Consumer Finance Monitor (Season 4, Episode 37): A Conversation with Nicholas Smyth, Senior Deputy Attorney General and Assistant Director for Consumer Financial Protection in the Pennsylvania Office of Attorney General

Speakers: Alan Kaplinsky and Nicholas Smyth

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor podcast, where we explore important new developments that impact on the consumer financial services industry. This is our weekly show. We are called Consumer Finance Monitor, and you'll note that we share the same name as our blog, which we launched over 10 years ago. We launched that blog on the very same date that the CFPB became operational, on July 21, 2011.

Alan Kaplinsky:

So as you know, on this program we cover a wide range of topics, and we very often have outside guests. Today we're going to be focusing on state enforcement actions that pertain to consumer finance. I'm very pleased to have as my guest Nicholas Smyth, and I will call Nicholas, Nick. Nick is Senior Deputy Attorney General and Assistant Director for Consumer Financial Protection in the Pennsylvania office of Attorney General.

Alan Kaplinsky:

Nick was recruited in 2017 by Attorney General Josh Shapiro to start the nation's first "mini CFPB." Nick manages investigations and litigations of 12 lawyers involving such wide ranging topics as student lending, mortgages, auto finance, payday and other high cost lending, debt collection, credit reporting, debt settlement, and scam prevention.

Alan Kaplinsky:

Public lawsuits and settlements involve a lot of major institutions, major banks, going down to many smaller non-banking institutions. In June of 2019, Nick testified before the U.S. House Committee on Financial Services about student loan servicing, a particular area on which Nick's office is focused.

Alan Kaplinsky:

To complete the picture on Nick, prior to joining the Pennsylvania office of Attorney Genera, Nick spent four years as the CFPB enforcement attorney. In fact, he was just the fourth employee at the CFPB. Previously he worked at the US Department of the Treasury with a team of attorneys that working closely with Congressional staff, drafted and revised the Consumer Financial Protection Act. Of course, the Consumer Financial Protection Act is a significant part of the Dodd Frank Act of 2009, 2010. It actually became law on July 21, 2010. Then there was a one-year period for the CFPB to be stood up.

Alan Kaplinsky:

So, before we get into – I've got a lot of questions for you today, Nick. But a very warm welcome to our podcast show.

Nicholas Smyth:

Thanks so much, Alan. It's great to be here. I've listened to the podcast many times on long drives, and I'm very glad to be here with you today.

Alan Kaplinsky:

Yeah, well I hope I've kept you awake while on those long drives, while you're listening to our show.

Nicholas Smyth:

You have. Yeah, I've learned a lot, and I always enjoy hearing your guests and you and Chris Willis and the other attorneys. It's a great show.

Alan Kaplinsky:

Thank you. So, let's start off with an easy question, and that is how are things going at Pennsylvania's mini CFPB?

Nicholas Smyth:

Well we're seeing some real progress. It's been just over four years since I joined the office, and we launched the Consumer Financial Protection unit. Working closely with other states and the CFPB, we've obtained $227 million in relief for Pennsylvania consumers.

Alan Kaplinsky:

Wow, that is a big number. How do you break that down, Nick?

Nicholas Smyth:

So that number includes $70 million in restitution, $31 million in penalties, and $126 million in debt cancellation, much of that of course is student loan debt cancellation on private student loans. Of course, like the CFPB, our impact cannot be fully quantified because injunctive relief required by settlements and voluntary changes made by companies have helped consumers avoid I estimate hundreds of millions of dollars more in additional harm.

Alan Kaplinsky:

Where do the civil money penalties go? Can you use them to finance your office or do they go into the general coffers of the commonwealth?

Nicholas Smyth:

Sure, I say $31 million in penalties. That actually breaks down mostly into money that goes to the Pennsylvania Treasury, back to the taxpayers. A small portion of it we can keep as costs, so whatever we can account as actual costs or attorney time spent on litigation might go back to our office, but the vast majority of it goes into the Pennsylvania Treasury.

