U.S. SURVEY ON DISCLOSURE OF PLAINTIFF'S LITIGATION LOANS AND IMPACT OF ADVERSE COST INSURANCE ON COSTS OF DEFENSE

In general, except in specific types of claims with statutory provisions for attorneys' fees, or otherwise provided for by contact, the prevailing party in most litigation across the United States is not entitled to recover attorneys' fees or significant litigation costs. As such, "adverse cost insurance," which covers the losing party's litigation expenses owed to the prevailing party, is uncommon. Litigation loans to personal injury plaintiffs, with high interest rates, are often referred to as "no recourse" loans as plaintiffs do not have to repay these loans if they do not recover in the lawsuit. Underwriting and the size of the loan is typically driven by the merits of the case and seriousness of the injury. As interest on these loans would not be recoverable against the adversary, most courts addressing this issue have decided that these loans typically would not need to be disclosed in litigation. Even though many states have enacted consumer protection statutes regulating non-recourse litigation loans, most are silent on the issue of disclosure to adverse parties in litigation.

With a plaintiff having little to no incentive to accept a settlement amount that does not significantly exceed the loan amount, these loans, especially those based on questionable underwriting, can drive up the cost of a claim, and potentially create conflicts between plaintiff and his or her own counsel. Thus, advocating for loan disclosure is critical for good-faith settlement negotiations. It is also important to check for publicly available information such as UCC filings as many states require the litigation lending company to file notice of a UCC lien, which would include the date of the loan, and name of the creditor and debtor.

Rule/Statute	Summary
Federal	
	As a general matter, Federal courts that have addressed the discoverability of litigation loans typically hold that information concerning litigation loans is non-discoverable. The basic reasoning is that the Federal Rules of Civil Procedure 26(b)(1) only permit discovery of nonprivileged matters that are "relevant to any party's claim or defense and proportional to the needs of the case" and litigation funding information is generally treated by as courts as irrelevant to proving the claims and defenses of a case. Fulton v. Foley, No. 17-CV-8696, at *2 (N.D. Ill. 2019). See also In re Valsartan N. Nitrosodimethylamine, 2019 WL 4485702, at *3 (D.N.J. 2019); Benitez v. Lopez, 17-CV-3827-SJ-SJB, at *1 (E.D.N.Y. 2019); MLC Intellectual Property LLC v. Micron Technology, Inc., Case No. 14-cv-3657-SI, at *2 (N.D. Cal. 2019); V5 Techs. v. Switch, Ltd., 334 F.R.D. 306, 311–13 (D. Nev. 2019). A few arguments that defendants typically make for the relevancy of litigation loans, which courts generally reject, are that the loans are relevant for settlement purposes, the loans are relevant to a plaintiff's or non-party's credibility as a witness, and that the funding party has discoverable information about the case subject to further discovery. See, e.g., Fulton, No. 17-CV-8696, at *3; V5 Techs., 334 F.R.D. at 312. However, Federal courts recognize that there is "no bright-line prohibition" on the discovery of litigation funding. V5 Techs.,

	334 F.R.D. at 312. “Discovery into litigation funding is appropriate when there is a sufficient factual showing of ‘something untoward’ occurring in the case.“ Id. (quoting In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prods. Liab. Litig., 405 F.Supp.3d 612, 615 (D.N.J. 2019)). Such examples of untoward behavior include “a sufficient showing that a non-party is making ultimate litigation or settlement decisions, the interests of plaintiffs or the class are sacrificed or not being protected, or conflicts of interest exist.” In re Valsartan N-Nitrosodimethylamine, 405 F.Supp.3d 612 at 615. However, even where such untoward behavior exists, Federal courts compel discovery only “upon the presentation of ‘some objective evidence’ that the discovering party's ‘theories of relevance are more than just theories.’” V5 Techs., 334 F.R.D. at 312 (quoting VHT, Inc. v. Zillow Grp., Inc., Case No. C15-1096JLR, at *1-2). See also MLC Intellectual, Case No. 14-cv-03657-SI, at *2. Apart from relevancy grounds, the second most common reason for the non-discoverability of litigation funding is the work product doctrine. Often, to obtain litigation funding, a plaintiff must provide the lender with a comprehensive analysis of the plaintiff’s case. This analysis is typically prepared by plaintiff’s counsel and includes plaintiff’s counsel’s thoughts on the strength of the plaintiff’s claims, the merits of the defendant’s defenses, and other observations regarding litigation issues. See, e.g., Doe v. Soc'y of Missionaries of Sacred Heart, No. 11-CV-02518, at *3 (N.D. Ill. 2014). Accordingly, the work product doctrine prevents the disclosure of these documents. Id. (citing Logan v. Commercial Union Ins. Co., 96 F.3d 971, 976 n. 4 (7th Cir. 1996)). In sum, relevancy and work product doctrine concerns generally make Federal courts reluctant to permit the discovery of litigation funding arrangements. However, this area of law is still evolving, and litigation funding arrangements could be discoverable if the right circumstances exist.
Alabama	
No rule or statutory requirements.	Alabama has no rule or statute governing litigation loans, and there is no requirement that such loans be disclosed to the defense. No appellate cases have addressed litigation loans, and the General Counsel of the Alabama State Bar has issued no ethics opinions addressing litigation loans. Since Alabama has no fee-shifting provisions aside from minimal costs, adverse cost insurance is not applicable.
Alaska	
There is no litigation concerning loans in Alaska. There are some ethics opinions that would certainly touch in that area, although somewhat indirectly.	Alaska is loser pays state. Ak.R.Civ.P. 82 states that the prevailing party is to be awarded some of their fees, whether plaintiff or defendant. The rule allows for upward and downward departure, based on certain factors, so a prevailing party could conceivably recover all of their reasonable actual fees, or none of them. Alaska at Ak.R.Civ.P. 68 has offers of judgment. If a party does not exceed an offer of judgment by 5% or 10%, depending on the number of defendants, the that party owes the other party up to 75% of their reasonable actual fees. This is in addition to Ak.R.Civ.P. 79 which awards certain costs to prevailing parties.
Arizona	
Arkansas	
<u>A.C.A. §4-57-109- Consumer Lawsuit Lending</u> which states: **(a)** As used in this section: **(1)** “Consumer” means an individual who is or may become a plaintiff or claimant	There have been no cases interpreting the statute so far. It is a statute from 2015.

