

Judicial Council Standing Committee on  
Model Utah Civil Jury Instructions

# Agenda

February 9, 2026

4:00 to 6:00 p.m.

Via [Webex](#)

Welcome and Approval of January Minutes	Tab 1	Alyson McAllister
Linguistics and Law Group - Update		Jesse Egbert
CV2119 Implied Covenant of Good Faith and Fair Dealing	Tab 2	Alyson McAllister
SB211 re <i>Gardner v Norman</i> , 2025 UT 47	Tab 3	Kara North
Gender Neutrality in Jury Instructions	Tab 4	Alyson McAllister
Progress on Instruction Topics	Tab 5	(Informational)

[Committee Web Page](#)

[Published Instructions](#)

**Meeting Schedule:** Monthly on the 2<sup>nd</sup> Monday at 4 pm

**Next meeting:** Mar. 9, 2026

# TAB 1

# MINUTES

Advisory Committee on Model Civil Jury Instructions  
January 12, 2026  
4:00-6:00 p.m.

Present: Alyson McAllister, Michael Lichfield, Kara North, Ben Lusty, Judge Brian D. Bolinder, John Macfarlane, Stewart Harman, Jace Willard (staff), Clancey Henderson (staff)

Excused: Aaron Pacini, Bill Eggington

Guests: None

## 1. Welcome and Approval of Minutes

Alyson McAllister welcomed the Committee. The Minutes from the November 2025 meeting were approved.

## 2. Review Public Comments to Instructions CV331 (Past Medical Expenses) and CV1740 Series (Abuse of Process)

The instructions were published for public comment in November 2025. There were no public comments for discussion by the Committee.

## 3. Discussion on CV2119 (Implied Covenant of Good Faith and Fair Dealing)

The Committee discussed a recently published article in the Bar Journal regarding CV2119 (Implied Covenant of Good Faith and Fair Dealing) and the article's request for the Committee to revisit the instruction and the pertinent caselaw to determine if the instruction language should be revised. The Committee considered the request and determined that Mr. Willard will reach out to the author to gather additional information informing her suggestion before further consideration or action.

## 4. Discussion of CV2005 (Economic Damages. Medical Care and Related Expenses)

Committee members Ms. North and Mr. Lusty gave an update on their work evaluating CV2005 (Economic damages. Medical care and related expenses) for potential amendment in light of *Gardner v. Norman*, 2025 UT 47. They indicated that, at least, updated citations to the instruction would be appropriate to include *Gardner*. They also suggested additional actions for consideration by the Committee, including: separating instructions on future and past medical damages, including an instruction to address the collateral source rule, and expanding the instruction to enumerate the factors raised in *Gardner*.

The Committee determined to include a citation in the instruction to *Gardner* as well as to the Restatement cited by the Court in *Gardner (Restatement (Second) of Torts § 911 cmt. h)*.

The Committee discussed creating new separate instructions for past medical expenses and future medical expenses. The Committee also considered the addition of a Committee Note to the instruction to address *Gardner*'s holding. The Committee drafted separate proposed instructions for past and future medical expenses for deliberation. The Committee determined to retain a single instruction for past and future medical expenses, and to draft notes pertaining to past medical expenses with citation to *Gardner* for inclusion with the instruction.

In context of this deliberation, the Committee also discussed adding a note regarding *Gardner*'s holding to CV2003 (Economic damages defined). A note was drafted and considered by the Committee.

The draft instructions were discussed by the Committee.

Mr. MacFarlane moved to approve the new proposed references and notes in CV2003. Ms. North seconded the motion. Upon a vote, the instruction was unanimously approved by the Committee for publication and public comment.

Mr. MacFarlane moved to approve the new proposed references and notes in CV2005. Ms. North seconded the motion. Upon a vote, the instruction was unanimously approved by the Committee for publication and public comment.

#### 5. Scheduling and adjournment

The next meeting will be held on February 9, 2026, at 4:00 p.m.

The meeting adjourned.

# TAB 2

Email (formatting altered)

From: Carolyn LeDuc

Wed, Jan 14, 2026

To: Jace Willard

Hello Jace and thanks for reaching out. My colleagues and I sincerely appreciate your time and effort on the MUJI committee, and your work to make the instructions easier to understand and apply. I've conferred with my colleagues on this instruction concerning the covenant of good faith. We offer a few thoughts below.

In *Young Living*, 2011 UT 64, ¶ 10 n.4, 266 P.3d 814, Justice Lee's footnote read:

*As the court of appeals noted, we have also sometimes asserted that the covenant "cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante." Young Living Essential Oils, LC v. Marin, 2009 UT App 272, para. 8, 2009 WL 3042385 (quoting Oakwood Vill., 2004 UT 101, ¶ 45, 104 P.3d 1226). Properly conceived, however, that proviso merely restates the proscription against using the covenant to establish new rights or duties that are "inconsistent with express contractual terms," as the covenant would be completely negated if it could never establish any independent rights not expressly agreed to by contract. To the extent our cases suggest otherwise—indicating a broad proscription against ever using the covenant to establish duties not expressly agreed to by the parties—we disavow those suggestions here.*

The current MUJI 2d instruction [CV2119] reads:

*All contracts contain an unwritten or implied promise that the parties will deal with each other fairly and in good faith. This means that [name of plaintiff] and [name of defendant] have promised not to intentionally do anything to injure each other's right to receive the benefits of the contract. To decide if [name of defendant] violated this unwritten promise, you should consider whether [his] actions were consistent with the agreed common purpose and justified expectations of [name of plaintiff] in light of the contract language and the dealings between and conduct of the parties.*

*There are some limits to this unwritten promise that you need to keep in mind.*

*First, this unwritten promise between the parties to deal fairly with each other and in good faith does not establish new, independent rights or duties that [name of plaintiff] and [name of defendant] did not agree to.*

*Second, this unwritten promise does not create rights and duties that are inconsistent with the actual terms of the contract.*

*Third, this unwritten promise does not require either party to use a contract right in a way that will be harmful to themselves simply to benefit the other party.*

*Finally, you cannot use this unwritten promise to achieve an outcome that you believe is fair but is inconsistent with the actual terms of the contract.*

*If you find that [name of defendant] violated this unwritten promise to deal fairly and in good faith, then [name of defendant] breached the contract.*

In light of Justice Lee's footnote, we believe it makes sense to eliminate what is currently the first limitation on the covenant of good faith, and simply move to the second point, i.e., that the covenant cannot create rights and duties that are inconsistent with the contract terms.

Another suggestion: In the current model instruction, the last limitation says, "...you cannot use this unwritten promise to achieve an outcome that you believe is fair but is inconsistent with the actual terms of the contract." This seems to be needlessly redundant. It is simply restating what has already been expressed earlier, i.e., that the "unwritten promise does not create rights and duties that are inconsistent with the actual terms of the contract." The simplest fix for this would be to eliminate the last limitation. In the alternative, it could be consolidated with earlier admonitions, as shown below.

We suggest the following revised instruction, with the text in purple perhaps deleted entirely, since it is redundant:

*All contracts contain an unwritten or implied promise that the parties will deal with each other fairly and in good faith. This means that [name of plaintiff] and [name of defendant] have promised not to intentionally do anything to injure each other's right to receive the benefits of the contract. To decide if [name of defendant] violated this unwritten promise, you should consider whether [his] actions were consistent with the agreed common purpose and justified expectations of [name of plaintiff] in light of the contract language and the dealings between and conduct of the parties.*

*There are some limits to this unwritten promise that you need to keep in mind.*

*First, this unwritten promise does not create rights and duties that are inconsistent with the actual terms of the contract. You cannot use this unwritten promise to achieve an outcome that you believe is fair, but is inconsistent with the contract's terms.*

*Second, this unwritten promise does not require either party to use a contract right in a way that will be harmful to themselves simply to benefit the other party.*

*If you find that [name of defendant] violated this unwritten promise to deal fairly and in good faith, then [name of defendant] breached the contract.*

Thanks again,

-Carolyn

## CV2119 Implied covenant of good faith and fair dealing.

All contracts contain an unwritten or implied promise that the parties will deal with each other fairly and in good faith. This means that [name of plaintiff] and [name of defendant] have promised not to intentionally do anything to injure each other's right to receive the benefits of the contract. To decide if [name of defendant] violated this unwritten promise, you should consider whether [his] actions were consistent with the agreed common purpose and justified expectations of [name of plaintiff] in light of the contract language and the dealings between and conduct of the parties.

