



NEW MEXICO

# Attorney General

PATRICIA A. MADRID

Report of Activities, January–July 2006

## FINANCIAL RECOVERIES FOR NEW MEXICO

### Ameriquest Mortgage

In one of the largest settlements of its kind in history, Ameriquest Mortgage Company, the nation's largest sub-prime lender, agreed in January to pay \$295 million to consumers and make sweeping reforms of practices that states, including New Mexico, alleged amounted to predatory lending.

As a leader at both the national and state level in the fight against predatory lending practices, Attorney General Patricia Madrid was part of the Executive Committee, which also included the Attorneys General of Iowa, Arizona and Minnesota, who investigated Ameriquest's business practices. The investigation concluded that Ameriquest had engaged in unfair and deceptive activities which included inadequate disclosure of prepayment penalties, discount points and other loan terms; unsolicited refinancing offers that did not adequately disclose prepayment penalties; improperly influenced and inflated appraisals, and encouraging borrowers to lie about income or employment to obtain loans.

Attorney General Madrid announced that the estimated minimum restitution amount to be distributed in New Mexico is \$913,800 to 1,523 individuals who had obtained mortgages through Ameriquest from January 1, 1999 through April 1, 2003.

Another \$120 million in restitution will be allocated to the settling states based on the percentage of total Ameriquest loans (measured in dollars) held by consumers in each state, and will be used to compensate Ameriquest customers who obtained mortgages between April 1, 2003 to December 31, 2005. Because Ameriquest pulled its businesses out of New Mexico after the legislature passed the Home Loan Protection Act in 2003, the state's share of this second restitution is expected to be \$236,756.

The company will pay an additional \$30 million to the settling states to cover their costs and to fund consumer education and consumer protection enforcement programs. As a member of the negotiating team, Attorney General Madrid's Office will receive \$900,000.

### South Valley Superfund Case

*“New Mexico will not tolerate corporate actors who defile our natural resources.”*

—Attorney General Patricia Madrid

Also in January, Attorney General Madrid announced a settlement with Chevron for \$7.5 million in the South Valley Superfund case, which involved polluting that area's groundwater with industrial waste. The case, first filed in 1999, remains active against two other major defendants, General Electric and American Car Foundry.

The settlement comes as a result of the 10th Federal Circuit Court of Appeals requirement for mediation between Chevron and the State of New Mexico. As part of the settlement agreement, remediation of the groundwater will continue under the supervision of the New Mexico Environment Department; and attorneys representing the state were awarded costs and fees that amounted to \$2.7 million. The case against Chevron will be dismissed and the settlement proceeds will be dispersed to the New Mexico Natural Resources Trustee.

Attorney General Madrid promised to press forward with the case against General Electric, “which I believe has been the worst corporate actor in its operations in the South Valley.”

### Microsoft

Early in 2006, Attorney General Madrid negotiated the final settlement terms of an anti-trust lawsuit against Microsoft, originally brought by 19 states and the U.S. Department of Justice. The preliminary settlement had been reached in July of 2001. As part of the settlement, Attorney General Madrid required that New Mexico would receive the same benefit from Microsoft that the company had agreed to pay to resolve lawsuits with any other state that continued in the litigation.

As a result of the negotiation, Attorney General Madrid received \$1.7 million in vouchers and \$1 million in cash for the State. The Attorney

General will be awarding the vouchers to non-profits and other selected entities to purchase hardware or software; the certificates are available in denominations of \$1,000, \$5,000, \$10,000, \$25,000, and \$50,000. The cash went into the General Fund with the proviso, approved by the Legislature, that \$550,000 would be available to the Attorney General's Office for consumer education and alert programs.

the parties had engaged in a conspiracy to inflate and manipulate HealthSouth's financial statements by creating false revenue and income.

As a result of this corporate malfeasance, various public institutions lost hundreds of millions of dollars. Michigan's public institutions, for example, lost \$30 million and New Mexico's public institutions lost approximately \$14 million.

### SmithKline Beecham

In March, Attorney General Patricia Madrid announced that a class action lawsuit settlement had been reached with SmithKline Beecham Corporation—dba GlaxoSmithKline ("GSK")—involving claims of antitrust law violations that prevented lower-priced generic versions of GSK's antidepressant drug Paxil from being manufactured. As a result of these actions, the price of Paxil was kept artificially high. The settlement reached with GSK provides for a payment of up to \$14 million to 49 states and Washington, D.C. New Mexico's purchases during that period totaled \$5,628,268, \$5,431,510 of which was attributable to Medicaid; the balance was attributable to state agencies.



ATTORNEY GENERAL MADRID DISCUSSING HER INTERNET SAFETY GUIDE WITH 106.3 TALK FM MORNING HOSTS.