in a dispute; **(2)** "Consumer lawsuit lender" means an individual or entity that engages in consumer lawsuit lending; **(3)** "Consumer lawsuit lending" means: **(A)** Providing money to a consumer to use for any purpose other than prosecuting the consumer's dispute, the repayment of which is conditioned upon and sourced from the consumer's proceeds from the outcome of the dispute by judgment, settlement, or otherwise; and **(B)** Purchasing from a consumer a contingent right to receive a share of the proceeds of the consumer's dispute by judgment, settlement, or otherwise; and **(4)** "Dispute" means: **(A)** A civil action; **(B)** An alternative dispute resolution proceeding; or **(C)** An administrative proceeding before an agency or instrumentality of the government of this state. **(b)** **(1)** The maximum rate of interest provided by § 4-57-104 applies to a consumer lawsuit lending transaction. **(2)** Any amount paid or payable to a consumer lawsuit lender under a consumer lawsuit lending transaction that exceeds the amount provided by the consumer lawsuit lender to the consumer in connection with a consumer's dispute shall be included as interest for purposes of § 4-57-104. **(c)** A contract or agreement governing a consumer lawsuit lending transaction shall: **(1)** Be in writing; and **(2)** **(A)** Prominently disclose the annual percentage rate applicable to the consumer lawsuit lending transaction. **(B)** The annual percentage rate shall be included in bold, 20-point type and Arial font surrounded by a black rectangle border of line weight one point five (1.5), as follows: Click here to view table. **(d)** A violation of this section is: **(1)** A deceptive and unconscionable trade practice under § 4-88-107; and **(2)** Subject to the penalties, remedies, and enforcement provided by § 4-88-101 et seq.	
California	
Cal Rules of Court, Rule 8.208 (a-f) N.D. Cal. Civil L.R. 3-15	Cal Rules of Court, Rule 8.208 (e)(2)(A-C) governs disclosure requirements for financially interested parties. However, the rule has not been construed to require the disclosure of a litigation financing agreement or the existence of a "no recourse" loan.

	While no analogous statute exists in California State court, N.D. Cal. Civil L.R. 3-15 may serve as persuasive authority for Judges sitting in the California State court system. See Malice Maintenance Is "Runnin' Wild": A Demand for Disclosure of Third-Party Litigation Funding, 83 Brooklyn L. Rev. 1029, 1052 (There has already been a proposed amendment to Federal Rule 26 modeled after N.D. Cal. Civil L.R. 3-15 which explicitly requires the disclosure of parties to a litigation financing agreement). Due to the lack of statutory regulation in California, parties have attempted to thwart lawsuit loan agreements by invoking English common law rules. California courts do not recognize the doctrines of champerty and maintenance and as such the doctrines may not be used to bar a litigation funder from enforcing a loan agreement in the State of California. See Los Angeles County Bar Assn. Formal Opinion No. 500 (1999) (Explaining that California courts abandoned the English common law doctrines in favor of other instruments such as frivolous lawsuit and malicious prosecution actions); see also Estate of Cohen, 66 Cal App 2d 450 [152 P2d 485] (1944).
Colorado	
At present, there is no specific rule or statute governing disclosure of information related to litigation loans or injury finance arrangements. A few courts have ruled that these materials should be automatically disclosed by plaintiffs pursuant to C.R.C.P. 26(a)(1)(B). If the loan documents are sought through discovery, many judges will now order them to be produced, subject to later arguments about relevancy and admissibility at trial.	Overwhelmingly, the majority of litigation finance or loan agreements in Colorado relate to injury finance agreements, whereby a third-party service will contract with specific care providers with whom a plaintiff can receive post-incident medical treatment even without health insurance, and the plaintiff remains wholly responsible for the full costs of the treatment which will be contractually deducted from any settlement or judgment received by the plaintiff. Defendants often point out that these injury finance agreements force plaintiffs to accept inflated costs for their care and constitute an improper assignment of plaintiff's rights in the litigation, which raises an issue about the real party in interest with respect to plaintiff's claimed damages. These issues are still being tested and developed through the courts, and no appellate rulings or guidance are available as of yet. With respect to litigation loans for costs and fees, these are typically offered to cover expert expenses for complex litigation and are less-common in Colorado. Recovery of costs in state court are governed by C.R.S. § § 13-16-122 and C.R.C.P. 54(d), and are available to the prevailing party in litigation. Where such agreements are in place, they will usually be disclosed as part of settlement discussions. Adverse cost insurance is not common, since most defendants factor costs into their settlement and exposure strategy, and most plaintiffs presume that costs will be waived as part of a resolution strategy if they ultimately lose at trial or on summary judgment.
Connecticut	
	Litigation loans are not common in Connecticut. There is no guidance on whether they are discoverable. As a general rule, Connecticut prohibits the assignment of a cause of action for personal injuries prior to entry of judgment. Gurski v. Rosenblum & Filan, LLC, 276 Conn. 257 (2005). A loan that requires at least a partial assignment of the proceeds of a personal injury claim would be presumptively invalid. In addition, as a matter of public policy Connecticut will not recognize an agreement by which a stranger to the litigation provides financial assistance in aid of the litigation in exchange for a share of the proceeds of the action. Rice v. Farrell, 129 Conn. 362 (1945). The invalidity of the agreement between the plaintiff and the individual/entity providing assistance is not a defense to the plaintiff's claim, however. Robertson v. Town of Stonington, 1999 WL 99214 (Superior Court, February 17, 1999). Outside of the personal injury context it appears that such lending arrangements are allowed; however, they raise problematic issues for the lawyer under the Rules of Professional Conduct pertaining to the lawyer's duty to exercise

