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Alabama

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Alabama courts have yet to address the discoverability of third-party medical funding files; however, given that Alabama has adopted a modified collateral-source rule (discussed further is response to the question of medical bills at trial), it could be argued that such information is both relevant and discoverable. Ala. Code § 12-21-45(a).

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Arkansas

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Arkansas does not currently have specific rules or regulations regarding third-party medical funding/factoring ("TPMF"). However, there may be limitations/sanctions if the TPMF company controls or directs the litigation in violation of Ark. R. Prof. Cond. 5.4. Also, TPMF may be discoverable under the Arkansas Rules of Civil Procedure to the extent not subject to privilege, such as attorney-client privilege.

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Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Regarding factoring companies, there is a growing trend in California whereby a surgeon and surgery center will perform surgery on a plaintiff-patient on a medical-legal lien basis. These lien-based medical bills are always far in excess of medical community standards. A financial factoring company will then purchase the medical-legal lien at a steep discount from the surgeon and surgery center. In exchange, the surgeon and surgery center will then "assign" the lien to the factoring company. The factoring company then stands in the shoes of the surgeon and surgery center for the full amount of the lien and usually will not compromise the lien. The defense is not permitted to discover the amount paid by the factoring company to the surgeon and surgery center. At trial plaintiff's counsel will "black-board" the full amount of the medical lien before the jury, and any reference to the factoring company is inadmissible. (*Katiuzhinsky v. Perry* (2007) 152 Cal.App. 4th 1288.).

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Colorado

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

The Colorado legislature recently passed a statute that essentially bars discovery and presentation of evidence regarding medical lien financing if the finance company discloses certain information to the plaintiff.[ii] Notably, the statute provides that a defendant does not have standing to challenge the adequacy of a medical lien finance company's compliance with statute's disclosure requirements.[iii] As a result, defendants are generally barred from taking any discovery whatsoever regarding medical lien financing.

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Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Connecticut standard discovery provides for discovery of payments by an *insurer*. However, there is nothing prohibiting inquiry at deposition about the source of medical payments.

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Delaware

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Delaware Courts have not addressed this issue.

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Florida

Does your state allow testimony at trial of the full amount of medical bills? What about medical-legal liens?

For causes of action accruing before March 24, 2023, Florida courts permit plaintiffs to offer evidence of the gross amount of the charges for medical care as long as the bills were not paid by a charitable or governmental source. Further, the defense was not permitted to offer evidence of lesser payments, for example, that private insurance paid those medical bills at substantially discounted rates.Yet, statutory changes effective on March 24, 2023 ("Florida's Tort Reform"), apply to payments for past medical care, unpaid medical bills, and the costs of future medical care[i] in personal injury or wrongful death cases accruing on or after March 24, 2023.[ii] The changes provide limitations on the introduction of evidence of the amount of medical bills actually paid, regardless of the payment's source. Specifically, evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid. This evidentiary standard is applicable even if the satisfied medical bills were satisfied at a reduced rate, whether by private insurer, government program, or another payor.[iii]

However, in evidencing *unpaid* past medical bills, the new statute also contains language allowing "evidence of reasonable amounts billed […] for medically necessary treatment or medically necessary services". As such, plaintiffs will likely argue the subjective standard of reasonableness in an effort to have the full amount of unpaid medical bills deemed admissible. Nevertheless, for past medical bills that remain outstanding the new statute permits allows introduction of evidence of the amount the insurer must pay, as well as the co-pay obligation or other personal contribution such as deductibles required under the policy. Further, if plaintiffs choose to fund medical care through a letter of protection, evidence of the amount the plaintiffs' health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation is admissible, as is the plaintiffs' share of medical expenses under the insurance contract or regulation, had they obtained medical services or treatment pursuant to the health care coverage. If plaintiffs do not have health insurance, or have Medicare or Medicaid, then 120% of the Medicare reimbursement rate is admissible, but if there is no rate on the date of the incurred medical treatment, then 170% of the Medicaid rate is admissible.[iv]

Additionally, in what is arguably the most significant statutory change, plaintiffs must now disclose the existence of letters of protection, along with other pertinent information, such as the existence of health insurance at the time of treatment and the identity of such coverage. Section 768.0427, Fla. Stat. Ann. (3)(a-e) sets forth the detailed list of what must be disclosed. Equally importantly,

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such disclosures are now admissible.