Alan Kaplinsky:

Right. I see. Okay. Well that's interesting. So, at least you're able to capture some of those penalties, but I guess it's a little bit different than civil money penalties at the CFPB where there it doesn't go into the US Treasury, I don't believe. It's used to provide additional relief to consumers where there has been wrongdoing, and the company is incapable of making them whole.

Alan Kaplinsky:

So let's talk about, I know one of the areas that your office has been involved in for years, maybe even before you were there, are lawsuits against out of state car title lenders. I'm wondering if you could first, for our listeners who are not familiar with what is involved there, tell us what the practice is that you've objected to.

Nicholas Smyth:

Sure. So car title lending is basically payday loans but there's a security interest taken on the car title that the borrower puts down. So, the interest rates are typically well over 200% APR, often as high as 360 or even 500% APR. So consumers are paying astronomical amounts of interest on these loans. The loan amount might be $5,000 to $10,000, and it's very common for consumers to fall behind, and then when that happens the lender repossesses the vehicle and auctions it off to pay off the loan.

Nicholas Smyth:

In Pennsylvania, we have a very good interest rate limit which works out to between 24% and 26% APR. It's tied to a discount rate, so there's not a clear APR number. So car title lending is effectively illegal in Pennsylvania, as is payday lending. Nonetheless, we've had out of state payday lenders and car title lenders trying to make loans to Pennsylvania consumers over the past few decades. We had a big long lawsuit against a company called Think Finance and Victory Park Capital which set it up, and we had a number of victories in that case. That predated my time here. That was settled in 2019, and the settlement was finalized in 2020.

Nicholas Smyth:

So when I got here, we turned to the car title lenders, many of which set up in Delaware, right across the border from Philadelphia. Consumers are being advertised to by these title lenders. They'll buy time on Philadelphia TV stations and radio stations. They buy web addresses that are designed to look like they're Pennsylvania lenders. Then they'll make the loans. Sometimes we think they make them over the phone or the internet. Other times they'll require the consumer to drive across the border to Delaware. But it's our position, and we've believe it's correct under Pennsylvania law, that if a consumer lives in Pennsylvania, and a company from out of state tries to make a loan to them on their car title and takes out a lien on their car title, they have to abide by Pennsylvania law. So, that's the goal of these investigations and lawsuits.

Alan Kaplinsky:

Yeah. So I'm a little familiar with these lawsuits because many years ago, Nick, we represented a company that was located in Illinois, and it made car title loans to residents of Indiana who would drive across the border into Illinois, apply for and get their car title loan in Illinois. State of Indiana thought exactly like you did in your office, that that was illegal because you couldn't charge the amount of interest that this particular auto title lender was charging. We litigated that case with the state of Indiana all the way up to the 7th Circuit Court of Appeals, and we got the 7th Circuit to agree that the Indiana law insofar as it was applicable to the stipulated facts that we had agreed to with the state of Indiana, that that violated, ran afoul of the commerce clause of the US Constitution. We got a ruling in our favor by... I'm going blank on the name of the judge. A very prominent judge on the 7th-

Nicholas Smyth:

Posner, I think. It was Judge Posner, right?

Alan Kaplinsky:

Posner. Yeah, in a case called Midwest Title. Is it your believe that that case is wrongly decided, or that it's distinct. I mean, I recognize a ruling of the 7th Circuit Court of Appeals doesn't control what happens in Pennsylvania, but nevertheless, it is the 7th Circuit opinion by a very well respected judge. So, tell me why that case doesn't control.

Nicholas Smyth:

So the dormant commerce clause doctrine is a little different in the 3rd Circuit, and in fact we just won a victory on June 30th in the middle district of Pennsylvania before Judge Rambo, and she wrote, "This court does not find Midwest Title persuasive under the circumstances, particularly considering the 7th Circuit's explicit acknowledgement that the 3rd Circuit would likely have reached a different conclusion." She cites to Midwest Title.