One of the first consumer education projects funded by the Microsoft settlement was the Attorney General's **Internet Safety Guide for Parents and Teens**, a 56-page booklet that addresses the dangers of online predation (please see "Internet Crimes Against Children" activities on p. 4 and "Recognition" on p.11 for more information).

Under the proposed settlement, the class action against HealthSouth and certain of its former directors and officers will be settled for a total of \$445 million, consisting of HealthSouth common stock and warrants valued at \$215 million, and cash payments by HealthSouth's insurance carriers of \$230

### Qwest Communications

In July, Governor Bill Richardson and Attorney General Patricia Madrid announced a major settlement with Qwest Communications that will invest \$265 million in new technology and make New Mexico one of the most "wired" states in the country.

*"I am extremely pleased with the strong prosecution of the HealthSouth litigation and the aggressive settlement strategy. This settlement helps the citizens of New Mexico who have found themselves to be victims of corporate malfeasance."*

— Attorney General Patricia Madrid

### HealthSouth Securities Fraud

In February, Attorney General Patricia Madrid announced that HealthSouth Corporation had agreed to a \$445 million settlement of the federal securities class action lawsuit that had been filed against that company, its former auditors Ernst & Young, and its primary investment bank UBS, involving an immense and pervasive fraudulent scheme. Over a decade,

million. Ernst & Young and UBS remain as defendants in the federal securities class actions.

Attorney General Madrid served as the Court-appointed Co-Lead Plaintiff on behalf of two New Mexico agencies, the Educational Retirement Board and the State Investment Council.

The settlement includes investments of \$15 million over three years (or \$5 million per year) in new technology for the most disadvantaged schools across the state; Attorney General Madrid led the negotiations in this area. New laptop computers will be purchased through the New Mexico Students and Teachers Reaching Optimal New Goals, or STRONG Project, which will initially reach 5,900 stu-

dents. The Project targets 7th and 8th grade students and teachers in minority-rich schools with students considered to be a high risk of dropping out.

The remainder of the settlement requires Qwest to spend \$250 million dollars over a 42-month period in the following areas: \$81 million to extend high-speed Internet access to an estimated 75,000 additional customers (families and businesses), \$23 million to upgrade Qwest’s redundancy and route diversity (to prevent failure of service) within its telecommunications network, and \$20 million for cable improvements. When the projects are completed, Qwest will invest \$100 million to implement a list of priority projects to augment its capacity and improve services to its customers.

If Qwest fails to complete the terms of the settlement, the company will be required to refund the unspent remainder of the \$265 million to each one of its New Mexico customers.

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## CRIMINAL PROSECUTIONS AND INVESTIGATIONS

### Medicaid and Insurance Fraud

In February, Valerie Potter, business manager of Albuquerque-based New Life Counseling, was indicted on 118 counts of Medicaid Fraud and Insurance Fraud. This case, the result of a three-year investigation, is the first one jointly prosecuted by the Attorney General’s Medicaid Fraud Control Unit and the New Mexico Insurance Fraud Bureau. The indictments specifically alleged that between November 2002 and December 2003, Potter submitted false claims by billing under the names of counselors who were no longer associated with

New Life, and also billed for services of unlicensed therapists or therapists who were not supervised in accordance with the requirements of state regulations.

### Securities Fraud

In April, after a trial that lasted two weeks, Henry A. Rivera was found guilty on all 25 counts of securities fraud involving more than 50 victims. In July, Rivera was sentenced to 117 years in prison and is required to serve 37 years behind bars. Judge Denise Barela Shepherd suspended the remaining 80 years.

The Office of the Attorney General had indicted Rivera for defrauding investors of life savings totaling more than \$6 million. However, Rivera fled to Mexico before the indictment could be finalized. He was deported in September of 2003 and arrested by FBI agents on a federal warrant for unlawful flight to avoid prosecution. The prosecution of the Rivera case was a collaborative effort between the Attorney General’s Office and the Securities Division of the New Mexico Regulation and Licensing Department.

### Astorga Extradition

Also in April, the Attorney General’s Office welcomed the assistance of Attorney General Patricia González Rodríguez of the State of Chihuahua, Mexico, in the deportation to New Mexico of Michael Astorga, arrested in Juarez and accused of killing Bernalillo Sheriff’s Deputy James McGrane, Jr. The deportation proceedings had been potentially complicated by the fact that Mexico was entitled to charge and try Astorga for possession of firearms and drugs discovered in his room when he was taken into custody.

### State Treasurer Bribery Case

In June, Attorney General Patricia Madrid announced the indictment on state charges of

former New Mexico state treasurer Michael Montoya, investment advisor Kent Nelson, and Montoya’s co-conspirators Angelo Garcia and Leo Sandoval. The indictments stem from the recent federal trial against former state treasurer Robert Vigil on corruption charges. In his testimony at the trial, Montoya had described soliciting and accepting bribes from individuals such as Kent Nelson, who wanted to do business with the state.

