1. Minimum liability limits

In Utah, all motor vehicle policies must contain motor vehicle liability coverage of at least $25,000 per person/$65,000 per accident/$15,000 property damage per accident, or in the alternative, $80,000 in total aggregate coverage. Utah Code § 31A-22-304.

2. Negligence laws

In 1986, the Utah Legislature enacted the Liability Reform Act, a comparative fault statute that is applicable to all negligence claims. Under the Liability Reform Act, “fault” is defined as any breach of legal duty including, but not limited to, strict product liability, breach of warranty, negligence in all its degrees, comparative negligence, and misuse/abuse of a product. Utah Code § 78B-5-817(2). Fault can be apportioned between intentional and negligent tortfeasors. Graves v. N. Eastern Servs., Inc., 2015 UT 28, ¶ 51, 345 P.3d 619.

A plaintiff may recover from any defendant or group of defendants whose combined fault exceeds that of the plaintiff. Utah Code § 78B-5-818. In other words, a plaintiff may not recover if he or she was 50% or more at fault. The plaintiff is entitled to a jury instruction informing the jury of the effect of assigning 50% or more fault to the plaintiff. See Dixon v. Stewart, 658 P. 2d 591, 596 (Utah 1982).

Joint and several liability has been abolished in Utah. Other than the exceptions discussed below for parties immune from suit, each defendant’s liability is limited to its proportionate share of fault. Utah Code § 78B-5-820(1); S.H. by and through Robinson v. Bistryski, 923 P.2d 1376, 1380 (Utah 1996).

Fault may be attributed to persons immune from suit (e.g., employers and governmental entities), but only for the purpose of determining the proportionate fault of the non-immune defendants. Utah Code § 78B-5-818(4). If the immune party’s fault is equal to or greater than 40%, the plaintiff’s recovery is reduced by the proportion of fault attributable to the immune party. Utah Code § 78B-5-819. However, if the immune party’s fault is less than 40%, that fault is redistributed proportionately to the non-immune parties, and the plaintiff’s recovery is not reduced. Id.; Field v. Boyer Co., 952 P.2d 1078, 1081-82 (Utah 1998).
3. **Bodily injury statute of limitations**
   
   Four years under the general “catch all” statute. Utah Code § 78B-2-307(3). Two years for wrongful death. Utah Code § 78B-2-304(2).

4. **Property damage statute of limitations**
   
   Three years. Utah Code § 78B-2-305(2).

5. **Are punitive damages insurable in Utah?**
   

6. **Is there an intrafamily immunity defense?**
   
   The common law doctrine of interspousal immunity has been abrogated by statute, and spouses may pursue claims for negligence and intentional torts against one another. See Ellis v. Estate of Ellis, 2007 UT 77, ¶¶ 21-24, 169 P.3d 441; see also Utah Code § 30-2-4.


7. **Is there a bodily injury damage threshold? If so, what is it?**

   An individual covered by no-fault personal injury protection (PIP) benefits may not bring a cause of action for general damages caused by an automobile accident against an **insured** driver, unless that person has sustained: (1) death; (2) dismemberment; (3) permanent disability or permanent impairment; (4) permanent disfigurement; or (5) medical expenses in excess of $3,000. Utah Code § 31A-22-309(1).

   If a person who has received PIP coverage asserts a general damages claim against an **uninsured** driver, the foregoing threshold provisions are ineffective. Utah Code § 41-12a-304. A claim for special damages may be brought regardless of the threshold. Warren v. Melville, 937 P.2d 556, 558, 558 n.1 (Utah Ct. App. 1997).

8. **What are the quick rules on Subrogation MP/PIP?**

   If another insurance company has paid for the personal injuries sustained by any person to whom benefits are required under the personal injury protection statute, the insurer of the person who is, or would be, legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable. Liability for required reimbursement shall be decided by mandatory, binding arbitration between the insurers. See Utah Code § 31A-22-309(6); Utah Admin. Code R590-190-11(11); see also Bear River Mut. Ins. Co. v. Wall, 1999 UT 33, 978 P.2d 460. Arbitration is the only proceeding available even if the issue is coverage, rather than allocation of fault. Regal Ins. Co. v. Canal Ins. Co., 2004 UT 19, ¶¶ 13-16, 93 P.3d 99.
An insurer that has tendered or paid its liability limits to the injured party is not responsible for reimbursement of PIP benefits. Utah Code § 31A-22-309(6)(b).