There are some limits to this unwritten promise that you need to keep in mind.

~~First, this unwritten promise between the parties to deal fairly with each other and in good faith does not establish new, independent rights or duties that [name of plaintiff] and [name of defendant] did not agree to.~~

~~First~~**Second**, this unwritten promise does not create rights and duties that are inconsistent with the actual terms of the contract. ~~Finally, you cannot use this unwritten promise to achieve an outcome that you believe is fair but is inconsistent with the actual contract's terms of the contract.~~

~~Second~~**Third**, this unwritten promise does not require either party to use a contract right in a way that will be harmful to themselves simply to benefit the other party.

~~Finally, you cannot use this unwritten promise to achieve an outcome that you believe is fair but is inconsistent with the actual terms of the contract.~~

If you find that [name of defendant] violated this unwritten promise to deal fairly and in good faith, then [name of defendant] breached the contract.

## References

Young Living Essential Oils, LC, v. Marin, 2011 UT 64.

Mark Technologies Corp. v. Utah Resources International, Inc., 2006 UT App 418, para. 7, 147 P.3d 509, 512.

St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991).

Oakwood Village, LLC v. Albertsons, Inc., 2004 UT 101, para. 45, 104 P.3d 1226, 1240.

## MUJI 1st Instruction

26.30

## Committee Notes

The duty of good faith and fair dealing as it applies to insurance contracts is addressed in MUJI 2d, 2400 series.

The committee notes that there has been no judicial definition of "justified expectations."

# TAB 3

2025 WL 3030153

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of Utah.

Troy GARDNER, Appellee,

v.

Tyler NORMAN, Appellant.

No. 20240344

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Heard April 9, 2025

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Filed October 30, 2025

### Synopsis

**Background:** Motorist filed suit against tortfeasor for injuries sustained in rear-end collision, seeking general damages for pain and suffering and special damages for past medical expenses. The Third District Court, Salt Lake County, [Keith A. Kelly, J.](#), excluded evidence of discounted, negotiated charges paid by motorist's health insurer for his medical care, and, following bench trial, awarded motorist special damages based on gross charges initially billed by health care provider. Tortfeasor appealed.

**[Holding:]** As matter of first impression, the Supreme Court, [Hagen, J.](#), held that negotiated charges between motorist's insurer and health care provider was proper measure of motorist's special damages for medical expenses, and thus, differential between gross costs and negotiated charges that motorist's insurer actually paid was not subject to collateral source rule.

Vacated; remanded for new trial.

**Procedural Posture(s):** On Appeal; Motion to Strike Testimony.

West Headnotes (21)

**[1] Appeal and Error**  Admission or exclusion of evidence in general

30 Appeal and Error

30XVI Review

30XVI(D) Scope and Extent of Review

30XVI(D)8 Evidence and Witnesses in General

30k3364 Reception of Evidence

30k3366 Admission or exclusion of evidence in general

While an appellate court reviews a district court's decision to admit evidence for abuse of discretion, it reviews for correctness the legal questions underlying the admissibility of evidence.

**[2] Damages**  Nature and theory of compensation

115 Damages

115III Grounds and Subjects of Compensatory Damages  
 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses  
 115III(A)1 In General  
 115k15 Nature and theory of compensation

When a plaintiff suffers harm from a defendant's tortious actions, "compensatory damages" seek to place the plaintiff in the same position the plaintiff would have occupied had the tort not been committed.

**[3] Damages** 🔑 **General and special damage**

115 Damages  
 115I Nature and Grounds in General  
 115k5 General and special damage

"Special damages," a form of compensatory damages also known as specific or economic damages, account for harm that is considered more finite and measureable; they are limited to "hard amounts" incurred by the plaintiff that are subject to careful calculation, such as the cost of medical and other necessary care.

**[4] Damages** 🔑 **Medical treatment and care of person injured**

115 Damages  
 115III Grounds and Subjects of Compensatory Damages  
 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses  
 115III(A)1 In General  
 115k41 Expenses  
 115k43 Medical treatment and care of person injured

To recover compensation in the form of special damages for medical expenses in a tort action, a plaintiff must prove that the amount incurred was reasonable and necessary.

**[5] Damages** 🔑 **Medical treatment and care of person injured**

115 Damages  
 115III Grounds and Subjects of Compensatory Damages  
 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses  
 115III(A)1 In General  
 115k41 Expenses  
 115k43 Medical treatment and care of person injured

When a tort plaintiff requests special damages in the form of medical expenses resulting from a tort, evidence is required to show that the medical expenses accurately reflect the necessary treatment that resulted from the injury and that the charges are reasonable.

**[6] Damages** 🔑 **Matter of mitigation; collateral source rule in general**

115 Damages  
 115III Grounds and Subjects of Compensatory Damages  
 115III(B) Aggravation, Mitigation, and Reduction of Loss  
 115k59 Matter of mitigation; collateral source rule in general

When a third party covers all or part of a plaintiff's medical expenses, the "collateral source rule" is implicated, for purposes of a calculating the plaintiff's damages award, in a tort action.

**[7] Damages** ➔ [Matter of mitigation; collateral source rule in general](#)**Damages** ➔ [Weight and Sufficiency](#)[115 Damages](#)[115III Grounds and Subjects of Compensatory Damages](#)[115III\(B\) Aggravation, Mitigation, and Reduction of Loss](#)[115k59 Matter of mitigation; collateral source rule in general](#)[115 Damages](#)[115IX Evidence](#)[115k183 Weight and Sufficiency](#)[115k184 In general](#)

Under the “collateral source rule,” which has both an evidentiary and a damages aspect in application, wrongdoers are not entitled to have damages, for which they are liable, reduced by proof that the plaintiff has received or will receive compensation or indemnity for the loss from an independent collateral source.

**[8] Damages** ➔ [Aggravation, mitigation, and reduction of loss](#)[115 Damages](#)[115IX Evidence](#)[115k164 Admissibility](#)[115k182 Aggravation, mitigation, and reduction of loss](#)

In a tort case, the evidentiary aspect of the collateral source rule precludes both explicit reference and methodical allusion to collateral source benefits.

**[9] Evidence** ➔ [Torts and Personal Injuries in General](#)[157 Evidence](#)[157V Tendency to Mislead or Confuse; Prejudicial Effect](#)[157V\(B\) Particular Cases](#)[157k1071 Torts and Personal Injuries in General](#)[157k1072 In general](#)

In a tort action seeking damages for personal injuries, evidence of collateral source benefits involves a substantial likelihood of prejudicial impact which may occur in two ways: first, evidence of payment from a collateral source suggests that a plaintiff is already receiving any necessary care, which may lead the jury to believe that the outcome of the trial is immaterial to the party benefiting from the collateral source; and second, because many jurors do not understand the concept of subrogation rights, they will erroneously conclude that the plaintiff is seeking a windfall, which misunderstanding is highly prejudicial because the jury will believe that the plaintiff has already been fully compensated and is trying to obtain a double recovery, thereby tainting the jury's decision-making process.

**[10] Damages** ➔ [Matter of mitigation; collateral source rule in general](#)[115 Damages](#)[115III Grounds and Subjects of Compensatory Damages](#)[115III\(B\) Aggravation, Mitigation, and Reduction of Loss](#)[115k59 Matter of mitigation; collateral source rule in general](#)

The damages aspect of the collateral source rule prevents a tort plaintiff's recovery from being offset by any payments provided by an independent collateral source.