	independent judgment (Rules 2.1 and 5.4) and the obligation to abide by the client's decisions regarding settlement (Rule 1.2(a)).
Delaware	
Florida	
Georgia	
	Collateral Source Rule Does Not Bar Discovery *ML Healthcare Servs., LLC v. Publix Super Markets, Inc.*, 881 F.3d 1293, 1298–99 (11th Cir. 2018): [T]he Georgia Supreme Court has recognized that "there may be another issue in a case to which evidence of collateral benefits is material." [*Polito v. Holland*, 258 Ga. 54, 56, 365 S.E.2d 273, 274–75 (1988)]. When that happens and the evidence is admitted for that other purpose, the court should nonetheless "charge the jury that collateral benefits shall not reduce damages the tortfeasor is otherwise liable to pay." *Id*. Indeed, Georgia appellate courts have recognized that evidence of collateral benefits received by the plaintiff may be admissible for impeachment purposes when a witness gives false evidence relating to a material issue in the case. *Kelley v. Purcell*, 301 Ga. App. 88, 90, 686 S.E.2d 879 (2009) (citing *Warren v. Ballard*, 266 Ga. 408, 410, 467 S.E.2d 891 (1996)). In short, under Georgia law, evidence of collateral benefits is not typically admissible in a personal injury tort case unless that evidence serves a valid evidentiary purpose other than just revealing to the jury those benefits. When that occurs and the evidence is admitted, the trial court should instruct the jury about the limited purpose of the evidence and, in particular, remind the jury not to consider the collateral payments to reduce its award of reasonable and necessary medical expenses. **Medical Funding Companies are not Collateral Sources** *Rangel v. Anderson*, 202 F. Supp. 3d 1361, 1373 (S.D. Ga. 2016): Similarly in this case, Key Health, a medical lien funding company, is not a traditional collateral source. Key Health has not paid or even reduced Plaintiff's medical bills. Rather, Key Health has essentially fronted Plaintiff the money for her treatment, and then Key Health intends to recover that money from Plaintiff after the lawsuit. Thus, unlike an insurance company, Key Health's payments do not reduce Plaintiff's financial obligations. **Both Amount Billed and Amount Paid are Admissible to Question of Reasonableness and Necessity** Today, we adopt the rule that best reflects the idiosyncratic realities of the healthcare market, avoids reliance on arbitrary factors unrelated to the harm suffered by the plaintiff, and affirms our confidence in juries to resolve challenging questions of fact. We hold that the appropriate measure of medical damages is a reasonable value determined by the jury upon consideration of all relevant evidence. Both the amount billed by healthcare providers M0631890.1 0051 and the amount paid by insurers are admissible as relevant to the question of fixing reasonable value. *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1308 (11th Cir. 2020) (Florida maritime lawcase). The controversy surrounding this damages question is limited neither to the Southern District of Florida nor to maritime law -- courts around the country have struggled to calculate medical damages in tort cases when medical bills overstate expenses. *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1310 (11th Cir. 2020). **Collateral Source Rule Does Not Bar Admission of Evidence Doctor has Stake in Case** *Stephens v. Castano-Castano*, 346 Ga. App. 284, 290, 814 S.E.2d 434, 440 (2018)

	Stephens simply sought to introduce evidence that Dr. Chappuis entered into an arrangement whereby the physician would be paid from the proceeds of Castano's recovery. Thus, excluding this evidence did not serve the underlying rationale of the collateral source rule. **Referral Arrangement Can Go to Bias, Intent and Motive** *ML Healthcare Servs., LLC v. Publix Super Markets, Inc.*, 881 F.3d 1293, 1302–03 (11th Cir. 2018): Defendant does not need to be able to prove a premeditated plan of deceit in order to probepotential bias. [] Instead, Defendant needed only to show that ML Healthcare's payment arrangement had "any tendency" to make bias more probable than it would be without the evidence. See Fed. R. Evid. 401(a). That requirement is easily satisfied here. A jury might infer that Plaintiff's doctors were incentivized by ML Healthcare's referral and payment arrangement to provide testimony that was more favorable to Plaintiff than it otherwise would have been. If so, the jury would have found bias, which is clearly a relevant consideration in evaluating a witness's credibility. *Salkic v. Heartland Express, Inc*., 813 Fed.Appx. 444 (11th Cir. 2020) (evidence doctor performed 90% of his laser spine surgeries on lawsuit plaintiffs went to bias, intent and motive). *Stephens v. Castano-Castano*, 346 Ga. App. 284, 290–91, 814 S.E.2d 434, 440 (2018) (exclusion of evidence of doctor's financial bias resulted in reversal of $700,000 jury verdict). **Expert Who Expands File Must Give Full Disclosure (State Court)** *Glover v. Atkinson-Sneed*, 348 Ga. App. 679, 685–86, 824 S.E.2d 588, 593 (2019) (where physician has expanded his or her file with materials provided by outside, such an expansion mandates the full Rule 26 disclosure—including disclosure of the subject communications, which go to the facts known by and thus basis of the experts' opinion). **Federal Expert Must Give Rule 26(a)(2)(B) Disclosure if He/She has Expanded File** *Kondragunta v. Ace Doran Hauling & Rigging Co.*, 2013 WL 1189493 at *12 (N.D.Ga. Mar 21, 2013): [I]f a physician's opinion regarding causation or any other matter was formed and based on observations made during the course of treatment, then no Subsection B report is required, [] albeit the Subsection C report discussed above will be required. If, however, the physician's opinion was based on **facts gathered outside the course of treatment**[], or if the physician's testimony will involve the use of hypotheticals, then a full subsection B report will be required. **Expert Opinions Based on Differential Analysis Must Be Scientifically Valid (State Court)** *Mason v. Home Depot U.S.A., Inc.*, 283 Ga. 271, 280, 658 S.E.2d 603, 610 (2008)("[E]xpert opinions employing differential diagnosis must be based on scientifically valid decisions as to which potential causes should be 'ruled in' and 'ruled out.'") **Expert Must Perform Differential Analysis to Render Scientifically-Valid Causation Opinion (Federal Court)** *Cooper v. Marten Transport Ltd.*, 539 Fed.Appx. 963, 966 (11th Cir. 2013). *Rangel v. Anderson*, 202 F. Supp. 3d 1361, 1370 (S.D. Ga. 2016). **Doctor Who Expresses Causation Opinion where Causation is Not Necessary for Diagnosis or Treatment Becomes Expert Because he is Offering a Hypothesis – a Hypothetical** Dr. Meier did not need to determine how Wilson was injured in order to treat him in this case. Testimony regarding his diagnosis of the injury itself—that Wilson's spine was fractured—would be permissible as lay testimony without the Daubert analysis, but his statement about the cause of the injury was an hypothesis. "And the ability to answer hypothetical questions is the essential difference between expert and lay witnesses."

