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. A plaintiff is entitled to recover the total amount of his/her medical expenses from a tortfeasor, regardless of whether a portion of those expenses are paid by insurance. See Acuar v. Letourneau, 531 S.E.2d 316,320-323 (Va. 2000).

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, evidence that the plaintiff’s medical expenses were reimbursed or paid by insurance is not admissible at trial. Further, a judge may not reduce the verdict in a post-trial hearing as a result of such reimbursement or payment by an insurance carrier. Id.

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).

No, the defendant must pay the full amount of the plaintiff’s medical expenses, regardless of whether the provider accepted a reduced payment. 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?
Under certain circumstances, accident/incident reports can be protected as privileged work product. In order for the privilege to apply, the party asserting the privilege must show that the documents were in fact, prepared in anticipation of litigation, as opposed to being prepared in the ordinary course of a business. For example, reports prepared by an insurance adjuster, which are ordinarily prepared as part of the insurance company’s normal course of business are unlikely to be protected. However, if litigation is foreseeable, the reports are more likely to be protected.

A. Virginia State Police Accident Reports

Of note, there is now a 30 day waiting period in order to obtain accident reports prepared by the Virginia State Police and requests for such reports must be directed to the Department of Motor Vehicles.

Accident reports prepared by local police departments may be obtained by sending a Virginia Freedom of Information Act request directly to the local department. There is no waiting period to obtain these reports.