the title transaction."
- Successfully sought an order in U.S. District Court for the District of Columbia preliminarily enjoining the U.S. Department of Housing and Urban Development's (HUD) October 2007 regulation that would decimate housing down payment assistance programs sponsored by, among others, our clients—two faith-based organizations, a Mobile, Alabama community ministry and an Austin, Texas Baptist church. The U.S. District Court later invalidated the HUD regulation.
- Represented a national direct marketing company in a investigation by the Texas Attorney General over alleged deceptive trade practices with respect to the client's direct mail and internet advertising. The investigation ended favorably without a penalty or finding of wrongdoing.
- Successfully represented a collection of general agents who helped manage "Non-resident automobile insurance" programs providing coverage to Mexican residents driving vehicles licensed in Mexico and traveling in the United States in overturning an ex parte cease and desist order issued by the Texas Department of Insurance. The order found that the agents had engaged in fraudulent acts and the unauthorized business of insurance. After examining the evidence presented and the applicable law, an Administrative Law Judge determined the Commissioner's ex parte emergency cease and desist order should be set aside in its entirety.
- Prosecuting on behalf of an association of entertainment businesses, federal and state constitutional challenges to a new state business tax imposed on the admission of customers that applied to only certain entertainment businesses. The tax creates a competitive disadvantage for those businesses taxed with respect to similar types of businesses and other entertainment venues which are not similarly taxed.
- Representing the nation's largest debt settlement company in litigation filed by the Texas Attorney General alleging deceptive trade practices. In the suit, the Texas Attorney General seeks temporary and permanent injunctive relief and restitution, civil penalties and attorneys' fees.
- Representing an out-of-state company in the appeal of cease and desist orders and fines imposed by the Texas Department of Savings and Mortgage Lending. The department contends that the company is performing loan modifications without the proper license in Texas.
- Representing Bank Association's position defending against court challenge brought by activist groups to the Texas Finance Commissions' rules governing how pre-paid interest and discount points are treated for the purposes of home equity lending.

Experience

State Attorneys General Representative Matters

- **National Home Mortgage Lender** – As part of a multi-state team, Winstead represented a national home mortgage lender defending against alleged deceptive lending practices investigated by a State Attorneys General's multi-state taskforce. We took the lead in negotiating the settlement with the Texas Attorney General and settled the matter without litigation.
- **Direct Marketing** – Represented a national direct marketing company in a suit filed in Texas by the Texas Attorney General and in suits filed in numerous other states by those state's Attorneys General. At issue were allegations of false and misleading advertising and violations of the Deceptive Trade Practices Act and other consumer laws of various states. All matters were favorably resolved in all states without a finding of violation of any law.
- **Auto Insurance** – On behalf of a major insurer, we counseled in its response to a Civil Investigative Demand regarding the use of credit scores in underwriting auto insurance.
- **Lender** – Represented a lender making property tax loans in a lawsuit by the Texas Attorney General alleging violations of the Texas Deceptive Trade Practices Act and the Property Tax Code. The suit requested injunctive relief, rescission of thousands of consumer contracts, disgorgement of funds received and millions of dollars in civil

penalties. The matter was successfully resolved with no injunction, no assessment of civil fees or penalties, dismissal of the case and entry of an assurance of voluntary compliance.

- **Investment Company** – Following our representation of a national real estate and securities investment training company under investigation by the Consumer Protection Division of the Texas Attorney General's office, the investigation was dropped without the filing of a suit by the Attorney General.
- **Pharmaceutical** – Advised and counseled a pharmaceutical company in litigation with the Texas Attorney General alleging overpricing of drugs used in Medicaid and Medicare programs.
- **Payday Lender** – For multiple payday lending companies, we defended their interests in lawsuits and in responding to Civil Investigative Demands in connection with investigations and/or lawsuits brought by the Texas Attorney General. At issue were alleged violations of the Texas Deceptive Trade Practices Act and various consumer credit laws and regulations.
- **Communications Corporation** – Represented a large communications company responding to a Civil Investigative Demand in connection with investigation of an advertising campaign that included a lottery. The matter was resolved without the filing of a suit by the Attorney General.
- **Title Insurance** – Provide ongoing counsel to several insurers in responding to Civil Investigative Demands in connection with the Texas Attorney General's civil investigation into industry practices regarding the collecting and protecting of title information.
- **Health Benefit Cards** – Represented service providers in Civil Investigative Demand brought by Texas Attorney General regarding the use of discount health benefit cards.
- **Highway Contractors** – Defended a major highway contractor against an open records demand before the Texas Attorney General in a proceeding to decide whether contractor's bid before a state agency was public information.