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SlimeGate 2/7: Predatorts 3.2/4: The Predatort Victim Exchange

Posted by RISKMONGER on JANUARY 21, 2020

It was never about the victims. It has always been about the preachers, the lawyers and the money. This blog looks at how a series of misery merchants are buying and selling plaintiffs on a type tort victim exchange – with no transparency, no moral integrity and no limits. Within the context of SlimeGate, this section delves into a practice with individuals who are, simply put, beyond awful. The only good news is when this bubble pops, the greed, lies and usury will likely bring down a large number of tort law firms and the invisible litigation finance arms supporting the reprehensible tactics.

Are US tort lawyers providing a public service, protecting citizens from large corporate injustice, or are they enriching themselves at a high cost to consumers and society while treating their clients horribly? Common sense would say they are somewhere in between but the more slime I pull off the surface, the murkier this profession appears. I used the term “Predatort” to describe not only how tort lawyers aggressively attack others to make money, but also how these opportunists use their clients, often leaving them with nothing from the emotionally or physically painful litigation process. This article will demonstrate how the victims these self-claimed heroes pretend to protect are mere commodities bought and traded on an open market: The Predatort Victim Exchange.

Often NGOs look the other way at the greed and excess and line up behind the Predatort lawyers in their

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lawsuits against industry. The lawyers' "defence of the citizen and the planet" reinforces the activist narrative of corporate exploitation. Of course the non-transparent slush funds filling the NGOs' dwindling budgets don't hurt either (as Chapter 4 will demonstrate). But as morally compromised activists like CS Right to Know's Carey Gillam and Corporate Europe Observatory's Martin Pigeon sing their praises to these corrupt, manipulative Predators, how do they sleep at night knowing they are legitimising a lamentable trade in victims?

Building a Plaintiff Pool

As seen in the [third part of this chapter](#), the money and time spent by law firms to bring in good quality plaintiffs is enormous with Predator ads no longer just filling up late-night American TV spaces. Lawsuit-related terminology are the most expensive ad-words and many consultancies exist for the sole purpose of filtering out the less desirable hard-to-win candidates. But that is only the start of the process.

Once a person dials the 800 number or clicks the big red button they are shuffled into the system. Doctors or scientists come in to determine if the claims could be portrayed legitimately (the [second part](#) of Chapter 2 looked at how some doctors in the silicon breast implant lawsuits were overly-zealous in their quest for "quotas"). It is not so much that the "victim is being heard" but rather being herded. It is not so much that the "victim is having his day in court" as much as having another day in another law office being processed. There may be further medical tests and interviews before potential plaintiffs are funnelled into a pool of viable prospects – the Plaintiff Pool. The victims then have a number tag punched into their ears as they enter the marketplace.

From Class Action to Multi-District Litigation

An interesting recent evolution in tort practices needs to be mentioned in understanding how these plaintiff pools are changing the rules of the game. Previously, a large number of similar claims were heard together as class actions (handled by the same law firm in a single court). In the last decades, more cases are heard as Multi-District Litigations (MDLs) which consolidate many cases from different law firms but each considered separately.

The investment in time and money is high here, and as we have seen, law firms are [borrowing heavily](#) at the early stages in a process that may take up to a decade to reap any benefits (only for the law firm). It has created a marketplace mentality with an ecosystem of services (from finance to media, from medical to political). Somewhere in the process, the victims transform from being people to merely packets.

As the shift away from class action suits into group MDLs increases, so too is the strategy: to overwhelm defendants in an extortionary manner to inspire quick settlements. If it takes too long to settle, these small firms will not be able to manage the costs of their caseloads. This is an important (and disturbing) evolution in the tort

game:

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- Combined MDL caseloads become tools for extortion rackets where a coalition of law firms play for a settlement;
- More power rests in the hands of the Plaintiffs' Steering Committees;
- Defence teams try to delay the process even longer (to wear down the law firms handling thousands of cases each);
- Litigation finance firms play an important role as more money is being borrowed at "loan shark" rates;
- Plaintiffs get passed around as each law firm's situation evolves.

If law firms cannot pay their litigation finance debts, they will have to sell their "assets" to other law firms (see the AkinMears case study at the end of this article). It should come as no surprise that many of these litigation finance firms are controlled by larger tort law firms (like Weitz & Luxenberg that founded [Counsel Financial](#) – the bank that asbestos built) so if the finance arms need to repossess plaintiffs, it is merely a prudent "business acquisition".

One thing is certain: it was never about the victims.

Reducing Billions into Thousands

As cases evolve and benefits may be offset by exposures to risks, it is unsurprising that external, victim exchanges (investment houses selling suffering onto law firms) come in and create a marketplace for expanding plaintiff pools. A plaintiff may change lawyers three or four times before (if ever) arriving in court as they are traded among law firms and consultancies like cattle at an auction.