	Wilson v. Taser Int'l, Inc., 303 Fed. Appx. 708, 712–13 (11th Cir. 2008) citing *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005) (holding that treating physician provided expert testimony where she expressed an opinion on causation where the determination of the cause of the injury did not aid in the treatment thereof). Dr. Scott did not need to determine how Grant was injured to treat him in this case. Her diagnosis of the injury itself, that Grant's jaw was fractured, would be permissible lay testimony, but her statement about the cause of the injury was, as she admitted, a "hypothesis." And the ability to answer hypothetical questions is "[t]he essential difference" between expert and lay witnesses. *Asplundh Mfg. Div. v. Benton Harbor Eng'g,* 57 F.3d 1190, 1202 n. 16 (3d Cir.1995) (quoting *Teen-Ed Inc. v. Kimball Int'l, Inc.,* 620 F.2d 399, 404 (3d Cir.1980)); *see also Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 592, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005). Dr. Firth's status as Plaintiff's treating physician does not immunize his testimonyfrom *Daubert*. The subject of this motion to exclude is Dr. Firth's opinions regarding causation. These opinions clearly fall within FRE 702's scope of "scientific knowledge." Therefore, Dr. Firth's opinion is an expert opinion and must satisfy Daubert and Rule 702. *Leathers v. Pfizer, Inc.*, 233 F.R.D. 687, 693 (N.D. Ga. 2006). **Lawyer as Witness** Plaintiff's damages are part of his cause of action, and where a lawyer has been "been involved in the very transaction which gave rise to the cause of action," that lawyer is a necessary witness. *Connors v. Omni Ins. Co.*, 195 Ga. App. 607, 608, 394 S.E.2d 402, 405 (1990). He is also a necessary witness if "the lawyer's testimony is relevant to disputed, material questions of fact and [] there is no other evidence available to prove those facts." *Clough v. Richelo*, 274 Ga. App. 129, 132, 616 S.E.2d 888, 891–92 (2005). **Reasonableness and Necessity of Medical Bills** *Showan v. Pressdee*, 922 F.3d 1211 (11th Cir. 2019) (whether the plaintiff's medical expenses were reasonable and necessary is a critical inquiry under Georgia law) citing *MCG Health, Inc. v. Kight*, 325 Ga.App. 349, 353 (2013). **Medicare Market Rate Evidence is Admissible to show Reasonableness and Necessity** [E]vidence of medicare market rates for care does not violate the collateral source rule when offered to establish the reasonableness of the amount of damages. *See Gaddy v. Terex Corp*., 1:14-CV-1928-WSD, 2017 WL 3473872, at *3 (N.D. Ga. July 21, 2017). For example, the Court would allow expert testimony on "the reasonable value of Plaintiff[s'] [ ] medical care based on the average rates paid in the market by all payers." *Compton v. Bach*, 374 F. Supp. 3d 1296, 1303 (N.D. Ga. 2019). **Medical Liens are Merely a Starting Point for Evaluating Reasonableness and Necessity** [W]hile the "amount claimed to be due" may serve as a starting point in an evaluation of what may or may not constitute a reasonable charge (and should have some basis to begin with), if it is later determined that the charge does not reflect what is reasonable, the hospital will only be able to collect on the lien for the amount that actually is reasonable. *Bowden v. Med. Ctr., Inc.*, 845 S.E.2d 555, 565 (Ga. 2020) **Work Product Objections As to Materials Shared with Expert** *McKinnon v. Smock*, 264 Ga. 375, 376, 445 S.E.2d 526, 527 (1994): M0631890.1 0051

	[O]ne seeking discovery of the facts known and opinions held by an expert acquired or developed in anticipation of litigation or for trial may do so without exhibiting a substantial need for the material and establishing the undue hardship that will result should the seeker have to employ other means to develop the evidence. However, discovery seeking the facts known and opinions held by the expert is subject to (b)(3)'s provision against the disclosure of "the mental impressions, conclusions, opinion, or legal theories of an attorney or other representative of a party concerning the litigation." See *Bogosian v. Gulf Oil Corp*., 738 F.2d 587 (3rd Cir. 1984). [] Thus, correspondence from an attorney to an expert is protected from disclosure to the extent that the correspondence contains the opinion work product of the attorney. Should a dispute arise over whether a particular document does contain protected work product material, the trial court must conduct an in camera review to ensure that mental impressions, conclusions, opinions, or legal theories of a party's attorney or representative are not disclosed." **Federal Work Product Rule Does Not Apply to Non-Parties** We hold that the work product doctrine does not apply to the Turner documents. By its plain text, Rule 26(b)(3) applies to documents or things prepared by or for another party or its representative. Turner prepared the documents at issue here in anticipation of the Kobarid litigation for Reizen. Reizen is not a party to this case. Defendants were not parties to the Kobarid case, but rather served as Reizen's defense counsel for a time. *Tambourine Comercio Internacional SA v. Solowsky*, 312 Fed. Appx. 263, 284 (11th Cir. 2009). **Insurance Fraud Statute** (a) Any natural person who knowingly or willfully: (1) Makes or aids in the making of any false or fraudulent statement or representation of any material fact or thing: (A) In any written statement or certificate; (B) In the filing of a claim; (C) In the making of an application for a policy of insurance; (D) In the receiving of such an application for a policy of insurance; or (E) In the receiving of money for such application for a policy of insurance for the purpose of procuring or attempting to procure the payment of any false or fraudulent claim or other benefit by an insurer; [] commits the crime of insurance fraud. O.C.G.A. § 33-1-9. **HIPAA Privacy Rule Objections** *Moreland v. Austin*, 284 Ga. 730, 732, 670 S.E.2d 68, 71 (2008) ("Georgia law is clear that a plaintiff waives his right to privacy with regard to medical records that are relevant to a medical condition the plaintiff placed in issue in a civil or criminal proceeding.") 45 C.F.R. § 164.500 (Privacy of Individually Identifiable Health Information – Applicability) (a) Except as otherwise provided herein, the standards, requirements, and implementation specifications of this subpart **apply to covered entities** with respect to protected health information. 45 C.F.R. § 160.103 (Definitions) Covered entity means: (1) A health plan.

	(2) A health care clearinghouse. (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. 45 C.F.R. § 164.512 (Uses and disclosures for which an authorization or opportunity to agree or object is not required.) (e) Standard: Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested **has been given notice of the request**; or (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section. 42 U.S.C. § 1320d-6. (Wrongful disclosure of individually identifiable health information) (a) Offense A person who knowingly and in violation of this part-- (1) uses or causes to be used a unique health identifier; (2) obtains individually identifiable health information relating to an individual; or (3) discloses individually identifiable health information to another person, shall be punished as provided in subsection (b). JUSTICE DEPARTMENT MEMORANDUM OPINION AS TO SCOPE OF CRIMINAL ENFORCEMENT UNDER 42 U.S.C. § 1320D-6: We conclude that health plans, health care clearinghouses, those health care providers specified in the statute, and Medicare prescription drug card sponsors may be prosecuted for violations of section 1320d-6. In addition, depending on the facts of a given case, certain directors, officers, and employees of these entities may be liable directly under section 1320d-6, in accordance with general principles of corporate criminal liability, as these principles are developed in the course of particular prosecutions. Other persons may not be M0631890.1 0051 liable directly under this provision. The liability of persons for conduct that may not be prosecuted directly under section 1320d-6 will be determined by principles of aiding and abetting liability and of conspiracy liability. ***********.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/17/hipaa_final.htm **HIPAA Audit Logs** 45 CFR § 164.312 - Technical safeguards. **(b) Standard**: Audit controls. Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information.

