



Feb 05, 2025

**Categories:**  
[Publications](#)

**Authors:**

[Dylan J. George](#)  
[Elise N. McQuain](#)  
[Madison L. Weaver](#)

# Colorado Supreme Court Clarifies Non-Economic Damages Cannot Be Denied Solely for Being “Inherently Subjective”

---

***Fear v. GEICO Cas. Co.*, 2024 WL 5195485, 560 P.3d 974 (Colo. 2024)**

In a pivotal decision, the Colorado Supreme Court addressed key issues regarding the obligations of underinsured motorist (UIM) insurers in the handling of non-economic damages. The court ruled that, as a matter of law, an auto insurer cannot refuse to pay non-economic damages to an insured on the basis that such damages are “inherently subjective.” This ruling, in the case *Fear v. GEICO Cas. Co.*, clarifies the obligations that UIM insurers have regarding non-economic damages, which include pain and suffering, emotional distress, and loss of enjoyment of life.

The court extended the principles from *Fisher*, a 2018 Colorado Supreme Court decision, which required insurers to pay undisputed covered benefits, like medical expenses, to non-economic damages. It reasoned that non-economic damages can also be undisputed and thus should be paid without necessitating the resolution of the entire claim. The court rejected the lower division’s blanket assertion that non-economic damages are always subject to reasonable dispute.

## Background and Lower Court Proceedings

The case began when a driver, Marcus Fear, injured in a rear-end collision for which he was not at fault, filed a UIM benefits claim with his personal auto insurer, GEICO. After settling with the at-fault driver’s insurer for \$25,000, the driver sought additional damages under his UIM policy, stating that his settlement with the tortfeasor had not made him whole. GEICO conducted an internal evaluation and set an internal “negotiation range” of \$2,500 to \$9,000 for the UIM claim. However, Fear did not accept GEICO’s offers and filed

suit in district court, asserting a claim for unreasonable delay under Colorado's bad faith statute.

Following a bench trial, the trial court found that GEICO had violated Colorado's bad faith statute by delaying the payment of the undisputed amount since the time that the evaluation was created. Notwithstanding, the court of appeals reversed this decision, stating that it was reasonable for GEICO to reject a higher settlement based on the view that noneconomic damages are subjective.

## Colorado Supreme Court's Reasoning

On appeal, the Colorado Supreme Court overturned the appellate court's decision, first concluding that under Colorado Rule of Evidence 408, this internal claim evaluation was inadmissible for the purposes of showing an amount of undisputed benefits owed. Rule 408 precludes the use of settlement negotiations as evidence of an amount owed. However, the Colorado Supreme Court left open the possibility that this evaluation may be admissible for other purposes, including, for example, establishing an insurer's good or bad faith in the handling of a claim.

The court went on to state that it is conceivable for non-economic damages, or portions thereof, to be undisputed or not subject to reasonable dispute, and in such a case, an insurer would be required to pay those damages without obtaining a release of an insured's entire claim. Therefore, an insurer cannot reasonably reject payment solely on the grounds that non-economic damages are inherently subjective. Here, however, Fear failed to meet his burden of establishing, through anything but what was determined to be inadmissible evidence, that any portion of his claimed non-economic damage was either undisputed or not subject to reasonable dispute.

## Key Takeaways for Insurers

This Colorado Supreme Court ruling reaffirms the principle that insurers must evaluate claims in good faith and cannot reject valid claims based solely on the fact that it involves a subjective assessment. This decision also clarifies that noneconomic damages,

despite their subjective nature, may indeed be an undisputed amount required to be paid even when other aspects of the claim remain in dispute.

It is important to note that Colorado has not adopted the Uniform Trade Practices Act (UTPA). Instead, Colorado has its own specific statutes, such as Colo. Rev. Stat. § 10-3-1115, which address similar issues but are tailored to the state's regulatory framework. This distinction may be helpful in drawing comparisons and understanding the potential persuasiveness of Colorado's decision in other states that have adopted similar frameworks.

Additionally, as duly noted by the Colorado Supreme Court, an insurer's internal settlement evaluation remains inadmissible as evidence of undisputed benefits owed; however, it can be disclosed when considering if the insurer upheld its duty of good faith. Thus, claims personnel should be advised that their valuation of non-economic damages has the potential to be viewed as undisputed amounts due and will be subject to court review.

If you have concerns or need further clarification on your company's handling of claims, contact the authors or any attorney with the firm's [Insurance Coverage and Bad Faith](#) team.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.