Nicholas Smyth:

So I think that the dormant commerce clause doctrine has developed a little differently in the 7th and 3rd Circuit, and we're confident that the 3rd Circuit will decide this issue a different way. I think the issue may come before the 3rd Circuit quite soon because our case, the June 30 victory, was on a motion to dismiss. So, I'll tell you. The way it developed was that the company that sued us is called Auto Equity Loans of Delaware, LLC, a car title lender. They sued the attorney general in an attempt to block our consumer protection investigation.

Nicholas Smyth:

The opinion reaffirms the principle that attorneys general have the authority to investigate conduct by out of state actors in order to protect their state residents from harmful practices. The lawsuit dated back to three years ago, 2018, when we initiated our investigation, when we sent a routine request for documents and data to Auto Equity, asking about the title loans they'd made to Pennsylvania residents. Instead of responding to the request, they sued us in federal court in Delaware, asking the court to declare that the US Constitution bars the AG from investigating them on their assertion that they do not operate in Pennsylvania.

Alan Kaplinsky:

Okay. Anyway. So that case got dismissed you said by Judge Rambo in the middle district. Has an appeal been taken to the 3rd Circuit yet?

Nicholas Smyth:

They filed a notice to appeal, so we expect that they will appeal it to the 3rd Circuit. We think that the 3rd Circuit will affirm. Judge Rambo reasoned that the attorney general is entitled to investigate, and past plaintiffs claim that no part of the company's loan transactions took place in Pennsylvania. So she did not decide whether Midwest Title was applicable or not because she agreed with our office that this issue was that it was premature to look at that. She said, "Auto Equity presents no persuasive authority that would bar the attorney general from investigating the scope and extent of its conduct to determine whether its representations are accurate and whether the application of Pennsylvania law is appropriate. It would be improper for the court to usurp the attorney general's authority with civil fact finding and injunctive relief at this stage, just as it would be premature for the court to weigh in on constitutional questions regarding the potential outcome of the investigation and theoretical enforcement of Pennsylvania usury law.

Nicholas Smyth:

So the court's point was of course the attorney general must be allowed to investigate here because otherwise any out of state company could just say, "Well, I'm not located in Pennsylvania. I'm not doing business in Pennsylvania. Take my word for it, court. Prohibit this investigation."

Alan Kaplinsky:

Right. So, the 3rd Circuit. I would say the way you've described it, it seems like it's probably unlikely that they're going to come down with a definitive commerce clause ruling. They're probably going to say it's premature, that there's no record that's been developed. No discovery. Maybe at a later point after. Well in the Midwest Title case, we had a stipulation of facts, and so there was no question about what everybody agreed to.

Alan Kaplinsky:

Well it will be interesting to see how that turns out, Nick.

Alan Kaplinsky:

Do you have more than that one case involving auto title lenders? Are there other ones?

Nicholas Smyth:

Yeah, we do. We have one called Cash Point, which is actually about to go to trial in Philadelphia. That case, we got a sanctions order that essentially decided that all of our claims were admitted. That the company was precluded from opposing our claims. That was because they had failed to respond to our discovery requests and violated a court order on motion to compel.

Alan Kaplinsky:

Right.

Nicholas Smyth:

So that case is a similar one. Cash Point, that was their DBA. Their formal name was Dominion Management of Delaware. But we hope to go to trial sometime this month in Philadelphia, and are hoping to get a judgment soon thereafter. We've got other ones in the works, too, that are non-public. We also have a parallel case against one of the former owners of Dominion Management named Mark Williams, and that case is also in Philadelphia in state court.

Alan Kaplinsky:

I understand, well, this is sort of a curious inquiry I'm going to make. That the Delaware attorney general got involved in filing an amicus brief in your case in front of Judge Rambo. What did they say? What was their point?

