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JUN 15 2012
JAMES N. HATTEN, Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GAIL HART,

Plaintiff,

v.

WAL-MART STORES, INC. d/b/a WAL-MART,

Defendant.

CIVIL ACTION
NO. 1:11-CV-03519-RLV

O R D E R

This case comes before the court on a motion to quash subpoena issued to non-party ML Healthcare, LLC ("MLH"). (MLH's Mot. to Quash [Doc. No. 33].) The defendant issued a subpoena to MLH for the production of records by MLH. (Def.'s Subpoena for Produc. of Docs. [Doc. No. 28].) The defendant's subpoena for production of records included the following:

> (1) The complete contract between [MLH] and Spivey Station Surgery Center.
> (2) The complete contract between [MLH] and Peachtree Orthopaedic Physical Therapy.
> (3) The complete contract between [MLH] and Peachtree Orthopaedic Clinic.
> (4) All other correspondence between [MLH] and [anyone] pertaining to this matter.
> (5) All correspondence and emails between [MLH] and [the plainitff's counsel] and/or the Borroughs Johnson Hopewell Coleman firm, regarding [MLH's] services in this case, and all other correspondence or emails between [MLH] and anyone else pertaining to this matter.
> (6) All billing records, engagement agreements or other documents regarding fees and expenses charged or paid by [MLH] for services in this matter.

> (7) The exact amount of money [MLH has] paid to date in this matter to [medical providers] regarding any treatment of [the plaintiff].
> (8) All tax forms (or tax returns) reflecting all income paid by [MLH], from 2002 through the current date . . . .
> (9) The exact amount of money [MLH has] paid to date in this matter [to any medical provider] regarding any treatment of [the plaintiff].
> (10) A listing of all cases in which any member of [MLH] group has worked in any capacity as an expert witness, expert consultant, treating physician of any party, or otherwise in any capacity for Genet M. Hopewell, and/or the Burroughs Johnson Hopewell Coleman firm from 2002 through this date . . . .
>
> (Def.'s Subpoena for Produc. of Docs. Ex. A at 1-3.)

1. The Subpoenaed Information Is Not Barred for Being Irrelevant or by the "Collateral Source Rule"

First, MLH argues that the defendant's subpoena should be quashed because items 1 through 9 of the subpoena seek irrelevant and inadmissible information which is barred by the "collateral source rule." (MLH's Mot. to Quash at 2.) MLH points out that evidence of a third-party's payment of medical bills incurred by a plaintiff allegedly as a result of a tort is not admissible or relevant as to the issue of damages. (Id.) MLH also contends that the "collateral source rule" allows a plaintiff to seek recovery for damages caused by tortious conduct even if the plaintiff has been reimbursed by an insurer. (Id. at 3.)

In response, the defendant argues that Fed. R. Civ. P. 26(b)(1) provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"

and that "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." (Def.'s Resp. to MLH's Mot. to Quash at 4 [Doc. No. 36].) The defendant contends that one of the reasons for the request was to show potential "bias, credibility, and impeachment" of medical providers that might have a financial interest in MLH. (Id. at 6.) The defendant also contends that MLH's use of the "collateral source rule" is improper since MLH is not an insurer and the rule does not bar discovery seeking information regarding funding relationships with medical providers. (Def.'s Resp. to MLH's Mot. to Quash at 7-8).

The court agrees with the defendants that the subpoena should not be quashed because Fed. R. Civ. P. 26(b)(1) provides for broad rules of discovery of information that "need not be admissible at trial." The court also agrees that the defendant has asserted viable reasons for requesting the information in the subpoena and that the "collateral source rule" should not operate when the information requested is to be used for purposes of showing bias, credibility, or impeachment.

2. The Subpoenaed Information is Not Barred for Seeking Trade Secrets

Second, MLH argues that the defendant's subpoena should be quashed because items 1-3 of the subpoena seek MLH's trade secrets.

(MLH's Mot. to Quash at 3.) MLH contends that their contracts with medical providers are trade secrets which they protect from disclosure to third parties. (MLH's Mot. to Quash at 4.) MLH points out that under Fed. R. Civ. P. 45(c)(4)(B)(i), "the issuing court may, on motion, quash or modify a subpoena if it requires disclosing a trade secret or other confidential research, development, or commercial information." (Id.)

