



## Utah Supreme Court Takes Significant Step Toward Eliminating “Phantom Damages”

by Cary Silverman

The Utah Supreme Court recently took a significant step forward in addressing inflated damage awards for medical expenses. In a unanimous decision, the court ruled in *Gardner v. Norman* that the amount paid for medical treatment, regardless of the source of the payment, “reflects the actual loss incurred and is the measure of special damages.”<sup>1</sup> Gross charges, which neither the plaintiff nor the plaintiff’s health insurer are obligated to pay, are generally inadmissible. Utah joins a growing number of States that have, through court rulings or legislation, recognized that a plaintiff’s damages should reflect the negotiated charge that is actually paid for medical treatment, not chargemaster rates, list prices, or other gross charges that are not paid.

**The Case.** Plaintiff Troy Gardner was involved in a minor accident with a Salt Lake City police vehicle driven by Defendant Tyler Norman. Gardner sought \$7,267.77 for an emergency room visit, CT scan, and eye examination based on the hospital’s originally billed gross charges, even though the hospital accepted \$4,487.75 (about 40% less) from his insurer as full payment. Norman’s counsel asked the trial court to exclude the gross charges or, alternatively, allow the jury to consider both the gross charges originally billed and the negotiated charges actually paid for medical expenses. The trial court denied that motion and, instead, granted a motion filed by Gardner to exclude any evidence of amounts actually paid for medical care, viewing the lower amounts as an insurance benefit that is inadmissible under the collateral source rule. The Utah Supreme Court reversed this ruling.

**Medical Billing Practices.** It is common practice for healthcare providers to set a fee for each service or treatment, as well as for medical products and supplies. The healthcare provider records its list prices in its billing system or “chargemaster” and that “standard charge” or “gross rate” is often indicated on the provider’s invoice. Healthcare providers rarely receive payment for gross charges. Instead, healthcare providers typically are paid based on negotiated rates with managed care plans or schedules set by Medicare rules. Likewise, uninsured patients rarely pay list prices, as healthcare providers offer programs providing subsidies or discounts to low-income patients and may write off some charges. Thus, there is often a stark difference between a healthcare provider’s list price for a particular service or procedure and the amount it customarily accepts as full payment, whether paid by a private insurer, a government program, or directly by a patient. Healthcare providers often receive one-third or less of what they bill as full payment and, for some medical treatments, chargemaster rates are ten times the amount providers routinely accept.

**The Ruling.** The court recognized that the purpose of compensatory damages is to place a plaintiff in the same position the plaintiff would have occupied had the tort not been committed. Applying this principle, recoverable medical expenses must reflect the reasonable value of medical care, which can be no more than the amount actually paid and accepted. Under the collateral source rule, the court reasoned, the fact that an insurer paid for a plaintiff’s medical expenses does not reduce his recovery, “[b]ut that rule does not alter the fundamental principle that special damages are limited to the actual loss resulting from the injury.” A plaintiff “cannot meaningfully be said to have ever

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<sup>1</sup> *Gardner v. Norman*, 2025 UT 47, -- P.3d --, 2025 WL 3030153, at \*8 (Utah Oct. 30, 2025).

incurred the full charges,” the court found, even if those amounts are listed on an initial hospital bill.

The court surveyed approaches taken in States that consider negotiated charges for medical care, placing them in three categories. Some States have codified an approach to valuing medical damages. Others allow admission of both the gross rate and negotiated rate as evidence of the reasonable value of care. A third approach precludes recovery based on gross charges either by excluding this evidence or through a post-trial setoff of amounts not paid. The Utah Supreme Court found the third approach—charges that are not actually paid are inadmissible—persuasive.

The court considered and rejected points frequently made in opposition to determining damages for medical expenses based on amounts actually paid. The court observed that “[e]ven 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 [the plaintiff] received, which was limited to the preexisting negotiated charges.” Basing damages on amounts paid for medical care “does not create a windfall for tortfeasors” because “no one pays the difference between the gross charge and the negotiated charge.” Finally, the court observed that one plaintiff receiving higher or lower damages than another plaintiff (due to variations in insurance or otherwise) is not out of the ordinary. A tortfeasor takes the plaintiff as he or she is found, which “often mean[s] that the same tortious conduct might result in vastly different damage awards based on the identity and personal characteristics of the plaintiff.”

**Implications.** Personal injury lawyers seek to present list prices for medical expenses, rather than the actual amount paid for the plaintiff’s treatment, to inflate damages. While the amount at issue was small in *Gardner*, “phantom damages”—the amount that appears on an invoice that no one actually paid—can be hundreds of thousands of dollars in cases involving more significant injuries. Presenting jurors with medical expenses at billed rates can also spiral into larger noneconomic damage awards because the inflated amounts make the injury appear more severe or because juries may arrive at a pain and suffering award through a multiplier of medical expenses. These excessive awards contribute to social inflation and nuclear verdicts.

As the gap between list prices and the amount healthcare providers typically accept as full payment for their medical services has grown, States are correcting distortion of the collateral source rule to require damages for medical expenses to reflect amounts actually paid, not originally billed. The Utah Supreme Court’s decision should largely eliminate the ability of lawyers to inflate damages for *past paid* medical expenses. The Utah high court joined a California Supreme Court decision, which it found particularly persuasive.<sup>2</sup> Several other States have adopted this approach through legislation.<sup>3</sup>

The *Gardner* case did not, however, present an opportunity for the court to address the admissibility of evidence of the value of past medical expenses that remain *unpaid* or damages for *future* medical expenses. The court expressly did not rule on these issues. Some States have enacted legislation addressing the value of past medical care that remains unpaid.<sup>4</sup> Doing so has become increasingly important as medical clinics that are sometimes aligned with personal injury law firms enter “letters of protection.” Under these agreements, the healthcare provider foregoes collecting payment, even when a patient has insurance coverage, and, instead, receives a right to collect payment at the “full” price out of patient’s settlement or judgment. Recently, three States adopted a comprehensive approach that addresses the value of past paid, past unpaid, and future medical expenses: Montana in 2021,<sup>5</sup> Florida in 2023,<sup>6</sup> and Georgia in 2025.<sup>7</sup>

<sup>2</sup> See *Howell v. Hamilton Meats & Provisions, Inc.*, 257 P.3d 1130 (Cal. 2011).

<sup>3</sup> See Ark. H.B. 1204 (enacted 2025) (to be codified at Ark. Code § 16-64-120(b)); La. Rev. Stat. § 9:2800.27 (enacted 2020, amended 2025); Tex. Civ. Prac. & Rem. Code § 41.0105 (enacted 2003); *Haygood v. De Escabedo*, 356 S.W.3d 390 (Tex. 2011).

<sup>4</sup> See, e.g., Iowa Code § 662.4 (enacted 2020); 12 Okla. Stat § 3009.1 (enacted 2011, amended 2015); Tenn. Code Ann. § 29-26-119 (enacted 2024).

<sup>5</sup> Mont. Code Ann. § 27-1-308 (enacted 2021).

<sup>6</sup> Fla. Stat. Ann. § 768.0427 (enacted 2023).

<sup>7</sup> Ga. S.B. 68, § 7 (2025) (to be codified at Ga. Code Ann. § 51-12-1.1).