SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
(202) 371-7410
DIRECT FAX
(202) 661-8301
EMAIL ADDRESS
JOHN.BEISNER@SKADDEN.COM

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October 30, 2015

Via E-Mail

Ms. Rebecca A. Womeldorf
Secretary of the Committee on Rules of Practice and
Procedure of the Administrative Office of the United
States Courts
One Columbus Circle, NE
Washington, D.C. 20544

RE: Update on Third-Party Litigation Funding

Dear Ms. Womeldorf:

I am writing on behalf of the U.S. Chamber Institute for Legal Reform ("ILR") to update the Advisory Committee on Civil Rules ("the Committee") on several important developments in the area of third-party litigation funding ("TPLF"). Last year, ILR and certain other organizations submitted a proposal to the Advisory Committee that would have amended the Federal Rules of Civil Procedure to require the disclosure of TPLF arrangements in any civil action filed in federal court. While the Committee ultimately elected not to proceed with formal consideration of that proposal, it indicated it would continue monitoring TPLF and its usage in the federal courts. Since that time, there have been several noteworthy developments in the TPLF arena, including the announcement of an investigation into TPLF usage and practices by Senate Judiciary Committee Chairman Chuck Grassley and Senator John Cornyn (R. Texas), chairman of the Judiciary Committee's Subcommittee on the Constitution. This development and others are explored in greater detail below.

Senate investigation into TPLF. Perhaps the most notable development on the issue of TPLF is a probe into the practice that was recently launched by Senators Grassley and Cornyn. According to a press release issued by Senator Grassley on August 27th, the two senators are "examining the impact third party litigation financing is having on civil litigation in the United States."[1] To that end, the Senators sent letters to Burford Capital, Bentham IMF and Juridica Investments Ltd., three of the largest commercial litigation funders, requesting various information regarding their TPLF activities in the United States. Copies of these documents are attached collectively as Exhibit 1. In particular, the letters seek information regarding the cases they finance, the structure and terms of the agreements they have executed and their returns on investment. The letters also seek information on the firms' general practices, including whether their financing arrangements were disclosed to other parties in the litigation.

As Senator Grassley explained in announcing the TPLF inquiry, "[l]itigation speculation is expanding at an alarming rate. And yet, because the existence and terms of these agreements lack transparency, the impact they are having on our civil justice system is not fully known. The information we requested today will help us better understand this industry. It's vitally important to our civil justice system that litigation decisions aren't unduly influenced by third parties."[2] Senator Cornyn similarly remarked that "[t]hird party litigation financing pumps millions of dollars into our justice system, and the current lack of oversight makes it difficult to track this money's influence on the actions of litigants and the outcomes of litigation. These letters will give us insight into where this money is going and will help us craft effective protection to keep the civil justice system honorable and fair."[3]

Expansion of TPLF in the United States. Over the last several months, more data have also emerged about the expansion of TPLF in the United States.[4] Indeed, according to a March 2015 article from The Lawyer, Burford Capital has reported a 35 percent increase in income for 2014, up to $82 million from $60.7

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1 *Grassley, Cornyn Seek Details on Obscure Third Party Litigation Financing Agreements*, Aug. 27, 2015, http://www.grassley.senate.gov/news/news-releases/grassley-cornyn-seek-details-obscure-third-party-litigation-financing-agreements.

2 *Id.*

3 *Id.*

4 *See, e.g.*, Mattathias Schwartz, *Should You be Allowed to Invest in a Lawsuit*, N.Y. Times Magazine, Oct. 22, 2015, http://www.nytimes.com/2015/10/25/magazine/should-you-be-allowed-to-invest-in-a-lawsuit.html?_r=1. A copy of this document is attached as Exhibit 2.

million, of which nearly 60 percent (or $47.9 million) comes from litigation investment activities.[5] In addition to expanding TPLF activities by Burford and other companies like it, the TPLF industry is also seeing a proliferation of new TPLF entities that are raising money from investors to buy interests in U.S. litigation matters. For example, the Wall Street Journal reported in March 2014 that the hedge fund EJF Capital (based in Arlington, Va.) has raised hundreds of millions of dollars to invest in mass tort lawsuits, including transvaginal mesh and Risperdal litigation.[6] The hedge fund is targeting "class-action injury lawsuits" at "hefty interest rates," with the loans to be repaid by law firms "as they earn fees from settlements and judgments."[7] EJF Capital's announcement is one indication of the rapid expansion of TPLF in the United States.

TPLF's foray into the mass-tort arena is illustrated in a breach-of-contract complaint recently filed in Texas state court by a disgruntled former plaintiffs' firm employee who was hired to secure third-party litigation funding for television ads and the direct purchase of mass-tort lawsuits from other plaintiffs' lawyers.[8] According to the complaint, the plaintiff helped the Texas law firm of AkinMears secure over $93 million from Gerchen Keller Capital ("GKC") to acquire thousands of transvaginal mesh cases that could yield the law firm fees of "$130 million on the low side, and $200 million on the high."[9] The complaint goes on to summarize the business model employed by the law firm:

> (i) borrow as much money as possible; (ii) buy as many television ads and/or faceless clients as possible; (iii) wait on real lawyers somewhere to establish liability against somebody for something; (iv) use those faceless clients to borrow even more money or buy even more cases; (v) hire attorneys to settle the cases for whatever they can get; (vi) take a plump 40% of the settlement from the thousands and

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5 Richard Simmons, *Revenue at Litigation Funder Burford Capital Booms by 35 Percent to $82m*, The Lawyer, Mar. 18, 2015.

6 *See* Rob Copeland, *Hedge-Fund Manager's Next Frontier: Lawsuits*, Wall Street Journal, Mar. 9, 2014, http://www.wsj.com/articles/hedge-fund-managers-next-frontier-lawsuits-1425940706.

7 *Id.*

8 *See Shenaq v. Akin*, No. 2015-57942 (Dist. Ct. Harris County, Tex., filed Sept. 29, 2015).

9 *Id.* ¶ 40.

> thousands of people its lawyers never met or had any interest in meeting; and (vii) lather, rinse, and repeat.[10]

This lawsuit, which has already been reported on in the press,[11] is worthy of close attention because it may provide new information about the way in which TPLF is being used to fund and expand mass torts litigation.

Changes in funding methods. TPLF companies are also expanding the ways in which they invest in litigation. The usual course has been for TPLF entities to collect money from investors that they would in turn use to buy interests in a collection of cases of the fund's choosing. LexShares Inc., a recent entrant to the market, however, plans on attracting investors, commercial plaintiffs, and plaintiffs' firms to its online marketplace. Accredited investors are able to shop among individual cases and contribute as little as $2,500 in the hopes of reaping an eventual profit when a matter settles or produces a favorable judgment.[12] Unlike traditional third-party litigation finance firms, LexShares solicits investments using a crowdfunding model, which allows ordinary accredited investors to choose among cases vetted though LexShares' due diligence. Another TPLF company, Invest4Justice, has joined the crowdfunding fray.[13] As of April 2015, the company had 18 campaigns, with almost $3 million funded. In light of a recent repeal of prohibitions against general solicitation, these companies can advertise their cadre of lawsuits and offer shares in the cases as securities.