**[11] Damages** 🔑 Reduction of loss by insurance

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(B) Aggravation, Mitigation, and Reduction of Loss

115k64 Reduction of loss by insurance

Under the damages aspect of the collateral source rule, the plaintiff in a tort action for personal injuries may recover damages for medical expenses already paid by the plaintiff's insurance even when it results in a windfall to the plaintiff based on the premise that the plaintiff victim, rather than the defendant tortfeasor, should be the beneficiary of any windfall.

1 Case that cites this headnote

**[12] Damages** 🔑 Reduction of loss by insurance

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(B) Aggravation, Mitigation, and Reduction of Loss

115k64 Reduction of loss by insurance

The collateral source rule is intended to encourage the maintenance of insurance by assuring that a plaintiff's payments for medical expenses from a collateral source will not be reduced in the calculation of damages by a subsequent judgment.

**[13] Damages** 🔑 Medical treatment and care of person injured

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k41 Expenses

115k43 Medical treatment and care of person injured

Special damages for medical expenses must reflect the actual loss resulting from the tortfeasor's conduct.

**[14] Damages** 🔑 Aggravation, mitigation, and reduction of loss

115 Damages

115IX Evidence

115k164 Admissibility

115k182 Aggravation, mitigation, and reduction of loss

Under the "collateral source rule," the fact that a third party bore the plaintiff's loss for medical expenses is inadmissible and cannot be used to reduce a plaintiff's recovery in a personal injury action.

**[15] Damages** 🔑 Matter of mitigation; collateral source rule in general

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(B) Aggravation, Mitigation, and Reduction of Loss

115k59 Matter of mitigation; collateral source rule in general

The collateral source rule prevents a tortfeasor from obtaining a windfall where collateral source benefits have mitigated the plaintiff's out-of-pocket losses.

**[16] Damages**  [Reduction of loss by insurance](#)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(B) Aggravation, Mitigation, and Reduction of Loss

115k64 Reduction of loss by insurance

The difference between the gross charge for medical expenses and the negotiated charge is not a “benefit” under the collateral-source rule, because it is not a payment; only the amount a plaintiff’s health insurer actually pays to the health care provider is a benefit from a collateral source.

**[17] Damages**  [Aggravation, mitigation, and reduction of loss](#)

115 Damages

115IX Evidence

115k164 Admissibility

115k182 Aggravation, mitigation, and reduction of loss

When no one pays the difference between the gross charge for medical expenses and the negotiated charge between a plaintiff’s insurer and the plaintiff’s health care provider, admitting evidence of the predetermined reduction does not violate the purpose behind the collateral-source rule; the tortfeasor does not obtain a credit because of payments made by a third party on behalf of the plaintiff, which is what the collateral source rule prevents.

[1 Case that cites this headnote](#)

**[18] Damages**  [Reduction of loss by insurance](#)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(B) Aggravation, Mitigation, and Reduction of Loss

115k64 Reduction of loss by insurance

If special damages for a tort plaintiff’s medical expenses are based on the gross charges, rather than the discounted prices negotiated by the plaintiff’s insurer and the health care provider, for purposes of determining the amount of the plaintiff’s special damages, it would place the plaintiff in a better financial position than before the tort was committed, but in limited situations, for instance, if the collateral source lacked subrogation rights, such a windfall to the plaintiff is permitted by the collateral source rule, which contemplates that the plaintiff victim, rather than the defendant tortfeasor, should be the beneficiary of any windfall; however, that does not allow the plaintiff to recover more than the actual loss caused by the tortfeasor’s conduct as special damages.

**[19] Damages**  [Aggravation of previous injury, disease, or disability](#)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k31 Physical Suffering and Inconvenience

115k33 Aggravation of previous injury, disease, or disability

One who injures another takes him as he is; this will often mean that the same tortious conduct might result in vastly different damage awards based on the identity and personal characteristics of the plaintiff.

**[20] Damages**  Expenses[115 Damages](#)[115VI Measure of Damages](#)[115VI\(A\) Injuries to the Person](#)[115k101 Expenses](#)

The negotiated charge between a tort plaintiff's insurer and the plaintiff's health care provider is the proper measure of plaintiff's special damages for past medical expenses.

**[21] Damages**  Aggravation, mitigation, and reduction of loss**Evidence**  Torts and Personal Injuries in General[115 Damages](#)[115IX Evidence](#)[115k164 Admissibility](#)[115k182 Aggravation, mitigation, and reduction of loss](#)[157 Evidence](#)[157V Tendency to Mislead or Confuse; Prejudicial Effect](#)[157V\(B\) Particular Cases](#)[157k1071 Torts and Personal Injuries in General](#)[157k1072 In general](#)

Where the reasonableness of the negotiated charge for a tort plaintiff's medical expenses is in dispute, for instance, the gross charge for the medical expenses might be relevant to a fact at issue, in calculating the plaintiff's special damages, although the risk of prejudice might substantially outweigh the probative value of that evidence, especially if its admission risks violating the collateral source rule by revealing that the cost was covered, in whole or in part, by insurance. [Utah R. Evid. 401, 403](#).

[1 Case that cites this headnote](#)

Third District Court, Salt Lake County, The Honorable Keith A. Kelly, No. 220906066

**Attorneys and Law Firms**

Attorneys <sup>\*</sup>:

[Karra J. Porter](#), Michael N. Driggs, Salt Lake City, for appellee

[Samantha J. Slark](#), Salt Lake City, for appellant

<sup>\*</sup> Additional attorneys for *amici curiae*, in support of appellant: Freyja Johnson, Rachel Phillips Ainscough, Bountiful, for International Municipal Lawyers Association; Darcy M. Goddard, Salt Lake City, for Utah Counties Indemnity Pool; Troy L. Booher, Salt Lake City, for State Farm Mutual Automobile Insurance Company; S. Spencer Brown, Scarlet R. Smith, Salt Lake City, for Prime Insurance Company; Heidi G. Goebel, Salt Lake City, Cary Silverman, Mark A. Behrens, Wash., D.C., for National Federation of Independent Business Small Business Legal Center, Inc., National Association of Manufacturers, American Tort Reform Association, Coalition for Litigation Justice, Inc., American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, American Trucking Associations, Inc., and Utah Trucking Association; Nathanael J. Mitchell, Salt Lake City, for Utah Defense Lawyers

Association; Peggy E. Stone, Joshua D. Davidson, J. Clifford Petersen, Asst. Solics. Gen., Salt Lake City, for Utah Division of Risk Management.

Additional attorneys for *amicus curiae*, in support of appellee: Peter W. Summerill, South Jordan, for Utah Association for Justice.

Justice Hagen authored the opinion of the Court, in which Chief Justice Durrant, Associate Chief Justice Pearce, Justice Petersen, and Justice Pohlman joined.

Justice Hagen, opinion of the Court:

## INTRODUCTION

\*1 ¶1 This opinion resolves a recurring issue in personal injury cases in which a plaintiff seeks to recover past medical expenses. If the plaintiff carried health insurance, those medical expenses may have already been paid, at least in part, by the insurance company. But evidence that the expenses were covered by insurance is generally inadmissible because a defendant's liability for damages cannot be reduced based on compensation the plaintiff received from a third party. This is known as the collateral source rule.

¶2 The amount that must be paid to satisfy an insured patient's medical bill varies based on the contractual arrangement between the health insurance company and the healthcare provider. The amount that providers agree to accept as full payment for services rendered to insured patients is often significantly less than the gross charge. We are asked to decide whether the collateral source rule requires exclusion of that negotiated charge.