9. Are there no fault laws in Utah?

Yes. With the exception of motorcycles, trailers, and semitrailers, every policy of insurance purchased to satisfy the operator’s security requirement must include PIP. Utah Code § 31A-22-302(2).

**PIP benefits must cover:**

1. Medical costs not to exceed a total of $3,000 per person for the *reasonable value of necessary* medical, surgical, x-ray, dental, rehabilitation (including prosthetic devices), ambulance, hospital, and nursing services. Utah Code § 31A-22-307(1)(a).

2. Disability payments covering the less of $250 per week or 85% of loss in gross income and loss of earning capacity per person for a maximum of 52 consecutive weeks following the loss. This benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks. § 31A-22-307(1)(b)(i). The 52-week period commences with the loss of income or earning capacity, not from the date of the accident. *Larsen v. Allstate Ins. Co.*, 857 P.2d 263, 265 (Utah Ct. App. 1993). A claimant who was unemployed at the time of the accident can collect disability benefits for lost wages only if the claimant establishes that a job was available for which the claimant was qualified and that the claimant would have taken that job. *Versluis v. Guaranty Nat’l Companies*, 842 P.2d 865, 867 (Utah 1992). However, if the claimant is working part-time and earning more than $150 per week, disability payments are terminated even if the claimant is still losing wages. *Jones v. Transamerica Ins. Co.*, 592 P.2d 609, 611-12 (Utah 1979) (overruled on other grounds).

3. Household services costs incurred at $20 per day for a maximum 365 days for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for the household. Such cost need not be paid for the first three days unless the injured person’s disability continues for more than two consecutive weeks. Utah Code § 31A-22-307(1)(b)(ii). Benefits are limited on an aggregate rather than on a daily basis, i.e., number of days of disability multiplied by $20 up to a maximum of 365 days. For example, if each of two insured parties is disabled for seven days, each is entitled to reimbursement up to $140 even though one party may have received $140 worth of services on one day during the period, whereas the other party received $20 worth of services on each of the seven days. *Tanner v. Phoenix Ins. Co.*, 799 P.2d 231, 233-34 (Utah Ct. App. 1990). But an insurer is not obligated to pay household services if the claimant is not also disabled for purposes of lost wages. *Jones v. Transamerica Ins. Co.*, 592 P.2d 609, 612 (Utah 1979) (overruled on other grounds).

4. Death benefit, payable to heirs, of $3,000; funeral, burial, or cremation costs not to exceed $1,500 per person. Utah Code § 31A-22-307(1)(c) and (d).
PIP benefits for lost income and household services need not be paid to the heirs of an insured killed instantly in an automobile accident. Under such circumstances, PIP benefits are limited to funerary expenses and actually incurred medical expenses. *Regal Insurance Co., Div. of Windsor Group, Inc. v. Bott*, 2001 UT 71, ¶¶ 11-13, 31 P.3d 524.

It may be unethical for an attorney to charge a contingent fee for collecting PIP benefits without informing the client of his rights under PIP coverage. A retainer agreement should specifically disclose that an insured can submit PIP claims directly to his insurance company without a lawyer’s assistance, and that the attorney will take a fee from all recoveries including items that could have been submitted under PIP coverage. *Archuleta v. Hughes*, 969 P.2d 409, 414 (Utah 1998).

**Persons Covered:**

(1) The named insured, when injured in an accident involving any motor vehicle anywhere in the United States or Canada, except where the injury is the result of the use or operation of a vehicle owned by the named insured but not actually insured under the policy. Utah Code § 31A-22-308(1).