As to evidence regarding future medical care, statutory changes allow for a wider range of admissibility for both plaintiffs and defendants. If plaintiffs have healthcare coverage other than Medicare or Medicaid, or are eligible for any such health care coverage, evidence of the amount for which future charges could be satisfied if submitted to such coverage is admissible. If plaintiffs do not have health care coverage, or have health care coverage through Medicare or Medicaid (or are eligible for the same), evidence of 120% of the Medicare reimbursement rate in effect at the time of trial is admissible. If there is no applicable Medicare rate for a service, 170% of the corresponding Medicaid rate is deemed admissible. However, the statutory change also allows for admission of "any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services." Accordingly, the effects of this catchall inclusion again create a largely subjective standard, the true meaning of which will be interpreted by courts in the years to come.

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Georgia

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Georgia courts have permitted discovery of third-party medical funding company files in several cases, and some Georgia courts have analyzed whether those files would be admissible at trial pursuant to Georgia's collateral source rule.

In Georgia, the collateral source rule "bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant's liability and damages for such payments." *Hoeflick v. Bradley*, 282 Ga. App. 123, 124 (2006); *see also Polito v. Holland*, 258 Ga. 54, 55 (1988) ("[t]he collateral source rule, simply stated, is that the receipt of benefits or mitigation of loss from sources other than the defendant will not operate to diminish the plaintiff's recovery of damages."). The rationale for this rule is a tortfeasor should not be allowed to benefit by its wrongful conduct or to mitigate liability by collateral funds and sources provided by others. *Olariu v. Marrero*, 248 Ga. App. 824, 825 (2001). Thus, evidence of collateral benefits are immaterial in a jury's assessment of damages because the collateral benefits may not be offset against damages. *Id*.

However, medical funding companies, unlike traditional collateral sources, act as creditors by fronting a plaintiff's medical expenses, while intending to recover that money from the plaintiff after the lawsuit. *Rangel v. Anderson*, 202 F. Supp. 3d 1361, 1373 (S.D. Ga. Aug. 23, 2016). Funding companies are not traditional collateral sources because their funding does not reduce plaintiffs' financial obligations and, if the plaintiffs lose at trial, they are still on the hook with the funding company. *See Bowden v. The Med. Ctr., Inc.*, 309 Ga. 188, 191 (2020) ("where the subject matter of a lawsuit includes the validity and amount of a hospital lien for the reasonable charges for a patient's care, how much the hospital charged other patients, insured or uninsured, for the same type to care during the same time period is relevant for discovery purposes."). Moreover, where the funding company pays the plaintiff's medical provider, the medical provider's "financial interest in the outcome of the case is highly relevant to the issue of credibility and potential bias" because the provider "has become an investor of sorts in the lawsuit." *Stephens v. Castano-Castano*, 346 Ga. App. 284, 291 (2018). Thus, generally, it appears that evidence of the existence of a medical funding company, the medical funding company's correspondence with plaintiffs and plaintiffs' providers, and the medical funding company's loans and payments are all discoverable under Georgia law.

Georgia recently considered whether a medical funding company could be

subpoenaed for the production of certain documents related to a plaintiff's medical treatment. In *Joiner-Carosi v. Adekoya*, the court held that a trial court did not err in granting a plaintiff's motion to quash a defendant's subpoena for production of documents issued to a medical funding company and plaintiff's medical provider. *Joiner-Carosi v. Adekoya*, 357 Ga. App. 388 (2020). However, the court's holding in that case rested on the peculiar facts supporting the subpoena itself. *Id*. at 392.

In *Adekoya*, the defendant alleged that the records she sought through her subpoena were important to show potential bias on the part of plaintiff's treating physician, and to determine whether the medical charges were reasonable. *Id*. at 389. The plaintiff argued that the subpoena should be quashed because the defendant never sought to obtain the documents through discovery and none of plaintiff's treating physicians were testifying and, therefore, defendant would be unable to impeach the testimony of any of plaintiff's witnesses through the records. *Id*. at 392. The court upheld the trial court's decision to quash defendant's subpoena because defendant failed to explore the relationship between the medical funding company and the plaintiff's treating physicians before the eve of trial and "although potential bias is an issue to be explored with testifying physicians, these issues were waived because [plaintiff] was not calling any of his physicians to testify." *Id*. Thus, the *Adekoya* court did not hold that records evidencing the relationship between a medical funding company and plaintiff's treating physician were undiscoverable in general, but rather held that in that case – where plaintiff's treating physicians did not testify – the issue of bias had been waived.