In response, the defendant contends that MLH has failed to make any showing that their agreements with medical providers constitute "trade secrets" other than through conclusory allegations. (Def.'s Resp. to MLH's Mot. to Quash at 10.) The defendant also points out that even if MLH made a showing that the information sought was entitled to protection, a protective order limiting the dissemination of the requested information would be the proper remedy. (Id.)

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of good cause for a protective order. Fed. R. Civ. P. 26(c)(1)(G) provides that the court may, for good cause, issue an order to protect including requiring that a trade secret not be revealed. However, the court agrees with the defendant that MLH has not made a showing that any of the information in items 1-3 of the subpoena was a trade secret.

3. MLH Does Not Show Over-Broadness or Harassment

Third, MLH argues that the defendant's subpoena should be quashed because it is overly broad and intended to harass or annoy MLH. (MLH's Mot. to Quash at 5.) MLH contends that items 1-3, 8, and 10 of the subpoena are not tailored to request documents relevant to this litigation. (Id.) MLH argues that since the contracts in items 1-3 are irrelevant to the litigation, the requested items 1-3 of the subpoena must be intended to harass them. (Id.) MLH further argues that the scope of items 8 and 10 going all the way back to 2002 is overly broad considering that this litigation began in 2011. (Id.) Additionally, MLH points out that Fed. R. Civ. P. 45(c)(3)(A)(iv) states a court "must quash or modify a subpoena that . . . subjects a person to undue burden." (Id.)

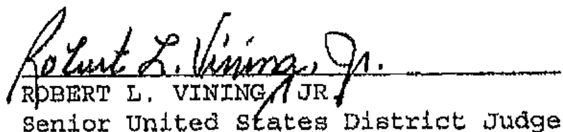
In response, the defendant contends that the alleged injury took place in 2009 and requesting documents seven years prior to the injury is not egregiously overbroad. (Def.'s Resp. to MLH's Mot. to Quash at 12.) The defendant also contends that MLH has merely made boilerplate objections and has not met its burden pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iv)to demonstrate that the requests are overly burdensome. (Def.'s Resp. to MLH's Mot. to Quash at 12.)

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of any specificity regarding why the defendant's requests are overly broad or somehow

unduly burdensome. Fed. R. Civ. P. 26(b)(2)(C)(iii) provides that the court must limit the extent of discovery if it determines that the burden or expense of the proposed discovery outweighs its likely benefit. The court agrees with the defendant that MLH has not made any showing of the scope of difficulty, time, or expense required to comply with items 8 or 10 of the subpoena.

For the reasons stated above, the court DENIES MLH's motion to quash the defendant's subpoena [Doc. No. 33]. Additionally, the court DIRECTS the CLERK of COURT to place the defendant's response to MLH's objections to document requests [Doc. No. 36] under seal to prevent the release of personally identifiable information of the plaintiff.

SO ORDERED, this 15th day of June, 2012.



ROBERT L. VINING, JR.
Senior United States District Judge

FILED IN CHAMBERS
U.S D.C. - Rome
JUN 25 2012
JAMES N. HATTEN, Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TICORA WILLIAMS,

Plaintiff,

v.

WAL-MART STORES EAST, L.P.,

Defendant.

CIVIL ACTION

NO. 1:11-CV-3712-RLV

O R D E R

This case arises from an alleged slip and fall accident which occurred at one of the defendant's stores. This matter comes before the court on a motion to quash a subpoena issued to non-party ML Healthcare, LLC ("MLH") [Doc. No. 62]. [1] The defendant issued a subpoena to MLH for the production of records by MLH. The defendant's subpoena sought records from MLH as outlined in Exhibit A of MLH's motion to quash. [Doc No. 62, Exhibit A]. For the reasons stated below, the court denies MLH's motion to quash.[2]

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[1] The court notes that the parties filed nearly identical pleadings in Hart v. Wal-mart Stores East, L.P., 1:11-CV-3519. On June 15, 2012, this court issued an order denying the motion to quash in that suit, wherein MLH and the defendant raised extremely similar arguments as raised in the current motion in this suit.