(2) Persons related to the insured by blood, marriage, adoption, or guardianship who are residents of the insured’s household, including those temporarily living elsewhere, who are injured in an accident involving any motor vehicle anywhere in the United States or Canada, except when the person is injured as a result of the use or operation of the person’s own motor vehicle not insured under the policy. Utah Code § 31A-22-308(2). Covered spouse would include common law marriage if court finds elements present. *Whyte v. Blair*, 885 P.2d 791, 794 (Utah 1994).

(3) Any other natural person whose injuries arise out of an automobile accident occurring while the person occupies a motor vehicle described in the policy with the express or implied consent of the named insured or while a pedestrian if the person is injured in an accident occurring in Utah involving the described motor vehicle. Utah Code § 31A-22-308(3).

**Deductibles:** Deductibles are not allowed with respect to minimum PIP coverage. Utah Code § 31A-22-307(6).

**Reduction of Benefits:** The PIP benefits payable to any injured party may be reduced by: (1) any benefits which the person receives or is entitled to receive under Worker’s Compensation or similar statutory plan; and (2) any benefits the person receives or is entitled to receive while on active duty in military service. Utah Code § 31A-22-309(3).

**Payment of Benefits:** Benefits are payable monthly as expenses are incurred. If not paid within 30 days after the insurer receives reasonable proof of the fact and of the amount of expenses incurred during the period, payments are overdue and are subject to 1½ percent interest charge per month. An insured may bring an action against the insurer for overdue payments, and if the insured prevails, the insurer is responsible for the insured’s attorney fees. Utah Code § 31A-22-309(5).
Exclusions: An insurer may not withhold PIP benefits unless one of the following conditions is met: (1) the injury is sustained by the insured while occupying a vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured, and the vehicle is not insured under the policy; (2) the injury is sustained by a person while operating the insured vehicle without consent of the insured or while in unlawful possession of the vehicle; (3) the injured person intentionally caused the injury or was injured while committing a felony; (4) the injury is sustained while the vehicle is being used as a residence or premises; (5) the injury is due to war, civil war, insurrection, rebellion, or revolution; or (6) the injury results from radioactive, toxic, explosive, or other properties of nuclear materials. Utah Code § 31A-22-309(2)(a).


Tort Limitations: An individual covered by PIP benefits may not bring a cause of action for general damages caused by an automobile accident against an insured driver, unless that person has sustained: (1) death; (2) dismemberment; (3) permanent disability or permanent impairment; (4) permanent disfigurement; or (5) medical expenses in excess of $3,000. Utah Code § 31A-22-309(1).

Accident victims who intentionally incur unnecessary expenses to meet the medical expense threshold may face sanctions. See Remington v. Allstate Ins. Co., 973 P.2d 932, 939 (Utah 1998) (imposing substantial attorney fees). If a person who has received PIP coverages asserts a general damages claim against an uninsured driver, the foregoing threshold provisions are ineffective. Utah Code § 41-12a-304. A claim for special damages may be brought regardless of the threshold. Warren v. Melville, 937 P.2d 556, 558, 558 n.1 (Utah Ct. App. 1997).

Actions by Persons Insured: Persons who meet threshold requirements may bring a tort action against those who are responsible for the injury. The insured cannot, however, recover amounts reimbursed by PIP benefits. These benefits are recouped by the no-fault insurance through arbitration. (See below). Therefore, any liability insurer that attempts to settle with an injured person who has received PIP benefits should be aware that, unless clearly stated to the contrary, settlement offers to the injured party do not, as a matter of law, include reimbursement of PIP benefits. Any amount offered to the injured party is “new money,” and the liability carrier still has an obligation to the no-fault carrier. Bear River Mut. Ins. Co. v. Wall, 1999 UT 33, ¶ 19, 978 P.2d 460. Similarly, a settlement between the insured and the tortfeasor does not discharge a no-fault insurer’s obligation to pay full PIP benefits. Bear River Mut. Ins. Co. v. Wall, 937 P.2d 1282, 1291 (Utah Ct. App. 1997).

