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?

Yes. Pursuant to the collateral source rule, Utah law allows a plaintiff to submit the total amount of his/her medical expenses to a jury, even if a portion of the expenses was reimbursed or paid for by an insurance carrier. Wilson v. IHC Hospitals, Inc., 2012 UT 43, ¶¶ 31, 34, 289 P.3d 369. “[W]hen an insurance company pays a party a sum of money pursuant to a policy, the premium of which was not paid by nor contributed to by the defendant, the payments so received belong to the plaintiff and are not to be credited to the defendant.” Phillips v. Bennett, 439 P.2d 457, 457-58 (Utah 1968).

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?

No. Any amounts of a plaintiff’s medical bills that were satisfied by his/her insurance carrier are inadmissible at trial. Wilson ¶¶ 31, 34. The judge generally does not later reduce the verdict in a post trial hearing in a standard case under the collateral source rule.

However, in the context of medical malpractice cases only, Utah has altered the collateral source rule by statute. In medical malpractice cases, the judge will reduce any damage award by the amount of any payments made by any collateral source during a post-trial hearing — provided that no subrogation right exists for any collateral source payments. Id. ¶ 32; Utah Code Ann. § 78B-3-405(1)-(2). Under the statute, “collateral source” includes private insurance, except life insurance, and public assistance programs. Id. § 78B-3-405(3).

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).

Utah appellate courts have not yet decided whether the full amount of a plaintiff’s medical bills may be presented to a jury—or only amounts actually paid to satisfy those bills. Tschagggeny v. Milbank Ins. Co., 2007 UT 37, ¶ 24, 163 P.3d 615 (identifying the issue as one of first impression, but finding the issue was not preserved).

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?

Accident/incident reports are evaluated on a case-by-case to determine whether such reports were prepared in anticipation of litigation and thus entitled to work-product privilege. Askew v. Hardman, 918 P.2d 469, 474 (Utah 1996). To determine whether such reports are “prepared in anticipation of litigation” a court considers: “the nature of the requested documents, the reason the documents were prepared, the relationship between the preparer of the document and the party seeking its protection from discovery, the relationship between the litigating parties, and any other facts relevant to the issue.” Id. While this test leaves considerable discretion to the trial court, Utah courts have been clear that the materials at issue need not be prepared by an attorney to be privileged. Green v. Louder, 2001 UT 62, ¶ 39, 29 P.3d 638. Specifically, the rule states that documents prepared by a party’s insurer may qualify for work-product privilege. Id. (quoting Utah Rule of Civil Procedure 26(b)).