	Stark Act Prohibits Self-Referrals to Any Entity with Which the Physician has a "Financial Relationship" The Stark Act prohibits healthcare entities from submitting Medicare claims for payment based on patient referrals from physicians having a "financial relationship" with the entity. 42 USC § 1395nn. The Act also prohibits a healthcare entity from presenting or causing to be presented a Medicare claim for services furnished pursuant to a prohibited self-referral. 42 USC § 1395nn (a) (1) (B). Notably, there are various safe harbor provisions that permit certain self-referrals under specific conditions, including bona fide employment relationships. See 42 USC § 1395nn (b), (e) (2). However, even in the context of a bona fide relationship, the compensation arrangement between the physician and the healthcare entity must "not [be] determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician." 42 USC § 1395nn (e) (2) (B) (ii). *Murray v. Cmty. Health Sys. Prof'l Corp.*, 345 Ga. App. 279, 282, 811 S.E.2d 531, 536 (2018)
Hawaii	
Idaho	
Idaho neither has a statute, rule nor appellate court authority addressing personal injury fee or litigation expense funding or disclosure.	
Illinois	
Indiana	
Indiana Code § 24-12-1-0.5 "Civil Proceeding Advance Payment Transaction (CPAP)": A nonrecourse transaction where CPAP providers provide funding to plaintiffs in civil lawsuits. Repayment is only required if the claimant prevails in the civil lawsuit and must come from the proceeds of the judgment, settlement or other resolution. **Indiana Trial Rule 26(B) Scope of Discovery:** "Parties may obtain discovery regarding 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 the party seeking discovery or the claim or defense of any other party…"	• **Nonrecourse Plaintiff's Personal Injury Loans in Indiana:** The CPAP statute was promulgated by the Indiana General Assembly in 2016 with the intent of regulating providers of nonrecourse transactions in the lawsuit funding industry. Prior to 2016, the State of Indiana did not provide any oversight in regulating the lawsuit funding industry. Because the statute is fairly new, there have been no appellate decisions addressing the CPAP statute or plaintiff's personal injury loans. Interestingly, the CPAP statute expressly states that an advance payment transaction is not a "loan", which is beneficial to nonrecourse transaction providers because they avoid tougher State regulations in other sections of the Indiana Code. I.C. § 24-12-6-2. • **Interest Rate:** The annual interest rate on CPAP transactions cannot exceed 36%. I.C. § 24-12-4.5-2. • **Must Disclose to Plaintiff Attorney:** If a Plaintiff enters into a CPAP transaction and is represented by an attorney, his attorney must sign a written acknowledgement contained in the CPAP contract. I.C. § 24-12-2-1. • **Discovery:** Because the statute is fairly new, there are no appellate decisions addressing whether CPAP transactions are discoverable by defendants. Indiana requires that two elements be met regarding whether information is discoverable: (1) the information must be relevant to the subject matter of the action; and (2) the information must not be exempt from being discoverable due to privilege or immunity. *Owens v. Best Beers of Bloomington, Inc.,* 648 N.E.2d 699 (Ind. Ct. App. 1995). The CPAP statute and its subsections do not contemplate any immunity regarding disclosure of a CPAP transactions. However, it is likely that the disclosure of the transaction could be challenged on the basis that it is irrelevant as it does not relate to a claim or defense in the pending action. **Attorney Fees:** The CPAP statute prohibits the payment of attorney fees, court costs, and filing fees from funds related to the CPAP transaction. I.C. § 24-12-3-1. Further, Indiana Code Section 34-51-1-1 limits recovery of attorney fees to a prevailing party unless provided by other statute or if the prevailing party demonstrates it is entitled to attorney fees due to frivolous, unreasonable, or groundless litigation. Therefore, "adverse cost insurance" would be unlikely in Indiana and not chargeable to the losing party.

Iowa	
	There are no statutes, rules or regulations concerning litigation loans in Iowa, nor have we been able to find any reported litigation regarding this issue.
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
It does not appear that Maryland has any statute that directly prohibits litigation lending but does have laws prohibiting champerty and barratry.	With respect to champerty, Maryland courts have rarely addressed the issue. The most relevant case, from 2002, involved tenant audit contracts between tenants and their consultant to help the tenants collect overcharges made under lease. Accrued Fin. Servs., Inc. v. Prime Retail, Inc., 298 F.3d 291, 299 (4th Cir. 2002). The Fourth Circuit noted that Maryland recognized that early common law prohibited barratry, maintenance, and champerty, declaring contracts that provide for such conduct void. Id. at 298. The court referred to William Blackstone's definition of "common barratry" as the offense of "frequently stirring up suits and quarrels;" "maintenance" as "an officious intermeddling in a suit;" and "champerty" as a "bargain with a plaintiff or defendant ... whereupon the champertor is to carry on the party's suit at his own expense." Id. at 298. Maryland's common law was codified in a criminal statute, outlawing "barratry" as follows: Without an existing relationship or interest in an issue, a person may not for personal gain, solicit another person to sue or to retain a lawyer to represent the other person in a lawsuit. Md Code Ann. Bus. Occ. & Prof. Art., § 1O-604. Id. at 299. The court applied the statute and common-law principles and held Maryland's public policy prohibits schemes to promote litigation for the benefit of the promoter rather than the party in interest. Id. at 299. The court ultimately held AFS was a solicitor for frivolous litigation, stirring up law suits for personal gain. Id. at 299. Thus, while litigation lending is not directly prohibited, the particular litigation lending arrangement would need to be reviewed in order to determine if champerty or barratry issues are raised.
Massachusetts	
Michigan	
Minnesota	
Mississippi	
There is no specific rule or statute governing disclosure of information related to litigation loans or injury finance arrangements.	• **Discoverability -** There is no Mississippi appellate court decision addressing the discoverability of third-party litigation funding. **Collateral Source** - We are aware of one (1) Mississippi trial court that issued an order holding that third-party litigation funding was subject to the collateral source rule and, therefore, the defendant could not present evidence of the third-party litigation agreement for the purpose of reducing the defendant's liability. *See Harris v. Ratcliff, et al.*, In the Circuit Court of