¶3 This case arises from an automobile collision between Troy Gardner and Tyler Norman. Gardner brought a negligence claim against Norman in which he sought special damages for his past medical expenses. Both parties filed motions in limine to determine the admissibility of the negotiated charge Gardner's insurance paid the hospital to satisfy his medical bills. The district court decided that, under the collateral source rule, the negotiated charge paid by Gardner's insurance must be excluded. The district court ultimately awarded Gardner special damages for his past medical care based on the hospital's gross charges. Norman appealed, and we elected to retain this case because it presents an issue of first impression before this court.

¶4 We hold that the collateral source rule does not require exclusion of the negotiated charges for Gardner's medical care. The gross charge does not reflect Gardner's past medical expenses because neither he nor his insurance were ever obligated to pay that amount. Because the difference between the gross charge and the negotiated charge was not a benefit to Gardner from a collateral source, the rule does not apply. Accordingly, we vacate the special damages award and remand for a new bench trial on that issue.

## BACKGROUND

¶5 Norman was driving a marked Salt Lake City police vehicle when he rear-ended Gardner's car, which was stopped in traffic on a freeway off-ramp. As a result of the collision, Gardner went to the emergency room and saw an eye doctor. The hospital billed Gardner \$7,175.77 for the emergency room visit. But as required by an existing contract between Gardner's health insurance and the hospital, the amount his insurance paid to fully satisfy the bill was \$4,395.75—just under a forty percent reduction of the initial charge. For Gardner's eye exam, the amount billed by the hospital and paid by his insurance was \$92.

¶6 Gardner later brought a negligence claim against Norman, seeking special damages for his past medical expenses and general damages for pain and suffering.<sup>1</sup> Gardner sought \$7,267.77 in special damages, representing the gross charges listed on the initial bill he received from the hospital.

1 Gardner also named Norman's employer, Salt Lake City, as a defendant. Prior to trial, the court granted the City's motion for summary judgment. Because Norman was not acting within the scope of his employment, the court determined that the City could not be held liable for the accident. We therefore refer to Norman as the only defendant even though the City participated in the litigation prior to its dismissal.

### *Pretrial Rulings*

\*2 ¶7 Both parties filed motions in limine to determine what evidence the fact finder could consider in determining Gardner's medical expenses. In his motion, Norman moved to exclude all evidence of the gross charge, which he refers to as the “chargemaster rate.”

¶8 Federal law requires hospitals to publish “a list of the hospital's standard charges for items and services provided by the hospital.” 45 C.F.R. § 180.10. “Standard charge means the regular rate established by the hospital for an item or service provided to a specific group of paying patients,” including (1) the “[g]ross charge,” (2) the “[d]iscounted cash price” for individuals who self-pay, (3) the “[p]ayer-specific negotiated charge,” which is the amount a hospital has negotiated with a third party, and (4) the “[d]e-identified maximum” and “[d]e-identified minimum” representing the highest and lowest charge a hospital has negotiated with all third-party payers. *Id.* §§ 180.20, 180.50(b). The gross charge “means the charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts.” *Id.* § 180.20. “Payer-specific negotiated charge[s]” include those that insurance companies have negotiated to pay. *Id.* § 180.50(b). Insurance companies regularly contract with healthcare providers in advance to set the negotiated charge for all available services. See [Tschaggeny v. Milbank Ins., 2007 UT 37, ¶ 10, 163 P.3d 615](#) (explaining that it is “typical in the industry,” as part of an existing contractual arrangement, for a “health insurer [to have] negotiated a lower rate for health care services for its policy holders”).

¶9 Norman argued in his motion that the district court should exclude evidence of the gross charge for Gardner's medical care or, in the alternative, allow evidence of both the gross charge and the negotiated charge Gardner's insurance actually paid to satisfy the bill. In response, Gardner argued that exclusion of the gross charge listed on his initial bill “based on indemnification from [his] private health insurance” would “directly violate[ ] Utah's adoption of the collateral source rule.” He contended that limiting his ability to present “evidence of the amount charged” as a direct result of the car crash would hinder his ability “to show that the value of medical services received was reasonable and necessary.”

¶10 The district court denied Norman's motion, ruling that “the insurance company payment and discount that were received as a benefit to the plaintiff fit under the collateral source doctrine.” The court reasoned that alleged tortfeasors are not entitled to the benefit of discounts negotiated by a plaintiff's insurance because a tortfeasor who denies liability (1) “has not accepted responsibility for payment,” (2) “has not negotiated for discounts,” (3) “has not voluntarily accepted payment responsibility at the time of the service,” and (4) “delays payment until after a lawsuit is filed.” Such tortfeasors, the court continued, “should not be entitled to the same discounts available to patients or their insurers who voluntarily agree to pay at the time medical services are rendered.”

¶11 Following the court's ruling, the parties proceeded with disclosure of trial exhibits. Upon receipt of the exhibits, Gardner moved to exclude any evidence or mention of the negotiated charges he or his insurance actually paid for medical services as opposed to the gross charges originally billed. Gardner argued that the negotiated charges were inadmissible under the collateral source rule. Norman countered that evidence of the negotiated amount “doesn't violate the collateral source rule because it's not seeking to reduce [damages] by the fact the third party had paid [them], just trying to introduce [the negotiated rate] as relevant evidence of the amount that is reasonable for the services.” The district court granted Gardner's motion ruling that evidence of “insurance discounts” would be excluded from the trial.

*Bench Trial*

\*3 ¶12 During a bench trial, Norman's counsel attempted to question Gardner about the billing for his emergency room visit. The evidence showed that the hospital billed Gardner's emergency room visit at two different levels of service—level four and level five. The evidence also showed that Gardner's insurance denied coverage of the level five bill for \$1,208—an amount included in the total \$7,267.77 Gardner sought.<sup>2</sup>

<sup>2</sup> Norman contends that this denial included a comment: “[M]edical records do not support level 5. Please re-bill.” The record citation Norman provides for this comment only shows a denial with no comment. But Gardner has not disputed the factual accuracy of Norman's representation.

¶13 Norman's counsel asked Gardner on cross-examination if he ever questioned the hospital about why it billed the emergency room visit at two different levels. Gardner said he did not. Norman's counsel then asked whether the hospital ever withdrew the bill. Gardner's counsel objected that the question called for speculation, which the district court overruled. Gardner responded that he knew “they made adjustments later.” Norman's counsel asked whether Gardner knew what those adjustments were. Gardner's counsel moved to strike, citing the collateral source rule. The court sustained the objection.

¶14 At the conclusion of the bench trial, the court determined that Norman breached his duty of care and proximately caused Gardner's injuries. In addition to general damages, the court awarded Gardner special damages for past medical expenses in the amount of \$7,267.77—the gross charge initially billed by the hospital. Because Norman had already reimbursed Gardner's personal injury protection car insurance for \$3,000, the court deducted that amount from the special damages award, bringing the total to \$4,267.77.

¶15 Norman appealed.

**ISSUE AND STANDARD OF REVIEW**

[1] ¶16 Norman argues that the district court erred when it relied on the collateral source rule to allow Gardner to introduce the gross charge for his medical care, to prevent Norman from introducing the negotiated charge, and to prevent Norman from questioning Gardner about whether a bill was withdrawn or reduced due to a billing error. While we review a district court's decision to admit evidence for abuse of discretion, we review for correctness the “legal questions underlying the admissibility of evidence”—in this case the applicability of the collateral source rule. [State v. Griffin](#), 2016 UT 33, ¶ 14, 384 P.3d 186 (cleaned up); see also [Mahana v. Onyx Acceptance Corp.](#), 2004 UT 59, ¶ 35, 96 P.3d 893 (“Whether the district court was correct in its application of the collateral source rule is a question of law that we review for correctness, without deference to the district court's conclusions.”).