Nicholas Smyth:

Yes, the Delaware Attorney General, Kathleen Jennings, filed a very helpful amicus brief with the middle district court of Pennsylvania in support of our position. Among other things, the Delaware AG wrote, "Pennsylvania and Delaware's shared border and the large populations living near it means that our respective residents regularly travel to their non-resident state for business, employment, school, entertainment, and shopping. It would be an absurd result to determine that a business such as AEL, which operates all of its Delaware locations mere miles from the Pennsylvania border, markets to out of state residents through its website, and concedes that it has some manner of contacts with Pennsylvania, is somehow completely immune from any investigation by the Pennsylvania attorney general."

Nicholas Smyth:

We were very grateful to them for filing that amicus, and I think it really reinforced our point that AGs need to be able to investigate out of state actors that are doing business with their citizens.

Alan Kaplinsky:

Did the Delaware bank commissioner join in that brief or have they taken a position?

Nicholas Smyth:

They did not join, and I'm not aware of them taking any position in the case.

Alan Kaplinsky:

Right, right. What about the Pennsylvania Department of Banking? As I seem to recall, and I think this is before you arrived at the AG's office, they were I think the first agency to get involved in this or to investigate some out of state players. Did they turn that over to the AG's office or are you co-counsel with them?

Nicholas Smyth:

So it's actually interesting, and I appreciate you mentioning it. There's a parallel case to our Auto Equity Loans of Delaware case involving Title Max of Delaware. The Department of Banking of Pennsylvania had subpoenaed Title Max, and Title Max sued the Department of Banking in Delaware. So it was a little different from our case because ours involves a voluntary request whereas the Department of Banking had sent a subpoena compelling production. But we have the same lawyer representing both of us, Alex Korn, in the office of Attorney General's civic litigation section. Alex has done a terrific job on both cases. Title Max is a little bit further ahead. That one, we got what we believe is a wrong ruling in the Delaware federal court. So then the Department of Banking appealed it to the 3rd Circuit. So that is now on appeal to the 3rd Circuit, and has been fully briefed. I don't want to go into too much detail on it, because as I say it's not my case. But we may get a ruling in that case on the dormant commerce clause issue-

Alan Kaplinsky:

Oh-

Nicholas Smyth:

From the 3rd Circuit, or as you said, the court may decide to sidestep it and decide on other grounds.

Alan Kaplinsky:

That case is already on appeal to the 3rd Circuit?

Nicholas Smyth:

Yep.

Alan Kaplinsky:

Yeah.

Nicholas Smyth:

It's totally briefed. I don't believe that oral argument is scheduled yet.

Alan Kaplinsky:

Okay, great. All right, that's the auto title lending cases. What about other cases that you've had during the past year?

Nicholas Smyth:

So in February, we announced a multi-state settlement with a large national bank that required the bank to refund over $1 million to about 7,000 credit card accounts in Pennsylvania, and a total of 25,000 accounts across 5 states. This case was important for two reasons. First, like the Wells Fargo settlement from 2018, it demonstrates that national banks are willing to cooperate with AG investigations, even when there's no bank regulator involved in the investigation. Second, the case involved the AGs obtaining additional refunds for consumers who had already been compensated through a 2018 settlement between the bank and the CFPB.

Alan Kaplinsky:

Okay. What were the violations that you alleged?

Nicholas Smyth:

The theory we pursued was that the bank overcharged consumers for interest in violation of the Card act lookback requirement. So, you'll recall one of the first statutes that was signed into law by President Obama was the Credit Card Act of 2009, and it imposed some important and very helpful protections on credit cards, one of which said that if a card issuer imposes a penalty rate because a consumer misses a payment or does something else in violation of the card agreement, the card issuer has to look back after 6 months and see if the penalty rate is still appropriate, and if there's no reason to keep that rate in place, they have to reduce the rate back down to what it was before.

Nicholas Smyth:

Essentially this bank had failed to do that properly, we said that the bank should retroactively apply the consumer's payments toward interest that it overcharged. Instead of applying them to interest, we wanted them to be applied toward the account balances, the principal balances, retroactively, which would have had a compounding effect to further reduce interest charges in future months. I guess, let me just explain it another way in case that sentence was a bit unclear.