In exchange for their cooperation and testimony, co-conspirators Montoya and Angelo Garcia were allowed to plead guilty to only one count of extortion, Nelson was permitted to plead guilty to only one count of mail fraud, and Leo Sandoval was granted immunity. However, Attorney General Madrid had not granted immunity on any state charges. When she announced the indictments, the Attorney General said that her office would seek restitution to the state “of any ill-gotten gains of these individuals. We know that millions of dollars changed hands during the unlawful activities and a determination needs to be made as to whether any of that money should be rightfully returned to the state.”

### Memorandum of Understanding with Chihuahua

In June, the state of New Mexico signed an historic Memorandum of Understanding (MOU) with the state of Chihuahua, Mexico, which formalizes the cooperative relationship between the two states (and the two countries) in criminal prosecution efforts. The collaboration began during the tenures of Attorney General Patricia Madrid and Chihuahua Attorney General Patricia González Rodríguez, and has facilitated the prosecution of some of New Mexico’s most heinous criminal cases.

In addition to their collaboration on criminal

matters, Attorneys General Madrid and González have conducted workshops to share information on law enforcement techniques and procedures, including effective ways to combat and prosecute such crimes as domestic violence and child abuse.

Representing Attorney General Madrid, Border Violence Division Director Maria Sanchez-Gagne joined Governor Bill Richardson, Chihuahua Governor Jose Reyes Baeza and Chihuahua Attorney General Patricia González Rodríguez in signing the MOU in Chihuahua.



ATTORNEY GENERAL MADRID WITH CHIHUAHUA, MEXICO ATTORNEY GENERAL PATRICIA GONZÁLES RODRÍGUEZ.

## INTERNET CRIMES AGAINST CHILDREN ACTIVITIES

### Internet Safety Guide

In January, Attorney General Patricia Madrid released her office's new **Internet Safety Guide for Parents and Teens**, a 56-page booklet that addresses the dangers of online predation. It offers advice to parents on how to protect their children and to teens about how to protect themselves. The booklet also teaches parents the warning signs that indicate their child may become a victim of a cyber predator, how predators "groom" a potential victim, and the potential consequences of online activities.

In addition, teens learn how to choose safe on-screen names, how to spot a potential predator's advances, and what information they should never provide online.

*"My office's Internet Safety booklet will open your eyes to the methods used by cyber predators to make contact with your child both online and in real life."*

— Attorney General Patricia Madrid

The design, printing and mailing of the **Internet Safety Guide** were paid for with money from a multi-state anti-trust settlement with the software giant, Microsoft. The New Mexico Legislature also gave approval for the settlement money to be used for this effort, as well as for other publications from the Attorney General's Office.

In July, the **Internet Safety Guide** won a Cumbre Gold award from The New Mexico Chapter of the Public Relations Society of America (NMPRSA).

### Matthew Ward

The release of the Internet Safety Guide occurred at the same time as the arrest of Matthew Ward, 41, on charges of attempted criminal sexual penetration, attempted criminal sexual contact of a minor and child luring. Ward was arrested following an Internet chat session, during which he contacted an agent from the Attorney General's Internet Crimes Against Children (ICAC) task force who was posing as a 14-year-old girl. Ward asked the agent a series of sexually explicit questions and asked if she would meet him for a sexual encounter. The meeting was arranged at a public park in Albuquerque, where Ward was arrested by agents from Attorney General Madrid's office, assisted by officers from Albuquerque Police and Bernalillo County Sheriff's Department.

On July 12, Attorney General Madrid announced that Ward had agreed to plead guilty to one count of fourth degree Child Solicitation by Computer and No Contest to

one count of Attempted Criminal Sexual Penetration, a third degree offense.

"This case should set an example to any potential predator who thinks he can use the Internet to lure children without being caught," Attorney General Madrid said. "But, as we have seen before, the predator's desire to meet children is stronger than his fear of being caught. My goal is that one day Internet predators will be too afraid to conduct their illegal activities in New Mexico because they know they will get caught."

### Ronald Mabry

Also in January, the Bernalillo County Sheriff's Department assisted the Internet Crimes Against Children Unit with the arrest of Ronald W. Mabry, 37, at a northeast Albuquerque park. Mabry was taken into custody after arranging in an Internet chat room to meet what he thought was a 12-year-old girl for sex. In February, the Bernalillo County Grand Jury indicted him on 25 various charges related to child sexual solicitation, exploitation, and pornography.

### Matthew Wagner

In March, Attorney General Patricia Madrid announced that Matthew Wagner, a 60-year-old suspected Internet predator captured by her Internet Crimes Against Children Unit, had

pleaded guilty to five counts of Possession of Child Pornography, a 4th degree felony.

Wagner's case began when the Internet Service Provider America Online (AOL) sent information to the National Center for Missing and Exploited Children's (NCMEC) Cyber Tip Line, indicating AOL had discovered that one of its account holders was in possession of an image previously identified by NCMEC as child pornography. NCMEC found that the zip code associated with the account was in New Mexico, and forwarded the case to Attorney General Madrid's ICAC Unit.

