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Medico-Legal Funding: Inflated Medical Bills and Defense Strategies in Personal Injury Litigation

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Litigation funding by non-parties has grown from a small niche into a significant industry, with such investments estimated to exceed \$67 billion annually by 2037.¹ As the volume of litigation continues to grow, so too does the prevalence of third-party litigation funding and medico-legal funding companies (MLFCs) in personal injury cases. Several years after the emergence of this industry, it has become clear that outside investment in lawsuits – particularly in personal injury claims – has adversely affected defendants by artificially inflating settlement demands and verdict awards. This article explores the real business impact of medico-legal funding on claim exposure and how thoughtful defense strategies can help control the impact of MLFCs on claim value.

Impact on Settlement Value and Verdict Exposure

MLFCs commonly enter personal injury cases in one of two ways: either by extending loans directly to the plaintiff or their counsel at a high interest rate in exchange for payment out of the settlement or verdict proceeds, or by directly financing the plaintiff's medical treatment. In the first scenario, the longer a claim is litigated, the longer interest will continue to accrue on a funding loan. This ultimately increases the plaintiff's overall expenses, which are then sought from the defendant as part of the claim.

On the other hand, when the plaintiff's medical treatment is financed by a MLFC, treatment is directed through MLFC-affiliated health care providers regardless of whether the plaintiff has public or private health insurance. In exchange for a significant discount benefiting the MLFC, the provider is guaranteed payment regardless of the outcome of the plaintiff's claim. To achieve this, the billed cost of the treatment is frequently inflated – sometimes double or triple typical insurance reimbursement rates. As a result, there is a substantial increase in claimed "past medical expenses" that is used, in turn, to prop up proportionally higher damages figures for the plaintiff's pain and suffering. At the end of the day, the overall settlement demand increases significantly, and with it the plaintiff's attorney's fees, but the plaintiff's net recovery only marginally increases.

This MLFC-created system also leads to a disproportionate increase in the defendant's cost of resolution. For example, the plaintiff or their counsel may refuse to accept an otherwise appropriate settlement offer because the amount owed to the MLFC is too high, leading to either higher settlement figures or higher defense costs preparing for trial. Considering the practical fact that juries frequently use medical expenses as a barometer to value damages for pain and suffering, there is also the potential for artificially inflated jury verdicts.

Defense Strategies and Arguments

Depending on the jurisdiction, a personal injury claim defendant may have the right to discover an MLFC agreement as well as challenge its validity and effect.

Currently, the majority of jurisdictions have not passed laws specifically addressing the discoverability of MLFC agreements. While some jurisdictions have decided that at least the existence of MLFC agreements is squarely within the scope of discovery, others disfavor their discovery altogether. If potentially discoverable, some of the frequent indicators that an MLFC may be involved include: (1) aggressive treatment for minor

injuries; (2) treatment for seemingly unrelated conditions; (3) abnormally high treatment costs; and (4) geographically distant health care providers.

When MLFC involvement is discovered, if possible, the defendant may have multiple avenues to mitigate against its effects. For example, some states have passed statutes invalidating certain types of MLFC agreements. Alternatively, there may also be arguments that an MLFC agreement should be invalidated under the common law doctrines of champerty and maintenance. Even if a particular MLFC agreement is valid, the defendant may still be able to argue that the arrangement does not qualify as traditional collateral sources.

Conclusion

Medico-legal funding arrangements can significantly increase a defendant's litigation costs and overall exposure. While the majority of jurisdictions have not specifically addressed this issue, there is a current trend of increased scrutiny of MLFCs across the country. Early identification of MLFC involvement, to the extent possible, is essential to properly defending a personal injury claim. Having counsel that can effectively execute targeted discovery and pre-trial strategies is likewise critical to challenging MLFC-related costs and, by extension, the ultimate cost of resolution.

Baker Donelson attorney [Myles Sonnier](#) is available to assist with any questions regarding third-party litigation funding and strategies for defending against these issues in litigation.

¹ See Global Litigation Funding Investment Market Size, Forecast, and Trend Highlights Over 2025-2037, Research Nester, <https://www.researchnester.com/reports/litigation-funding-investment-market/2800>.