Nicholas Smyth:

We looked at the way that the bank had charged consumers the extra interest, and it was over a period of 8 years or so. We said it's not enough to just refund consumers the interest that the consumers were overcharged because the money has value, has the time value of money, especially in the context of credit card account where the consumers are paying double-digit interest rates. We wanted the bank to retroactively say, "Whatever the amount of overcharged interest was, let's treat that as though that had been a payment toward the principal balance at the time, whether it was in 2011, 2013, whatever it was." It was a number of years ago. Then that would have reduced the principal balance, which would have reduced the amount of interest owed the following month, and would have essentially had a compounding effect over time.

Nicholas Smyth:

Of course this was a settlement so we didn't get everything we wanted, but we're very pleased that the bank provided significant additional refunds to consumers who suffered great harm, and who had to wait six to eight years to be refunded for the interest overcharges.

Alan Kaplinsky:

Yeah, I'm curious about one thing. You were, in that case, investigating a national bank, and I thought there were restrictions on your ability to sue national banks. That you can go after... You've got full jurisdiction against non-banks and state-chartered banks, but how are you able to pursue a national bank?

Nicholas Smyth:

So, we cannot use our subpoena powers on national banks, right? The preemption doctrine prevents us from compelling them to respond to our subpoenas-

Alan Kaplinsky:

The visitorial powers right? And that's what-

Nicholas Smyth:

Exactly-

Alan Kaplinsky:

It's called.

Nicholas Smyth:

Exactly, in Cuomo v. Clearinghouse, I believe.

Alan Kaplinsky:

Right.

Nicholas Smyth:

But we are able to sue them and get discovery, civil discovery, just as we would with any other company. So that's our leverage. Of course we didn't have to sue in this case, and we didn't have to sue in Wells Fargo either, because the national banks recognized that if we wanted to we could sue, and then we would get discovery, and it would become a public lawsuit at that point.

Alan Kaplinsky:

Right.

Nicholas Smyth:

So in recent years, the national banks have been quite cooperative with the AGs, and this dates back to the mortgage settlement investigations, where the banks were very willing to work with the AGs. Of course in the mortgage settlement, the federal bank regulators were involved, too. So that's why I say I think this case and the Wells Fargo case are interesting in that in these two, we were doing it on our own as AGs. I think it's really good that the banks are willing to work directly with us, and we don't have to sue them in order to get what we need.

Alan Kaplinsky:

Got it. Got it.

Alan Kaplinsky:

So you mentioned you've got a trial coming up in Philly in one of these cases involving an out of state car title lender. Do you have any other trials that are coming up or is that the one?

Nicholas Smyth:

That's the main one. It's interesting. As you may know, in Philadelphia state court, they don't even give you a date until maybe a week or two prior. So all we've been told is that it's in the September trial pool. It could get bumped to October, but we're ready to go. This is a case where it dates back to October 2018. We sued Dominion Management alleging that they had collected $5.7 million from PA consumers since 2013 towards repayment of these illegal car title loans.

Nicholas Smyth:

As I said earlier, after one defendant sadly passed away, the other defendant refused to sit for a deposition, and he produced very little in the way of discovery, even after the court issued an order granting our motion to compel.

Alan Kaplinsky:

Right. Okay.

Alan Kaplinsky:

So, let's turn to another area. I understand you've been very active in investigating companies that have violated the so-called Reynold Purchase Agreement Act. Wondering if you could tell us what that act is. I assume it's a fairly new piece of legislation. And what you're alleging in those cases.

Nicholas Smyth:

Sure, so the Reynold Purchase Agreement Act, or RPAA, is a statute that was passed primarily to govern the large rent-to-own companies like Rent-A-Center. We started looking at it a couple of years ago because we learned that there were these out-of-state companies that were doing what they called virtual rent-to-own, where they were going into furniture stores, and telling them, "Hey, you can offer a rent-to-own option to consumers who don't qualify for other forms of financing." It is essentially a very expensive loan. Consumers think of it as a loan. But they design it so that it fits under the Reynolds Purchase Agreement Act as a rent-to-own, similar to what Rent-A-Center or Aaron's would do.