During the investigation, ICAC agents were able to identify Wagner as the user of the AOL account, located his residence in Northeast Albuquerque, served a warrant at his residence in March of 2005, and seized computer equipment and storage media. A forensic examination of the equipment revealed numerous images depicting child pornography.

**John P. Kallman**

In May, John P. Kallman of Albuquerque pled guilty to seven counts of Sexual Exploitation of Children. ICAC investigators had arrested him in November of 2005 for possession and manufacturing of child pornography. The investigators discovered that Kallman had acquired thousands of obscene images through the Internet that depicted sexual acts involving children as young as five years old.

**Daniel Valdez**

Former Santa Fe Police Officer Daniel Valdez was arrested in May and charged with one count of Child Solicitation by Computer (Luring), four counts of Attempted Criminal Sexual Penetration, one count of Tampering with Evidence, and one count of Driving while License Suspended. The 40-year-old Valdez

had rented a hotel room where he planned to have sex with a 15-year-old girl—actually an ICAC undercover officer who had been in contact with the accused over a three-month period. Investigators were concerned that this may not have been a first Internet contact for Valdez: he had an earlier conviction for harassment of a young Santa Fe woman.

**Jeramie Dante**

Dante, 33, was arrested and charged with one count of 4th degree Child Solicitation by Computer. An ICAC agent, posing as a 12-year-old girl, received a series of sexually explicit messages from Dante between May 3 and May 16. Using the photographs Dante took of himself and matching them to MVD records, ICAC Investigators were able to confirm Dante's identity and address, and locate and arrest him on May 18.

**Patrick Dangel**

Patrick Dangel pled guilty in May to one count of Child Luring, a felony. He potentially faces up to 18 months in prison, a \$5,000 fine and parole for one year. His was one of the first Internet child luring cases that the Attorney General's Office had prosecuted.

Beginning in November of 1999, Dangel initiated and then continued a sexually explicit Internet correspondence in an online chat room with an Albuquerque Police Department officer posing as a 12-year-old girl. The e-mails encouraged the "child" to meet with Dangel for the purpose of a sexual encounter. In December of 1999, police intercepted Dangel as he approached the "child" and took him into custody. Dangel relocated to Mabelvale, Arkansas at the end of the year.

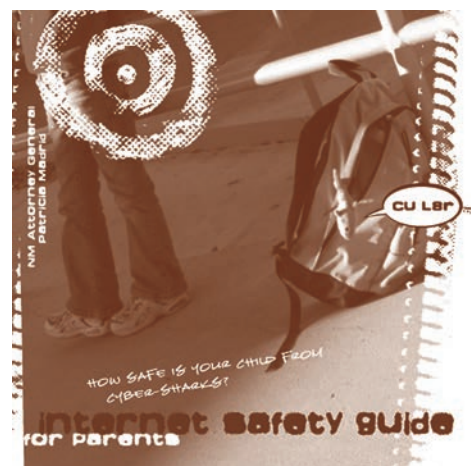
The Attorney General took over the case in May of 2005 after it had been deemed "unprose-

cutable." Because of language in a previous child luring statute, it was argued that Dangel could not be prosecuted because the "girl" he was soliciting was actually an adult undercover officer. The Attorney General's Office was prepared to argue that it was Dangel's intent to solicit a child that made his act a crime.

**Donald Orr**

This Rio Rancho suspect was indicted on August 3 by a Sandoval County Grand Jury on 20 counts of fourth degree Exploitation of Children (Possession). Orr's indictment came about after Attorney General Madrid's ICAC Unit served a search warrant on May 31 following a tip from the Kansas City, Missouri Police Department. Madrid's Office prepared the case in cooperation with the 13th District Assistant D.A.'s office.

In May, Kansas City Police detectives reported that photos depicting child pornography were allegedly sent from Orr's AOL email account to another suspect they had been investigating in Belton, Missouri. According to Kansas City detectives, an email from AOL screen name "NM87124" had been discovered on the computer of Kamron Dehghani of Belton, which contained numerous images of child pornography sent by email. Kansas City detectives contacted investigators from Madrid's ICAC unit for



assistance in the case after discovering the NM87124 screen name was traced to Orr's AOL account in New Mexico.

ICAC investigators served a search warrant on Orr's Rio Rancho home and took possession of his computer equipment and storage media. Forensic examination of Orr's computer revealed numerous images depicting child pornography. Examiners said Orr's computer contained photographs of some of the youngest victims they had ever seen, with sexually explicit photographs of infants.