**ANALYSIS**

¶17 The question presented is whether the collateral source rule requires courts to exclude evidence of the negotiated charge for an insured plaintiff's past medical care. This is a matter of first impression in Utah. See [Tschaggeny v. Milbank Ins.](#), 2007 UT 37, ¶ 24, 163 P.3d 615 (noting “that the application of the collateral source rule to medical bill write-offs is a matter of first impression in Utah” but declining to reach the unpreserved issue). To answer this question, we begin with basic principles governing special damages as well as an overview of the collateral source rule. We next examine how other courts have analyzed

the collateral source rule in this context. We then conclude that the collateral source rule does not operate to exclude evidence of the negotiated rates paid for an insured plaintiff's medical care.

### 1. Special Damages

\*4 [2] [3] ¶18 When a plaintiff suffers harm from a defendant's tortious actions, “compensatory damages seek to place the plaintiff in the same position [the plaintiff] would have occupied had the tort not been committed.” *Wilson v. IHC Hosps., Inc.*, 2012 UT 43, ¶ 37 n.10, 289 P.3d 369 (cleaned up). Special damages, a form of compensatory damages also known as specific or economic damages, account for “harm that is considered more finite” and “measureable.” *Sheppard v. Geneva Rock*, 2021 UT 31, ¶ 17 n.5, 493 P.3d 632 (cleaned up). Such damages are limited to “hard amounts” incurred by the plaintiff “that are subject to careful calculation such as the cost of medical and other necessary care.” *Id.* (cleaned up); see also *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 976 (Utah 1993) (explaining that plaintiffs may recover medical expenses “incur[red] as a result of a demonstrated injury” (cleaned up)).

[4] [5] ¶19 To recover “compensation for medical expenses in a tort action,” a plaintiff must prove that the amount incurred was “reasonable and necessary.” *Hansen*, 858 P.2d at 981; see also *Wilson*, 2012 UT 43, ¶ 37, 289 P.3d 369 (“Upon proof of liability, a plaintiff may recover medical expenses that are reasonable and necessary.”); *Simmons v. Wilkin*, 80 Utah 362, 15 P.2d 321, 323 (1932) (explaining that special damages must “be reasonable and necessary as a result of the accident”). Specifically, “evidence is required to show that the medical expenses accurately reflect the necessary treatment that resulted from the injur[y] and that the charges are reasonable.” *Gorostieta v. Parkinson*, 2000 UT 99, ¶ 35, 17 P.3d 1110. The reasonableness requirement means that, even if the treatment was necessary, recovery is limited to “the reasonable value of the services rather than the amount paid or charged.” RESTATEMENT (SECOND) OF TORTS § 911 cmt. h (A.L.I. 1979).

¶20 But if “the injured person paid *less* than the exchange rate, he can recover no more than the amount paid.” *Id.* (emphasis added). Because special damages compensate the plaintiff for the concrete economic harm suffered as a result of the tortfeasor's actions, *Sheppard*, 2021 UT 31, ¶ 17 n.5, 493 P.3d 632, it is not enough to prove that certain expenses *would have been* reasonable had they been incurred. In other words, only “reasonable and necessary expenses for medical care and other related expenses incurred” are compensable as special damages. Cf. MODEL UTAH JURY INSTRUCTIONS 2d CV2003 & CV2005, <https://legacy.utcourts.gov/muji/?cat=1&subcat=20> (last visited Oct. 24, 2025) (defining economic damages).

### 2. The Collateral Source Rule

[6] [7] ¶21 When a third party covers all or part of a plaintiff's medical expenses, the collateral source rule is implicated.<sup>3</sup> Under this rule, wrongdoers are “not entitled to have damages, for which [they are] liable, reduced by proof that the plaintiff has received or will receive compensation or indemnity for the loss from an independent collateral source.” *Gibbs M. Smith, Inc. v. U.S. Fid. & Guar. Co.*, 949 P.2d 337, 345 (Utah 1997) (cleaned up). In its application, the collateral source rule has both an evidentiary and a damages aspect.

<sup>3</sup> The collateral source rule is a common law concept that can be altered by statute. In some states, the legislature has modified or abolished the collateral source rule. See, e.g., *Gulfstream Park Racing Ass'n v. Volin*, 326 So. 3d 1124, 1126 (Fla. Dist. Ct. App. 2021) (Florida statute “requires a court to setoff certain payments from collateral sources in personal injury cases”); *Swanson v. Brewster*, 784 N.W.2d 264, 269 (Minn. 2010) (Minnesota “statute changed the rule on collateral sources and damage awards, essentially providing that a plaintiff cannot recover money damages from

the defendant if the plaintiff has already received compensation from certain third parties or entities”); [Furlong v. Merriman](#), No. HHBCV044000416S, 2006 WL 1461112, at \*7 (Conn. Super. Ct. May 4, 2006) (Connecticut statute requires the court to “reduce the amount of an economic damages award by an amount equal to the total” paid by a collateral source (cleaned up)).

The Utah Legislature has altered this common law rule only for medical malpractice claims. *See generally* [UTAH CODE § 78B-3-405](#). When a plaintiff receives damages in a malpractice action, “the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources.” [Id.](#) § 78B-3-405(1). But where a collateral source has a subrogation right or the collateral payment was not included in the damages award, the court does not reduce the damages. *Id.*

\*5 [8] [9] ¶22 The evidentiary aspect “precludes both explicit reference and methodical allusion to collateral source benefits.” [Wilson](#), 2012 UT 43, ¶ 2, 289 P.3d 369. “It has long been recognized that evidence of collateral source benefits involves a substantial likelihood of prejudicial impact.” [Id.](#) ¶ 47 (cleaned up). That prejudice may occur in two ways. First, evidence of payment from a collateral source suggests that a plaintiff is already receiving any necessary care, which may lead the jury to “believe[ ] that the outcome of the trial is immaterial to the party benefitting from the collateral source.” [Id.](#) (cleaned up). Second, because many jurors “do not understand the concept of subrogation rights, they will erroneously conclude that the plaintiff is seeking a windfall.” [Id.](#) This misunderstanding is “highly prejudicial because the jury will believe that the plaintiff has already been fully compensated and is trying to obtain a double recovery,” thereby tainting the jury’s decision-making process. [Id.](#) (cleaned up).

[10] [11] [12] ¶23 The damages aspect prevents a plaintiff’s recovery from being offset by any payments provided by an independent collateral source. *See* [Gibbs M. Smith, Inc.](#), 949 P.2d at 345; [Mahana v. Onyx Acceptance Corp.](#), 2004 UT 59, ¶ 37, 96 P.3d 893. Put simply, “[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor’s liability, although they cover all or a part of the harm for which the tortfeasor is liable.” [RESTATEMENT \(SECOND\) OF TORTS § 920A\(2\) \(A.L.I. 1979\)](#). This means that the plaintiff may recover medical expenses already paid by the plaintiff’s insurance even when “it results in a windfall to the plaintiff based on the premise that the plaintiff victim, rather than the defendant tortfeasor, should be the beneficiary of any windfall.” [Mahana](#), 2004 UT 59, ¶ 37, 96 P.3d 893. The rule is also intended to “encourage[ ] the maintenance of insurance by assuring that a plaintiff’s payments from a collateral source will not be reduced by a subsequent judgment.” [Wilson](#), 2012 UT 43, ¶ 31, 289 P.3d 369 (cleaned up).

### 3. Application to the Negotiated Charges Context

¶24 In this appeal, Norman argues that the collateral source rule “does not apply to preclude evidence of the amount” of the negotiated charge “or to entitle a plaintiff to recover more than the damage actually caused by the defendant.” He contends that the collateral source rule instead is “limited to preventing evidence of the source of the payment, *not the amount paid*.” In Norman’s view, “admitting evidence of rates not charged to or paid by [a plaintiff] or his insurer and excluding the amounts actually charged and paid is contrary to bedrock principles of compensatory damages and tort recovery, which aim to compensate only for the harm caused.”