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[10] *Id.* ¶ 76.

[11] *See* Daniel Fisher, *Lawsuit Details How Law Firms Borrow And Pay Millions To Get Mass Tort Cases*, Forbes, Oct. 20, 2015, http://www.forbes.com/sites/danielfisher/2015/10/20/lawsuit-details-how-law-firms-borrow-and-pay-millions/; Paul Barrett, *Inside Massive Injury Lawsuits, Clients Get Traded Like Commodities for Big Money*, Bloomberg, Oct. 22, 2015, http://www.bloomberg.com/news/articles/2015-10-22/inside-massive-injury-lawsuits-clients-get-traded-like-commodities-for-big-money; Brenda Sapino Jeffreys, *Ex-Employee of AkinMears Sues Firm, Alleges Millions Owed*, Texas Lawyer, Oct. 20, 2015, http://www.texaslawyer.com/id=1202739910841/ExEmployee-of-AkinMears-Sues-Firm-Alleges-Millions-Owed?slreturn=20150930140928. Copies of these documents are attached collectively as Exhibit 3.

[12] *See* David Bario, *Litigation Finance Meets Crowdfunding With New Wall Street Startup*, The Am Law Litigation Daily, Nov. 19, 2014, http://www.litigationdaily.com/id=1202676828979/Litigation-Finance-Meets-Crowdfunding-With-New-Wall-Street-Startup#ixzz3VrxxITaI.

[13] Brian S. Kabateck & Tsolik Kazandjian, *Should you Crowdfund your Case?*, New Jersey Law Journal, June 15, 2015.

We hope the information summarized above will aid the Committee in further assessing TPLF. We look forward to continuing discussion of this important issue, and we urge the Committee to take steps soon to achieve greater transparency about the growing use of TPLF in federal court litigation.

Sincerely,

John H. Beisner

Enc.

EXHIBIT 1

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
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LINDSEY O. GRAHAM, SOUTH CAROLINA
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KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

August 27, 2015

VIA ELECTRONIC TRANSMISSION

Charlie Gollow
Managing Director, Bentham IMF
885 Third Avenue, 19th Floor
New York, NY 10022

Director Gollow,

Over the last several years, a growing number of reports have raised concerns about what impact the rapid expansion of third party litigation financing (TPLF) is having on our civil justice system. We write you, Managing Director of one of the most prominent TPLF funders, seeking information related to those concerns.

In 2011, the New York City Bar Association estimated that more than $1 billion was committed to litigation financing in the United States. By some estimates, that amount has tripled in just the last few years. While three of the largest firms involved in commercial litigation lending—Burford Capital ("Burford"), Bentham IMF ("Bentham"), and Juridica Investments Ltd. ("Juridica")—are all publicly traded on foreign exchanges, each invests heavily in the United States civil justice system.[1] For instance, while your firm is based in Australia, it recently announced it was funding 10 additional lawsuits within the United States, and reported a gross revenue of $31 million in the United States.[2] Likewise, in January, Burford Capital announced a 300 percent increase in its capital commitment, including an additional $62 million in 2014 alone. A majority of this capital is committed to "U.S. litigation and arbitration."[3] Finally, Juridica earned $73.9 million in net proceeds in 2014, and brought its total gross proceeds to over $241 million from litigation, $178 million of which is net profit. According to Juridica, its investments "have been made predominately in the United States."[4]

[1] Both Burford and Juridica are incorporated in Guernsey and publicly traded on the London Stock Exchange's Alternative Investment Market. Bentham Capital LLC is the wholly owned subsidiary of IMF Bentham Ltd. IMF Bentham Ltd is incorporated and domiciled in Australia and publicly traded on the Australian Securities Exchange.
[2] Bentham's chief investment officer observed that "[t]he pace and volume of new funding opportunities have grown sharply in the past year." *Id.*
[3] Burford Capital, *Annual Report 2014*, (March 17, 2015) at 8.
[4] Juridica Investments Ltd, *Annual Report 2014*, (April 10, 2015), at 15.

Your burgeoning industry is largely unregulated and operates with no licensing or oversight. Lending agreements between plaintiffs and commercial funders are confidential and generally not disclosed to the courts, the opposing party, or the public unless the terms of the agreement itself are the subject of subsequent litigation. And while commercial litigation lenders maintain that plaintiffs retain control over litigation and settlement decisions, the terms and fundamental structure of agreements that are publicly available call into question these assertions.[5]

We are concerned about the nature of commercial financing agreements and the impact they have on our civil justice system. Accordingly, please provide answers to the following questions:

1. For each year from 2009 to 2014, please identify the matters (by case name and docket number) being litigated or arbitrated in the United States, where you have entered into a financing agreement, or similar arrangement.

2. For each matter being litigated or arbitrated in the United States, please identify the lawyers or law firms, or other persons, with whom you have entered into financing agreements, or similar agreements.

3. For each matter being litigated or arbitrated in the United States, please summarize the subject of the dispute, whether it resolved and how much money was paid to (i) the plaintiffs; and (ii) your firm.

4. For each year from 2009 to 2014, please provide the total amount of capital committed to matters being litigated or arbitrated in the United States. Please provide these figures both in absolute terms, and as a percentage of the overall capital committed on a worldwide basis, for each calendar year.

5. Please describe your returns on investment for each matter for the years 2009-2014.

6. Please identify any referral agreements, either formal or informal, you, your firm (including any subsidiaries) or any representatives thereof have entered into with any lawyers or law firms in the United States. If you, your firm (including any subsidiaries) or any representatives thereof have entered into any such agreements, please provide copies, as well as a description of the terms. In your answer, please also provide the number of referrals made, the number of cases financed, and the final resolution of those financed cases.

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[5] *See*, e.g., *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 384 (S.D.N.Y. 2014).

7. Have you been a party to any litigation or arbitration arising out of the terms or provisions of the financing agreements you have entered into? If so, please identify the matter, as well as the forum and current status.

8. Do any of your agreements include either: (a) a provision or language that vary the interest collected on the amount funded depending on the amount recovered by the plaintiff, or (b) language that provides that if plaintiffs settle the matter for an amount below a contractually provided figure, the net recoveries will be calculated by reference to an amount other than the actual recovery? Please provide copies of any such agreements, and identify the relevant provisions.

9. Do your financing agreements typically include arbitration clauses? If so, do those clauses cover disputes between you and the plaintiff over whether or not to enter into a settlement with the defendant?

10. In any matters where class treatment was sought under FRCP Rule 23 (or similar state rule of civil procedure), have you disclosed the existence or terms of the financing arrangement to the court or other interested parties?