**Internet Predator Sting Operation**

On July 17, Attorney General Madrid announced that personnel from the Internet Crimes Against Children Unit, aided by officers and investigators from seven other agencies, had arrested three Albuquerque cyber predators, Garvin Frazier, 30, Ray Gallea, 25, and Tyrone Wiggins, 18, during a two-day sting operation that took place July 13-15. It was the first multi-agency sting operation conducted in New Mexico, and it involved the Albuquerque, Rio Rancho and Santa Fe Police Departments, Bernalillo County Sheriff's Department, New Mexico State Police, New Mexico Taxation and Revenue Department, and Immigration and Customs Enforcement.

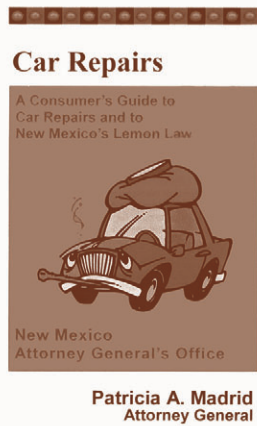
Undercover agents from these agencies posed as underage girls or boys in online chat rooms. The three alleged cyber predators contacted the agents and suggested meeting in person to engage in sexual activity. Meeting times and places were arranged, and arrests were made at those times.

On July 25, a Bernalillo County Grand Jury indicted Gallea on two counts of 4th degree Child Solicitation by Computer, and Frazier and Wiggins on one count each of the same charge.

**CONSUMER PROTECTION**

**Violations of Auto "Lemon Law"**

In January, Attorney General Patricia Madrid's Consumer Protection Division filed a series of lawsuits against six Albuquerque used car dealers: Albuquerque Lincoln Mercury, LLC;



Danny Voight's Auto Center, LLC; Gus's Auto Sales; Outwest Auto Corral; Tom's Motors, Inc., and Top Quality Imports, Inc. The lawsuits alleged repeated violations of New Mexico's Used Motor Vehicle Lemon Law that provides consumer protections for used car buyers.

Since the law went into effect in January of 2004, Attorney General Madrid's Consumer Protection Division has received complaints about business practices by each of these dealers that conflict with the Lemon Law. Even though the Division notified all the companies about their respective violations, the dealers had either not resolved the repeated complaints with the Attorney General's Office, or had continued to use contracts that violated the Law.

**Low-Altitude Water Heaters**

In February, Attorney General Patricia Madrid's Office notified retailer Home Depot and water heater manufacturer Rheem that they were to stop selling and distributing standard low-altitude water heaters in Santa Fe and other New

Mexico cities that are above 5,999 feet in elevation. When a low-altitude water heater is used at high elevations, a process called "over-burning" occurs, where too much gas is used for the amount of oxygen that is present at those altitudes. As a result the water heater uses too much energy and the increased production of carbon monoxide can become a health hazard.

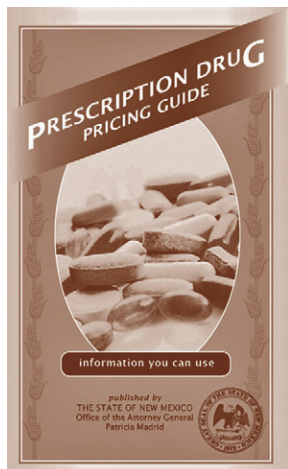
The notification letter also requested that Home Depot take several other corrective actions, which included making high-altitude water heaters available in all of the company's New Mexico stores; notifying consumers who had purchased standard hot water heaters of the need to modify them for high altitude, and offering to provide and install modification equipment to bring these water heaters into compliance.

As a result, Rheem, which is the sole distributor of hot water heaters for Home Depot, agreed to stop distributing its low-altitude water heaters to higher-elevation stores. Rheem also provided signage for display in Home Depot stores, disclosing the difference between the two altitude-rated models of water heaters.

**Drug Marketing**

In April, Attorney General Patricia Madrid announced that Lovelace Clinic Foundation (LCF) was awarded a major competitive grant to educate health care providers about the pharmaceutical industry's influence over how drugs are prescribed. LCF is one of 24 grantees nationwide who were selected to receive a total of \$9 million, which was funded by a 2004 settlement between attorneys general and Warner Lambert (now a division of Pfizer), makers of the epilepsy drug Neurontin.

The New Mexico Attorney General's Office led part of a multi-state investigation of the marketing of Neurontin, which resulted in a \$430 million multi-state settlement. The \$9 million education campaign is designed to help physicians, pharmacists, and consumers gain access to fair and balanced information about prescription drugs.



### Zangara Auto

In April, Zangara auto dealerships in Albuquerque and Española agreed that the court will enter a Consent Judgment and Permanent Injunction against the companies to resolve a lawsuit filed by Attorney General Patricia Madrid. Responding to numerous consumer complaints, the Consumer Protection Division had discovered that the Zangara dealerships were repeatedly charging more than the actual MVD fees for licensing and registration, sometimes by as much as double the actual fee, and were also adding onto customer's sales contracts a so-called "title guarantee fee." Similar to the Lemon Law case cited above, the Zangara companies had either not resolved the repeated complaints with the Attorney General's Office despite notification, or had continued to pursue their illegal practices.