¶25 In contrast, Gardner argues that “[c]onsistent with the collateral source rule,” only the gross charge initially billed to a plaintiff is “admissible to prove the reasonable and necessary amount of medical expenses.” He contends that this is consistent with the purpose of the collateral source rule: “to prevent a windfall to the tortfeasor, ensuring that the plaintiff—not the wrongdoer—benefits from” a plaintiff’s “efforts to secure discounted medical bills while avoiding full responsibility for payment of the claim.” Gardner asserts that “evidence of the amount paid or accepted by insurance” is evidence of a benefit from a

collateral source and “does not reflect the true costs and efforts associated with obtaining and maintaining coverage, including paying premiums and dealing with coverage disputes.”

¶26 The debate between these two parties is one that has played out in other cases across the country with states reaching various conclusions. Among the states that have allowed consideration of the negotiated charge, several approaches have emerged. For a number of states, the outcome has been dictated by state statutes modifying the collateral source rule.<sup>4</sup> Other states allow the admission of both the gross rate and the negotiated rate as evidence of the reasonable value of medical care.<sup>5</sup> Yet a third approach precludes recovery based on the gross charge by either excluding evidence of the gross charge or reducing the damages award post-verdict.<sup>6</sup>

<sup>4</sup> See, e.g., [Weston v. AKHappytime, LLC](#), 445 P.3d 1015, 1019 (Alaska 2019); [Meek v. Mont. Eighth Jud. Dist. Ct.](#), 379 Mont. 150, 349 P.3d 493, 496 (2015); [Haygood v. De Escabedo](#), 356 S.W.3d 390, 395–99 (Tex. 2011); [Swanson](#), 784 N.W.2d at 269–70, 282; [Deck v. Teasley](#), 322 S.W.3d 536, 538–42 (Mo. 2010) (en banc); [Crocker v. Grammer](#), 87 So. 3d 1190, 1193 (Ala. Civ. App. 2011); [Furlong](#), 2006 WL 1461112, at \*7–8, \*11.

<sup>5</sup> See, e.g., [Martinez v. Milburn Enters., Inc.](#), 290 Kan. 572, 233 P.3d 205, 222–23 (2010); [Law v. Griffith](#), 457 Mass. 349, 930 N.E.2d 126, 135–36 (2010); [Stanley v. Walker](#), 906 N.E.2d 852, 858 (Ind. 2009); [Robinson v. Bates](#), 112 Ohio St.3d 17, 857 N.E.2d 1195, 1200–01 (2006); [Barday v. Donnelly](#), No. CV-04-508, 2006 WL 381876, at \*2–3 (Me. Super. Ct. Jan. 27, 2006).

<sup>6</sup> See, e.g., [Weston](#), 445 P.3d at 1019; [Haygood](#), 356 S.W.3d at 395–99; [Howell v. Hamilton Meats & Provisions, Inc.](#), 52 Cal.4th 541, 129 Cal.Rptr.3d 325, 257 P.3d 1130, 1139–40 (2011); [Swanson](#), 784 N.W.2d at 269–70, 282; [Sliker v. Nat'l Feeding Sys., Inc.](#), No. 282 CD 2010, 2015 WL 13779690, at \*8 (Pa. Ct. Com. Pl. Oct. 19, 2015); [Furlong](#), 2006 WL 1461112, at \*7–8, \*11; [Wildner v. Wendorff](#), No. 05-1998, 2006 WL 2265453, at \*4 (Iowa Ct. App. Aug. 9, 2006).

\*6 ¶27 The third approach is best exemplified by [Howell v. Hamilton Meats & Provisions, Inc.](#), 52 Cal.4th 541, 129 Cal.Rptr.3d 325, 257 P.3d 1130 (2011). In that case, the California Supreme Court considered “whether restricting recovery to amounts actually paid by a plaintiff or on his or her behalf contravenes the collateral source rule.” [Id.](#), 129 Cal.Rptr.3d 325, 257 P.3d at 1137. As in our case, the defendant moved “to exclude evidence of medical bills that neither [the] plaintiff nor her health insurer ... had paid.” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1137. The defendant asserted that the record showed that “significant amounts” of the plaintiff’s past medical bills “had been adjusted downward before payment pursuant to [prior] agreements between” the healthcare providers and her insurance. [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1133–34.

¶28 The court held “that a plaintiff may recover as economic damages *no more* than the reasonable value of the medical services received and is not entitled to recover the reasonable value if his or her actual loss was less.” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1137. The court explained that “[t]o be recoverable, a medical expense must be both incurred *and* reasonable.” [Id.](#) In the court’s view, the burden to prove that the plaintiff’s special damages reflect the “reasonable value” of the services incurred limits “recovery to reasonable expenditures” but does “not expand [ ] recovery beyond the plaintiff’s actual loss or liability.” [Id.](#) In other words, the reasonable value of medical care in this context “is a term of limitation, not of aggrandizement.” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1136 (cleaned up).

¶29 Turning to the case before it, the court concluded that the “plaintiff did not incur liability for her providers’ full bills, because at the time the charges were incurred the providers had already agreed on a different price schedule for” patients covered by the plaintiff’s insurance. [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1143. And because the plaintiff “never incurred the full bill,” the court went on, the plaintiff “could not recover [that amount] in damages for economic loss,” making the collateral source rule “inapplicable.” [Id.](#)

¶30 The court clarified that the rule still “applie[d] with full force” to prevent the deduction of payment made by an independent source “from the *damages which the plaintiff would otherwise collect from the tortfeasor.*” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1143–44 (cleaned up). But “the negotiated rate differential [was] not a collateral payment or benefit subject to the collateral source rule.” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1144. “Certainly, the collateral source rule should not extend so far as to permit recovery for sums neither the plaintiff nor any collateral source will ever be obligated to pay.” [Id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1143 (cleaned up).

[13] [14] ¶31 We find the reasoning of the California Supreme Court persuasive. Special damages must reflect the actual loss resulting from the tortfeasor’s conduct. Under the collateral source rule, the fact that a third party bore that loss is inadmissible and cannot be used to reduce a plaintiff’s recovery. But that rule does not alter the fundamental principle that special damages are limited to the actual loss resulting from the injury.

¶32 Here, Gardner never incurred the gross charges listed on the initial hospital bill. Before he was injured, Gardner’s insurance had entered into a contract with the hospital that set out the authorized amounts that could be charged to insured patients. Because the contracted prices were in place when Gardner sought treatment, his “prospective liability” was limited to those authorized amounts. See [id.](#) 129 Cal.Rptr.3d 325, 257 P.3d at 1139. As a result, Gardner “cannot meaningfully be said” to have ever “incurred the full charges.” [Id.](#) Even if the gross charges reflect a reasonable cost of necessary treatment resulting from the injury, they do not represent the cost of the medical services that Gardner received, which was limited to the preexisting negotiated charges.

\*7 ¶33 Gardner argues that such a determination violates the public policy underlying the collateral source rule by awarding a windfall to tortfeasors. See [Wilson](#), 2012 UT 43, ¶ 31, 289 P.3d 369 (“[P]ublic policy favors giving the plaintiff a double recovery rather than allowing a wrongdoer to enjoy reduced liability simply because the plaintiff received compensation from an independent source.” (cleaned up)). Norman, on the other hand, argues that to rule otherwise violates “the fundamental tort law purpose of placing” plaintiffs in the same position they would have occupied but for the tort. See [Mahana](#), 2004 UT 59, ¶ 26, 96 P.3d 893 (“To the extent possible, the fundamental purpose of compensatory damages is to place the plaintiff in the same position he would have occupied had the tort not been committed.”). We agree with Norman.

