COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203	DATE FILED November 12, 2025 10:04 PM FILING ID: 6593980878DE7 CASE NUMBER: 2025CA1304
DISTRICT COURT, CITY AND COUNTY OF DENVER Honorable Sarah B. Wallace Case No. 2023CV32798	
Plaintiff-Appellee: FERMIN SALGUERO-QUIJADA, by and through DAVID STEINHOFF, ESQ., as Conservator for Plaintiff v. Defendant-Appellant NORGUARD INSURANCE CO.	Case Number: 2025CA1304
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BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANT NORGUARD INSURANCE CO.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d). Specifically, it contains 4,739 words (does not exceed 4,750 words).

The brief complies with the content and form requirements set forth in C.A.R. 29(c). I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

Dated: November 12, 2025

s/ Kendra N. Beckwith

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STATEMENT OF IDENTITY AND INTEREST

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber is committed to the preservation of a fair, consistent, and predictable tort system in the United States, including in Colorado. The Chamber seeks to ensure that Colorado remains economically vibrant and committed to the rule of law. The jury verdict here threatens businesses and consumers alike because it contributes to unpredictability in Colorado courts and sets a dangerous precedent for unbridled damages awards.

The Chamber therefore participates in this appeal to contextualize the threat this case presents to the greater liability ecosystem in Colorado and emphasize the

importance of providing meaningful definitions for, and clear delineations among, economic, noneconomic, and physical-impairment and disfigurement damages.

ARGUMENT

The eye-popping award here exemplifies the serious and growing nationwide problem of devastating, massive jury verdicts over $10 million, known as nuclear verdicts. Unrestrained physical-impairment damages drive and exacerbate this problem. Plaintiff sued NorGUARD Insurance, his employer's workers' compensation carrier, for NorGUARD's alleged bad-faith delay in providing benefits to him, demanding noneconomic and physical-impairment damages. The jury returned a verdict of over $145 million against NorGUARD, including $80 million for alleged physical impairment and disfigurement. The district court refused to meaningfully define physical-impairment damages or even what damages do not constitute physical-impairment damages. Instead, the court defined only "noneconomic losses" and instructed the jury that "physical impairment or disfigurement" damages should not include damages already awarded as these losses. It did not define economic losses or instruct the jury that economic losses also should not be included as physical-impairment damages—despite pattern instructions imposing precisely this limitation.

Absent a more complete definition, the jury was left to arbitrarily assign a meaning to "physical impairment," untethered from any limiting principles. Nothing prevented the jury from improperly incorporating economic damages in its award for physical impairment.

This verdict therefore illustrates the harm that results when courts fail to provide guidance for awarding physical-impairment and disfigurement damages. Colorado's history of physical-impairment damages demonstrates that courts should provide juries with guidelines for their verdicts to guard against nuclear verdicts that destroy businesses, increase costs, and allow plaintiffs to circumvent the system of remedies the General Assembly enacted. Accordingly, this Court should direct trial courts to clearly instruct juries on the boundaries of physical-impairment damages and engage in its own rigorous appellate review of nuclear verdicts like this one.

I. Unrestrained physical-impairment damages fuel harmful "nuclear verdicts."

Unrestrained physical-impairment damages awards exacerbate the growing problem in the United States tort system of unpredictable, devastating verdicts over $10 million. These "nuclear" verdicts impose massive, harmful consequences on businesses and state and local economies, and they undermine predictability in

court systems. The verdict here demonstrates the urgent need for procedural and substantive guardrails to ensure that damages awards do not run afoul of the judicial system's foundational principles of due process and fundamental fairness.

A. Noneconomic and physical-impairment damages awards have recently exploded in size.

Historically, the availability of noneconomic or physical-impairment damages did not raise concerns because "personal injury lawsuits were not very numerous and verdicts were not large." Phillip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective View of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 560 (2006). In the mid-twentieth century, however, plaintiffs' attorneys began enlarging their clients' awards for pain-and-suffering damages by "anchoring"—suggesting that juries award extraordinary monetary value for a person's pain and suffering or proposing a formula for damages that would lead to an excessive award. *See* Joseph H. King, Jr., *Counting Angels and Weighing Anchors: Per Diem Arguments for Noneconomic Personal Injury Tort Damages*, 71 Tenn. L. Rev. 1, 13, 37–40 (2003).

This strategy has led to dramatic increases in damages awards. John Campbell et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 28 (2017). By the 1970s, it was "a well-known

fact of courtroom life that in personal injur[y] litigation the intangible factor of 'pain, suffering, and inconvenience' constitute[d] the largest single item of recovery, exceeding by far the out-of-pocket 'specials' of medical expenses and loss of wages." *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971).

Today, plaintiffs frequently request, and juries increasingly award, "nuclear verdicts" over $10 million. *See* U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 8 (Cary Silverman and Christopher E. Appel, eds. May 2024) ("Silverman 2024").[1] These verdicts represent a growing and alarming trend across the United States. *Id.* at 10. The driving category of damages in these verdicts is usually noneconomic damages, largely because—just like physical-impairment damages—noneconomic damages are "inherently subjective" to each plaintiff. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* 25 (Cary

[1] Available at: https://instituteforlegalreform.com/wp-content/uploads/2024/05/ILR-May-2024-Nuclear-Verdicts-Study.pdf (last accessed Nov. 12, 2025).