PIP Reimbursement: If another insurance company has paid for the personal injuries sustained by any person to whom benefits are required under the personal injury protection statute, the insurer of the person who is, or would be, legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable. Liability for required reimbursement shall be decided by mandatory, binding arbitration between the insurers. Utah Code § 31A-22-309(6)(a); Utah Admin. Code R590-190-11(11); see also Bear River Mut.

An insurer that has tendered or paid its liability limits to the injured party is not responsible for reimbursement of PIP benefits. Utah Code § 31A-22-309(6)(b).

**Penalty:** The owner of a motor vehicle who does not have insurance as required by the financial responsibility provisions does not have no-fault immunity and is personally liable for the payment of PIP payments to persons entitled to receive them. Utah Code § 41-12a-304.

10. **Is the customer’s insurance primary?**

In Utah, insurance covering a driver is usually secondary, and insurance covering the owner of the automobile involved in the accident is usually primary. See Christensen v. Farmers Insurance Exchange, 443 P.2d 385 (Utah 1968); see also Chambers v. Agency Rent-a-Car, 878 P.2d 1164, 1167 (Utah Ct. App. 1994) (“The general rule is that the car owner’s insurance is considered to provide primary coverage and that of the particular driver is considered to provide excess or secondary coverage.”); Nat’l Farmers Union Property & Casualty v. Farmers Insurance Group, 377 P.2d 786 (Utah 1963) (recognizing owner’s insurance as primary, and operator’s insurer as secondary); Western Casualty and Surety Company v. Transamerica Ins. Co., 484 P.2d 1180, (Utah 1971) (“If both policies afford coverage, then that written on the jeep would be primary, and that written on Dan’s car [and which insured the operator] would be secondary or excess.”).

Pursuant to statute, insurance covering the driver of a rental vehicle is primary, and insurance maintained by the rental car company is secondary. See Utah Code § 31A-22-314(2). A rental car company must provide primary insurance unless the driver is already covered by a personal insurance policy, in which case it is secondary. Li v. Enter. Rent-A-Car Co. of Utah, 2006 UT 80, ¶ 30, 150 P.3d 471.

11. **Is there a seat belt defense?**

No. Failure to use a seat belt or child restraint cannot be used to prove comparative fault and may not be introduced as evidence in any civil litigation on the issue of negligence, injuries, or the mitigation of damages. Utah Code § 41-6a-1806. This statute has been found constitutional. Ryan v. Gold Cross Serv., Inc., 903 P.2d 423, 426-28 (Utah 1995).

12. **Is there a last clear chance defense?**

No. Subsequent to the adoption of a comparative fault statute, the doctrine of last clear chance is “used as just one of many factors juries can look to in apportioning fault under the comparative fault scheme.” Hale v. Beckstead, 2005 UT 24, ¶ 22, 116 P.3d 263.
13. **Is there an assumption of risk defense?**


14. **Is there a UM requirement?**

“Uninsured motor vehicle” includes:

(1) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence;

(2) a vehicle covered by liability limits lower than the statutory minimums is uninsured to the extent of the deficiency;

(3) an unidentified motor vehicle that left the scene of an accident proximately caused by the vehicle’s operator;

(4) an insured vehicle whose liability insurer disputes coverage for an accident for more than 60 days; or

(5) an insured vehicle whose liability insurer is declared insolvent before or after the accident by a court of competent jurisdiction to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

Utah Code § 31A-22-305(2).

**Uninsured Motorist Coverage:**

For new policies written on or after January 1, 2001, Utah requires an insurer to offer uninsured motorist (“UM”) coverage with limits equal to the lesser of the limits of the insureds’ motor vehicle liability coverage or the maximum UM coverage limits available under the insureds’ policy. The insured may purchase a lesser amount by signing an acknowledgment form provided by the insurer which (i) waives the higher coverage; (ii) reasonably explains the purpose of UM coverage; and (iii) discloses the additional premiums necessary to purchase UM coverage equal to the lesser of the limits of the insureds’ motor vehicle liability coverage or the maximum UM coverage limits available under the policy. UM coverage may not be sold with limits less than $25,000 for one person and $500,000 per accident. Utah Code § 31A-22-305(3) through (5). The statute provides three possible levels of UM coverage: 1) an amount equal to the liability coverage, 2) the maximum amount available under the insured’s policy, or 3) some lesser amount which requires the insured sign an acknowledgment form that he or she is waiving higher coverage. *Gen. Sec. Indem. Co. of Arizona v. Tipton*, 2007 UT App 109, ¶ 19, 158 P.3d 1121.