The Consent Judgment and Permanent Injunction orders the Zangara dealerships to set up an account, administered by a third party, that will be used to pay restitution to consumers affected by its business practices. The companies must make an initial \$125,000 payment for customer restitution, an additional payment to cover instances when the account balance drops to \$75,000, and \$100,000 to the Attorney General's Office for legal and investigative costs. Attorney General Madrid's Office estimates the amount of restitution could total hundreds of thousands of dollars.

### Payday Lending

In May, Governor Bill Richardson and Attorney General Patricia Madrid announced that they have jointly developed new regulations for the payday lending industry in New Mexico. The proposed regulations are designed to protect consumers against predatory practices that take unfair advantage of New Mexicans.

The proposed regulations would give consumers the sole discretion to renew a loan twice at a maximum fee of \$15.50 per \$100; cap the amount of borrowed money at 25% of the consumer's gross monthly income; give

consumers the ability to enter into a longer payment plan—as long as 130 days with no additional fees—after a second renewal; set a flat fee for new loans and renewals at \$15.50 per \$100; and launch an aggressive consumer advocacy program to inform consumers that they do not have to repay payday loans made by anyone who is not duly licensed to make such loans.

The state Regulation and Licensing Department is to publish the proposed regulations and seek public input before finalizing the rules.

### Cigarette Sales to Minors

In June, Attorney General Patricia Madrid joined the Attorneys General of 26 other states and the District of Columbia in an agreement with Chevron Products Company that will help reduce sales of cigarettes to minors at its retail locations across the nation. The agreement requires that Chevron implement comprehensive, youth prevention tobacco retailing practices at each of its approximately 9,100 company-owned stores in 32 states and Washington, D.C. There are 151 Chevron retail outlets in New Mexico.

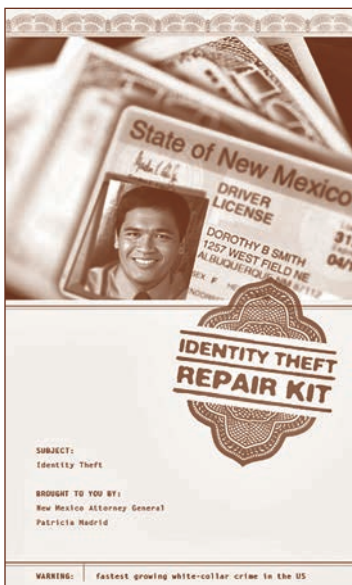


ATTORNEY GENERAL MADRID WITH REGULATIONS AND LICENSING SUPERINTENDENT EDWARD J. LOPEZ, JR. AND GOVERNOR BILL RICHARDSON SPEAKING TO THE PRESS ABOUT NEW PAYDAY LOAN REGULATIONS.

Chevron will also take a number of steps to prevent youth access to tobacco at its franchise outlets in the participating states, including providing annual notices of the importance of complying with youth access laws; requiring franchisees to report violations to the corporate office; and modifying franchise agreements to provide that violations of youth access laws could constitute grounds for termination or non-renewal of the franchise agreement.

### Identity Theft Repair Kit

Also in June, Attorney General's Patricia Madrid joined with New Mexico Veterans Services Department Secretary John Garcia to announce that her office's new **Identity Theft Repair Kit** would be made available free of charge at 18 Veterans Services Offices around the state as well as through her office. The **Repair Kit** is a handbook that guides consumers step by step through the process of repairing their credit if ID theft has occurred. Thousands of copies of the **Repair Kit** were provided for distribution in response to the May theft of a computer holding personal data of millions of veterans and active-duty military personnel, placing 26.5 million veterans at risk for identity theft.



## LEGAL OPINIONS

### Dual Office-Holding

In January, Attorney General Patricia Madrid issued a legal opinion that affirmed that a state legislator is eligible to serve as president of Luna Vocational-Technical Institute without having to resign his seat. In an opinion requested by State Senator Pete Campos, Attorney General Madrid determined that the office of the president of Luna Vocational-Technical Institute does not qualify as a "civil office" under the state law that prohibits dual office-holding. The school president is "merely executing the sovereign prerogative of the board," has no supervisory control over the school's fiscal affairs and policy matters, and is therefore not a "civil officer" affected by the state law's prohibition.

### Open Government

In April, Attorney General Madrid issued a formal opinion, in response to questions from State Auditor Domingo Martinez, which stated that mutual domestic water associations are subject to the Open Meetings Act and the Inspection of Public Records Act. These associations, while not state agencies, are public bodies and political subdivisions, "made up of citizens democratically selected and governmentally organized," that must adhere to the State Procurement Code and the Per Diem and Mileage Act. Therefore, these bodies should be subject to the state's open government laws as well.

