Barbarians at the Gate
Uncovering Bias in Medical Lien Finance Arrangements

Personal injury attorneys often take advantage of medical lien companies to inflate medical expenses and control the medical care. As part of this scheme, plaintiffs' attorneys refer their clients to pro-plaintiff doctors who are part of a medical lien “network.” At the behest of counsel, plaintiffs enter into contracts with medical lien companies to finance this medical treatment. The lien companies then pay the medical expenses at a deep discount in exchange for a lien against the lawsuit proceeds for the full “billed” amount of medical expenses. Medical lien companies often cast themselves as mere “factoring companies” that purchase accounts receivable at a discount. In addition to creating a large profit for the lien company, this system allows plaintiffs’ attorneys to inflate damages by seeking the “billed” amount of medical expenses without regard for the lien company’s discount. These schemes also allow plaintiffs’ attorneys to control the medical treatment and utilize plaintiff-oriented doctors who are experienced advocates. The defense should be prepared to identify medical lien arrangements and the bias they create.

There are few published appellate opinions regarding admissibility of these arrangements, though some state appellate courts have recently stated addressing the issue. As a result of the lack of appellate court guidance, trial court opinions run the gamut. For example, various judges in the United States District Court for the District of Colorado, applying Colorado state law, have reached different conclusions as to whether a medical lien arrangement qualifies as a collateral source. Compare *Romero v. Allstate Fire & Cas. Ins. Co.*, Civil Action No. 14-cv-01522-NYW, 2015 U.S. Dist. LEXIS 122138,
at *9 (D. Colo. Sep. 14, 2015)(holding that “monies paid by [lien company] quality as a collateral source”) with Ortiviz v. Follin, 2017 U.S. Dist. LEXIS 113143, *11 (D. Colo. 2017)(holding that finance arrangement is not a collateral source). Generally, trial courts tend to lean against admitting evidence of these arrangements in light of a lack of direction from higher courts. However, the tides seem to be turning as more courts are allowing defendants to present evidence that a plaintiff received treatment though a medical lien program. See, e.g., Khoury v. Seastrand, 377 P.3d 81, 93-94 (Nev. 2016); Rangel v. Anderson, 202 F. Supp. 3d 1361, 1373 (S.D. Ga. 2016).

Defense attorneys face difficult obstacles to admitting evidence regarding medical lien finance arrangements. Plaintiffs’ attorneys can point to a myriad of trial court opinions excluding the evidence. As discussed above, trial courts sometimes treat lien arrangements as insurance subject to the collateral source rule even though there is no insurance involved. See, e.g., Romero v. Allstate Fire & Cas. Ins. Co., Civil Action No. 14-cv-01522-NYW, 2015 U.S. Dist. LEXIS 122138, at *9 (D. Colo. Sep. 14, 2015). In addition, courts often hold the evidence is irrelevant or unduly prejudicial. See, e.g., Moore v. Mercer, 4 Cal. App. 5th 424, 445 (2016). We will discuss strategies for responding to these arguments.

It is important to make clear that medical lien arrangements are not insurance because the plaintiff remains liable for the billed amount of medical expenses. Trial courts often apply the law of the forum state regarding admissibility of insurance information and “billed vs. paid” medical expenses or collateral source payments even though there is no insurance involved in lien finance arrangements. See Romero v. Allstate Fire & Cas. Ins. Co., Civil Action No. 14-cv-01522-NYW, 2015 U.S. Dist. LEXIS 122138, at *9 (D. Colo. 2015).
Sep. 14, 2015). Thus, in states that bar evidence of "billed" medical expenses, trial courts may exclude evidence that the lien company paid a discount. *Id.* However, medical lien financing arrangements are fundamentally different than insurance because the plaintiff remains responsible for the entire billed medical expenses regardless of the outcome of the litigation. In other words, the plaintiff is not indemnified by a third party (*i.e.* an insurance company). *See, e.g., Rangel,* 202 F. Supp. 3d at 1373; *Khoury,* 377 P.3d at 94 (Nev. 2016). In states where the collateral source rule bars evidence of the amount paid by insurance, defense counsel seeking to admit evidence of a medical lien financing scheme must establish that the arrangement is not akin to insurance.

In response to the argument that evidence of medical lien financing is irrelevant or prejudicial, the defense may benefit from focusing on the bias the medical lien scheme creates. Courts have repeatedly rejected arguments that a lien company's payment of a discount is relevant to the reasonableness of the billed medical expenses. *See, e.g., Moore,* 4 Cal. App. 5th at 445. However, defendants have had more success with the less-common argument that the scheme is evidence of bias. For example, the Nevada Supreme Court in *Khoury* held that evidence of a medical lien agreement is irrelevant to show the reasonableness of medical expenses but is relevant to show bias. *Khoury,* 377 P.3d at 94. Likewise, the federal district court in Georgia held "[The lien company's] involvement in Plaintiff's treatment is highly relevant to the issue of Plaintiff's treating physicians' credibility and potential bias." *Rangel,* 202 F. Supp. 3d at 1373. The Georgia court gave a detailed explanation of the bias a medical lien arrangement creates:

...a medical lien funder is an investor in its client's lawsuit. If Plaintiff receives a large verdict amount, then [the medical lien company] has a near certain chance of fully and quickly recovering the money it has fronted
Plaintiff. On the other hand, if Plaintiff does not recover at trial, [the medical lien company’s] chances of being reimbursed are doubtful at best. Added to this arrangement is the fact that [the medical lien company] referred Plaintiff to many of her treating physicians… These physicians have a patent financial interest in receiving more case referrals from [the medical lien company]. If Plaintiff is awarded a recovery, then [the Medical Lien Company] would arguably be more inclined to refer cases to those physicians in the future. Thus, the physicians have a financial motivation to testify favorably for Plaintiff. Consequently, the jury should consider the relationships between Plaintiff, [the medical lien company], and Plaintiff’s physicians when assessing the credibility of Plaintiff’s physicians’ testimony.


The marketing materials of lien companies, particularly websites, often contain a treasure trove of evidence showing bias. For example, the website of a medical lien company in Colorado proclaims, “We have a proven track record for helping attorneys build successful cases.” The same company boasts that medical lien financing is “best for everyone involved. Except perhaps the people who caused the accident in the first place.” Another medical lien company advertises that “You [the attorney] remain in control of your client’s treatment.” Yet another lien company posted pictures online of its annual “track day” where it invites attorneys who refer clients to the lien company to drive racecars at a local speedway. The financial relationship between the lien company, the doctor, and the attorney creates a strong case for bias.

At the claim phase, claim professionals should be on the lookout for claimants who use medical liens. Even if a claimant’s counsel refuses to divulge information about medical liens, the billing statements may indicate who is paying the bills. It is also possible
to spot a medical lien arrangement based on who the claimant treats with. Notorious pro-
plaintiff medical providers often work primarily—or even exclusively—with medical lien
companies. In addition, medical lien companies usually file UCC liens that are available
to the public. Claimants who receive treatment though medical lien companies often
overtreat and have inflated medical expenses. Therefore, claim professionals and
attorneys should identify cases where the claimant is using a medical lien and factor the
lien relationship into the evaluation and litigation of the claim.