The named insured may reject uninsured coverage by an express writing on a form provided by the insurer which reasonably explains the purpose of UM coverage, and the
For existing policies as of January 1, 2001, the insurer shall, in conjunction with the first two renewal notices sent after that date, disclose, in the same medium as the premium renewal notice, an explanation of UM coverage and the costs of increasing UM coverage to amounts up to and including the maximum available under the policy. This disclosure must be sent to all insureds who carry less than the maximum UM coverage. Utah Code § 31A-22-305(3)(f).

A UM carrier that intervenes in an insured’s lawsuit against an uninsured driver must provide independent counsel to its insured or reimburse its insured for reasonable legal expenses incurred in defending against the insurer’s claims and defenses. *Chatterton v. Walker*, 938 P.2d 255, 261-62 (Utah 1997).

**Underinsured Motorist Coverage:**

For new policies written on or after January 1, 2001, Utah requires an insurer to offer underinsured motorist (“UIM”) coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum UIM coverage limits available under the insured’s policy. The insured may reject UIM coverage or purchase a lesser amount by signing an acknowledgment form provided by the insurer which (i) waives the higher coverage; (ii) explains the purpose of UIM coverage; and (iii) discloses the additional premiums necessary to purchase UIM coverage equal to the lesser of the limits of the insured’s motor vehicle liability coverage or the maximum UIM coverage limits available under the policy. Utah Code § 31A-22-305.3(3)(a). The insured’s rejection of UIM coverage remains effective until the named insured requests in writing that the insurer provide UIM coverage. Utah Code § 31A-22-305.3(3)(b).

UIM coverage may not be sold with limits less than $10,000 for one person and $20,000 for two or more persons. Utah Code § 31A-22-305.3(3)(i).

For claims arising on or after January 1, 2001, subsections 3(a) and (b) apply retroactively as long as the insured has not made a demand for arbitration or filed a lawsuit as of May 14, 2013. Utah Code § 31A-22-305.3(3)(c).


For existing policies as of January 1, 2001, the insurer shall, in conjunction with the first two renewal notices sent after that date, disclose, in the same medium as the premium renewal notice, an explanation of UIM coverage and the costs of increasing UIM coverage to amounts up to and including the maximum available under the policy. This disclosure must be sent to all insured who carry less than the maximum UIM coverage. Utah Code § 31A-22-305.3(3)(l).
Waiver of subrogation:

Within 5 days of notification that all liability carriers have tendered their limits, a UIM carrier must either (i) waive any subrogation claim it might have against the tortfeasor, or (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier. If neither option is exercised by the UIM insurer, it is deemed to have waived its right to subrogation. Utah Code § 31A-22-305.3(6)(a).

Exhaustion clauses—requiring the “liability insurer to pay out its full policy limits before permitting payment of UIM benefits”—are generally enforceable in Utah. McArthur v. State Farm Mut. Auto. Ins. Co., 2012 UT 22, ¶ 3, 274 P.3d 981. Additionally, “the enforceability of UIM exhaustion provisions is not contingent upon an insurer’s showing of actual prejudice because they are not covenants but rather conditions precedent.” Id.

15. Is there a physical contact requirement?

There is no physical contact requirement in the context of third-party liability claims. Moreover, physical contact with an unidentified vehicle is not a prerequisite to recovery under uninsured motorist coverage. However, in the absence of contact, an insured must show the existence of the “phantom vehicle” by clear and convincing evidence consisting of more than the insured’s testimony. Utah Code § 31A-22-305(6); see also Marakis v. State Farm Fire & Cas. Co., 765 P.2d 882, 883 (Utah 1988).