Similarly, the Georgia Court of Appeals recently considered whether a plaintiff's medical provider's claims manager could be compelled to create and produce database reports containing the medical provider's financial and billing information. *Medernix, LLC v. Snowden*, 2024 Ga. App. LEXIS 243 (June 21, 2024). The Court found that the both the medical provider (Ortho Sport & Spine, LLC) and its claims manager (Medernix, LLC) could not be compelled to generate a database report "revealing Ortho Sport/Medernix's billed charges or rates, as well as any adjustments made to those charges or rates, 'categorized by associated law firm referral partner.'" *Id.* at *3.

Nevertheless, the court stated that "the amount that Ortho Sport charged, wrote-off, adjusted, or accepted as payment in full from other patients for the same types of treatment at the same medical facility during the same general time period as [the plaintiff] may have some relevance – 'particularly in the broad discovery sense' – to the reasonableness and necessity of the charges for [the plaintiff's] care and thus be discoverable." *Id.* at 11-12. The court further stated that "evidence that the plaintiff's counsel has a close relationship with and a history of making referrals to the plaintiff's treating physician can be relevant to show the bias of that physician." *Id*. at 13.

That said, the court held that the information contained in the database report that the defendants sought to have Ortho Sport and Medernix, LLC create would be far too extensive in scope given the breadth of sensitive financial information that would be contained in the report. *Id.* at 14. Thus, the Court held that the defendants' request was not reasonably calculated to lead to the discovery of admissible evidence. *Id.*

However, the court also found that information regarding write-offs or adjustments to the bills of other patients requested from Medernix, LLC by the defendants would be discoverable, if it was shown to be relevant to anything that is or may become an issue in the litigation. *Id.* at 25-26. The court further explained that "the amount that Ortho Sport charged, wrote-off, adjusted, or accepted as payment in full from other patients for the same types of treatment at the same medical facility during the same general time period as [the plaintiff] may have some relevance to the reasonableness and necessity of the expenses for [the plaintiff's] care. *Id.* at 27. Thus, the court did permit discovery of files and financial information held by the plaintiff's treating provider's claims manager (Medernix, LLC) related to write-offs, adjustments, and payments.

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Indiana

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There are no Indiana cases or statutes that directly discuss the discoverability of 3rd party medical funding files. Under Indiana Trial Rule 26(B), however, discovery is open to "any matter, not privileged, which is relevant to the subject-matter involved in the pending action." While there are no specific rules regarding the discovery of 3rd party medical funding/factoring company files, it is likely that, under the broad scope of discovery, that information would be discoverable. That 3rd party company could try to claim that the information in the file is some sort of trade secret [or otherwise privileged], but that would be a question of first impression in Indiana.

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Illinois

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Illinois has not developed any rules or regulations pertaining to the specific issue of the discoverability of files relating to the funding of medical expenses by third parties. However, just as defendants are generally able to discover the records of a plaintiff's health insurance carrier to determine the amount of medical bills that have been charged, paid, and written off, it follows that the files of a third party medical funding or factoring company should likewise be discoverable as such information goes to establishing the reasonableness of the bills and the amount of the set-off to which defendants are entitled under Section 2-1205 of the Code of Civil Procedure.

Illinois employs a "reasonable value" approach whereby a plaintiff may recover the *entire* amount billed, provided the plaintiff establishes the proper foundational requirements to show the bill's reasonableness. *Wills v. Foster*, 229 Ill. 2d 393 (2008). The leading and most difficult case for defense attorneys in Illinois is the *Wills* case, which holds that plaintiffs can collect the full amount of a bill even if only partially paid. The court held that the collateral source rule prohibits defendants from informing the jury that the medical care provider settled for less than the full amount of the bills. The reasoning includes a comment that defendant should not get the benefit of the reduced charges because of the collateral source rule. Thus, a plaintiff may recover sums of money which he or she is not obligated to pay.