The goal though is to not let the plaintiff have his or her day in court but rather to be a number in a large settlement pool. Once the settlement pie is sliced up, the law firm can decide what gratuity, if any, should be tossed at the plaintiff after all of the charges, fees and benefits have been written off. This needs an illustration.

In the case of the Roundup litigation (soon likely to top 50,000 cases), assuming Bayer settles for five billion USD, that would leave one hundred thousand per plaintiff. Deduct the fees from the victim exchange, costs for processing the plaintiffs (research, tests, interviews...), 20% per year for the litigation finance investors, then from the remainder, 50% for office costs (advertising, admin, scientific litigation consultants, lobbying and private jets), lawyer fees, the reserve for the Plaintiffs' Steering Committee and other "gratuities", there would be a couple thousand if any left for each number in the plaintiff pool. Crumbs!

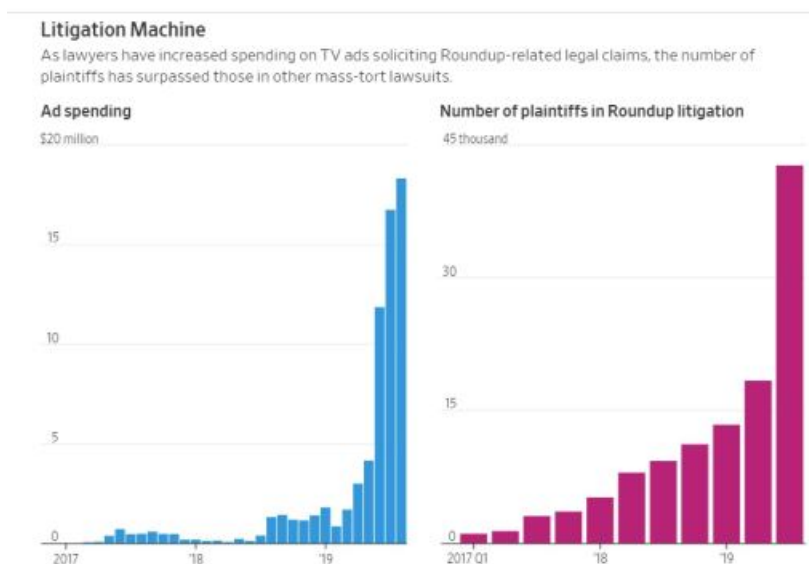
One thing is certain: it was never about the victims.

The Predatort Victim Exchange

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The Predatort Victim Exchange is a place where lawyers and marketing firms buy victims via mass advertising campaigns, assessing a dollar value on each individual and trading them on an open market. The best recent example of the lawyers' victim exploitation can be seen in the explosion of Roundup victims lined up to be auctioned off to any Predatort firms with good credit at a litigation finance centre. Not a day goes by where Americans don't see a TV commercial, read an email or get a notification on the big money they can get for the suffering of a long-lost loved one or potential risks to their own health.

It is interesting to see how the increase of plaintiffs in the ongoing Roundup litigation correlates with the increased spend in TV ads.



Source: [Wall Street Journal](#) It is curious to extrapolate this trend to Q4.2019

But who is doing all of this advertising and call-screening?

The law firms are too small to be hustling thousands of leads and plaintiff recruiting. Enter the Misery Merchants: attorney advertising consultants who buy the air-time, acquire the assets and then try to pawn them off on law firms. In an [email exchange](#) (see image) we have a better idea of how these misery merchants buy and sell their goods (referred to, crudely, as "packets"). If law firms need extra services like pulling medical records (maybe they can also "check their teeth") that would cost extra.

Soulless lowlives

The number of registered cases in the Roundup Tort Bonanza skyrocketed from around 15,000 at the end of the summer to over 42,000 in the autumn when rumours spread that Bayer was considering a settlement. If people knew about the possibility of claiming damages from Roundup for five years, why did 27,000 extra plaintiffs suddenly appear within a few months?

- Was it a delayed revelation from the victims?
- Did law firms or consultants pay off doctors in hospitals to refer cases (see the Sheldon Silver case earlier in this chapter)?
- Or did the law firms take on anyone and everyone in a gameplan shift directed by the Roundup Plaintiffs' Steering Committee?
- Was this part of an extortion strategy: pile on so many lawsuits that the Bayer shareholders will panic and revolt against the top directors if they don't reach a settlement at any cost?

Predator greed, no doubt was behind much of this sudden escalation in Roundup cases: to grab as big a slice of the settlement pie as possible (while the victims might get some crumbs). Forcing Bayer's shareholders to demand a quick, expensive settlement by overwhelming the company's legal capacity (and threaten its very existence) is something akin to mob incitement. It is clearly extortion That they are just scooping up as many "packets" as they can on the Victim Exchange horrifies anyone who had believed these lowlifes actually had souls.