[2] On page 6 of its motion to quash, MLH states that it will produce a number of documents in response to the defendant's subpoena. Specifically, MLH states that it will produce the distribution agreement between MLH, the plaintiff, and the

1. The Subpoenaed Information Is Not Irrelevant, or Barred by the "Collateral Source Rule"

First, MLH argues that the defendant's subpoena should be quashed because it seeks information that is not relevant. Specifically, MLH argues that the defendant's request for documents and correspondence relating to amounts MLH paid to Resurgens Orthopaedics, Key Health Medical Solutions, Inc., Premier South Medical Group, P.C., Peachtree Orthopaedic Clinic, Shawn Jones, DC, and Peachtree Orthopaedic Physical Therapy, are not relevant because evidence of a third-party's payment of medical bills incurred by a plaintiff allegedly as a result of a tort is not admissible or relevant to the issue of damages. Moreover, MLH also argues that the "collateral source rule" allows a plaintiff to seek recovery for damages caused by tortious conduct even if the plaintiff has been reimbursed by an insured.

In response, the defendant argues that Federal Rule of Civil Procedure 26(b)(1) provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party" and that "relevant information need not be

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plaintiff's counsel. Moreover, MLH stated that it was willing to produce medical provider bills as well as various diagnostic documents. Based on these concessions, this order only addresses the outstanding objections raised to the defendant's subpoena.

admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." The defendant contends that it seeks this information to show "bias, credibility, and impeachment" of medical providers that might have a financial interest in MLH. The defendant also contends that MLH's use of the "collateral source rule" is improper since MLH is not an insurer and the rule does not bar discovery seeking information regarding funding relationships with medical providers.

The court agrees with the defendants that the subpoena should not be quashed. In reaching this conclusion, the court notes that Rule 26(b)(1) of the Federal Rules of Civil Procedure provides for broad discovery of information that "need not be admissible at trial." The court also agrees that the defendant has asserted viable reasons for requesting the information in the subpoena and that the "collateral source rule" should not operate when the information requested is to be used for purposes of showing possible bias or to impeach.

2. The "Trade Secrets" Objections to Defendant's Subpoena Are Improper

Second, MLH argues that the defendant's subpoena should be quashed because the defendant seeks to discover MLH's agreements with medical providers, which MLH argues are trade secrets.

Specifically, MLH points out that under Rule 45(c)(4)(B)(I) of the Federal Rules of Civil Procedure, "the issuing court may, on motion, quash or modify a subpoena if it requires disclosing a trade secret or other commercial information."

In response, the defendant contends that MLH failed to make any showing that their agreements with medical providers constitute "trade secrets" other than through conclusory allegations. The defendant also points out that even if MLH made a showing that the information sought was entitled to protection, a protective order limiting the dissemination of the requested information would be the proper remedy.

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of good cause for a protective order. In reaching this conclusion, the court notes that Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure provides that the court may, for good cause, issue an order to protect including requiring that a trade secret not be revealed. However, the court agrees with the defendant that MLH has not made a showing that any of the information sought by the defendant's subpoena is or was a trade secret.

3. The Defendant's Non-Party Requests
Are Proper in Terms of Breadth and Scope

Third, MLH argues that the defendant's subpoena should be quashed because it is overly broad and intended to harass or annoy MLH. MLH argues that these requests are not tailored to request documents relevant to this litigation. MLH further argues that the defendant's request for tax records going back to 2002 is overly broad considering that this litigation began in 2011. Finally, MLH points out that Rule 45(c)(3)(A)(iv) states a court "must quash or modify a subpoena that . . . subjects a person to undue burden."

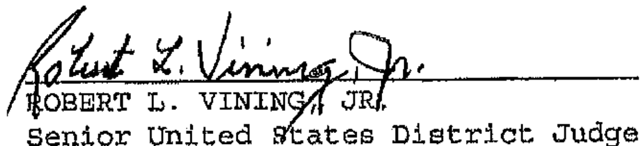
In response, the defendant contends that the alleged injury took place on September 23, 2010, and requesting any information from 2002 is not egregiously overbroad. Additionally, the defendant argues that MLH has merely made boilerplate objections and has not met its burden pursuant to Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure to demonstrate that the requests are overly burdensome.

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of any specificity regarding why the defendant's requests are overbroad or somehow unduly burdensome. In reaching this conclusion, the court notes that Rule 26(b)(2)(C)(iii) of the Federal Rules of Civil

Procedure provides that the court must limit the extent of discovery if it determines that the burden or expense of the proposed discovery outweighs its likely benefit. The court agrees with the defendant that MLH has not made any showing of the scope of difficulty, time, or expense required to comply with the defendant's subpoena.

For the above reasons and for those stated in the defendant's response dated May 30, 2012, the court DENIES MLH's motion to quash the defendant's subpoena [Doc. No. 62].