16. Is there a mandatory ADR requirement?

There is no mandatory ADR requirement. In 1994, Utah enacted the Alternative Dispute Resolution Act, currently codified at Utah Code §§ 78B-6-201 et seq. The Act includes minimum procedures for arbitration, mediation, and ADR in general. In addition, the Judicial Council has promulgated rules for the referral of civil cases to ADR procedures. The court may refer an action to the ADR program on its own or at a party’s request. The court may also excuse a party from the ADR program upon a showing of good cause. Utah Code Judic. Admin. R4-510.05.

The Utah Court of Appeals (but not the Utah Supreme Court) has created an Appellate Mediation Office which requires the parties to participate in mediation efforts in some cases. The system is designed to function much like the Tenth Circuit mediation process.

17. Are agreements reached at a mediation enforceable?

Yes, provided that it is “an agreement evidenced by a record signed by all parties to the agreement.” See Utah Code § 78B-10-106(1)(a). If a written agreement is not created or signed and/or a dispute arises, certain mediation communications are privileged and may not be considered in later court proceedings. See id. §§ 78B-10-104 & -107.
18. **What is the standard of review for a new trial?**

Rule 59 of the Utah Rules of Civil Procedure sets forth the standard for a new trial. It provides that the grounds for a new trial include: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors; (3) Accident or surprise, which ordinary prudence could not have guarded against; (4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial; (5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice; (6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law; or (7) Error in law. Utah R. Civ. P. 59(a).

19. **Is pre-judgment interest collectable? If so, at what rate?**

Yes. For accidents arising on or before June 30, 2014, the prejudgment interest rate for personal injury judgments is 7.5% per annum. Utah Code § 78B-5-824 (prior to 2014). Prejudgment interest is awarded on the amount of special damages actually incurred from the date of the occurrence of the act giving rise to the cause of action to the date of entry of judgment. Thus, interest on all special damages is calculated from the date of loss, regardless of when the damage or expense was incurred. *Id.* Prejudgment interest is not available for future medical expenses, loss of future wages, or loss of future earning capacity. *Id.*

For accidents arising on or after July 1, 2014, “the court shall calculate prejudgment interest using a per annum rate, which is two percentage points above the prime rate, as published by the Board of Governors of the Federal Reserve System on the first business day in January of the calendar year in which the judgment is entered. The prejudgment interest rate applied to all cases may not be lower than 5% or higher than 10%.” Utah Code § 78B-5-824(5)(b) (2014).

Prejudgment interest is calculated as simple interest, using the rate applicable on the date of the accident for the remainder of the year in which the accident occurred. For successive years, the rate adjusts on January 1 of each year consistent with the rate provided for in the statute. *Id.* §§ 78B-5-824(5)(a)-(b). For cases filed under Tier 1 discovery (Rule 26(c)(5)), prejudgment interest is only recoverable if the plaintiff or other claimant tenders a written settlement demand at least 60 days before trial, and the amount of the demand does not exceed 1-1/3 of the amount of the judgment eventually awarded at trial. *Id.* § 78B-5-824(2).

For contract matters, the default prejudgment interest is 10% per annum. Utah Code § 15-1-1(2).

In other situations, generally prejudgment interest is appropriate if the loss is fixed as of a particular time and the amount can be calculated with mathematical accuracy. *Sundial Inc. v.*
20. **Is post judgment interest collectable? If so, at what rate?**

Post-judgment interest accrues at the federal post-judgment interest rate as of January 1 of each year, plus 2%. The federal post-judgment rate is the rate established for the federal court system under 28 U.S.C. § 1961, as amended. Utah Code § 15-14. For 2016, the rate for Utah is 2.65% and applies to all judgments rendered during the year. Where a judgment entered after 2014 and is under $10,000, the rate is plus 10% rather than plus 2%. The post judgment interest rate for every year from 1993 through the present is listed at: [https://www.utcourts.gov/resources/intrates/interestrates.htm](https://www.utcourts.gov/resources/intrates/interestrates.htm).

