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?

Pennsylvania plaintiffs may submit to a jury the entire amount of their medical expenses which were actually paid, even though an insurance carrier contributed a portion of the expenses. Moorhead v. Crozer Chester Medical Center, 765 A.2d 786 (Pa. 2001). As discussed below, Pennsylvania plaintiffs may not submit the medical expenses which were written-off by the medical provider. Id., at 791.

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?

Pennsylvania defendants cannot reduce a plaintiff’s damages by introducing evidence that an insurance carrier paid all or part of the claimed medical expenses. Moorhead, at 790. Under Pennsylvania’s collateral source rule, payments from a collateral source shall not diminish the damages otherwise recoverable from the wrongdoer. Id., at 790; Johnson v. Beane, 664 A.2d 96 (Pa. 1995).

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).

Pennsylvania defendants can reduce a plaintiff’s medical expense claims to the amount that was actually paid by an insurer. Moorhead, at 791. The collateral source rule does not require that a plaintiff recover the amount that was written-off because that amount was not paid by any collateral source. Id.

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?

Any incident report or investigation, whether routinely prepared or prepared in anticipation of litigation, is discoverable except for the mental
impressions, conclusions or opinions respecting the value or merit of a claim or strategy or tactics of the party’s attorney or other representative. Pa.R.C.P. 4003.3.