SO ORDERED, this 25th day of June, 2012.



ROBERT L. VINING, JR.
Senior United States District Judge

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CLERK OF STATE COURT
GWINNETT COUNTY, GA

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RICHARD ALEXANDER, CLERK

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

SANDRA ELIZABETH FLORES JUAREZ and WILLIAM PINEDA VILLACORTA,

Plaintiffs,

v.

GEORGIA POWER COMPANY and CASSANDRA KIM TAYLOR,

Defendants.

CIVIL ACTION
FILE NO.: 11-C-09903-1

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION IN LIMINE

Defendants hereby respond to Plaintiffs' Motion in Limine ("Plaintiffs' Motion"). Defendants note at the outset that Plaintiffs' Motion addresses 33 topics, the overwhelming majority of which are irrelevant to the facts of this case or the anticipated evidence and argument at trial. Rather, the majority of Plaintiffs' Motion appears to be a form that is submitted by Plaintiffs' counsel in all of their cases. Such a form motion, which is not tied to the facts and circumstances of this case, wastes the time and resources of Defendants and the Court.

Moreover, with few exceptions, Plaintiffs do not identify any testimony or trial exhibits that they claim to be objectionable. Instead, Plaintiffs make generalized, vague arguments about entire categories of evidence or about general principles of law, which is an improper basis for a motion in limine. *See Witty v. McNeal Agency, Inc.*, 239 Ga. App. 554, 557 (1999) ("Since the motion in limine was overly broad and not tailored to a legitimate objection, then it was proper to deny such motion."). Plaintiffs' Motion is improper, and this Court should reserve its evidentiary rulings for particularized objections made in the proper context of the evidence and argument presented at trial. *See Morris v. S. Bell Tel. & Tel. Co.*, 180 Ga. App. 145, 145 (1986).

For these reasons, and for all of the reasons discussed below with respect to each topic in Plaintiffs' Motion, the Court should DENY Plaintiffs' Motion in its entirety.

4. **Collateral Source**

As they indicated in discovery and the Consolidated Pretrial Order, Plaintiffs seek to recover damages equal to the invoices from their medical providers, despite the facts that:

(1) the full amounts of the providers' invoices were not, and never will be, paid to the providers;

(2) by contract, ML Healthcare agreed to fund Plaintiffs' medical costs in exchange for Plaintiffs' agreement that, in the event Plaintiffs recover damages in their litigation against Defendants, Plaintiffs will reimburse ML Healthcare the full amount of providers' invoices;

(3) by contract, ML Healthcare agreed to pay, and the providers agreed to take, a lesser amount than the invoices (a "discounted rate"), thus generating profit for ML Healthcare if Plaintiffs are successful in their litigation; and

(4) neither Plaintiffs nor ML Healthcare have any liability whatsoever *to the medical providers* for the difference between the providers' invoices and the reduced amounts paid by ML Healthcare.

Under these circumstances, ML Healthcare is not a "collateral source," and evidence regarding the contracts between Plaintiffs and ML Healthcare, the contracts between ML Healthcare and the medical providers, and the actual payments made by ML Healthcare to Plaintiffs' medical providers is relevant and admissible at trial.[1]

(a) ML Healthcare Is Not a Collateral Source Under Georgia Law.

None of the cases cited by Plaintiffs support their misguided argument that ML Healthcare is a "collateral source." To the contrary, the true nature of the relationship between Plaintiffs and ML Healthcare, in the context of Georgia law, demonstrates that ML Healthcare is

[1] Defendants' Motion to Compel Production and in Opposition to ML Healthcare's Motion to Quash is pending. For the reasons stated in Defendants' motion, ML Healthcare should be ordered to produce all requested documents and information to show the actual amounts that ML Healthcare paid to Plaintiffs' medical providers.

not a collateral source, and evidence of payments made by ML Healthcare to Plaintiffs' medical providers is not barred by the "collateral source" rule.