The decision of *Perkey v. Portes-Jarol*, a Second District Case, provides some hope that a Defendant will be entitled to a set-off in cases where the injured Plaintiff had insurance which paid a portion of the bills. 2013 IL App (2d) 120470. The court held that Section 2-1205 of the Code of Civil Procedure modifies the collateral source rule such that a defendant is entitled to a set-off for medical bills which have been paid by an insurer or fund, at a reduced level, to the extent of that reduction. In other words, if the total bill is $100,000.00 and the health insurer pays $40,000.00 to fully satisfy the charges, the remaining $60,000.00 should be set-off from the judgment. The trial court in that case, like most judges in Cook County in the past, refused any set-off finding that no set-off was allowed because the health insurer had a right to recoupment, i.e., a subrogation right. As virtually every health insurance policy has a subrogation clause, the right to a set-off was pretty much non-existent. The *Perkey* decision puts some teeth back into the statute. However, a more recent decision from the Fourth District Appellate Court rejects the *Perkey* analysis and holds that no set-off is allowed even where the bills have been written off and Plaintiff does not have to pay the written off amounts. *See Miller*

v. Sara Bush Lincoln Health Ctr., 2016 IL App. (4th) 150728. Whether our liberal Supreme Court will allow this interpretation to prevail, especially since it contradicts *Wills* and *Miller*, remains to be seen.

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Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Iowa courts and statutes have not specifically addressed the issue of whether third-party medical funding ("TPMF") is discoverable. *See* Meade Mitchell & Jon Still*, A Dive into Third-Party Litigation Financing and Third-Party Medical Funding*, JDSUPRA, https://www.jdsupra.com/legalnews/a-dive-into-third-party-litigation-2443504 (referring to the abbreviation of "TPMF"). TPMF is an offshoot of third-party litigation financing ("TPLF"). *Id.* The concept of using a medical funding or medical financing company ("MFCs") to undertake the responsibility of paying providers for services an injured party received is becoming increasingly common, which explains the current (and, perhaps, temporary) lack of Iowa law on the topic. *Id*.; *see also* John. E. Schneider & Cara M. Scheibling, *The Rise of Litigation Funding and Medical Funding in Personal Injury and Product Liability Lawsuits*, AVALON HEALTH ECONOMICS (2023), https://avalonecon.com/the-rise-of-litigation-funding-and-medical-funding-in-personal-injury-and-product-liability-lawsuits.

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Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Like third-party litigation funding files, Kentucky courts have not directly addressed the issue of the discoverability of third-party medical funding/factory company files. The discovery of third-party medical funding/factoring company files would likely be subject to Kentucky CR 26.02(1). Pursuant to Kentucky CR 26.02(1) discovery is limited to "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party."

As stated previously hereinabove, neither the Kentucky Court of Appeals nor the Supreme Court of Kentucky has addressed whether third-party funding agreements violate Ky. Rev. Stat. § 372.060, Kentucky's champerty statute which voids any contract or agreement to provide funding for another party's case in exchange of the proceeds. In *Boling v. Prospect Funding Holdings, LLC*, the Sixth Circuit Court of Appeals predicted that the Kentucky Supreme Court would most likely hold that such agreements would violate Ky. Rev. Stat. § 372.060 and that such agreements would be inconsistent with Kentucky's public policy. *Boling v. Prospect Funding Holdings, LLC*, 771 Fed. Appx. 562, 581-82 (6th Cir. 2019).

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Louisiana

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Yes. The same rules and regulations that apply to litigation funding companies apply to medical funding companies. Please see the response to the litigation funding question for a full synopsis of the rules and regulations placed on medical funding companies and the discoverability of the agreement and files.

In December of 2022, the Louisiana Supreme Court addressed the use of medical factoring companies and the impact on litigation in the case of *George v. Progressive Waste Sols. of La, Inc.*, 2022- 01068 (La. 12/1/22), 2022 WL 17546741. The relevant facts of the case were as follows: the plaintiff was struck by defendant's garbage truck and sustained physical injuries which resulted in medical bills totaling $192,020.14 for the treatment related to his alleged injuries. Thereafter, the medical providers that treated plaintiff assigned the accounts receivable to a third-party medical financing company, which paid a total of $76,808.06 to the providers for the assignment. Defendants filed a motion in limine seeking to limit the plaintiff's recovery to the $76,808.06 that had been paid to the medical providers. The trial court granted the motion and held that the plaintiff could only present evidence and recover the amount that was actually paid by the financing company to the medical providers to acquire its assignment ($76,808.06), as opposed to the full charged amounts ($192,020.14).

