

The New Era of Personal Injury Lawsuits: The Rise of Lien-Doctors and Medical Financing Companies

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“Medical funding companies” are increasingly featured in personal injury cases.¹ Technically, the lien arrangements are legal and do not violate ethical rules.² The proponents of medical litigation funding and lien-based medical treatment argue that it allows treatment for individuals injured in an accident who may not otherwise be able to afford medical treatment. But this honorable facade results in exaggeratedly inflated medical bills, medically questionable procedures, and a third party now involved in the litigation that wants to see a return on investment. These factors increasingly result in “nuclear” verdicts.

Medical funding generally consists of two different approaches. The first approach is when the plaintiff is given a loan by a medical funding company to pay for their medical treatment. In these cases, the treating physicians then bills at special “litigation rates,” which are typically significantly higher than reasonable value (“RV”) or fair market value (“FMV”). This greatly inflates total damage amounts to levels to amounts that are far in excess of RV or FMV. However, in this approach, the medical funding company does *not* “purchase” the plaintiff’s bills at this litigation rate; instead, they negotiate a discounted rate (which coincidentally is typically the RV or FMV of those charges), and once the case is resolved, the medical funding company steps in to collect the original, litigation-funded rates set by the provider.

The second approach is when the funding company provides financing directly to the medical provider to cover costs associated with treatment provided to the plaintiff. There are numerous “preferred physicians” in the medical funding world who will agree to bill at the litigation funded rates. The funding company provides financing directly to the medical provider to cover expenses associated with treating the patient. The provider then seeks referrals of patients with “compensable injuries” from medical providers and lawyers. Once treatment is provided, providers typically generate inflated medical bills via some combination of over-treating, over-billing, and improper billing.³ This billing often occurs under a letter of protection (“LOP”) between the physician, the patient, and the lawyer. After the lawsuit is resolved, the plaintiff’s lawyer negotiates the amount owed to the provider for the (inflated) bills. At this stage, is it common for the provider to accept as payment in full (“PIF”) 50% or less of the total “billed” charges.⁴

¹ E. Miller, "Secret Funding for Plaintiff Attorneys Is On Rise, Experts Say," *Transport Topics* July 21 (2021).

² See generally C. Chambers and L. LaFoe, "Legality and Ethics of Lien Uses in Medicine," *Mo Med* 117, no. 4 (2020).

³ H.M. Bagley, "Medical Litigation Funding: How to Spot It and How to Fight It," (Drew Eckl & Farnham, LLP, 2021).

⁴ *Ibid.*

Buford, Inc. is currently the largest medical funding company in the US. According to Buford, investing in medical funding is a safer bet than the stock market, and the average case returns around \$10 million (after a \$5 million investment). Buford acknowledges that medical funding is reshaping every aspect of the litigation process, without any transparency. The medical funding companies control how long the cases are they pursued, when they are settled, etc., and it is being done with virtually no oversight.⁵ Defense attorneys are warning that this behavior could “turn the courthouse into a casino,”⁶ and this is turning personal injury lawsuits into profit making investment opportunities.

References

- Bagley, H.M. "Medical Litigation Funding: How to Spot It and How to Fight It." Drew Eckl & Farnham, LLP, 2021.
- Chambers, C., and L. LaFoe. "Legality and Ethics of Lien Uses in Medicine." [In eng]. *Mo Med* 117, no. 4 (Jul-Aug 2020): 313-18.
- Miller, E. "Secret Funding for Plaintiff Attorneys Is On Rise, Experts Say." *Transport Topics* July 21 (2021).
- Stahl, L. "Litigation Funding: A multibillion-dollar industry for investments in lawsuits with little oversight." New York, NY: CBS News | 60 Minutes, 2022.

⁵ L. Stahl, "Litigation Funding: A multibillion-dollar industry for investments in lawsuits with little oversight," (New York, NY: CBS News | 60 Minutes, 2022).

⁶ Miller, "Secret Funding for Plaintiff Attorneys Is On Rise, Experts Say."