

## CLIENT ALERT

### Will State Attorneys General Pursue Enforcement Demanding COVID-19 Refunds for Consumers?

Apr.28.2020

In the early stages of the COVID-19 crisis, State Attorneys General began asking companies to absorb the losses of travel and event cancellations as well as other consumer refund requests. Specifically, State Attorneys General urged companies to refund consumers for these cancellations and the unforeseen inability to use prepaid tickets. At the time, these statements were merely requests that businesses bear the losses from cancellations, not consumers. However, recent Attorney General actions and announcements, at a time when private class action lawsuits seeking refunds are prevalent and growing, indicate that these previous refund requests could soon become enforcement matters through the many legal tools available to State Attorneys General. Some states have already begun to enforce their laws in this context.

Businesses have been inundated with refund requests in light of COVID-19 cancellations. To avoid issuing a large number of refunds at once, some companies have avoided issuing refunds when events are merely postponed rather than cancelled. In other situations they are offering credits as opposed to refunds. In some cases, businesses have even retroactively altered refund policies to allow themselves to delay issuing a refund or to provide consumers with credits or other compensation in lieu of a refund. In response, private class counsel have brought a variety of class action lawsuits seeking refunds for cancelled sports seasons, concerts and other events, and travel, among other things.

Like the plaintiffs in these class actions, it is likely that State Attorneys General will view businesses' desire to retroactively change their refund policies or otherwise adopt a wait-and-see approach as unfair to consumers. Attorneys General may look at whether consumers are unable to attend a rescheduled event, that the timing or nature of the rescheduled event will cause consumers to lose the benefit of their bargain, or that consumers need prompt refunds to pay for living expenses given a downward shift in their financial positions due to the current pandemic. Some Attorneys General have already begun to affirmatively pursue refunds for consumers. For example, New York Attorney General Letitia James recently negotiated a settlement for nearly \$425,000 to compensate 2020 season pass holders for the closed Fantasy Island amusement park. Other Attorneys General have begun to seek refunds on behalf of consumers for gym and fitness club memberships, in addition to asking these businesses to relax their often strict cancellation policies, such as the need to cancel in-person. Attorneys General have also obtained refunds for travel related losses on consumers' behalf. These actions and announcements indicate that State Attorneys General will continue to protect consumer interests when it comes to COVID-19 related refunds. It also demonstrates how the State Attorneys General will pursue enforcement in contexts outside of price gouging during the pandemic.

Based on their announcements since the COVID-19 crisis began, it is likely that many State Attorneys General will conclude that consumers deserve timely refunds. If more Attorneys General begin to join consumers in actively seeking refunds for cancelled events through enforcement, this will add to businesses' potential exposure to liability beyond private class action lawsuits. Therefore, in addition to preparing for possible litigation over COVID-19 related cancellations, businesses should take note of the potential for enforcement by State Attorneys General and closely watch how the States are attempting to protect consumers in this context.

---

---

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Clayton S. Friedman**

Partner – Orange County  
Phone: +1 949.798.1316  
Email: [cfriedman@crowell.com](mailto:cfriedman@crowell.com)

**Michael Yaghi**

Partner – Orange County  
Phone: +1 949.798.1396  
Email: [myaghi@crowell.com](mailto:myaghi@crowell.com)

**Natalie O. Ludaway**

Partner – Washington, D.C.  
Phone: +1 202.624.2613  
Email: [nludaway@crowell.com](mailto:nludaway@crowell.com)

**Joselle Albracht**

Senior Counsel  
Phone: +1 949.798.1332  
Email: [jalbracht@crowell.com](mailto:jalbracht@crowell.com)

**Suzanne Trivette**

Associate – New York  
Phone: +1 212.895.4312  
Email: [strivette@crowell.com](mailto:strivette@crowell.com)