

## **Beware the Trolldom: Speculative Interests and Policy Implications behind the Circulation of Damage Claims**

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**Abstract :** Moving from the evaluations operated by Richard Posner in his judgment on the case *Carhart v. Halaska*, the paper seeks to analyse the so-called 'litigation troll' phenomenon and the development of a damage claims market, i.e. a market in which the right to propose claims is voluntary exchangeable for money and can be asserted by private buyers. The aim of our study is to assess whether the implementation of a 'damage claims market' might represent a resource for victims or if, on the contrary, it might operate solely as a speculation tool for private investors. The analysis will move from the US experience, and will then focus on the EU framework. Firstly, the paper will analyse the relation between the litigation troll phenomenon and the patent troll activity: even though these activities are considered similar by Posner, a comparative study shows how these practices significantly differ in their impact on the market and on consumer protection, even moving from similar economic perspectives. The second part of the paper will focus on the main specific concerns related to the litigation trolling activity. The main issues that will be addressed are the risk that the circulation of damage claims might spur non-meritorious litigation and the implications of the misalignment between the victim of a tort and the actual plaintiff in court arising from the sale of a claim. In its third part, the paper will then focus on the opportunities and benefits that the introduction and regulation of a claims market might imply both for potential claims sellers and buyers, in order to ultimately assess whether such a solution might actually increase individual's legal empowerment. Through the damage claims market compensation would be granted more quickly and easily to consumers who had suffered harm: tort victims would, in fact, be compensated instantly upon the sale of their claims without any burden of proof. On the other hand, claim-buyers would profit from the gap between the amount that a consumer would accept for an immediate refund and the compensation awarded in court. In the fourth part of the paper, the analysis will focus on the legal legitimacy of the litigation trolling activity in the US and the EU framework. Even though there is no express provision that forbids the sale of the right to pursue a claim in court - or that deems such a right to be non-transferable - procedural laws of single States (especially in the EU panorama) must be taken into account in evaluating this aspect. The fifth and final part of the paper will summarize the various data collected to suggest an evaluation on if, and through which normative solutions, the litigation trolling might comport benefits for competition and which would be its overall effect over consumer's protection.

**Keywords :** competition, claims, consumer's protection, litigation

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