I. Collateral Source

A. Can plaintiff submit to a jury the total amount of his/her medical expenses, even if a portion of the expenses were reimbursed or paid for by his/her insurance carrier?

A plaintiff may submit to a jury the total amount of his/her medical expenses, even if a portion of the expenses were reimbursed or paid for by his/her insurance carrier. The collateral source excludes evidence of payment or reimbursement "if an injured party received some compensation for his injuries from a source wholly independent of the tortfeasor . . . ." Proctor v. Castelletti, 112 Nev. 88 (Nev. 1999).

B. Is the fact that all or a portion of the plaintiff’s medical expenses were reimbursed or paid for by his/her insurance carrier admissible at trial or does the judge reduce the verdict in a post trial hearing?

The fact that all or a portion of the plaintiff’s medical expenses were reimbursed or paid for by his/her insurance carrier is not admissible at trial and the judge does not reduce the verdict in a post trial hearing. Proctor v. Castelletti, 112 Nev. 88 (Nev. 1999).

C. Can defendants reduce the amount plaintiff claims as medical expenses by the amount that was actually paid by an insurer? (i.e. where plaintiff’s medical expenses were $50,000 but the insurer only paid $25,000 and the medical provider accepted the reduced payment as payment in full).

Nevada has not decided if defendants can reduce plaintiff’s claims as medical expenses by the amount that was actually paid by an insurer. In 2012, the Nevada Supreme Court had a first impression case regarding this issue and declined to decide it, stating, “it is apparent that there are numerous reasons for medical provider discounts, including discounts that result when an injured party's insurance company has secured medical provider discounts as part of the health insurance plan. At least in those circumstances, such benefits may reside within the scope of the collateral source rule, although that is a legal issue we leave for a case that requires its determination. Whether the collateral source rule applies to other types of medical expense discounts would require evidence of the reason for the discount and its relationship to the third-party payment.” Tri-County Equip. & Leasing, LLC v. Klinke, 286

II. Accident and Incident Reports

Can accident/incident reports be protected as privileged attorney work product prepared in anticipation of litigation or are they deemed to be business records prepared in the ordinary course of business and discoverable?

The Nevada Supreme Court has found that “materials resulting from [a] company's investigation are not made ‘in anticipation of litigation’ unless the [company’s] investigation has been performed at the request of an attorney.” Ballard v. Eighth Judicial Dist. Court, 106 Nev. 83, 85 (Nev. 1990). Nevada Courts have held that if the occurrence reports were prepared in the ordinary course of business, such that employees are required to fill out forms in the event of any incident, they would not be protected by attorney-work product even if counsel is involved. Columbia/HCA Healthcare Corp. v. Eight Judicial Dist. Court, 113 Nev. 521, 527 (Nev. 1997). Another major factor that Nevada considers is the purpose of the document. If an incident report is created to further the business, it would not be protected. Id. Finally, "the mere presence of the attorneys at meetings does not make the [records] privileged and therefore protected by the work product doctrine." Wardleigh v. Second Judicial Dist. Court, 111 Nev. 345 (Nev. 1995)