	Lamar County, Mississippi, Cause No. 37CI1:17cv00091 (Jan. 16, 2020) (unpublished). Notably, the Southern District of Mississippi has held that third-party litigation funding agreements are admissible to show bias or attack the credibility of the witness. *See Woulard v. Greenwood Motor Lines, Inc.*, 2019 WL 3311752 (S.D. Miss. Feb. 4, 2019).
Missouri	
	In Missouri, a settlement advance is a non-recourse advance on the expected settlement of plaintiff's claim; it is not a loan. There are no lending rules regulating non-recourse advances in Missouri. The only exception is that attorneys in Missouri must fully disclose the terms of legal funding contracts to their clients. This includes informing the client about the loss of attorney-client privilege when the attorney discloses confidential case information to the finance company for underwriting purposes. There have been a number of ethics opinions that address attorneys entering into non-recourse advances against the outcome of litigation. In most instances, an attorney taking a non-recourse advancement is seen as champerty or maintenance and is not allowed by the rules of professional conduct. If an attorney is so intertwined with the finance company's non-recourse advance, it may be considered champerty even if the advance is made to the plaintiff and not the attorney directly.
Montana	
Montana Rule of Professional Conduct, Rule 1.8 (e) prohibits financial assistance from an attorney to a client, subject to three specified exceptions: Rule 1.8 (e) (1) allows an attorney to advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; Rule 1.8 (e) (2) provides that an attorney representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and Rule 1.8 (e) (3) precludes non-recourse lending "specialists" by providing that "a lawyer may, for the sole purpose of providing basic living expenses, guarantee a loan from a regulated financial institution whose usual business involves making loans if such loan is reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided that neither the lawyer nor anyone on his/her behalf offers, promises or advertises such financial assistance before being retained by the client. Montana Rules of Professional Conduct, Order 03-264, In Re: Revising the Montana Rules of Professional Conduct, February 17, 2004.	There has been no appellate level decision addressing the discoverability of personal injury loans in Montana. Despite this fact, pursuant to Mont.R.Civ.P. 26, disclosure of non-recourse loans should be discoverable and not subject to privilege. As a practical matter, a plaintiff's attorney has incentive to disclose any non-recourse loans as a plaintiff would be unlikely to accept any settlement offers which did not exceed the non-recourse loan amount.
Nebraska	
• Nebraska is one of only a few states to impose regulations on Litigation Finance Companies ("LFCs"). • These regulations are set forth under Nebraska's Nonrecourse Civil Litigation Act. Neb. Rev. Stat. §§ 25-3301 - 25-3309. • Attorney fees, though recoverable, are not commonly awarded in Nebraska.	• The Nonrecourse Civil Litigation Act requires a mandatory disclosure statement for all nonrecourse civil litigation funding, which includes: i. The total dollar amount to be funded to the consumer; ii. An itemization of one-time fees; iii. The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all

Neb. Rev. Stat. Ann. § 25-824.	fees; iv. The total dollar amount in broker fees that are involved in the transaction; and v. The annual percentage rate of return, calculated as of the last day of each six-month interval including frequency of compounding. • Nebraska prohibits an LFC from requiring payment in instances where the borrower recovers less than what they owe the LFC.
Nevada	
NRS Chapter 604C regulates consumer litigation funding, enacted in 2019 NRCP 26 allows the parties to obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case. It need not be admissible to be discoverable.	• There is no specific rule requiring or prohibiting discovery of consumer litigation funding. The collateral source rule in Nevada prohibits collateral source payments from being introduced into evidence to show payment for the injury; however, there is an exception for medical liens for the purpose of showing bias. *Khoury v. Seastrand*, 132 Nev. 520, 377 P.3d 81 (2016). • There are no Nevada Supreme Court cases addressing the discovery or admissibility of consumer litigation funding. • Costs are awardable to the prevailing party as permitted by NRS 18.005 and NRS 18.020. NRS 18.005 lists the categories of costs allowed to the prevailing party, which does not include "adverse cost insurance." It is unlikely such a cost would be chargeable to the losing party, but could be argued to fall under the "catch all" in section 17 "any other reasonable and necessary expenses incurred in connection with the action…"
New Hampshire	
New Jersey	
Pursuant to NJ Rule 4:10-1. Discovery Methods; Except as otherwise provided by R. 5:5-1 (discovery in family actions), parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. Unless the court orders otherwise under R. 4:10-3, the frequency of use of these methods is not limited. **Pursuant to NJ Rule 4:10-2. Scope of Discovery;** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (a) In General. Parties may obtain discovery regarding 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 the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons	• **There are no NJ state statutes, rules or court decisions** that directly address whether third-party litigation financing is discoverable during the course of litigation. • **On the federal side, the United States District Court for the District of New Jersey** considered this question in In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prod. Liab. Litig., 405 F. Supp. 3d 612, 615 (D.N.J. 2019), finding that plaintiffs' litigation funding was not relevant to claims against defendants, and therefore not subject to discovery. This multidistrict litigation centered on allegations that a generic prescription medication indicated in the treatment of high blood pressure and other conditions contained carcinogens that caused personal injuries and economic losses. The defendants, including manufacturers of active pharmaceutical ingredient (API), suppliers, repackagers, wholesalers, and retailers, requested discovery of plaintiffs' litigation funding. The plaintiffs objected, and the District Court found that "litigation funding is irrelevant to the claims and defenses in the case and, therefore, plaintiffs' litigation funding is not discoverable." Id., at 405 F. Supp. 3d 612, 615 (D.N.J. 2019). The District Court stated that "The scope of relevant discovery is set forth in Fed. R. Civ. P. 26(b)1). This Rule permits discovery regarding, 'any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]' The Court agrees with the plethora of authority that holds that discovery directed to a plaintiff's litigation funding is irrelevant." Id. at 615. The District Court did not rule that litigation funding discovery was always undiscoverable, but stated that "In cases where there is a showing that something untoward occurred, the discovery could be relevant. In other words, rather than directing carte-blanche discovery of plaintiffs' litigation funding, the Court will Order the discovery only if good cause exists to show the discovery is relevant to claims and defenses in the case." Id. at 615. • **Further, the New Jersey Assembly is considering a pending bill, (No. A-3097)**, also known as the "Consumer Litigation