On writs to the Louisiana Supreme Court, the Court reversed the trial court's ruling, and held that the plaintiff could present evidence of the full billed amount at trial. The Louisiana Supreme Court held that the assignment to the third-party factoring company did not release the plaintiff's obligation to pay the full billed amounts for his medical care to the third-party factoring company. The Court also held that the collateral source was not implicated under the facts presented because that rule only applied where the plaintiff received monies "from sources independent of the tortfeasor's procuration or contribution." *George* at *6 (*quoting Bozeman v. State of La., DOTD*, 03-1016, p. 9 (La. 7/2/04), 879 So.2d 692, 698).

The collateral source rule had no application because the plaintiff "had not diminished his patrimony to receive medical treatment from his healthcare providers, as he has not procured any separate benefit or negotiated rate at his own expense." *Id*. Thus, the Court concluded that: "[i]n the absence of any evidence that plaintiff is not liable for the full billed medical charges in this matter, defendant cannot benefit from any reduction as a result of the subject

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medical factoring agreement." *Id*. Therefore, the plaintiff would be permitted to present evidence of the full amount of the charged medical expenses and for which he remained liable to pay. *Id.* However, it is implied that the medical funding agreement and possibly the related assignment documents were discoverable and used in the analysis to determine whether the collateral source rule applied.

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Maryland

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Maryland state courts have yet to address the issue of third-party litigation financing. The general rules of discovery set forth in the Maryland Rules of Civil Procedure would likely govern, at this point, whether third-party litigation funding files are discoverable. Maryland Rule 2-401 provides that a party may obtain discovery of any matter relevant to the subject matter involved in the pending action.

In the Federal Court in Maryland, the Federal Local Rule is "[w]hen filing an initial pleading… counsel shall file a statement (separate from any pleading) containing…[t]he identity of any corporation, unincorporated association, partnership, or other business entity, not a party to the case, which may have any financial interest whatsoever in the outcome of the litigation, and the nature of its financial interest."[i]

Likewise, the Local Rule for the Fourth Circuit is that "[a] party…must identify any publicly held corporation, whether or not a party to the present litigation, that has a direct financial interest in the outcome of the litigation by reason of a…profit sharing agreement…or state that there is no such corporation."[ii]

Recently, in *In re Sanctuary Belize Litig.*, the U.S. District Court in Maryland found that, after reviewing a litigation financing agreement between a commercial litigation finance firm and a formerly pro se Plaintiff, that the information was discoverable and that "any term sheet and any further litigation financing agreement" had to be turned over as part of the litigation.[iii]

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Massachusetts does not have rules governing discovery of third-party medical funding or discovery related to it.

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Michigan

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Michigan does not have any statutes, court rules or case law pertaining to discovery of 3rd party medical funding/factoring company files.

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Minnesota courts have not addressed the discovery of 3rd party medical funding/factoring, and there are no regulations directly addressing medical funding/factoring.

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Mississippi

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There is no clear answer in Mississippi. Argument supporting discovery is that the 3rd party funding agreement may be relevant to attack the bias, credibility and motivation of the provider. *Woulard v Greenwood Motor Lines*, 2019 WL 3311752 (S.D.Miss. 2/4/2019). Discovery of a 3rd party litigation funding agreement is broader than admissibility at trial.

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Missouri

Does your state permit discovery of 3rd party medical funding/factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There are no Missouri appellate court decisions on the issue. However, anecdotally, limited discovery of such funding arrangements has been permitted in some state circuit courts. The scope of the discovery allowed, if any, has varied dramatically from one court to the next.

Even if discoverable, the defense bar has experienced little success admitting evidence of 3rd party medical funding at trial.

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Montana

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There is currently no precedent in Montana for discovery of 3rd party litigation funding, and thus approaches may vary from venue to venue within Montana. As discussed in the next section, an argument would exist for discoverability if the result was that part of the billed amount of the medical expenses were written off, that should be discoverable under Mont. Code Ann. Sec. 27-1-308.