Under Georgia law, a collateral source is a third party that has voluntarily provided a benefit through a bargained-for agreement, such as insurance or a gratuity. *See Olariu v. Marrero*, 248 Ga. App. 824, 826 (2001) (emphasis added). The collateral source rule generally prevents inclusion of evidence that a plaintiff received "gratuitous medical care, continued salary or wage payments, proceeds from insurance policies, or welfare and pension benefits . . . ." *Bennett v. Haley*, 132 Ga. App. 512, 523 (1974) (quoting 22 Am. Jur. 2d *Damages* § 206) (internal quotations omitted). The stated goal of this rule is to prevent a tortfeasor from unjustly benefiting from a reduction in the plaintiff's damages "whether [from] insurance companies or beneficent boss or helpful relatives." *Id.* at 522. For that reason, courts do not allow a defendant to introduce evidence to reduce damages based solely on the fact that the plaintiff received a benefit from one these sources. *Amalgamated Transit Union Local 1324 v. Roberts*, 263 Ga. 405, 408-09 (1993).

In Georgia, the "collateral source" rule has been applied to prevent the admission of the following types of evidence: benefits from collateral insurance coverage, services furnished without charge, compensation for time not actually worked, Social Security or pension benefits, workers' compensation benefits, and Medicaid or Medicare benefits. *See Cincinnati v. Hilley*, 121 Ga. App. 196, 201 (1970); *Bennett v. Haley*, 132 Ga. App. 512, 525 (1974); *Denton v. Conway Express, Inc.*, 261 Ga. 41, 42-43 (1991); *Georgia Power Co. v. Flagan*, 261 Ga. 41, 43 (1991); *Warren v. Ballard*, 266 Ga. 408, 409-10 (1996); *Worthy v. Kendall*, 222 Ga. App. 324, 325-26 (1996). ML Healthcare is not a collateral source because, unlike all other recognized collateral sources in Georgia, ML Healthcare does not provide any benefit to Plaintiffs. ML

Healthcare is not an insurer, a medical provider, a family member, or a government benefit program, and ML Healthcare does not furnish services without a charge. *See* Deposition of ML Healthcare (Craver) at 40-41 [cited excerpts are attached as Exhibit A].

(b) ML Healthcare Is a Real Party-in-Interest with a Financial Stake in This Case, and Evidence of ML Healthcare and Its Payments to Plaintiffs' Medical Providers Is Relevant and Admissible.

The reality is that ML Healthcare is an investor in Plaintiffs' lawsuit, thus making ML Healthcare a real party in interest in this litigation, and the jury is entitled to hear that evidence. ML Healthcare pays for medical services that Plaintiffs receive only from medical providers with which ML Healthcare negotiated a discounted rate (an amount less than the invoice amount) prior to the providers' treatment of Plaintiffs. ML Healthcare then makes a profit by collecting the full invoice amounts from a plaintiff when he recovers in litigation. *See* Deposition of ML Healthcare (Craver) at 41-43.

Unlike an insurance company—which receives premiums from its insureds, in exchange for covering the costs of the insureds' medical care, without expecting reimbursement of any amounts in excess of what it paid to medical providers—here, ML Healthcare did not receive premiums from Plaintiffs, and ML Healthcare requires Plaintiffs to reimburse ML Healthcare not only for any amounts that ML Healthcare pays to Plaintiffs' medical providers, but rather for the full amounts of the medical providers' invoices.[2] *See* Deposition of ML Healthcare (Craver) at 41-43. If, at the end of the day, Plaintiffs are still liable to ML Healthcare for the full amount of

[2] ML Healthcare's contracts with the Plaintiffs state that ML Healthcare "shall be paid the full amount of the Funding upon any Recovery." ML Healthcare Distribution Agreement ¶ 2 [attached hereto as Exhibit B]. "Recovery," under the contract, is defined as "settlement, collection, judgment, compromise, or other resulting collection of funds relating to the claims of the injured party resulting from such accident." *Id.* at 1.

the invoices from the medical providers, then Plaintiffs receive no benefit from ML Healthcare, and ML Healthcare is not a collateral source.[3]

Stated another way, ML Healthcare does not pay "benefits" on behalf of Plaintiffs, but instead loans them money at 0% interest. Indeed, the only practical difference between ML Healthcare and any other financing company (e.g., bank, credit union, or other lending institution) is that ML Healthcare obtains its profit by reducing its payout obligation instead of charging the borrower interest. A loan from a consumer lender would never qualify as a "benefit" under Georgia's collateral source rule because the ultimate obligation of the plaintiff to pay the cost for his medical treatment does not change. Put simply, the collateral source rule applies only when someone pays a debt for services rendered to the plaintiff (either through payment or donation of "benefits"), and the plaintiff is no longer liable to anyone for that debt. Here, however, although ML Healthcare paid Plaintiffs' medical providers, that was not a benefit because Plaintiffs remain liable to ML Healthcare for a debt.