having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.	Funding Act". This proposed legislation does not directly discuss the discoverability of litigation funding in a case, it does address statutory and common law privileges where a litigation funding company is involved. . Specifically, Section 10 of the proposed legislation states: 10. No communication between the consumer's attorney in the legal claim and the consumer litigation funding company as it pertains to the consumer litigation funding shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege. In other words, the substance of counsel's communication with the litigation funding company will likely be shielded from discovery as privileged (so long as it otherwise meets the requirements of a privileged communication).
New Mexico	
New York	
CPLR 3101 requiring disclosure of "all matter material necessary and in the prosecution or defense of an action."	• There has been no appellate level or higher decision addressing the discoverability of plaintiff's personal injury loans. Two trial level courts however have issued decisions precluding the disclosure of such loan information on the basis that it was not material or necessary to the defense of the action. See *Quan v. Peghe Deli Inc.*, 2019 WK 3974786, at *2 (N.Y. Sup. Ct. 2019). Cabrera v. 1279 Morris LLC, 2013 WL 5418611, at *1 (N.Y. Supt. Ct. 2013). • In practice, many plaintiff's attorneys will disclose the existence of a "no recourse" loan as it likely impacts settlement negotiations as a plaintiff will have no incentive to accept a settlement that does not exceed the "no recourse" loan. • "Costs" awarded to a prevailing party after trial are nominal and do not exceed a few hundred dollars, thus "adverse cost insurance" is not common and would not be chargeable to the losing party.
North Carolina	

	• North Carolina has very little on this topic
	• North Carolina State Bar discussed in-depth in 2006 FEO 12 (https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-12/)
	  ○ Discusses ethical issues that may arise for attorneys who uses a financing company to fund litigation costs
	
	• Odell v. Legal Bucks, LLC, 192 N.C. App. 298, 665 S.E.2d 767 (2008)
	  ○ The Court recognized that the litigation funding was not a "loan," because a "loan" carries the requirement of an unconditional obligation to repay principal, but held that N.C. Gen. Stat. §24-1.1 also covers "advances," which do not have the same requirement.
	  ○ The Court of Appeals upheld claims for usury, unfair and deceptive practices, and a violation of the North Carolina Consumer Finance Act.

North Dakota	
Ohio	
	Ohio Revised Code § 1349.55 governs non-recourse civil litigation advance contracts. It is a consumer protection statute which requires all contracts for a non-recourse civil litigation advance to contain on the front page: (a) the total dollar amount to be advanced to the consumer; (b) an itemization of one-time fees; (c) the total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all fees; and the annual percentage rate of return,

	calculated as of the last day of each six-month interval, including frequency of compounding. The contract must also contain a notice in a clear and conspicuous manner stating: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of company]" Additionally, the contract must contain a statement immediately above where the consumer's signature is required stating: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSUL A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION." Furthermore, the contract must contain a written acknowledgement by the attorney representing the consumer in the civil action or claim stating: (a) the attorney representing the consumer in the civil action or claim has reviewed the contract and all costs and fees have been disclosed including the annualized rate of return applied to calculate the amount to be paid by the consumer; (b) the attorney representing the consumer in the civil action or claim is being paid on a contingency basis per a written fee agreement; (c) all proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the civil action or claim or a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer; and (d) the attorney representing the consumer in the civil action or claim is following the written instructions of the consumer with regard to the non-recourse civil litigation advance. R.C § 1349.55 became effective in August of 2008, in response to the Ohio Supreme Court's decision in Rancman v. Interim Settlement Funding Corp. In Rancman, the Ohio Supreme Court analyzed funding contracts provided by alternative litigation finance ("ALF") providers under the common law doctrines of champerty and maintenance. 99 Ohio St.3d 121, 2003-Ohio-2721, 789 N.E.2d 217, ¶ 9-19. And in finding that champerty and maintenance were condemned the Court held that "[e]xcept as otherwise permitted by legislative enactment or the Code of Professional Responsibility, a contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as champerty and maintenance." Thereafter, Ohio was purportedly the only state that disallowed non-recourse civil litigation advances. 76 Ohio Report No. 186, Gongwer News Service, Inc. (Sept. 19, 2007) (proponent testimony of Gary Chodes, chief executive officer of Oasis Legal Finance, on H.B. 248, 127th General Assembly). Consequently, the General Assembly enacted R.C. § 1349.55 in 2008. To date, no court appears to have addressed any legal challenges to R.C. § 1349.55. Nevertheless, the Ohio Supreme Court Board of Commissions on Grievances & Discipline (the "Board") issued an advisory opinion in 2012 addressing R.C. § 1349.55 and the ethical obligations it creates for lawyers. The Board held that "lawyers may inform clients of the non-recourse civil litigation advances that are offered by alternative litigation finance (ALF) providers and regulated by R.C. 1349.55." BCGD, Advisory Opinion 2012-3 (December 7, 2012) at syllabus. However, if a client decides to pursue funding from an ALF, "the lawyer must recognize the ethical obligations the transaction creates." Id. The obligations include: (1) a duty to communicate with the client and provide competent, candid advice about the nature of the transaction and its terms; (2) the lawyer must ensure that the ALF providers does not interfere with the lawyer's duty to exercise independent professional judgment; (3) the lawyer shall not reveal information about the representation to the ALF

	provider without securing the client's informed consent after explaining the risks of sharing information with an ALF provider, including the potential waiver of attorney-client privilege; and a lawyer must obtain the client's informed consent before providing a case evaluation to an ALF provider. Id. Therefore, while the Board opinion is only advisory in nature, it details how R.C. § 1349.55 impacts an attorney's duties.
Oklahoma	
14A Okla. Stat. § 3-801 *et seq.*; Okla. Admin. Code § 160:75-1-1, *et seq.*	• The Oklahoma Consumer Litigation Funding Act governs all aspects of litigation loans provided to personal injury plaintiffs. • No provision of the Act governs discoverability of the agreement in the context of civil litigation and there is no current case law addressing this issue. • A prevailing party's right to cover costs is limited (and specifically defined) by statute, 12 Okla. Stat. §942, and would not encompass the cost associated with litigation loans. • Adverse cost insurance is not common.
Oregon	
Pennsylvania	
	Pennsylvania recognizes the doctrine of champerty, which may be asserted as a defense against the enforcement of a contract when three elements are established: "1) the party involved must be one who has no legitimate interest in the suit; 2) the party must expend its own money in prosecuting the suit; and 3) the party must be entitled by the bargain to share in the proceeds of the suit." *Fleetwood Area Sch. Dist. v. Berks Cnty. Bd. of Assessment*, 821 A.2d 1268, 1273 (Pa. Commw. Ct. 2003). The doctrine has recently been applied to invalidate litigation financing agreements altogether. *WFIC, LLC v. LaBarre*, 2016 PA Super 209, 148 A.3d 812. As such, there is a question as to whether such loans are even valid in Pennsylvania. There is not presently any rule or statute governing the discoverability of such loans during litigation.
Rhode Island	
South Carolina	