[15] [16] ¶34 Limiting an insured plaintiff’s recovery to the negotiated charge does not create a windfall for tortfeasors. The collateral source rule prevents a plaintiff’s recovery from being “reduced by proof that the plaintiff has received or will receive compensation or indemnity for the loss from an independent collateral source.” [Gibbs M. Smith, Inc.](#), 949 P.2d at 345 (cleaned up). It prevents a tortfeasor from obtaining a windfall where collateral source benefits have mitigated the plaintiff’s out-of-pocket losses. See generally [Wilson](#), 2012 UT 43, 289 P.3d 369. But the difference between the gross charge and the negotiated charge is “not a ‘benefit’ under the collateral-source rule because it is not a payment.” [Robinson v. Bates](#), 112 Ohio St.3d 17, 857 N.E.2d 1195, 1200–01 (2006). Only “the amount a plaintiff’s health insurer actually pays to the health care provider is a benefit from a collateral source.” [Martinez v. Milburn Enters., Inc.](#), 290 Kan. 572, 233 P.3d 205, 213 (2010).

[17] ¶35 Given that no one pays the difference between the gross charge and the negotiated charge, admitting evidence of the predetermined reduction “does not violate the purpose behind the collateral-source rule.” [Robinson, 857 N.E.2d at 1200](#). The tortfeasor does “not obtain a credit because of payments made by a third party on behalf of the plaintiff,” which is what the collateral source rule prevents. [Id.](#) The tortfeasor still faces the burden of paying for the economic loss proximately caused by the tortfeasor's negligence. But the difference between the gross charge and the negotiated charge results from the preexisting contractual arrangement between the insurer and the healthcare provider. It is not a loss caused by the tortfeasor's conduct.

[18] ¶36 If special damages were based on the gross charge, it would place the plaintiff “in a better financial position than before the tort was committed.” [Howell, 129 Cal.Rptr.3d 325, 257 P.3d at 1136](#). In limited situations, such a windfall to the plaintiff is permitted by the collateral source rule. If the collateral source lacked subrogation rights, for instance, the rule contemplates that “the plaintiff victim, rather than the defendant tortfeasor, should be the beneficiary of any windfall.” [Mahana, 2004 UT 59, ¶ 37, 96 P.3d 893](#). But that does not allow the plaintiff to recover more than the actual loss caused by the tortfeasor's conduct as special damages.

[19] ¶37 Gardner also argues that it would be unfair to allow a tortfeasor to benefit from the plaintiff's efforts to maintain health insurance when the tortfeasor's liability to an otherwise identical plaintiff might have been greater based merely on insurance status. We recognize that medical billing “depends, to a significant extent, on the identity of the payer.” [Howell, 129 Cal.Rptr.3d 325, 257 P.3d at 1142](#). But “one who injures another takes him as he is.” [Harris v. ShopKo Stores, Inc., 2013 UT 34, ¶ 23, 308 P.3d 449](#) (cleaned up). This will often mean that the same tortious conduct might result in vastly different damage awards based on the identity and personal characteristics of the plaintiff. It is simply the luck of the draw that a defendant who injured an insured plaintiff might be required to pay a lower damages award for past medical expenses because of the preexisting contract between the plaintiff's insurer and the medical providers.<sup>7</sup>

<sup>7</sup> We also recognize that the disparity between an insured and uninsured plaintiff may not be as great as Gardner suggests. As with insured individuals, predetermined discounted rates exist for those who are uninsured. By way of example, the hospital where Gardner received care has posted rates showing that an uninsured individual receiving the same treatment as Gardner would receive about a twenty-five percent discount. *See Price Transparency, INTERMOUNTAIN HEALTH, <https://intermountainhealthcare.org/locations/intermountain-medical-center/about/price-transparency>* (last visited Oct. 24, 2025). The adjusted charge for an uninsured patient would be greater than the negotiated charge Gardner incurred, but in both cases, the gross charge would not reflect the medical expenses they each incurred, regardless of their insurance status.

\*8 [20] ¶38 In holding that the negotiated charge for past medical expenses is the proper measure of special damages, we emphasize that our holding does not modify the collateral source rule. Under that rule, evidence that an insurer paid any portion of the medical costs a plaintiff incurred is inadmissible. *See* [Wilson, 2012 UT 43, ¶ 2, 289 P.3d 369](#). Similarly, a plaintiff's recovery cannot be reduced by the amounts paid or reimbursed through health insurance, except in medical malpractice cases as provided by statute. *See supra* ¶ 21 n.3. To borrow the California Supreme Court's language in [Howell](#), “we merely conclude [that] the negotiated rate differential—the discount medical providers offer the insurer—is not a benefit provided to the plaintiff in compensation for his or her injuries and therefore does not come within the rule.” [129 Cal.Rptr.3d 325, 257 P.3d at 1145](#). Both the evidentiary and damages aspects of the collateral source rule remain in full effect, except where abrogated by statute. But that rule does not allow a plaintiff to recover more than the amount actually incurred for past medical treatment.

[21] ¶39 Although special damages must be based on the costs the plaintiff actually incurred, we do not go so far as to hold that evidence of gross charges is never admissible. Where the reasonableness of the negotiated charge is in dispute, for instance, the gross charge might be relevant to a fact at issue, *see* [UTAH R. EVID. 401](#), although the risk of prejudice might substantially

outweigh the probative value of that evidence, *id.* R. 403, especially if its admission risks violating the collateral source rule by revealing that the cost was covered, in whole or in part, by insurance. And we express no opinion on the “relevance or admissibility” of this evidence “on other issues, such as noneconomic damages or future medical expenses.” [Howell, 129 Cal.Rptr.3d 325, 257 P.3d at 1146.](#)

¶40 Here, the district court excluded evidence of the negotiated charge and used the gross charges to calculate the special damages award, based on its understanding that the collateral source rule required that result. But while the collateral source rule prohibits evidence that Gardner's medical costs were paid by his insurance, it does not allow Gardner to recover special damages for costs he has not and never will incur. We therefore vacate the district court's award of special damages and remand for a new trial on that issue.

### CONCLUSION

¶41 Under the collateral source rule, the fact that the negotiated charge was paid by a third party is inadmissible and cannot reduce the plaintiff's recovery. But the amount of the negotiated charge reflects the actual loss incurred, which is the measure of special damages. Because the court based the special damages award on the gross charges for which neither Gardner nor his insurance were responsible, we vacate the award and remand.

### All Citations

--- P.3d ----, 2025 WL 3030153, 2025 UT 47

## **CV2003 Economic damages defined.**

Economic damages are the amount of money that will fairly and adequately compensate [name of plaintiff] for measurable losses of money or property caused by [name of defendant]'s fault.

### **References**

[\*Gardner v. Norman\*, 2025 UT 47, ¶ 35.](#)

## **MUJI 1st Instruction**

27.1.

### **Committee Notes**

[In the context of medical expenses, the measurable loss is limited to the amount the plaintiff or their insurer was or is actually obligated to pay. \*Gardner v. Norman\*, 2025 UT 47, ¶ 35 \(holding that the difference between a hospital’s “gross charge” and the “negotiated charge” \(the insurance write-off\) “is not a loss caused by the tortfeasor's conduct”\).](#)

## **CV2005 Economic damages. Medical care and related expenses.**

Economic damages include reasonable and necessary expenses for medical care and other related expenses incurred in the past and those that will probably be incurred in the future.

### **References**

[\*Gardner v. Norman\*, 2025 UT 47, ¶ 32 \(only relates to past medical expenses\).](#)

*Wilson v. IHC*, 2012 UT 43, n 11.

*Judd v. Rowley's Cherry Hill Orchards, Inc.*, 611 P.2d 1216 (Utah 1980).

[Restatement 2d of Torts, § 911, cmt. h \(only relates to past medical expenses\).](#)

### **MUJI 1st Instruction**

27.3.

#### **Committee Notes**

[“Incurred” expenses refers to the negotiated rate, not the “chargemaster” or “gross” rate. \*Gardner v. Norman\*, 2025 UT 47, ¶ 32 \(where hospital and insurer had contracted prices in place at time plaintiff sought treatment, plaintiff’s prospective liability was limited to those amounts; plaintiff “cannot meaningfully be said” to have ever “incurred the full charges”\).](#)

[The fact that insurance paid a bill remains inadmissible and should not be considered. \*Gardner v. Norman\*, 2025 UT 47, ¶ 38; CV634 Insurance.](#)

Kirk A. Cullimore proposes the following substitute bill:

**Tort Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

House Sponsor:

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**LONG TITLE**

**General Description:**

This bill addresses evidence in a civil tort action.