One thing is certain: it was never about the victims.

Beyond Awful

Chapter 2 of SlimeGate has highlighted how awful much of the US tort industry has become, but using humans in such a nominal way is beyond awful. While pretending to protect the rights of individuals, behind the scenes, these slimeballs are trading plaintiffs in a complex exchange as commodities valued according to their potential return on investment. I am not sure many of the 27,000 recently acquired Roundup "assets" would be happy to know their suffering has been relegated to the knock-off jumble sale category.

A recent article in the Wall Street Journal acknowledged that some of the 42,700 Roundup cases signed up from



Interesting to note that Litzenburg tried to extort \$200 million from a company threatening to march in thousands of cancer victims he referred to as a "parade of the horribles".

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the recently blasted mass marketing lawsuit campaign are being traded on the Victim Exchange for less than \$100 (and all of the Roundup leads, all of them, are being accepted by law firms). If your cancer claim has been appraised to be worth less than \$100, then the law firm representing you accepts that your claim is full of shit – it will cost them exponentially more in filing charges to process you. You won't get a penny from the settlement, but your time wasted in strip-mall law offices will allow the Predatort law firm to bundle your claim with others they thought actually had a chance (a hedging to spread their risk). They'll sell you hope and (hopefully) give you a free cup of coffee, but little more.

Worse though is how that higher prospect victim for the Predatort windfall will lose any possible settlement in order to cover the risk of the \$100 sure loser – these poor people are mere commodities. This behaviour and trade in “human cargo” goes beyond awful.

How many of the 42,700 Roundup cases are sure losers? Based on the manner in which the Victim Exchange has piled the plaintiffs up, it is safe to assume a good percentage won't pass muster. The Wall Street Journal [exposé](#) showed that the manner in which the plaintiffs were slapped together leaves a large number of victims with no likely compensation. If the Merck & Co. Vioxx litigation settlement is anything to go by, it would not be unsurprising for a third of the Roundup plaintiffs to not collect a penny if there were to be a settlement.

Companies facing such lawsuits argue the mass-tort machine encourages the proliferation of claims, which in turn pressures them to settle, even if they believe their products are safe. They say the system makes it easy for lawyers to file nearly identical complaints in rapid succession, with just a few paragraphs changed about each plaintiff, giving defendants little to go on to gauge the legitimacy of any given case.

Defense lawyers point to the Vioxx painkiller litigation, in which court documents show that nearly one-third of plaintiffs who had filed claims by the time of a \$4.85 billion settlement with drugmaker [Merck & Co.](#) failed to meet the criteria necessary to collect any money.

TV lawyers who pass on clients to bigger firms “are building inventory without close scrutiny being given to the claims that they have filed, and hoping that hard work by other lawyers will lead to a mass settlement that will allow them to cash in,” said Mark Behrens, a partner at Shook, Hardy & Bacon LLP who advises Bayer on mass-tort issues.

Source: [Wall Street Journal](#)

It is interesting to see how Predatorts filing these Roundup cases by the thousands were merely copy-pasting the same text into all of the documents. All in the plaintiffs' interest?

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Bubbles do Pop

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Even more unbelievable is how these cases are being packaged up into something not unlike collateralised debt obligations: one of the financial tricks used to sell off liar loans (home mortgages expected to default) to unwitting investors in the 2000s that led to the financial collapse. In the tort case, a large number of worthless plaintiff claims are being packaged and sold off as “pretend assets” to litigation finance companies (who are expecting to collect around 20% on loans per year from the tort law offices pre-settlement profit-sharing). These bundles are then used to attempt to extort settlements from companies more worried about the threat to their shareholder value (to pay back their loans).

When, like in the Roundup litigation, the number of cases against Bayer escalated from 15,000 to 42,000 in a matter of months, it is evident there is a bubble in the bundling ... and bubbles do pop. If companies like Bayer (or J&J on talc) refuse to settle and take all cases to appeal, the debt-load will overwhelm these tort offices (each having no more than 12-15 partners). As resources dry up, the litigation finance companies (which have grown far too fast in an unregulated, non-transparent environment) themselves will face bankruptcy causing the whole US tort system to likely collapse under the weight of its own greed.

One Predatort, Tim Litzenburg, felt a \$200 million brown-envelope payout was good value for a company he was trying to extort breaking down how much less that would compare to a company losing 40% of its share value once he “paraded” thousands of victims in front of the cameras. There was no science or facts involved – just a cold, hard greed calculation. There were no victims’ demand for justice involved here – the best solution would leave them out of the equation. Tim got arrested for extortion and is facing serious jail-time, but only because he tried to extract a settlement outside of the Roundup Plaintiffs’ Steering Committee playbook. But no one was asking how a single person could go out and leverage a thousand cancer victims to throw at a company. From the image above, Tim knew how to negotiate on the Victim Exchange.