	<u>**Litigation Loans/Adverse Cost Insurance**</u>
	- **South Carolina Rues of Civil Procedure Rule 26(b)(2) Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement. SCRCP 26
	- No cases outside of disciplinary matters address "litigation loans"
	- No cases address the following terms
	  ○ Personal injury loans
	  ○ Adverse cost insurance
	  ○ Lawsuit loans

	○ Pre-settlement funding - Depending on their structure, either Title 37 (Consumer Protection Code) or Title 29 (Mortgages and Other Liens) govern these as loans under a 2014 ruling from the S.C. Department of Consumer Affairs. This ruling stated that litigations loans must comply with South Carolina loan laws [https://legalnewsline.com/stories/510628059-south-carolina-agency-rules-lawsuit-loans-are-traditional-loans-subject-to-state-law] - Nothing in South Carolina regarding adverse cost insurance (beyond Rule 26)
South Dakota	
Tennessee	
Texas	
Texas Rule of Civil Procedure 192.3(a) generally allows for the discovery of "any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." Further, Texas Rules of Civil Procedure 194.2 (f) & (g) require mandatory disclosure of all indemnity and insuring agreements, as well as settlement agreements. Despite these broad grants of discoverability, it appears that no Texas appellate courts have directly addressed the issue of litigation funding or non-recourse loans in the context of TRCP 192.3 or 194.2.	It is worth pointing out, though, that the Texas Secretary of State websites does allow individuals and organizations to search UCC filings online for a fee. In best practice, litigation lenders typically file a UCC lien with the state in order to secure and prioritize their debt. Although the state filing does not provide the amount of the lien, it does provide the date the lien was taken out, which may be helpful in determining whether the loan is related to a plaintiff's medical treatment in a particular case. One can also view the filing statement, which provides the name and address of both the debtor and secured party. Therefore, even without direct guidance from the Courts on this issue, litigants may utilize the Texas Secretary of State UCC search tool as a starting point and critical resource to determine whether a plaintiff has a litigation funding loan tied to their name. Moreover, given this lack of direct statutory guidance and Court interpretation, there has been a recent push for broader and more aggressive forms of mandatory disclosure of third-party litigation funding agreements. For example, on February 20, 2019, two identical proposed bills (86(R) HB 2096 and SB 1567) were filed proposing amendments to Chapter 22 of the Texas Government Code which, among other things, would require the Texas Supreme Court to "adopt rules to provide for the mandatory disclosure of third-party litigation financing agreements to the parties in a civil action in connection with which third-party litigation financing is provided." However, both bills are currently pending in committee.
Utah	
Vermont	
	There is nothing in Vermont regarding the disclosure of personal injury loans, i.e. there have been no reported cases at the trial or appellate levels addressing the discoverability of plaintiff's personal injury loans. As such, disclosure is controlled by the usual parameters of discovery under Vermont Rule of Civil Procedure 26, which mirrors the federal rule: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit…."
Virginia	
	There are no statutes, rules, or judicial decisions that specifically govern third-party litigation financing in Virginia. This was explicitly noted by the National Conference of State Legislatures in a 2014 publication. *See*

	https://www.ncsl.org/research/financial-services-and-commerce/litigation-funding-transactions-2014-legislation.aspx. However, the Virginia State Bar has noted that there may be ethical issues when the attorney, client, and third-party financer appear to be entering into an agreement whereby the financer receives a portion of the attorney's legal fee. See Va. State Bar Standing Comm. on Legal Ethics, Advisory Op. 1764 (2002) ("not[ing] a basic ethical problem" in a proposed financing agreement that called for a "finance company to receive a portion of the attorney's legal fee").
Washington	
The rule/statute portion should be Civil Rule 26 (CR 26(a)(1)), allowing for discovery regarding "*any matter, not privileged, which is relevant to the subject matter involved in the pending action*."	We have found no Washington state cases addressing litigation loans/financing/funding. We also are not aware of any statute in Washington addressing this issue. Acccordingly, it appears Washington courts have not ruled on the particular subject.
West Virginia	
W. Va. Code § 46A-6N-5 W. Va. Code § 46A-6N-6	West Virginia has codified how they deal with litigation financing in Article 6N of chapter 46A. This includes specifics as to the form of disclosures within the loan, as well as specifics pertaining to disclosure of the loans during litigation. Those include that the loans must be disclosed during the course of litigation without awaiting a discovery request. W. Va. Code § 46A-6N-5 provides: **(a)** A litigation financing contract shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract. **(b)** Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows: **(1)** Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include: **(A)** Notification that some or all of the funded amount may be taxable; **(B)** A description of the consumer's right of rescission; **(C)** The total funded amount provided to the consumer under the contract; **(D)** An itemization of charges; **(E)** The total amount due from the consumer, in six-month intervals for 42 months, including all charges and fees; **(F)** A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form; **(G)** In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed; **(H)** A statement that if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the litigation financier; **(I)** A statement that if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the litigation financier, the litigation financier shall accept a reduced sum as full payment of its funded amount and charges; and **(J)** The following: Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning

	the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return. **(2)** Within the body of the litigation financing contract, the following: The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney; **(3)** Within the body of the litigation financing contract, in all capital letters contained within a box, the following: THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCIER; **(4)** Located immediately above the place on the litigation financing contract where the consumer's signature is required, the following: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT. W. Va. Code § 46A-6N-6 provides: Except as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.
Wisconsin	
	In 2018, Wisconsin became one of the first states to mandate the disclosure of all legal funding agreements. The legislation requiring all third-party litigation funding deals to be disclosed was passed in 2018. The Wisconsin Act 235 demands that plaintiffs "provide to the other parties any agreement" whereby third-party funders will be entitled to a share of profits from a civil action, judgment, or settlement.
Wyoming	
	There are no statutes, rules or regulations concerning litigation loans in Wyoming, nor have we been able to find any reported litigation regarding this issue.