### Municipal Elections

Also in April, Attorney General Patricia Madrid issued an opinion to the New Mexico Secretary of State on the legality of the City of Espanola's "ward" system of electing city councilors. The opinion characterizes the system employed by the City as a hybrid between a single-district

voting system and an at-large voting system. Councilors elected to represent a particular ward are not required to live there, and voters select one candidate from each ward regardless of the voters' residence. In the 2005 election, a lawsuit resulted in the removal of six Espanola City Council candidates from the ballot.

Attorney General Madrid suggested that the City could best protect itself from a legal challenge by changing its voting system in one of two ways: by creating a single-member district system with residency requirements for both the candidate and the voter, or by obtaining clearer legislative authority for the current practice.

*"It is important that voters have a clear and understandable voting system in which they can have complete confidence."*

—Attorney General Patricia Madrid

## ENVIRONMENTAL PROTECTION AND REGULATION

### Organic Pollutants

In March, Attorney General Patricia Madrid and Attorneys General from ten states sent a letter to Congressmen Joe Barton and John D. Dingell, Chair and Ranking Member respectively of the House Committee on Energy and Commerce. In their letter, the Attorneys General expressed their concern about provisions in HR 4591, the bill that implements the Stockholm Convention on Persistent Organic Pollutants, a



global treaty that was signed by 50 countries including the U.S. (although our country has not yet ratified it). The Attorneys General specifically highlighted the portions of the bill that preempt state authority to set more stringent standards to regulate dangerous chemicals.

The Stockholm Convention focused on prohibiting or restricting the production, use and release of 12 chemicals, including DDT and PCBs. It intends to protect human health and the environment from “persistent organic pollutants,” chemicals that remain in the environment for prolonged periods, are capable of accumulating in living organisms, and are problems because they have spread into environments in which they were never used or produced.



The Clean Air Act requires that the EPA review and revise emission standards regarding new pollution sources every eight years to ensure

*“Once again we are forced to take the federal government to court to protect the health of our citizens and our environment. In this time, when the federal government is controlled by one party, we see the checks and balances breaking down.”*

— Attorney General Patricia Madrid

**Clean Air Act**

In April, Attorney General Patricia Madrid joined nine other state Attorneys General, along with the District of Columbia and the City of New York, to file a lawsuit against the federal Environmental Protection Agency (EPA). The lawsuit alleges that the EPA failed to adopt strong emission standards for regulating the release of air pollution from new power plants across the nation.

that the standards protect both the public health and the environment. In February of this year, the EPA issued revised regulations in

accordance with a court order. According to the lawsuit, the revised standards completely fail to regulate power plant emissions of carbon dioxide, a major contributor to global warming, and the revised standards for other air pollutants known to be harmful to public health are unacceptably lax.

**Fuel-Economy Standards**

In May, Attorney General Madrid joined with Attorneys General from nine states, the District of Columbia, and the City of New York in filing a lawsuit in the U.S. Ninth Circuit Court of Appeals challenging the Bush Administration’s new fuel-economy standards for SUVs and light trucks. The suit alleges that the rules fail to address the effects on the environment and global warming; and that the National Highway Traffic Safety Administration (NHTSA), in adopting the fuel economy standards, violated the National Environmental Policy Act (NEPA) and the Energy Policy and Conservation Act (EPCA), which require the government to determine the impacts of new regulations on fuel conservation and the environment.

**Food Labeling**

In March, Attorney General Madrid joined with 38 other Attorneys General to voice their opposition to H.R. 4167, the “National Uniformity for Food Act.” They noted that while the bill is intended to establish labeling rules and warnings for food, food packaging, and beverages sold throughout the country, it actually under-

*“The President asked Congress for the authority to set higher fuel-economy standards for passenger cars, yet he is content to fail to set meaningful standards for SUVs and light trucks.”*

— Attorney General Patricia Madrid

cuts states' rights and consumer protection by limiting warnings about food and beverages to those identified by the Food and Drug Administration. State-level warnings that are likely to be challenged if this bill passes include alerts about mercury contamination in fish, arsenic in bottled water, lead in ceramic tableware and post-harvest pesticide applications to fruits and vegetables.

by the Appeals Court in October when the EPA agreed to formally reconsider the rules. The filing of the petition allows the states' suit to move forward.

### Global Warming

On June 26, the United States Supreme Court agreed to review the decision of a federal appeals court supporting the Environmental

2000, indicating that the Agency did have the legal power to regulate such emissions.

New Mexico joined eleven other states, American Samoa, the Northern Mariana Islands and the District of Columbia in filing a petition with the U.S. Court of Appeals to contest the EPA's rulings. At the same time, three cities, Baltimore, New York and Philadelphia, and numerous environmental groups filed separate challenges to the rulings. In July of 2005, the Court of Appeals voted 2-1 to allow the rulings to stand. In March of 2006, the coalition of states, cities and environmental groups filed a petition asking the U.S. Supreme Court to take the case.

