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?

New Hampshire law has long allowed plaintiffs to receive, as damages, compensation for all injuries, past and prospective, in consequence of the defendants' wrongful or negligent acts. Holyoke v. Grand Trunk Ry., 48 N.H. 541 (1869). Plaintiffs are allowed to introduce evidence of the reasonable value of these past and future medical expenses, even if a portion of the expenses were reimbursed or paid for by his/her insurance carrier. Cyr v. J.I. Case Co., 652 A.2d 685, 688 (N.H. 1994).

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?

Evidence of the fact that all or a portion of the plaintiff's medical expenses were reimbursed or paid for by an insurance carrier is evaluated and deemed admissible on a case-by-case basis. If introduced for the purpose of determining damages, it is inadmissible. However, if introduced for other purposes, it could be admissible.

In Cyr v. J.T. Case Co., 652 A.2d 685, 688 (N.H. 1994), evidence of the plaintiff's receipt of workers' compensation benefits was ruled admissible by the trial court despite the collateral source rule because it was admissible for another permissible purpose under Rule 105. The defendants entered the benefits into evidence to show a motive for exaggerating injuries - the desire not to return to work and collect workers compensation. The New Hampshire Supreme Court ruled later, however, that although the workers' compensation evidence was admissible under Rule 105, it failed the balancing test of Rule 403. The probative value of the evidence was substantially outweighed by the likelihood the jury would use the information for improper purposes. The case was vacated and remanded for a new trial on this basis alone.

So although evidence of a collateral source of compensation may be allowed under Rule 105, courts are wary to allow it in after a Rule 403 analysis.