Although the Georgia appellate courts have not issued any opinion regarding whether the collateral source rule bars evidence of payments by a litigation medical finance company, like ML Healthcare, an Oregon case directly addressed the issue and is instructive here. In *Miller v. J-M Manufacturing Co.*, 2008 U.S. Dist. LEXIS 9392 (D. Ore. Feb. 7, 2008), pursuant to a series

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[3] The same is true if Plaintiffs do not recover anything in their litigation against Defendants because, in that situation, Plaintiffs are still required to reimburse ML Healthcare the amounts actually paid to the medical providers. Under ML Healthcare's contracts with Plaintiffs, if an "Event of Default" occurs, ML Healthcare can declare reimbursement of "Funding immediately due and payable . . . ." ML Healthcare Distribution Agreement ¶ 6. An "Event of Default" includes the "failure of the applicable claim or suit to result in a Recovery . . . ." *Id.* ¶ 2. "Funding" is defined as the amount of "reimbursement to medical providers." *Id.* at 1. Again, because Plaintiffs are required to repay ML Healthcare the full amount that ML Healthcare paid to Plaintiffs' medical providers, Plaintiffs have not received any "benefit" from ML Healthcare, and ML Healthcare is not a collateral source.

of contracts, two medical finance companies purchased the plaintiffs' accounts receivable from the hospital that treated the plaintiffs before their surgeries were performed. *Id.* at *4-7.

> As a result of these transactions, Valley Hospital received a total of $25,943.30 for the services rendered to the Millers and has no rights to any additional payment. The [plaintiffs] remain personally liable to Med-Care and Key Health (collectively "medical finance companies") for the full amounts originally billed, a total of $113,046.00.

Id. at *7. The plaintiffs claimed $113,046.00 as damages (the amount of the hospital's invoices), but the defendants argued that any recovery should be limited to $25,943.30 (the amount paid by the medical finance companies). *Id.* Finding that evidence of payments made by the medical finance companies was <u>not</u> barred by the collateral source rule, the court reasoned as follows:

> The [plaintiffs] have received no benefits or compensation from a collateral source. Properly viewed, the transactions between Valley Hospital and the medical finance companies are nothing more than assignment contracts. The [plaintiffs] remain liable for the full amount of debt. . . . The assignment contracts did not extinguish the debt the [plaintiffs] owe to Valley Hospital, but merely substituted the payee. The [plaintiffs] have not, in full or in part, been made whole by a source collateral to them. Therefore, <u>the collateral source rule does not apply</u>.

Id. at *19 (emphasis added).

Plaintiffs cannot have it both ways at trial—they cannot seek damages in the amount of the providers' invoices and also avoid evidence of ML Healthcare's payments. By seeking to recover the full amount of the providers' invoices, Plaintiffs are claiming that they are liable to ML Healthcare for the full amount of the providers' invoices, and as such, ML Healthcare is not a collateral source. Defendants are entitled to present evidence to the jury to show the amounts that ML Healthcare actually paid to Plaintiffs' medical providers (the proper measure of Plaintiffs' damages) and the profit that ML Healthcare would make if the jury were to award damages in the amount of the providers' invoices. The collateral source rule has no application in this context, and accordingly, the Court should deny Topic 4 of Plaintiffs' Motion.

5. Unproven Suggestions of Fraud and Collusion Amongst Plaintiffs, Their Medical Providers, Their Attorneys, and ML Healthcare to Artificially Inflate Medical Bills

Topic 5 is another improper attempt for Plaintiffs to prevent any "mention the existence of ML Healthcare or its involvement in the case," Pls.' Mot. at 7-8, and to limit Defendants' ability to present their defense at trial. However, Topic 5 has no basis in law or fact and should therefore be denied.

As discussed in Topic 4 above and Topic 29 below, Defendants are entitled to introduce evidence regarding (1) the contracts between Plaintiffs and ML Healthcare and the contracts between ML Healthcare and Plaintiffs' medical providers, (2) the difference between the providers' invoices and the actual amounts that ML Healthcare paid to the providers, and (3) Plaintiffs' counsel's referrals to physicians. This is a proper evidentiary rebuttal to Plaintiffs' credibility with respect to their alleged injuries, causation, and the reasonableness of the damages that Plaintiffs seek at trial (the full amount of the providers' invoices, instead of what ML Healthcare actually paid). Defendants are allowed to make any arguments that are supported by the evidence at trial. If the evidence at trial supports an argument that there was fraud, collusion, or improper motives among Plaintiffs, their medical providers, attorneys, and ML Healthcare to receive unnecessary medical treatment or to inflate the amounts of Plaintiffs'

medical bills, then Defendants may properly make those arguments to the jury, and the jury may draw inferences from that evidence.[4] *See* O.C.G.A. §§ 24-4-402 and 24-14-9.