Nicholas Smyth:

In April we announced we'd entered into settlements with seven or eight furniture stores concerning the RPAA's hang tag law. The hang tag law is a requirement that a physical tag must be attached to each item of property offered for rent, and that tag has to include four pieces of information: the periodic payment amount, the number of payments, the cash price, and the leasing fees and total costs to the consumer.

Nicholas Smyth:

So we found that none of the furniture stores in Pennsylvania were complying with this requirement, and without the hang tags, consumers were getting into these rental agreements and paying leasing fees up to twice the cash price of the item, which is equivalent to 152% APR. Consumers had no idea they were getting into this because the store employees were presenting these to them as same as cash deals, because that was the enticement to get into the agreement. If you pay it off in 90 days, it would be same as cash. But the consumers weren't told ahead of time, "You have to intentionally make extra payments to pay it down in 90 days." The lease was set up so the payments would be over the course of the year, and required the double the cash price amount.

Nicholas Smyth:

You've probably heard of some of the furniture stores we settled with. They're mostly located in the Philly area. The biggest one is Mattress Firm, which of course is national, and they paid a $50,000 penalty and agreed to stop offering rental purchase agreements in their stores.

Alan Kaplinsky:

Okay. Are there more actions forthcoming under this hang tag law?

Nicholas Smyth:

Yes, we have additional investigations underway, and I hope we'll have further settlements to announce soon. In May 2020, we sued a Utah-based rent-to-own finance company called Snap Finance. This case is led by Jill Ambrose from our Pittsburgh office. Snap was one of the out-of-state companies I mentioned earlier that had partnered with more than 1,000 Pennsylvania retailers and played a significant role in perpetuating the violations of the hang tag law and other consumer protection laws.

Nicholas Smyth:

We are both taking on the furniture stores themselves that are physically offering the furniture, but also going after the out-of-state companies that are setting up the rental purchase agreements, and ultimately that are profiting off of them the most. We've got more in the works on that front.

Alan Kaplinsky:

Right. Okay. Now, tell us also about the Harbour Portfolio settlement that I understand involves contracts for deeds. What is, first of all, a contract for deed?

Nicholas Smyth:

So, this is another great case out of Pittsburgh, led by Susan Apel. A contract for deed is a strange product which kind of fits in between the mortgage laws and the landlord-tenant laws. The way it was set up here, we alleged, was in blatant violation of the mortgage laws. But essentially, the company was trying to have its cake and eat it too, where they bought up all of these properties that were run down. Mainly they bought them from Fannie and Freddie after the financial crisis.

Nicholas Smyth:

Instead of fixing them up and renting them out, the company, Harbour Portfolio, decided to put up For Sale by Owner signs in the front yards, and then get consumers to come in and think that they were buying the property with something that looked like a mortgage. Then the consumer was responsible for fixing it up. But the homes were in terrible condition. They were sold without disclosure of defects. They often lacked basic essentials like heat, electricity, or appliances. As a result of our settlement, Harbour and its leader Charles Vose, are going to pay $500,000 in restitution to consumers they scammed, and put into these uninhabitable homes.

Alan Kaplinsky:

Wow, that's quite a case. Let me ask you another thing that's been gnawing at me, and I'm wondering if the attorney general's office, in particular your part of it, are doing anything about it. I'm talking out of personal experience now. I get in the course of the day, particularly on my landline. Literally, if I answered the phone every time it rang, I would guess two dozen calls that are trying to scam me in one way or another. The most common one is the one where they're claiming that your warranty has expired, and you had best take care of it before it runs out. That one you hear jokes about that all the time because it must be all over the country.