11. Regardless of your answer to number 10, under what circumstances, if any, do you disclose the existence and/or terms of your financing agreements to other interested parties (including but not limited to the court and opposing parties)?

12. Does your firm or any of its affiliates make any investments other than in litigation? If so, please identify these investments and the amount of capital – absolute and relative, as described in question 4 – committed to those investments?

Thank you in advance for your cooperation with this request. We would appreciate a response by September 18, 2015. If you have questions, please contact Ted Lehman or Noah Phillips from our respective Committee staffs at (202) 224-5225.

Sincerely,

Charles E. Grassley
Chairman
United States Senate Judiciary Committee

John Cornyn
Chairman
Subcommittee on the Constitution

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 27, 2015

VIA ELECTRONIC TRANSMISSION

Sir Peter Middleton GCB
Chairman, Burford Capital
292 Madison Avenue, 23rd Floor
New York, NY 10017

Sir Peter,

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 27, 2015

VIA ELECTRONIC TRANSMISSION

Lord Daniel Brennan
Chairman, Juridica Investments Ltd.
11 New Street , St. Peter Port
Guernsey, GY13EG

Lord Brennan,

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Charles E. Grassley
Chairman
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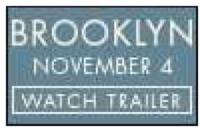
EXHIBIT 2



The New York Times Magazine | http://nyti.ms/1NVIdoN

Should You Be Allowed to Invest in a Lawsuit?

In recent years, investors have started buying shares in other people's litigation proceedings. Are they warping the legal system in the process?

By MATTATHIAS SCHWARTZ OCT. 22, 2015

The Miller quick coupler comes in a few different sizes. The one I tried out has the proportions of a laundry bin and weighs nearly 700 pounds. It allows the operators of hydraulic digging machines to switch buckets without ever leaving the cab. Two flanges rise from its sides, supplying it with the Volkswagen-like curves that inspired its nickname, the Bug. The flanges are drilled clean through with four holes set inside four bosses; beneath the front pair of holes are two upturned latches, like the open ends of two wrenches. Other than its poppy-red color, the device appears to be an ordinary specimen from the menagerie of heavy-duty construction equipment.

But in a Chicago courtroom on Oct. 26, the Bug will star in a multimillion-dollar dispute that represents a new frontier in the march of global capitalism. The nominal occasion is a paternity feud between two of the Bug's corporate parents, Miller UK, the equipment manufacturer based in Cramlington, England, and Caterpillar, the American construction-equipment giant that was once Miller's biggest customer. The themes of Miller UK v. Caterpillar are classics of the intellectual-property genre: greed, betrayal, bloodlines. But Miller's method of funding its side of the production is something new. Rather than paying its lawyers out of pocket, Miller has turned to a private firm to front the money for its legal costs: the Illinois-based Arena Consulting, which is headed by two brothers, Herbert and Douglas Lichtman. If Miller loses, Arena gets nothing. If it wins, Arena will get a share of the proceeds, which could run well into the tens of millions of dollars.

This new form of lawsuit funding is called litigation finance. It lies at the crossroads of two Anglo-American tendencies. The first is our litigious side, in which we celebrate our equality before the law by dragging those who have wronged us before a judge. The second is our ingenious mercantilism, as demonstrated by our penchant for turning everything from church raffles to mortgages into marketable securities to be chopped up, bundled and resold. Like the celebrity bonds backed by royalties and popularized by David Bowie during the 1990s, litigation finance represents the expansion of securitization into hitherto virgin territory. Those involved in the practice argue that it allows smaller companies like Miller to afford a day in court. Detractors worry that it could give rise to a litigation arms race, with speculative money aggravating the already high costs of the American legal system.

While the amount of litigation funded by outside financiers is still relatively small, the industry — which barely existed outside personal-injury cases until the mid-2000s — is growing rapidly, driven by increasingly permissive laws, the promise of high returns and hourly billing rates that run $500 or more for the largest and most sophisticated law firms. Between 2013 and 2014, Burford Capital, a public company traded in Britain, increased its lawsuit investments from $150 million to $500 million. During the same period, its profits rose by 89 percent, with a 61 percent net profit margin. The two-year-old Gerchen Keller, one of the industry's youngest funds, manages more than $840 million. With investor-backed war chests, plaintiffs are crossing borders to find the most favorable jurisdictions, and sometimes enlisting the help of foreign governments. Like equities and mortgages, lawsuits are making a transition from a private arrangement to a fully monetized asset class. The "portfolio" held by IMF Bentham, an Australia-based funder, consists of 39 cases, which the firm values at just over $2 billion. United States lawmakers are beginning to ask questions. In August, two senators from the Judiciary Committee sent letters to major funders asking them for the names of the cases they had invested in and many details of their business dealings. The letter called litigation finance a "burgeoning industry" that was "largely unregulated and operates with no licensing or oversight."

Larger companies, even those with their own in-house counsel, are selling off pieces of lawsuits to smooth out cash flow and offload risk. Juridica Investments, a Miami-based fund with $650 million under management, specializes in working

with Fortune 500 companies, which make up 80 to 85 percent of its investments, according to Richard Fields, its chief executive, who says that outside funding helps align the interests of plaintiffs' lawyers with those of their clients. "You want the largest recovery, in the shortest time, with the least uncertainty," he says. Smaller companies can use litigation financing to finance growth, by using their future award as a credit line.

Over the last century, many have come to see lawsuits as a means of expression, a political weapon and a powerful deterrent against those who might do wrong. And yet creating lawsuits is not the same as creating something like the Bug. Litigation is a zero-sum industry — every dollar in damages taken home by the winner, minus fees, must be wrung out of the loser. Litigation also helps shape legal precedent, defining the terms under which civil justice may be sought. It's hard to imagine how billions in outside capital won't wind up changing the justice system. The only question is how.

To help me understand what a quick coupler does, David Ridley, a straw-haired Miller mechanic in a jumpsuit, arranged a demonstration. Beside a chain-link fence near the Miller UK factory, he had set up a yellow Komatsu digging machine, of the scale favored by demolition crews and construction-minded toddlers. Attached to the end of its hydraulic arm was a digging bucket. Ridley picked up a sledgehammer and tapped a wrist-like joint, then slid out one of the two cylindrical pins holding the bucket in place. The pin's chrome surface was coated with grease. He hoisted it onto his shoulder. It weighed about 100 pounds.

"How many people want to be changing that all day?" Ridley asked.

Ridley then tapped out the other pin, climbed up into the Komatsu's cab and revved the diesel engine up to a gentle hum. He swung the yellow arm over to the Bug and positioned it within the flanges so the four holes aligned. He connected some hydraulic hoses to deliver power to the Bug's innards and tapped the two pins back in. Then, using the Bug-enhanced Komatsu, Ridley picked the bucket back up. Thanks to the Bug, it was an idiotproof process. A bright yellow safety latch tightened neatly over one of the pins. It took less than 10 seconds.