21. **Is there a workers compensation exclusive remedy defense?**

Yes. Under Utah Code § 34A-2-105, where an employer is covered by workers’ compensation insurance, the right to recover workers’ compensation benefits “is the exclusive remedy against the employer” and any officer, employee or agent thereof.

22. **Is the doctrine of joint and several liability applicable?**

No. Joint and several liability has been abolished. Other than statutorily immune parties, each defendant’s liability is limited to its proportionate share of fault. Utah Code § 78B-5-820(1); see also Sanns v. Butterfield Ford, 2004 UT App 203, ¶¶ 13-14, 94 P.3d 301.

23. **Is there a self-critical analysis privilege?**

Utah has not adopted the self-critical analysis privilege. Utah has codified a version of the privilege in the limited context of environmental self-evaluations. See Utah R. Evid. 508; Utah Code § 19-7-107.

24. **Is accident reconstruction data admissible?**

Yes. In Utah, expert testimony regarding an accident reconstruction is admissible as long as it complies with the admissibility requirements of Utah Rule of Evidence 702. The expert may base his or her opinion on “reports, writings, databases, and techniques universally used” by other accident reconstructionists. Balderas v. Starks, 2006 UT App 218, ¶ 30, 138 P.3d 75.

25. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

Utah courts have not resolved this issue, although the strong trend in the district courts is to allow the amount billed into evidence, and to exclude evidence of the amount paid on the basis of the collateral source rule. Collateral source evidence is generally not appropriate for jury consideration. Wilson v. IHC Hospitals, Inc., 2012 UT 43, 289 P.3d 369.
26. **What is Utah’s rule on offers of judgment?**

   Rule 68 of the Utah Rules of Civil Procedure provides: “If the adjusted award is not more favorable than the offer, the offeror is not liable for costs, prejudgment interest or attorney fees incurred by the offeree after the offer, and the offeree shall pay the offeror’s costs incurred after the offer. The court may suspend the application of this rule to prevent manifest injustice.” Utah R. Civ. P. 68(b).

   The offer must be in writing; expressly refer to the rule; be made more than 10 days before trial; remain open for at least 10 days; and be served on the offeree under Rule 5. Utah R. Civ. P. 68(c).

   For accidents arising on or after July 1, 2014, for cases filed under Tier 1 discovery (Rule 26(c)(5)), prejudgment interest is only recoverable if the plaintiff or other claimant tenders a written settlement demand at least 60 days before trial and the amount of the demand does not exceed 1-1/3 of the amount of the judgment eventually awarded at trial. *Id.* § 78B-5-824(2).

27. **What is Utah’s rule on spoliation of evidence?**


   Under Rule 37(i) of the Utah Rules of Civil Procedure, the district court has “inherent power” to impose sanctions “if a party destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty.” Utah R. Civ. P. 37(e). However, “[a]bsent exceptional circumstances, a court may not impose sanctions…on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.” Rule 37(e).

28. **Are there damages caps in place?**

   There is a damages cap for health care providers. Utah Code § 78B-3-410 establishes caps on non-economic losses in malpractice actions against health care providers.

   There is also a damages cap for governmental entities and employees to whom a governmental entity owes a duty to indemnify. Utah Code § 63G-7-604; see also Utah Admin. Code R37-4-2.

29. **Is CSA 2010 data admissible?**

   Utah courts have not resolved this issue. It can be argued that any such evidence is more prejudicial than probative under Utah Rule of Evidence 403. Alternatively, it can be argued under Utah Rules of Evidence 404 and 406 that evidence of a party’s character or habits is not admissible to prove that on a particular occasion the person acted in conformity with the habit, character or trait.
30. Briefly, does the jurisdiction have any unique rules on electronic discovery?

No unique rules.

31. Is the sudden emergency doctrine recognized in Utah?

No Utah court has addressed the continued viability of the sudden emergency doctrine in light of the adoption of a comparative fault scheme. It is likely that the doctrine will be used, similar to the doctrine of last clear chance, “as just one of many factors juries can look to in apportioning fault under the comparative fault scheme.” See Hale v. Beckstead, 2005 UT 24, ¶ 22, 116 P.3d 263.