Also, Defendants should be aware of Montana law related to prepayment of medical expenses. Under Montana law, where liability is reasonably clear, and it is reasonably clear that the expenses is caused by the accident then the Defendant must prepay those expenses. Given that law, the use of 3rd party medical funding is not too prevalent in Montana.

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Nebraska

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Nebraska courts have not specifically addressed whether third party medical funding/factoring company files are discoverable. We would expect that this matter will be addressed by our courts in the same manner as the discoverability of third party litigation funding. Given Nebraska's long-established adherence to the collateral source rule, the admissibility of third party funding would seem unlikely, but our courts have not yet addressed this issue.

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New Hampshire

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There are no specific rules on obtaining discovery of third-party medical funding/factoring files in New Hampshire. However, such discovery could theoretically be obtained by deposition and notice procedure if relevant to any issue in the underlying litigation.

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New Jersey

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Currently, there are no rules and regulations regarding discovery of third-party medical funding/factoring company files.

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New Mexico

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

New Mexico does allow third party medical funding/factoring companies, and there are currently no established rules, regulations, or case law in New Mexico addressing same. The issue has not yet been challenged in New Mexico. There is no case law addressing the admissibility of 3rd party medical funding agreements.

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North Carolina

Does your state allow testimony at trial of the full amount of medical bills? What about medical-legal liens?

Under Rule 414 of the North Carolina Rules of Evidence, the admissible medical expenses are the amounts actually paid to satisfy the bill, regardless of the source of payment, and/or the amounts actually necessary to satisfy the bills that have not been paid. This rule deviates from the common law collateral source rule followed by a majority of states which prohibits the admission of evidence that a plaintiff received compensation from some other source other than the damages sought against the defendant.

The rule's applicability in federal court depends on whether the federal courts view the North Carolina statute as substantive rather than procedural. To date, North Carolina federal courts have followed Rule 414 in the following instances:

Sigmon v. State Farm, where a federal court in North Carolina prohibited the admission of evidence of billed medical expenses, mentioning in a footnote that "[t]he application of Rule 414 may affect the outcome of litigation and is substantive North Carolina law." 2019 WL 7940194, at *1, n.1 (W.D.N.C. 2019). Although none of the medical bills had been paid, the medical providers wrote off substantial portions of the bills. Plaintiff was prohibited from entering evidence of the written off expenses, despite Plaintiff's argument that amount written off should come into evidence to corroborate his testimony about the extent of his injuries and his pain and suffering.

Verma v. Walmart, Inc., 2023 WL 6516921 (2023), where the court granted defendants' motion in limine to preclude the plaintiff from presenting evidence of medical expenses prohibited by North Carolina Rule of Evidence 414. *Carmely v United States*, 2023 WL 2314873 (2023)(docket entry granting defendant's motion in limine).

Medical-legal liens are generally admissible.

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North Dakota

Does your state permit discovery of 3rd party medical funding/factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

North Dakota courts have not addressed whether third-party medical funding/factoring company files are discoverable. The scope of discoverable information is outlined in N.D. R. Civ. P. 26. Determining whether third-party medical funding/factoring company files are discoverable would require a fact-intensive analysis as to why the information is being sought and if it relates to a party's claim or defense.

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Ohio

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

This specific issue has not been addressed by Ohio state courts. Although there remains a shroud of secrecy regarding third-party medical funding, at least one trial court opinion suggests that the court may be willing to permit discovery regarding outside medical funding. In *Zwegat v. Bd. of Trustees*, while addressing the broader issue of third-party litigation financing, the court stated that "any third-party funding needs careful study by counsel invited to participate in it; and may deserve full disclosure to a court in camera, or to other parties in pretrial discovery." *See Zwegat v. Bd. of Trustees*, C.P. No. 18CV-10593, 2019 Ohio Misc. LEXIS 228, at *11 (July 25, 2019). The court's use of broad language cracks the door for the discovery of any third-party funding, including the potential for discovery of third-party medical funding.

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Oklahoma

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

The Oklahoma appeals courts have not been asked to address the question of whether third-party medical funding/factoring company files are discoverable. The courts have not signaled what position they might take when asked to rule on this issue. Okla. tit. 12, § 3009.1, which states that "the actual amounts paid for any services in the treatment of the injured party, including doctor bills, hospital bills, ambulance service bills, drug and other prescription bills, and similar bills shall be the amounts admissible at trial, not the amounts billed for such expenses incurred in the treatment of the party," mediates in favor of allowing discovery of medical funding/factoring company files, as the use of these third-parties can be means of attempting to evade the issue of what was paid v. incurred.