What will happen to the thousands of plaintiffs when their law firms go out of business and no one has any money to pick up their cases? Are there Predatort Pawn Shops to offer pro bono tort (in polyester suits)? And who will then finance a judge’s re-election campaign in Cook County? This is uncharted territory.

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Pass the “Parcel”

To get an idea of the amount of plaintiffs shuffled around and the role of these private loan shark litigation finance organisations, there was an interesting case where this murky world of victim exchanges and litigation finance surfaced into the light of day. (Sadly, as transparency in the tort law profession is non-existent, it is only when one lawyer sues another that we actually get an idea of how dreadfully deep the slime actually runs.)

Forbes’ investigative tort reporter, Daniel Fisher, exposed the murky world of litigation finance and the Predatort

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Victim Exchange in the 2015 case of AkinMears and a former Wells Fargo leveraged finance executive, Amir Shenaq, whom they had employed. In the four and a half months he worked for AkinMears, Shenaq acquired \$90 million in loans from litigation finance firms, spending more than half of that to buy 3,000 lawsuits from other law firms (mostly for transvaginal mesh implant cases). AkinMears has four partners and three lawyers and never actually takes cases to court. Previously they invested in TV advertising to get packets to sell on but that was not lucrative enough. The strategy was to sell these plaintiffs on to other firms expecting to take around 40% in contingency fees. Shenaq claims these cases were worth up to \$200 million for the firm.

According to Fisher, AkinMears was paying their litigation finance company, Gerchen Keller Capital (now Burford), 24% per year for their loans and was running out of capital. Shenaq managed to renegotiate the loans down to 16%, saving enough to buy AkinMears' four partners a 20% share in a private jet (at \$1.5 million). I wish I were making this shit up.

Shenaq was quoted as saying:

“AkinMears is not run like a traditional plaintiff’s law office, and the Firm’s lawyers do not do types of things that regular trial lawyers do,” like meet clients, file pleadings and motions, attend depositions “or, heaven forbid, try a lawsuit,” Shenaq claims in his suit. “Despite the fact that AkinMears’ lawyers do not have to dirty their hands with the mundane chores that come with actually practicing law,” the firm charges a 40% contingency fee “which is then divided in some fashion among the participants in its ever-shifting syndicate.

Source: Daniel Fisher

Speaking on this case, Lisa Rickard, president of the U.S. Chamber of Commerce’s Institute for Legal Reform, said this shows how “litigation financing perverts the justice system and puts the interests of lawyers and financiers ahead of actual plaintiffs.”

This information became public only because Shenaq sued AkinMears for still owing him \$4.2 million – they only paid him \$1.2 million for four and a half months work. Poor guy! Without such internal lawsuits getting noisy, we would have no idea of what is going on with the Predatort Victim Exchange, how the Misery Merchants work and how much these litigation finance loan sharks take in.

The case was settled out of court but Amir Shenaq, you may be happy to learn, has since started up his own business ... helping law firms raise capital from litigation finance companies for mass tort dockets. Sweet!

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Does it matter?

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How many of the 42,700 Roundup cases are being traded around the Predator in this callous manner? Does it matter that these law firms are only interested in the contingency fees, retainers or conversion rates? Does it matter that the Predators are not expecting to actually take any of these cases to court? Does it matter that there is no science or facts supporting the claims linking glyphosate to non-Hodgkin Lymphoma? Does it matter that farmers and consumers will pay the price for this high-level extortion racket?

This section shows how Predators use people as objects or commodities traded in an elaborate, extortionary process. When you have hundreds of millions of dollars, it is easy to convince yourself everyone can be bought and nothing else matters.

- They spend millions of dollars to buy off scientists like Chris Portier, Martyn T Smith and Bernard Goldstein to get IARC to manufacture evidence. The science doesn't matter.
- The misery merchants gather cancer victim packets and sell them to lawyers to be used as a "parade of the horribles" to coerce and threaten shareholders into demanding a settlement. The company's innocence doesn't matter.
- The Predators create their own non-profits or corrupt NGO activists like Carey Gillam at US Right to Know to generate public fear and outrage that will increase jury payouts or further threaten shareholder value. That consumers and farmers are paying for the law firms' private jets doesn't matter.
- Their campaigns undermine trust in the regulatory process and government agencies with many tort lawyers travelling to the EU and Canada to try to corrupt other political processes. The resulting inability to govern doesn't matter.

The greed and slime of the US tort litigation industry has corrupted science, civil society, agriculture, government and commerce, all in pursuit of more wealth and power.

One thing is certain: it was never about the victims. ... It was about these slimy little Predator shits ... who are truly beyond awful.

AkinMears

attorney advertising

litigation finance

Misery Merchants

Predator Victim Exchange

Predators

Roundup

Roundup Plaintiffs Steering Committee

Timothy Litzenburg

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