*“This food labeling bill is yet another example of the federal government showing their concern for corporations at the expense of the public. It is clearly not in the best interests of consumers.”*

— Attorney General Patricia Madrid

### Mercury Emissions

In June, Attorney General Patricia Madrid announced that her office had joined 15 other states in a petition challenging the final rules that establish a cap-and-trade system for regulating harmful power plant mercury emissions. The rules were published by the Environmental Protection Agency earlier in the month. The petitioners believe that the EPA's new rules will delay meaningful reductions in mercury emissions for years, and actually further weaken already lax mercury emissions standards for every major category of coal plant except for bituminous coal-burning facilities.

Protection Agency's (EPA) refusal to regulate greenhouse gas emissions for motor vehicles. In August of 2003, the EPA issued two rulings declaring that the agency did not have statutory authority to regulate greenhouse gas emissions under the Clean Air Act. These rulings contradicted testimony and statements the EPA had made to Congress in 1998, 1999 and

*“I am pleased that the U.S. Supreme Court will hear this vital case. The significance of global warming cannot be dismissed. We need the EPA to do their job now, before it's too late.”*

— Attorney General Patricia Madrid

A coalition of states filed suit last year in the U.S. Court of Appeals for the D.C. Circuit, challenging both the cap-and-trade rule and a separate rule that removed power plants from the list of pollution sources subject to stringent pollution controls under the federal Clean Air Act. The lawsuit, which asserts that the two rules violate the Clean Air Act, was put on hold

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## OTHER MATTERS

### Illegal Internet Cigarette Sales

In January, Attorney General Madrid announced that Philip Morris USA (“PM USA”) has voluntarily agreed to participate in a landmark agreement with 37 state Attorneys General that will help combat the illegal sale of cigarettes conducted on the Internet and through the mail. By adopting specific controls over who receives shipments of PM USA products, the company and the participating Attorneys General predict a significant reduction in the number of its cigarettes being sold and distributed to minors through the Internet.

### Community Education

In June, Attorney General Patricia Madrid's Violence Against Women Division conducted a three-day training program in Farmington called the “Ending Violence Against Women Project.” The Attorney General was awarded a \$586,000 grant from the Department of Justice to develop statewide training confer-

ences that provide hands-on instruction to community members in New Mexico. The program is a collaborative effort with the New Mexico Coalition Against Domestic Violence, Family Crisis Center, and the UNM Office of Continuing Medical Education.

Also in June, the Attorney General's Office held its continuing statewide seminars on the Open Meetings Act and the Inspection of Public Records Act in Roy and Angel Fire.

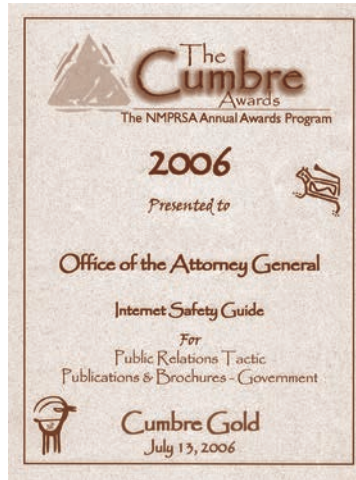
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## RECOGNITION

### Attorney General Patricia Madrid

At a gala awards dinner on July 13, the New Mexico Chapter of the Public Relations Society of America (NMPRSA) honored Attorney General Patricia Madrid with its 2006 Cumbre Gold Award for her **Internet Safety Guide For Parents and Teens** booklet. The Guide was produced by members of the Attorney General's communications staff and the Albuquerque public relations firm Griffin & Associates.

Freelance designer Bohdana Erne was honored for her graphic design and layout of the publication in cooperation with Griffin & Associates.



In May, Attorney General Madrid received the Governor's Award as one of the Top 20 Outstanding Women of New Mexico, as designated by the New Mexico Commission on the Status of Women. Since 1986, the Governor's Award has recognized honorees for leadership in their careers and in their communities, and for their advocacy efforts to improve the status of women in New Mexico.

The April issue of *Hispanic Business Magazine* recognized Attorney General Madrid as one of the top four finalists for the magazine's 2006 Elite Woman of the Year award. Candidates are evaluated on their responsibilities and how each woman serves as a role model in her individual career field.

### Frank D. Weissbarth

In May, the State Bar of New Mexico recognized Assistant Attorney General Frank D. Weissbarth from Attorney General Patricia Madrid's Litigation Division with the Public Lawyer of the Year Award. This Award recognizes the accomplishments, integrity and character of an attorney who has had long-time experience in public service.

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This activities report contains highlights of the work of the Attorney General's Office from January through July of 2006. For more information visit [www.ago.state.nm.us](http://www.ago.state.nm.us).