Before quick couplers, operators would waste 30 minutes or more each time they wanted to switch out a bucket or other tool. Miller's first quick coupler, nicknamed the Magnificent Seven, came to market in the early 1990s, reducing that time to seven seconds. They also solved another problem. Previously, a construction company with three kinds of machines would need to buy three lines of buckets to match. Quick couplers soon created universal compatibility among product lines: A Komatsu bucket, for example, could now be slapped onto a Volvo machine.

Caterpillar soon took notice. Compared with Miller, Cat is a leviathan: It's one of the 200 largest corporations in the world, with more than 100,000 employees. In 1997, according to legal filings from Miller, Cat approached a Miller executive at a trade show in Germany. The two companies began to talk about having Miller contract to supply Cat with a fully automatic coupler that the companies ultimately brought to market as the Pin Grabber Plus. Over the years, Cat (by Miller's count) bought about 27,000 of these units for resale to its own customers, generating upward of $100 million in revenue. Each generation of couplers had to mesh perfectly with the specifications of Cat's machines, so the companies' engineers exchanged technical drawings, and their executives hobnobbed over dinners in Northumberland and Illinois. By 2006, Caterpillar was ordering about 10,000 Miller couplers a year. According to Miller, Caterpillar orders accounted for as much as 28 percent of its business and a larger share of its profits.

Then, in the midst of the 2008 downturn, Cat, according to Miller's version of events, abruptly told Miller that its couplers would no longer be needed. Cat had designed its own coupler in-house. (Cat's filings deny that its coupler used Miller's proprietary technology and say that it was allowed to terminate its contract with Miller at any time.) Keith Miller, the company's founder, was gutted. With the loss of his largest customer, Miller earnings swung from an eight-million-pound profit to a million-pound loss. Miller took on debt and dismissed more than half of its employees.

A year after Cat broke the news, Keith Miller saw its competing coupler for the first time. "It wasn't just similar," he told me. "It was a replica of ours." Miller felt certain that the new Cat couplers made use of his company's know-how. He sued Caterpillar for breach of contract, fraud and misappropriating trade secrets. But he

quickly learned what it means to sue a company as large as Cat. Caterpillar's lawyers made dozens of preliminary filings. They claimed that Miller had delivered "substandard" couplers and failed to address "continuity of supply" issues that it had repeatedly raised.

Miller's lawyers quickly went through millions of pounds. To make it through the discovery phase of the suit would require millions more. Keith and his two siblings, who own the company together, mortgaged their houses and signed personal guarantees on the company's debt. But still they didn't have enough money to see their case through to court. So a contact in London introduced them to Reed Oslan, a Chicago lawyer who specializes in litigation finance.

In the legal world, the Miller lawsuit is what is known as a "David and Goliath" case, in which a plaintiff is so outgunned financially that it wouldn't be able to have its day in court without a lawyer willing to work on contingency or an infusion of investor cash. The Davids come in a variety of guises. Patricia Cohen, ex-wife of the billionaire hedge fund manager Steven A. Cohen, got a reported $1.2 million war chest from a firm called Balance Point, which specializes in funding divorce cases like hers. In 2006, 16 years after their divorce, Patricia saw a "60 Minutes" report on her ex-husband's business, which led her to file a lawsuit accusing Cohen of racketeering and fraud, claiming that he concealed $5.5 million during their legal proceedings. In 2014, after a string of findings and appeals, a federal judge dismissed the racketeering portion of Patricia's claim, noting that the only difference between it and other family disputes was "the seemingly inexhaustible resources that each side has brought to bear," but he allowed Patricia to continue her case against Steven for fraud and other claims. The litigious aftermath of the Cohen divorce, he noted, had persisted for twice as long as the Cohen marriage. Gerald Lefcourt, Patricia Cohen's lawyer, said that outside financing was necessary for Patricia to challenge someone with the resources of her ex-husband. "The average person who has a good job making $100,000 a year is middle class, but totally shut out of the legal system," he said. "You can't fight a big case. How do you do it?"

Terms of the deal between Miller UK and its funders have not been disclosed, but funders typically acquire the rights to 20 to 60 percent of all damages in hopes of recouping two or three times their original investment, sometimes more. This

month, when Miller UK Ltd. v. Caterpillar Inc. is scheduled to reach trial in a federal court in Chicago, Miller's lawyers will ask a jury to award Miller more than $100 million. "As the boss, I have to find a way forward," Keith Miller said. "We're just a little business from the northeast of England. Without litigation finance, we couldn't take them on."

Despite the hypercapitalist spirit of its rise, litigation finance actually has its roots in antiquity. According to Max Radin, a historian of ancient city-states, members of Athenian political clubs would back each other in lawsuits against their rivals. Apollodorus, a wealthy banker's son, bought shares of lawsuits and hired professional orators — some of the earliest lawyers in Western history — to write his court speeches. The Romans tolerated the practice in some cases until the sixth century, when it was banned by Emperor Anastasius. The Roman taboo on litigation finance, Radin writes, sprang from the idea that "a controversy properly concerned only the persons actually involved in the original transaction," not self-interested meddlers. In medieval England, litigants could hire "champions" to represent them in "trial by battle." By the late 13th century, these strongmen were being compared to prostitutes, and their prevalence hastened the movement of dispute resolution to the courtroom. During the Middle Ages, this concept of "champerty" — assisting another person's lawsuit in exchange for a share of the proceeds — emerged as part of the larger ecclesiastical taboo against usury. Though the word was associated with feudal land grabs, Radin notes that in practice, champerty was used by rich lawyers "on behalf of propertied defendants." In 1787, Jeremy Bentham, the political philosopher, mocked prohibitions on champerty as a holdover from feudal days, where courts were beholden to "the sword of a baron, stalking into court with a rabble of retainers at his heels."

Nevertheless, a vestigial squeamishness about investing in lawsuits made its way across the Atlantic. The first such disputes, early in the 20th century, were over contingency fees, the practice, now common, of lawyers taking on a case in exchange for a percentage of future damages. Unlike England, which still caps fees for winning solicitors, America was open to this kind of payment structure, in keeping with its frontier ethic toward credit and speculation. Twenty-eight states now explicitly permit champerty, as long as funders do not act out of malice, back frivolous lawsuits or exert too much control over trial strategy.

Hedge funds, banks and insurance companies have long been quietly funding the occasional lawsuit, but no major United States investment outfit in the commercial arena specialized in the practice until Juridica was founded in 2007. The industry's early growth was driven in part by the recession, which made lawyers at big companies eager to hand off risk and also increased the demand among investors for opportunities that could pay off no matter what was happening in the world's markets. Today the industry seems to have become a permanent part of the financial landscape, with shares of prominent funders trading every day on stock exchanges in London and Sydney.