Plaintiffs' Motion, which is based on hypothetical arguments outside the proper context of evidence presented at trial, is premature and improper. The Court must wait to see what evidence is adduced at trial in order to assess any objections about the arguments that Defendants may make at trial. For all of these reasons, the Court should deny Topic 5.

6. Misuse of Medical Records During Cross Examination

Topic 6 of Plaintiffs' Motion should be denied because it is not based on any specific expected testimony at trial and does nothing to narrow the issues in this case. Plaintiffs do not identify any testimony or trial exhibit that they claim to be objectionable and instead make general, vague arguments and cite general legal principles, which is an improper basis for a motion in limine. *See Witty v. McNeal Agency, Inc.*, 239 Ga. App. 554, 557 (1999) ("Since the motion in limine was overly broad and not tailored to a legitimate objection, then it was proper to deny such motion."). At trial, Defendants' counsel will comply with Georgia law and the rules of evidence regarding admissibility and presentation of medical records. Plaintiffs may state any

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[4] Plaintiffs' reliance on Mr. Lamar Blount's testimony to argue that there is no evidence of fraud or collusion is wholly misguided. Mr. Blount is an expert in medical billing, coding, and documentation and was asked by Defendants to determine if Plaintiffs' medical bills were reasonable. Mr. Blount was not asked to make any determinations regarding ML Healthcare, and Plaintiffs are well aware of this fact during the deposition of Mr. Blount:

> Q: Are you going to suggest that the involvement of ML Healthcare in this case is somehow a fraud or an effort by any plaintiffs' lawyer or anybody else to artificially inflate bills?
>
> A: I've not been asked to evaluate anything about their business.
>
> Q: Are you taking the position in this case that any -- any plaintiff or plaintiffs' attorney has knowingly tried to artificially inflate bills?
>
> A: No. I've not been asked about that.

Deposition of Lamar Blount at 100. This testimony does not prove the absence of fraud or collusion—it just means that Mr. Blount could not opine on that subject.

objection in proper context of specific testimony that may be elicited at trial, and this Court will be in a position to make evidentiary rulings on those particularized objections.

7. **Criminal Offenses, Arrests, Charges, and Certain Convictions**

The Court should deny Topic 7 of Plaintiffs' Motion because it is not based on any specific expected trial testimony and essentially asks this Court to issue an advisory opinion on a subject that may not ever arise during the trial of this case. In discovery, Plaintiffs stated they had never been charged or convicted of a crime. *See* Pls.' Responses to Defs.' First Interrogatories No. 6.[5] If Plaintiffs' discovery responses are true, then there is no basis for Plaintiffs' request to exclude any evidence or mention of Plaintiffs' criminal offenses, arrests, charges, or convictions. Topic 7 simply recites general legal principles, which is an improper basis for a motion in limine that should be denied. *See Witty v. McNeal Agency, Inc.*, 239 Ga. App. 554, 557 (1999) ("Since the motion in limine was overly broad and not tailored to a legitimate objection, then it was proper to deny such motion."). If Defendants learn that Plaintiffs have been charged with or convicted of a crime, Defendants have a right to use such information at trial as permitted by Georgia law. This Court is skilled in applying the law and deciding evidentiary issues, and if such evidence is presented at trial, the Court can rule on objections that are made in the proper context of specific evidence or argument at trial.

8. **Plaintiffs' Psychologists or Psychiatrists**

Topic 8 of Plaintiffs' Motion should be denied because it is not based on any specific expected testimony at trial and is yet another example of Plaintiffs' reciting the law and seeking nothing more than what amounts to an advisory opinion from this Court. In discovery, Plaintiffs

[5] A copy of Plaintiff Flores' Responses to Defendants' First Interrogatories is attached hereto as Exhibit C, and a copy of Plaintiff Villacorta's Responses to Defendants' First Interrogatories is attached hereto as Exhibit D.