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

Applicability of the “Golden Rule” prohibiting argument asking jurors to place themselves into shoes of a party:

The golden rule as adopted in Utah likely permits Reptile-like arguments only so long as the arguments address the issue of ultimate liability. The Utah Supreme Court held that golden rule arguments are improper only if they involve the issue of damages. Green v. Louder, 2001 UT 62, ¶ 36, 29 P.3d 638.

Two subsequent cases decided by the Utah Court of Appeals have found golden rule arguments to be impermissible in the criminal context, and they may provide civil defendants with potential anti-Reptile arguments. The Utah Court of Appeals stated that “a prosecutor’s comments are improper if they invoke the passion and prejudice of the jury by asking jurors to put themselves in the victim’s place.” State v. Thompson, 2014 UT App 14, ¶¶ 67-70 (internal quotation marks and citations omitted). The court also stated that a prosecutor’s comments are improper if they suggest that the jury should find guilt “out of vengeance or sympathy for the victim,” if they contend “that the jury has a duty to protect the alleged victim,” or if they refer to the jury’s societal obligation. Id.; see also State v. Todd, 2007 UT App 349, ¶ 19, 173 P.3d 170 (“[A] prosecutor is prohibited from asking jurors to put themselves in the victim’s place.”).

A Utah federal district court case has ruled that “Golden rule argument or other types of argument such as ‘reptile brain’ will be subject to the general prohibition against impassioning or inflaming the jury. Appropriate objections may be made at the time of trial and will be ruled on accordingly.” Harper v. Tveter, No. 2:13-CV-889 TS, 2015 U.S. Dist. LEXIS 114650, at *3 (D. Utah Aug. 27, 2015).

Application of Rules 401, 403 and 404 to prohibit Reptile Theory arguments regarding general safety rules/regulations, potential harm to the public and endangering the public/community:

It may be argued that Reptile Theory arguments—arguments regarding general safety rules/regulations, potential harm to the public, or endangering the public/community—are impermissible under Rules 401, 403, and 404 of the Utah Rules of Evidence. Evidence is
relevant if: “(a) it has any tendency to make a fact more or less probable than it would be without the evidence and (b) the fact is of consequence in determining the action.” Utah R. Evid. 401. It can be argued that Reptile Theory arguments are irrelevant because these arguments do not make a fact of consequence any more or less probable. Thus, an argument whose only purpose is to play on the fears of the jurors is irrelevant and should be prohibited.

Under Rule 403, “the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Utah R. Evid. 403. “Evidence poses a danger of unfair prejudice, as ground for exclusion, if it has an undue tendency to suggest decision on an improper basis, commonly but not necessarily an emotional one, such as bias, sympathy, hatred, contempt, retribution or horror.” State v. Rodriguez, 2012 UT App 81, ¶ 4, 274 P.3d 1012 (internal quotation marks and citation omitted). It can be argued that Reptile Theory plays on the primal fears of the jury, which is an improper basis for a decision and, therefore, is unfairly prejudicial. These arguments also confuse the issues and could mislead the jury by suggesting an unreasonable standard of care.

Rule 404 may provide another avenue to argue against the use of Reptile Theory arguments. Utah Rule of Evidence 404(b) generally prohibits the introduction of evidence of other bad acts except in limited circumstances.

33. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

Small claims: “A small claims action is a civil action for the recovery of money where the amount claimed does not exceed $10,000 including attorney fees but exclusive of court costs and interest.” Utah Code § 78A-8-102(1).

District court: “The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.” Utah Code § 78A-5-102(1). Discovery limits are set based on the amount of damages sought. Rule 26(c)(4)-(5).

34. Are state judges elected or appointed?

Utah judges are appointed by the governor and confirmed by the Utah Senate. Judges must stand for retention election at the end of each term of office. The Utah Judicial Performance Evaluation Commission (JPEC) evaluates the performance of judges standing for retention election and recommends to voters whether a judge should be retained.