Anthony Sebok, a professor at Cardozo Law who advises Burford, says he sees the practice as part of a broader trend toward the financialization of the law. "Why can't I promise a stranger some piece of the game?" he asked me, paraphrasing Bentham's writings. "Is there something icky about it, like I'm commodifying my rights? Bentham says these legal rights are our property. Why shouldn't we be able to sell them?" Jonathan Molot, a professor at Georgetown Law who serves as Burford's chief investment officer, has written that stock offerings by law firms could improve morale, lower rates and help lawyers focus on maximizing long-term profits. Like lawsuits, the firm itself should evolve into an asset. "It's a mistake for lawyers to hunker down and say we're different, we're excluded, we're not part of the economy," he said.

But the interests of financiers and plaintiffs are not always so well aligned. Depending on the structure of the deal and the ultimate payout, plaintiffs sometimes walk away with a few crumbs after the funders and lawyers take their share. One such outcome happened in 2007, when Altitude Capital, a funder, invested $8 million in an intellectual-property suit filed by DeepNines, a small network security company, against McAfee, a much larger competitor. The case was settled for $25 million, but after expenses ($2.1 million), lawyers' fees (roughly $11 million) and Altitude's cut ($10 million), DeepNines took home $800,000, a little over 3 percent of its settlement. Then, Altitude questioned DeepNines' math, arguing that the company shouldn't have deducted its own expenses before calculating contingency fees. It sued its former partner for $5 million more, eventually dropping the suit in 2011.

This kind of falling out is unusual, but it shows the fundamental conflict that can occur. When it's time to divvy up the prizes, allies can turn into competitors, and smaller, inexperienced plaintiffs can find themselves facing down a second Goliath — their former champion.

The Institute for Legal Reform, a Washington-based lobby affiliated with the Chamber of Commerce, argues that litigation finance will prompt courts to award damages so large that they hurt American businesses. Executives from Johnson & Johnson, FedEx, Dow Chemical and many other large companies have sat on its board. "We support the position taken by the Institute for Legal Reform," said a spokeswoman for Caterpillar, who said she could not comment further on the Miller case because of the pending lawsuit.

Lisa Rickard, the institute's president, calls litigation finance "the biggest single threat to the integrity of our justice system." As evidence, she put me in touch with Howard Schrader, a lawyer for Ace Limited, a $35 billion insurance company engaged in a multifront legal battle over a grievance dating back to the Liberian Civil War of 1991. At its root was the question of whether a Liberian company run by Lebanese nationals was due an insurance settlement over a looted supermarket, or whether the damage fell under a war-risk exclusion in its insurance policy that ruled out "insurrection." The plaintiff was a Liberian official, represented by a lawyer from the British Virgin Islands, who had found outside investors and sued in a Cayman Islands court to enforce a Liberian judgment. Schrader spent more than an hour speaking with me by phone, dutifully walking me through the case and peeling back mind-numbing layers of acquisitions, indemnity agreements, receiverships and jurisdictional disputes. To Rickard, the Ace Limited case was an example of buccaneering funders tracking down far-flung plaintiffs to pick at old wounds. I wasn't so sure. On one hand, a giant Swiss insurance company felt it was being shaken down. On the other, a small business felt it was due something for paying years of premiums. I had trouble feeling too sorry for either.

In another long-running legal battle, which began in Ecuador and has since spread to several other jurisdictions, Steven Donziger, a Harvard Law School-educated lawyer, has pursued Chevron with an Ahab-like single-mindedness. He has donned the hats of advocate, adviser and ad hoc fund-raiser for some 30,000

indigenous Ecuadorians who live around the Lago Agrio area and claim that Texaco, which Chevron acquired, left contaminated waste pits around old oil-drilling sites on their land. In 2010, after the case had gone on for 19 years and Donziger's team had gone through $7 million, Burford bought in. They invested $4 million, with another $11 million planned. In exchange for its support, Burford would receive 5.5 percent of the settlement, which could work out to a 100-to-1 jackpot should Chevron pay $27 billion in damages, an ambitious sum calculated by a court-appointed expert.

Chevron went on offense, digging up outtakes from a documentary in which Donziger extols the suit as an act of "brute force" and the purpose of plaintiffs' law as "to make [expletive] money." (Donziger has said that these excerpts are "grossly misleading or lacking in context.")

In September 2011, Burford sent Donziger a letter ending their relationship. They accused his team of "fraudulent conduct" and "deception," citing Donziger's communications with the supposedly impartial expert who had come up with the $27 billion settlement figure. Burford said that consultants working with Donziger's team had "ghost written" the expert's report and "worked very hard to cover that up." Donziger, meanwhile, has continued his crusade against Chevron in Canada, Argentina and Brazil. "You cannot sustain this kind of case without money, and a lot of money," Donziger said in 2010. You can imagine Chevron's being more inclined to settle had Donziger taken a less ambitious approach. Considering that scenario, it's arguable that Burford's investment could have been part of what has kept those 30,000 Ecuadorians — Donziger's clients — from receiving one penny in damages, more than 20 years after Texaco left their area. In 2014, a federal judge ruled that Donziger could not continue to pursue Chevron in the United States. Donziger has appealed and continues his foreign lawsuits. Chevron calls the case against the company "the legal fraud of the century."

Not long ago I had breakfast with Christopher Bogart, Burford's C.E.O. He is in early middle age, and his well-tended appearance and subtly asymmetric eyeglasses signal prosperity. "We've done more than 100 deals," he said, speaking of the Chevron case. "We haven't had another one that's gone that way." Burford, Bogart told me, never anticipated a $27 billion payout. "We believed that Chevron would

settle for much less than that," he said, perhaps $1 billion, a more modest 3-to-1 or 4-to-1 win.

"The case illustrates something that I think all lawyers know," he continued. "You don't always get all of the facts from your client." His tone was somewhere between resignation and remorse, like a banker who had made a bad bet.

Of course, the transformation of legal disputes into deals didn't begin with litigation finance. For years, observers of the legal profession have criticized how the market economy erodes its ethical obligations, pushing private advantage over public good and billable hours above all. Only the truly rich can afford to hire a professional who will zealously and exhaustively defend their interests. When litigation financiers talk about expanding access to justice and standing up for the little guy, they generally mean helping millionaires pursue claims against billionaires. In some ways, the rise of litigation finance is a symptom of what the American civil-justice system has become — a slow, expensive and complicated system for mediating corporate breakups. The judges in this system might talk like referees, but their function is moving toward that of accountants.

Keith Miller sometimes imagines his lawsuit as a movie, the heavy-equipment version of "Erin Brockovich." For years, he claims, Caterpillar denied rumors that it was building its own version of the Bug, reassuring Miller of the prospects for their ongoing relationship up to the moment that Cat terminated the contract. Emails turned up during discovery by Miller's legal team show Caterpillar employees' strategizing about what to do if the information somehow leaked. To Keith Miller, the dispute over the quick coupler's origin is about more than money.

"All we want to do is set the record straight about what happened and why," he told me.