Alan Kaplinsky:

Then the really pernicious ones are the ones that claim that they're representing the IRS or some agency of the federal government, Social Security, and they're telling the person on the other end of the line, "You're in big trouble. You owe a lot of money to the IRS. There's a warrant for your arrest with the local police department, and if you don't take care of this today, you're going to end up in jail." There are all kinds of variations on that theme. I've gotten calls claiming they've seized something in customs, some kind of illicit... It sounded like it was drugs, and we understand that you're involved in it, and you're in deep trouble. This goes on and on. Is there anything that your agency or any other agency is doing about it? I got to imagine they've got to be stealing millions and millions of dollars from particularly elderly and uneducated consumers.

Nicholas Smyth:

Yeah, it's absolutely horrible. I agree with you. I get these calls a lot too, and it's just heartbreaking. We get these complaints, people losing hundreds of thousands of dollars. We got one the other day where someone had lost $1.4 million, wiring it from his bank account, liquidating his retirement account, because he thought that someone had used his information to smuggle drugs, as you said.

Nicholas Smyth:

We have tried to take this on in two ways. One is public facing, just reminding consumers, "don't answer the phone." I mean, I would tell you get rid of your landline because it's only scammers calling.

Alan Kaplinsky:

Yeah, I am.

Nicholas Smyth:

We tell folks never to answer the phone if they don't recognize the number. If it's a legitimate call, the person will leave you a voicemail or they'll send you a text. But it never makes sense to answer unknown numbers these days. The other thing we're doing is we have partnered with big retailers because a lot of the scammers as victims to pay with retail gift cards from Target or Wal-Mart, or Apple or Google Play. So, we announced back in November 2018 a deal with Wal-Mart, Target, and Best Buy, which was not a settlement. It was more of a voluntary initiative where the retailers after working with us and talking with us about the problems, agreed to take on some additional steps to prevent victims from being scammed using their cards.

Nicholas Smyth:

I don't want to get into all the details because a lot of the work that they do, they want to keep it private from the scammers. But a good example was they reduced the gift card limit. It used to be that a victim could buy up to I think $5,000 in gift cards in one transaction. Two of the retailers significantly reduced their limits. They also placed restrictions on redemption of retail cards or other gift cards. It used to be that the scammers would launder the money by taking the victim's Wal-Mart gift card and using it to buy an iTunes or a Google gift card, and then they can sell that on the black market. Well, the retailers said, "You can't do that anymore. You can't use a retail gift card from one of our stores to buy a third-party gift card." They've also enhanced employee training, right, trying to empower employees to recognize a scam victim and try to stop the scam.

Nicholas Smyth:

We've been talking to banks about it, too, because as I said, some of the biggest loses come in wire transfers. The banks have basic procedures in place to make sure that the consumer is wiring it to the account that they intend to wire it to, but I don't think the banks are doing enough to identify a scam victim and stop a scam in its tracks. I think there's actually a lot the bank can learn from Wal-Mart. Wal-Mart has developed some amazing machine learning and AI that they use to identify potential scams just by studying the data. They have tons of data on their gift cards.

Nicholas Smyth:

I've actually encouraged the banks to talk to Wal-Mart about what they're doing because I don't think the banks are doing enough to study their wire data and recognize patterns and say to the branches, "Okay, this is the trademark of a scam victim, of a scammer in process," and prevent the $1.4 million loss. Maybe you can't stop the first $100,000 or whatever it is, but in the case of this victim, the person wired I think about 11 transfers over the course of six weeks. At what point does the bank need to wise up and realize that this is a scam, as opposed to some kind of legitimate transaction?

Alan Kaplinsky:

Wow. Are most of these scams being perpetrated from offshore? Is that the reason why it's become virtually impossible to identify who they are and to prosecute the people?

Nicholas Smyth:

Yeah, I think a lot of it is offshore. But they'll often have mules on shore who are participating in the scam, right? Because a lot of the retailers don't allow their gift cards to be used overseas. So if someone is getting stolen Target gift cards, there needs to be someone in the US who can either order something online or go into a Target store and buy the goods and then sell them on the secondary market or otherwise get the money out.