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Oregon

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Oregon does not have rules or regulations governing medical funding/factoring agreements. Nor does Oregon have rules or case law governing discoverability of 3rd party medical funding / factoring company files.

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Pennsylvania

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

No. The rules for third-party medical funding/factoring are the same as those for third-party litigation funding. While discovery of third-party litigation funding is permitted in Pennsylvania in some cases, such as champertous assignment of claims, a third-party litigation funder's files are typically protected by the attorney-client privilege. Further, communications with a litigation funder are protected as work product. Lambeth Magnetic Structures, LLC v Seagate Technology (US) Holding, Inc., 16–CV–0538, 2018 WL 466045, at *5 (W.D. Pa. Jan. 18, 2018), Devon IT, Inc. v. IBM Corp., 2012 U.S. Dist. LEXIS 166749 (E.D. Pa. Sep. 27, 2012).

However, any time a plaintiff takes out a law loan, the funding company must file a UCC lien with the Department of State. While this filing does not provide the amount of the lien, it typically provides the date the lien was filed, which can be useful in comparing the timing of the funding with a plaintiff's medical treatment in a particular action. One can also view the filing statement, which provides the debtor's name and address, and the secured party's name and address. These filings are accessed through the Department of State's website / database, which requires log-in information.

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Partnership, 532 S.E.2d 269, 273 (S.C. 2000)). "A champertor is one who purchases an interest in the outcome of a case in which he has no interest otherwise. A champertous agreement is unlawful and void where the rule of champerty is recognized, and the tainted agreement is unenforceable." *Osprey, Inc.*, 532 S.E.2d at 273. "In other words, champerty was described by the Supreme Court as a subset of maintenance in which assistance is provided specifically in return for a financial interest in the outcome." *Progressive Gaming Intern., Inc. v. Venturi*, 563 F. Supp.2d 321, 324 (D.R.I. 2008). Although the court noted that the modern trend among many courts is to abolish these causes of action, the court refused to do so. *Toste Farm*, 798 A.2d at 905-06. The court left it to the legislature to modify or repeal these doctrines. *Id.* at 906.

What constitutes assistance is not clearly defined. There have been very few modern cases dealing with these issues especially since the creation of the 3rd Party Litigation Funding industry. The cases that do involve either maintenance or champerty usually involve a person actively involved in the litigation and not merely providing financial assistance, however, there are no bright line rules in this area.

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Tennessee

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

Tennessee has no specific statutory or regulatory rules regarding discovery of 3rd party medical factoring or funding. Discovery is permitted in conjunction with Tennessee's version of the collateral source rule which allows plaintiffs to claim the entire amount of billed medical expenses at trial as opposed to the amounts actually paid by a health insurer or other source.

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Vermont

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

This information is not likely to be discoverable under Vermont's collateral source rule. There is no caselaw on the issue, and neither the Vermont Supreme Court nor Vermont Federal Courts have ruled on it. An argument could be made that, given the lack of authority on point, the defense should request the documents. Depending on how the relationship between the plaintiff and the third party medical funder/factoring company is structured, these materials may be considered discoverable, especially if plaintiff's counsel was not involved in the relationship between the plaintiff and the third party medical funder/factoring company.

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Washington

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There are no Washington appellate cases addressing this issue. It is most likely not admissible at trial because the relative financial ability of the parties is not allowed in evidence.

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West Virginia

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

West Virginia does not have specific rules governing the discoverability of third-party medical funding or factoring company files. Rule 26 of the West Virginia Rules of Civil Procedure permits parties to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Any material is subject to discovery unless the matter is so obviously irrelevant or the mode of discovery so ill-fitted to the issues of the case that it can be said to result in annoyance, embarrassment, oppression, or undue burden or expense. W. Va. R. Civ. P. 26(b),(c).

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Wyoming

Does your state permit discovery of 3rd party medical funding/ factoring company files and, if so, what are the rules and regulations governing medical funding/factoring?

There is currently no precedent in Wyoming for discovery of 3rd party medical funding files, and approaches may vary from venue to venue.