An initial skirmish in Miller v. Caterpillar involved a major question for litigation finance as a whole — should plaintiffs be forced to disclose their funding arrangements, or are they entitled to keep these deals confidential? Lisa Rickard, from the Institute for Legal Reform, argues in favor of disclosure. "That helps the judge and the defendant understand who's pulling the strings," she told me.

Judge Jeffrey Cole, who is presiding over the Miller case, disagreed. He called champerty "a hoary doctrine" that time had "narrowed to a filament." Many of the particulars of Miller's financial dealings with its backers, Cole found, are irrelevant, as they "have nothing to do with the claims or defenses in the case." Miller could keep the specifics of how it was financing its lawsuit confidential.

If Cole's ruling is any indication, the day is approaching when lawsuits are something like the Bug itself — complicated, expensive and eminently transferable commodities. More and more lawyers will find themselves being paid by people whose interest in the outcome is speculative, not personal. Somewhat like mortgage banking, lawyering will involve serving as a buffer between the people who care and the people who manage the probabilities.

Like most entrepreneurs, Keith Miller is a bit of both. His feelings about Caterpillar's treatment of the Bug haven't stopped him from continuing to sell the company some of Miller's smaller products. "We're hand-to-mouth each month," he says. "Quite frankly, we're not in a position to turn anything down." Could he ever imagine repairing Miller's relationship with Cat? "I'd be delighted to do that," he said. "So long as we're reimbursed for our losses."

Correction: October 23, 2015

An earlier version of this article misstated the amount of money managed by the firm Gerchen Keller. It has more than $840 million under management, not $475 million in private capital.

Mattathias Schwartz is a contributing writer for the magazine. His last article was about the meaning of the word "relevant" in the USA Patriot Act.

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Lawsuit Details How Law Firms Borrow And Pay Millions To Get Mass Tort Cases

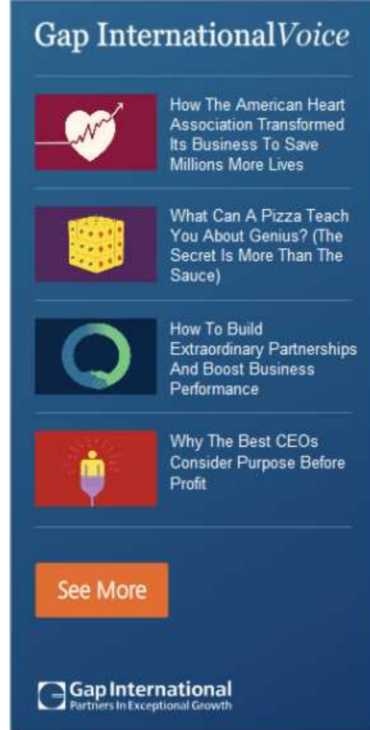
A former employee of a Houston law firm offers a revealing look at the world of mass torts in a lawsuit detailing how the firm borrowed millions of dollars at near-usurious rates to buy control of thousands of cases that it hoped to turn into as much as $200 million in fees.

In the lawsuit, former Wells Fargo leveraged-finance executive Amir Shenaq says he was lured to AkinMears, a high-volume Houston law firm, by the promise of millions in dollars in fees for himself if he could obtain needed financing. Shenaq claims he earned $1.4 million during his four-and-a-half-month stint at AkinMears but is owed another $4.2 million for arranging some $90 million in loans, part of which was used to buy some 14,000 lawsuits from other firms.

The claims, if true, paint an unflattering portrait of a business where law firms use television and Internet ads to recruit clients, whom they then trade with other firms in exchange for a piece of the contingency fees that often run to 40%. This division of labor may make economic sense, but can run afoul of ethics rules that prohibit lawyers from splitting fees unless they perform meaningful legal work for their clients.

AkinMears lists four partners and three attorneys "of counsel" on its website including name partners Truett Akin IV and Michelle Mears. A lawyer for the firm said they would have no comment. Shenaq's lawyer, Kenneth S. Wall, didn't respond to a request for comment. Houston Judge Randy Wilson issued an order sealing the case on Oct. 7, with the agreement of both sides, because of the potential for "immediate and irreparable injury" to AkinMears. The suit was first reported in a Texas Lawyer article last week.

In a filing that reads more like a potboiler detective novel, Wall explains how the then-29-year-old banker moved to Houston in 2014 to set up a leveraged finance office for Wells Fargo. He began talking to his neighbor, Truett Akin IV, and the two



quickly began discussing a job. AkinMears owed $40 million to a local litigation-finance firm that was charging it 24% interest, Shenaq claims, yet it was down to its last $2 million in cash because of heavy spending on television ads to recruit new clients.

"AkinMears is not run like a traditional plaintiff's law office, and the Firm's lawyers do not do the 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."

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Akin told Shenaq he wanted to change the firm's strategy from finding clients through advertising to buying cases from other firms. Shenaq says Akin had a goal of buying $100 million worth of cases by the end of 2015. He was hired in March 2015, the lawsuit says. Shenaq says he "hit the ground running" and immediately arranged a meeting with Gerchen Keller Capital, a Chicago firm that is one of the biggest in litigation finance.

Hedge funds and firms like Gerchen Keller have long loaned money to plaintiff lawyers, often at high rates, because litigation finance is an attractive investment that is uncorrelated with anything else. In his suit, Shenaq says he lowered AkinMears' rate from 24% to 16%. With some of the proceeds, he says, Akin bought a fifth interest in a Phenom 300 corporate jet for $1.5 million. GKC didn't immediately respond to a request for comment.

At the same time as he was arranging the new loan, Shenaq says he negotiated transactions with Houston lawyer Fletch Trammel and Dallas lawyer Mazin Sbaiti, who he says was affiliated with four firms that called themselves Alpha Law. They ultimately agreed AkinMears would pay $40 million for 13,837 mesh cases. Shenaq estimated AkinMears could reap $130 milllion to $200 million in fees from the 14,000 cases, at $14,000 to $16,000 per case.

Transvaginal mesh litigation has surged over claims the products made by Johnson & Johnson, C.R. Bard, Boston Scientific and others can lead to infections, incontinence and other conditions. Manufacturers have paid out billions in settlements so far. On its website, AkinMears says it also represents clients in other mass torts including mesothelioma, Risperdal, power morcellators, testosterone therapy, Xarelto, Lipitor and the Mirena intrauterine device.

Shenaq says he was operating under an 18-month contract that promised him $30,000 a month plus commissions, with the goal of raising $20 million in capital from new sources. He claims he was to be paid 3% up front, or $1.5 million on $50 million, plus a back-end fee that could amount to 2% of the fees AkinMears earned on the cases he helped finance. He also claims he was promised 7.5% of any investment deals he brought to the firm on the front end, plus 5% of resulting fees on the back end. (Texas ethics rules say "a lawyer or law firm shall not share or promise

to share legal fees with a non-lawyer," although a person with Shenaq's name is a graduate of Emory Law School and member of the State Bar of Georgia.)