Nicholas Smyth:

Our criminal section did a case a number of years ago where it was the Jamaican lottery scam. There was a woman in Pittsburgh, who was basically accepting amounts of money through the mail, and then shipping it off to Jamaica. She herself was a victim, in the sense that she thought she was going to get some huge pay day at the end, but we ended up having to charge her because our office and other law enforcement had warned her many times, "This is a scam. You need to stop doing this. You're in cahoots with the scammers." And she kept doing it. So it's really hard. I think that there needs to be a lot more done at the federal level. We AGs try to do what we can, but we are limited by our resources and our size. I think the FBI is going after the biggest scammers, but I'd love to see a lot more resources devoted to this at the federal level.

Alan Kaplinsky:

Yeah, and I think, I agree with everything you've said, and I also think more should be done both at the federal and state level to educate people, particularly vulnerable consumers, about not falling prey to these people.

Alan Kaplinsky:

Let me complete the other... Want to get into one other area before we wrap things up, and that is the CFPB. Have you noted with the change in administrations and the fact that there is now a different acting director of the CFPB, David Uejio, that anything has changed in terms of the level of cooperation or cases that you're collaborating with them on? Wonder if you could comment on that.

Nicholas Smyth:

You know, we've always had a good relationship with the CFPB. I think obviously we had our disagreements with Director Kraninger, and we publicly criticized her on the payday lending rule, for example, and some other proposals. So, we've definitely been pleased with the changes coming out of the front office.

Nicholas Smyth:

At the staff level, not much has changed. We've always had a great relationship working together on cases. For example, the Navient lawsuit that the CFPB has been working on since Director Cordray was there. We have our lawsuit, and we've always worked very well together on that. So, I think we're excited about the new leadership.

Nicholas Smyth:

I'll also mention, Rich Cordray going over to the FSA, which is the part of the Department of Education that manages the federal student loans. That has been a major change. We used to really have to do battle with ED, which was blocking us from getting the data we needed for our student loan servicing cases. Now that Cordray's in charge, he has made cooperating with the CFPB and state AGs a top priority, and we really appreciate that. He's rolled back some of the bad policies of Secretary DeVos, and we're looking forward to working with him more.

Alan Kaplinsky:

Yeah. The other thing I want to ask you is how involved is your office in multi-state investigations, that is in working with other state AG offices? Is there much of that that you're involved in?

Nicholas Smyth:

Yes. So we are involved in a number of large multi-states, and some smaller ones too. That's always a really rewarding part of the job because we can leverage the resources of other AGs, and work together to take on these big national players. The opioid lawsuits, obviously, were a big one. I wasn't involved in those, but that was a big focus for our office.

Nicholas Smyth:

You probably know John Abel on our team. He helps lead our multi-state work. So we are working on a number of big multi-states, some of which I hope will be wrapped up this year but we'll see.

Alan Kaplinsky:

Okay. Well let me, before we sign off, Nick, let me ask you is there anything else that I failed to ask you about that is really important to make sure our listeners are aware of.

Nicholas Smyth:

I think you covered it, Alan. No, I appreciate you having me on the show, and it's been an interesting conversation. Look forward to seeing you in person whenever we can get back to the ABA conferences.

Alan Kaplinsky:

Yes, I'm definitely looking forward to that. Not sure when that will happen, but again, I want to thank you very much for taking the time out of your day. I know you're very busy working on a variety of matters. I also want to thank all of our listeners today who downloaded the program. For those listeners who are not regular listeners, let me just remind you that our podcast show is a weekly show. We release a new podcast every Thursday, except for in December. Over the holidays we take a couple of weeks off. But it's available on our website. It's available essentially on whatever platform you use for podcasts, be it Spotify, Google Play. We're really on every single platform. So, with that, I want to bring our program to an end.