**Highlighted Provisions:**

This bill:

- defines terms;
- addresses evidence relating to a collateral source in a civil action for damages arising out of a tort; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-5-621**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78B-5-621** is enacted to read:

**78B-5-621 . Evidence relating to a collateral source in a civil tort case.**

(1) As used in this section:

(a) "Collateral source" means the same as that term is defined in Section 78B-3-405.

(b) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(2) This section applies to a civil action for damages arising out of a tort, unless the action is a malpractice action against a health care provider as described in Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act.

(3)(a) The following evidence is inadmissible for any purpose, including the

- 30 determination of liability, the assessment of damages, impeachment, or credibility:  
31 (i) the existence of a collateral source;  
32 (ii) an amount of a collateral source;  
33 (iii) evidence that a medical expense or other cost related to an injury at issue in the  
34 action was paid, adjusted, waived, written off, or otherwise reduced or satisfied by  
35 a third party or as a result of a negotiated rate, including an adjustment under a  
36 public program such as Medicare or Medicaid;  
37 (iv) whether the plaintiff has paid, or is personally obligated to pay, an amount for  
38 medical care or treatment resulting from an injury at issue in the action;  
39 (v) evidence of an amount actually paid by a party or third-party for medical care or  
40 treatment resulting from an injury at issue in the action; and  
41 (vi) the existence of a health care provider lien or right of subrogation related to the  
42 plaintiff's medical expenses or other claimed damages.  
43 (b) Evidence described in Subsection (3)(a) may not be referenced, disclosed, or alluded  
44 to in any manner during trial, including through testimony, exhibits, examination of  
45 witnesses, or argument.  
46 (4) A defendant may not reduce, limit, or deny a settlement offer or claim valuation based  
47 on the amount actually paid for medical care or treatment resulting from an injury at  
48 issue in the action, including a discounted or written off amount.  
49 (5) During the action, a plaintiff may not be required to disclose any health care provider  
50 lien arising from the plaintiff's medical expenses or claimed damages related to an injury  
51 at issue in the action.  
52 (6) If requested by a party, the court shall instruct the jury that the jury may not consider or  
53 speculate about the existence of a collateral source, lien, or the plaintiff's personal  
54 financial obligations for medical treatment.

55 Section 2. **Effective Date.**

56 This bill takes effect on May 6, 2026.

# TAB 4

### **CV1102 Duty to invitee.**

[Name of plaintiff] claims that [name of defendant] failed to use reasonable care to [conduct [describe activity]] [discover [describe condition]] on [name of defendant]'s property and to repair, replace, or adequately warn about it. To succeed in this claim, [name of plaintiff] must prove that [name of defendant]:

[(1) held [his] property open to the public or that [name of defendant] held [his] property open for a purpose directly or indirectly connected to [his] business; and]

(2) knew or should have known of [describe activity or condition]; and

(3) knew or should have known that [describe activity or condition] presented an unreasonable risk of harm; and

(4) knew or should have known that [name of plaintiff] would not discover [describe activity or condition] or that [name of plaintiff] would fail to protect [himself].

In deciding whether [name of defendant] used reasonable care to discover or correct the [describe activity or condition], you may consider, among other factors, the following:

[(a) the location of the property; or]

[(b) the likelihood that someone would come onto the property in the same manner as [name of plaintiff] did; or]

[(c) the likelihood of harm; or]

[(d) the probable seriousness of the harm.]

### **References**

Porter v. Farmington City Corp., 2014 UT App 12, 318 P.3d 1198.

Jex v. JRA, Inc., 2008 UT 67, 196 P.3d 576.

Hale v. Beckstead, 2005 UT 24, 116 P.3d 263.

Berrett v Albertsons, 2012 UT App 371.

Gonzalez v. Russell Sorensen Construction, 2012 UT App 154, extends this principal to a general contractor who controls a job site.

Carlile v. Wal-Mart, 2002 UT App 412, 61 P.3d 287.

Canfield v. Albertsons, Inc., 841 P.2d 1224 (Utah App 1992).

Glenn v. Gibbons & Reed Co., 265 P.2d 1013 (1954).

Restatement (Second) of Torts sect.343 (1965).

### **MUJI 1st Instruction**

11.2; 11.3

**Committee Notes**

If the status of the plaintiff as an invitee is not disputed, the court does not need to give bracketed paragraph (1) to the jury. For examples of an invitee, see the Restatement (Second) of Torts Section 343 (1965).

Instruct only on factors (a) - (d) for which there is evidence.

# TAB 5

**MUJI Civil Upcoming Queue:**

<b>Numbers</b>	<b>Subject</b>	<b>Members</b>	<b>Progress</b>	<b>Next Report Date</b>
1000	Products Liability	Tracy Fowler, Paul Simmons, Judge Todd Shaughnessy	Appeared on Agenda November 2021. Continuing to work and will report back.	April 2026
2003, 2005	Economic Damages / Collateral Sources	Kara North and Ben Miller	Notes added Jan. 2026 (related to <i>Gardner v Norman</i> , 2025 UT 47; back on agenda Feb. 2026 due to SB211 (superseding <i>Gardner</i> if it passes)	Feb 2026
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Dan Bertch, Bruce Pritchett, Jake Hinkins	Appeared on Agenda March 2022. Feb. 2025 Stewart indicates the group is awaiting a decision on appeal.	
	Unjust Enrichment	Aaron Pacini	Aaron to research and draft these instructions.	2026
2700	Directors and Officers Liability	Adam Buck	April 2025 - Stewart will contact	
2500	Wills / Probate	Matthew Barneck; Rustin Diehl	Matthew and Rustin have met to discuss direction and have started reaching out to various recommendations – Elder law section, Probate Subcommittee, WINGS, recommended individuals. Alyson, Stewart, and Jace to follow up on this one.	
2300	Sales Contracts and Secured Transactions	Matthew Boley, Ade Maudsley	Matthew and Addie are willing to work on this topic and would like more feedback from the Committee. Alyson, Stewart, and Jace to follow up on this one.	
	Case law and Statutory Updates	TBD	Previous chairs or group leads may have feedback.	
	Linguistics and Law I - General	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	Presented Feb. 2025. Have identified instructions potentially in need of plain-language adjustments; awaiting feedback on work; working with MUJI (Crim) as well	Feb. 2026
	Linguistics and Law II - Reasonableness	Judge Bolinder, Bill Eggington, Ben Lusty	Bill presented Feb. 2025 on the changing meaning of reasonableness; this subcommittee	2026

			would also like to work with MUJI (Crim)	
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**Archived Topics:**

<b>Numbers</b>	<b>Subject</b>	<b>Completed</b>
1500	Emotional Distress	December 2016
200 / 1800	Fault / Negligence	October 2017
1300	Civil Rights: Set 1 and 2	September 2017
1400	Economic Interference	December 2017
1900	Injurious Falsehood	February 2018
1200	Trespass and Nuisance	October 2019
100	Uniformity	February 2020
1600	Defamation Update	March 2022, December 2022
135	Pretrial Delay	December 2022, February 2023
107A	Avoiding Bias	May 2023, February 2025
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023
132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023, Feb. 2025
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024, Feb. 2025
301B/301C	Elements of a Medical Negligence Claim; Standard of Care	December 2024
324	Use of Alternative Treatment Methods (removed with explanatory committee note)	December 2024
2015	Survival claim (amended committee note)	December 2024
1700	Assault/Battery/False Arrest/Malicious Prosecution	August 2025
331	Past and Future Medical Expenses	November 2025
1740-42	Abuse of Process	November 2025