Before leaving on a family vacation in July, Shenaq says he sent Akin an e-mail specifying the commissions he was owed. Akin replied "let's discuss when you return."

"Uh-oh. You know where this is headed," the lawsuit states.

In a meeting after he returned, Akin launched into a what he called "a big boy talk" about his work on the deal. Akin claimed another lawyer active in transvaginal mesh litigation originated the deal, and Shenaq hadn't raised any capital. By the weekend he learned his health insurance had been cancelled. When he went to pick up his belongings, he learned from the firm's lawyer that he'd been fired on July 31 for self-dealing and conflicts of interest.

The firm didn't specify what those were, and if it was his help arranging loans for other lawyers in the syndicate, Shenaq says, Akin suggested them both. "Akin and Mears didn't pay Shenaq for one reason and one reason only: They didn't pay him because they didn't feel like it," he says.

The lawsuit is dated Sept. 29 and soon after it was filed AkinMears moved to seal it. "This information would be valuable to any competitor by, for example, assisting the competitor in creating a business plan or financial model maximizing efficiency similar to that of AkinMears and otherwise allowing a competitor to gain an unfair advantage in financing deals similar to those to which AkinMears was a party by knowing AkinMears' financial data," Texas Lawyer reported the firm said in its motion to seal the case.

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America's Most Dangerous Cities 2015

Microsoft Makes Windows 10 Upgrades Automatic For Windows 7 And Windows 8

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Inside Massive Injury Lawsuits, Clients Get Traded Like Commodities for Big Money

A disgruntled former law firm employee spills secrets on a mass tort factory.

Paul Barrett

October 22, 2015 — 2:05 PM EDT

For all the black robes and ceremony, the American legal system often operates more like a factory assembly line than a citadel of individualized justice. Ninety-five percent of criminal prosecutions end in plea deals. Many defective-product claims settle in mass pacts that benefit attorneys more than putative victims. Now a legal dispute within a plaintiffs' law firm that organizes massive torts is threatening to pull back the curtain on the mechanics of high-volume litigation.

It's not a pretty picture.

Amir Shenaq, a 30-year-old financier, sued his former employer, the Houston law firm AkinMears, over $4.2 million in allegedly unpaid commissions. To earn those fees, Shenaq says he raised nearly $100 million used to purchase thousands of injury claims from other lawyers. The suit portrays a claim-brokering marketplace that normally operates in secret, with clients recruited en masse through TV and Internet advertising who are then bundled and traded among attorneys like so many securitized mortgages.

AkinMears "is not run like a traditional plaintiffs' law office, and the firm's lawyers do not do the types of things that regular trial lawyers do," according to the Shenaq suit, which was filed in Texas state court in late September by another Houston firm, Oaks, Hartline & Daly. AkinMears doesn't do "things like meet their clients, get to know their clients, file pleadings/motions, attend depositions/hearings, or, heaven forbid, try a lawsuit," Shenaq alleges. Rather, AkinMears "is nothing more than a glorified claims-processing center, where the numbers are huge, the clients commodities, and the paydays, when they come, stratospheric."

AkinMears's outside attorney, Allan Neighbors IV of Houston, declined to comment or make the firm's name partners, Truett Akin IV and Michelle Mears, available for interviews. In court filings, AkinMears denied wrongdoing and said Shenaq had been fired last July 31 for unspecified reasons. Shenaq, a former Wells Fargo Securities leveraged-finance banker, alleges Akin fired him to avoid paying the multimillion-dollar commissions.

AkinMears asked the trial judge to seal Shenaq's suit, saying his disclosures "will cause immediate and irreparable harm to the continued nature of financial and other information belonging to AkinMears and those with whom it does business under terms of confidentiality." Judge Randy Wilson granted the gag order earlier this month, but only after the original filing had been disseminated online. Shenaq and the Oaks firm did not respond to requests for comment.

While it primarily concerns Shenaq's attempt to get paid commissions he says he's owed, the employment suit illuminates the now-common practices of litigation finance and claim aggregation. Shenaq alleges that in 2014, five-attorney AkinMears switched strategies away from "buying non-stop advertisements and acquiring clients in a random, unpredictable manner." Instead, the firm's principals decided "to start making direct investments in ongoing mass tort litigation" over such products as hip implants, Viagra, and Lipitor.

To finance those investments, AkinMears asked Shenaq to raise tens of millions of dollars from outside investors. The former banker says he did that primarily by obtaining nearly $100 million from the Chicago-based hedge fund Gerchen Keller Capital. The fund specializes in betting on other people's lawsuits—a form of alternative investing known as litigation finance.

With the Gerchen capital, according to the Shenaq suit, AkinMears purchased some 14,000 defective-product claims, most of them concerning so-called transvaginal mesh, a type of implant designed to bolster sagging organs. Some women have complained that once implanted, the devices also cause injury and severe pain. By Shenaq's calculations, the mesh cases cost AkinMears between $2,500 and $3,125 apiece and yielded attorneys' fees of $15,000 each.

It isn't clear from the court filings how much the plaintiffs stood to gain from settlement of their claims or where the AkinMears-owned cases stand. It also isn't clear which companies AkinMears sued with the client information it acquired. Among the defendants that have been sued in connection with transvaginal mesh implants are C.R. Bard, Boston Scientific, and Johnson & Johnson.

Gerchen Keller managing director Travis Lenkner declined to comment, citing client confidentiality, but the hedge fund has been highly visible in the burgeoning litigation finance field. The firm announced a new $475 million fund in February for investments such as the AkinMears financings. Taken all together, Gerchen Keller says it manages some $800 million in assets for pension funds, endowments, foundations, and financial institutions—enough to make it one of the largest players in litigation finance.

In some instances, Gerchen Keller invests in litigation in exchange for a cut of any recovery.
The investments with AkinMears, however, were essentially loans extended at an interest rate of "slightly below 16 percent," according to the Shenaq suit.

The U.S. Chamber of Commerce has condemned both claim aggregation and litigation finance as likely to encourage frivolous and abusive lawsuits. "The allegation that a law firm used hedge fund money to buy and sell thousands of personal injury lawsuits shows plaintiffs have become little more than commodities," says Lisa Rickard, president of the Chamber's Institute for Legal Reform. "This case appears to be a new example of how litigation financing perverts the justice system and puts the interests of lawyers and financiers ahead of actual plaintiffs."

More about the plumbing of mass lawsuits could become public if the Shenaq case defies the odds and proceeds to a public trial. And even the information available so far has helped to underscore that the life of a plaintiffs' attorney isn't necessarily what's taught in law school. "Despite the fact that AkinMears's lawyers do not have to dirty their hands with the mundane chores that come with actually practicing law," the suit alleges, "the firm nonetheless charges a robust 40 percent contingency fee for its efforts (which is then divided in some fashion among the various participants in its ever-shifting syndicate)." Lucrative work, if you can swing it.

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Ex-Employee of AkinMears Sues Firm, Alleges Millions Owed

Brenda Sapino Jeffreys, Texas Lawyer

October 20, 2015

A Harris County judge has temporarily sealed a petition filed by a former employee of Houston mass tort firm AkinMears who alleges that the plaintiffs firm fired him in July because it didn't want to pay him millions in unpaid commissions and fees for his work raising capital for firm.

In that Sept. 29 petition, Amir Shenaq alleges that when his employment was terminated on July 31, the firm owed him $4.2 million in unpaid commissions and fees for raising nearly $100 million for the firm in four months. Shenaq alleges in the petition that he not only met the goal set in his employment contract, but "shattered" it, since he was asked to raise $20 million in capital from new sources or $40 million from all sources.

Shenaq alleges that after he sent the firm an email requesting payment of the compensation due him, partner Truett Akin IV told him the request was "insulting" and demanded to know why Shenaq should be paid before him or partner Michelle Mears.

Shenaq alleges in the petition that AkinMears may have planned all along to find a way to not pay him all that he's due.

"And looking back at how it all went down, it is now clear that the question wasn't if AkinMears was going to screw Shenaq. The only question was when," Shenaq alleges in the petition.

Defendants Akin and Mears did not return telephone messages seeking a comment. Neither did defense attorney Allan H. Neighbors IV, a shareholder in Littler Mendelson in Houston.

Defendants AkinMears, Akin and Mears have not filed an answer to the allegations in Shenaq v. Akin. However, AkinMears filed a motion on Oct. 1 seeking temporary and permanent orders to seal the court record on the ground that Shenaq breached a confidentiality agreement with the firm by disclosing "large and varied types of confidential, proprietary, and trade secret information about AkinMears, its business partners and clients.

"This disclosure was certainly no accident and serves no purpose other than to financially harm AkinMears and those with whom it does business."

AkinMears alleges that it fired Shenaq for cause on July 31, and that in the petition he filed on Sept. 29, Shenaq disclosed confidential and proprietary information that is valuable because it gives the firm a competitive advantage and could give competitors an unfair advantage.

"This information would be valuable to any competitor by, for example, assisting the competitor in creating a business plan or financial model maximizing efficiency similar to that of AkinMears and otherwise allowing a competitor to gain an unfair advantage in financing deals similar to those to which AkinMears was a party by knowing AkinMears' financial data," the firm alleges in the motion.

It alleges that Texas Rule of Civil Procedure 76a allows court records to be sealed.

On Oct. 6, plaintiff Shenaq and defendant AkinMears filed an agreed temporary order sealing the original petition and request for disclosure filed on Sept. 29. On Oct. 7, 157th District Judge Randy Wilson signed an order temporarily sealing the petition and setting a hearing in November on AkinMears' motion to seal a court record.

In a notice of oral hearing on AkinMears' motion to seal, filed on Oct. 7, the firm alleges that Shenaq sued the firm and partners Akin and Mears for claims arising from his employment and for compensation. Shenaq brings breach of contract, quantum meruit, accounting and constructive trust causes of action against the defendants.

AkinMears alleges in the notice of oral hearing that Shenaq discloses confidential information in the petition, including information "concerning the source and identity of AkinMears' financing; amounts of financing obtained by AkinMears; settlement values of cases in which AkinMears or its business associates have interest; AkinMears' borrowing costs and related financial impacts of such borrowing costs; actual and potential fees received by AkinMears; commissions paid to others; and confidential deal terms related to the purchase of litigation dockets, including the purchase price, number of cases and financing terms."

Plaintiffs attorney Kenneth Wall, of counsel with Oaks, Hartline & Daly in Houston, did not return a telephone message seeking a comment.

The Alleged Arrangement

In the petition, Shenaq alleges that he left a job in finance at Wells Fargo Securities to join AkinMears in March to help it raise money to "start making direct investments in mass tort litigation" and to get away from the business practice of securing clients through television advertisements. Shenaq alleges that he learned that the firm had borrowed more than $40 million from Virage Capital Management, but by mid-February, "the firm's cash position had withered below $2 million."

Shenaq alleges that he joined the firm on March 16 and signed an employment contract calling for a minimum of 18 months of employment and with a goal to raise at least $20

million in capital from new sources or $40 million from all sources. As for compensation, Shenaq alleges that he would receive a $30,000 monthly draw on a nonrecourse basis, and receive commission or fees for capital acquisition, deal origination and deal closing. He alleges that the firm put no limit on his potential compensation.

Shenaq alleges in the petition that he secured financing for the firm from Chicago-based Gerchen Keller Capital (GKC), including a $50 million commitment in April. He alleges that GKC wired half of the money to the firm and half to Virage to pay down its debt. He alleges that the firm paid him $1,430,765, a 3 percent commission, for raising that $50 million, and Akin "assured" him that he would be paid another $1 million in 18 months.

In addition to several smaller financings, Shenaq alleges that he also secured another $45 million commitment from GKC to fund the purchase of about 14,000 transvaginal mesh cases from a group of four law firms. Shenaq alleges that he estimated the value of fees from those cases at $130 million to $200 million, based on a net return of attorney fees of $14,000 to $16,000 per case. He alleges that final terms of the deal, which closed in July, called for AkinMears to pay $40 million for a docket of 13,837 mesh cases and 900 nonmesh cases, with GKC financing the purchase price and committing to provide an additional $6 million for case expenses.

Shenaq alleges that in late July, prior to going on a family vacation, he sent an email to Akin requesting payment of $4.2 million in compensation in commission and fees. He alleges that after he returned from vacation, he went to a meeting at the firm with Akin and Mears that was a "full-on assault" of him.

He alleges that Akin bullied him during the meeting, "intermittently screaming and doing his best to intimidate," and alleging that Shenaq did not originate the mesh case deal, but rather that it was originated by a lawyer who does business with the firm.

"It takes a very clever lawyer—or something—to argue with a straight face that GKC's transfer of over $43 million to the firm's account at the Post Oak Bank was not an acquisition of capital," Shenaq alleges in the petition, in reference to the $40 million funding the mesh case deal and another $3 million in funding for another group of cases.

Shenaq alleges that he received an email from Akin on Aug. 3 notifying him he had been terminated on July 31, and on Aug. 14 he received a letter from a lawyer for the firm stating that he had been terminated for cause on July 31, "due to insubordination, breaches of fiduciary duty, self-dealing and conflicts of interest, thus extinguishing any compensation, back-end interest or fees allegedly owed to you."

Shenaq alleges that neither the firm nor its lawyers explained exactly what he did that caused the insubordination, self-dealing or other allegations. He alleges that he did help two other lawyers arrange financing with GKC, but at Akin's request and with his knowledge.

"AkinMears' after-the-fact story is utter pretext, and its revisionist history would be comical if it wasn't so sinister. Akin and Mears didn't pay Shenaq for one reason and one reason only: They didn't pay him because they didn't feel like it," he alleges in the petition.

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