Silverman and Christopher E. Appel, eds. Sep. 2022) ("Silverman 2022")[2]; *see also* Silverman 2024, *supra*, at 12–13. This trend is exacerbated by the fact that noneconomic damages—like physical-impairment damages—are not well defined, difficult to prove and quantify, and subject to wildly varying interpretations and calculations.

Just like traditional "noneconomic" damages that compensate for subjective harm such as pain and suffering, unrestrained physical-impairment damages fuel devastating nuclear verdicts, as this case shows. The verdict inexplicably exceeds $145 million—including $80 million in physical-impairment damages—and the judgment nears $170 million with the inclusion of prejudgment interest. This makes the verdict the largest in Colorado and among the largest nationwide. *Top Verdicts 2024*, LawWeek Colorado (April 21, 2025) ($67 million verdict)[3]; Silverman 2024, *supra*, at 3 ("Approximately half of nuclear verdicts . . . were

[2] Available at: https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf (last accessed Nov. 12, 2025).

[3] Available at: https://www.lawweekcolorado.com/article/top-verdicts-2024/ (last accessed Nov. 10, 2025).

between $10 million and $20 million, and over one-third were between $20 million and $50 million.").

B. Excessive, unpredictable verdicts undermine the rule of law, inflicting significant practical harms.

Unpredictably large nuclear verdicts threaten the rule of law, causing significant harm to businesses, the entire economy, and all Americans. The American civil-justice system relies on the expectation that defendants will be subjected to liability and damages "in a fair, consistent, and predictable manner." Silverman 2022, *supra*, at 38; *cf. Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (stating that due process imbues "the legal system" with "a degree of predictability . . . that allows potential defendants to structure their primary conduct" (cleaned up)). When damages awards can be decided arbitrarily, jurors have license "to transfer the assets of one party to another" without meaningful constraint. Ronald J. Allen et al., *An External Perspective on the Nature of Noneconomic Compensatory Damages and Their Regulation*, 56 DePaul L. Rev. 1249, 1259–60 (2007). "This is the antithesis of the rule of law," *id.* at 1260, so courts should be wary of jury instructions that permit jurors to stray from reasonable damages. *Cf. Gregory v. Chohan*, 670 S.W.3d 546, 557 (Tex. 2023) (noting in evaluating whether evidence justified an award that "[a]ny system that

countenances the arbitrary 'picking numbers out of a hat' approach to compensatory damages awards is not providing the rational process of law that we are obligated to provide, or at least to strive for."); *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 433 (1994) (stating that "proper jury instruction[] is a well-established and, of course, important check against excessive awards").

Arbitrary nuclear verdicts undermine stability and predictability in tort litigation, damaging Colorado's legal system. As Judge Paul V. Niemeyer of the Fourth Circuit observed, when juries lack a "rational, predictable criteria for measuring . . . damages," the resulting excessive awards constitute a "pocket of irrationality" in a tort system that seeks "to embrace a rule of law whose fabric is rationality and predictability." Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va .L. Rev. 1401, 1401, 1405 (2004). That "pocket" especially "threatens the system's rational method of redressing torts," *id.* at 1405 (emphasis added).

The result is serious harm to businesses and consumers, entire industries, and even entire economies. *See* Silverman 2024, *supra*, at 2, 46–47. For starters, massive verdicts can destroy smaller businesses altogether and disrupt entire industries for larger businesses. *See id.* at 46.

The uncertain threat of nuclear verdicts also drives settlements higher and makes them more difficult to reach. In addition to the potentially unpayable costs of a nuclear verdict at trial, businesses must weigh the "cost of a lengthy appeal that will follow" and "the damage to its brand and harm to shareholders from adverse publicity." *See id.* at 12, 50–51. These considerations can encourage defendants to settle suits at higher values than they otherwise would, just to save their business. But it also means plaintiffs demand higher settlements that defendants often must refuse to pay. *See id.* at 49–50. These dueling incentives destabilize the tort system.

These destructive costs spread throughout the economy. Nuclear verdicts increase consumer costs, inhibit job growth, and discourage investment in business and industry. *See id.* at 46–49; *see also* Jason Schiciano, *Scaffold Law Drives Up Cost of Construction in New York, Insurance Broker Says*, Lohud. (Jan. 9, 2019, 7:00 AM) (noting that increased liability for fall-related injuries under New York law contributed to "a crisis in the construction insurance market that is costing New Yorkers billions").[4]

[4] Available at: https://www.lohud.com/story/opinion/contributors/2019/01/10/new-york-

Large nuclear verdicts also disrupt the insurance market, an essential component of the tort system that ensures legitimately injured plaintiffs are compensated and businesses can appropriately balance and allocate risk. Unpredictably massive nuclear verdicts make it harder for liability insurers to price risk, potentially driving up insurance premiums and insurers out of jurisdictions. *See* APCIA Amicus Br. 20–23 (detailing the catastrophic effects of this verdict to Colorado's workers' compensation industry). Coloradans already suffer from unbearably high premiums. Gov. Jared Polis, *Roadmap to Reduce Auto Insurance Premiums* 5 (Oct. 2025) (finding a 40% increase in the average cost of car insurance in the United States from June 2022 to June 2024, with Colorado ranking the fifth most expensive state in the country).[5] This is a particular problem for the workers' compensation system—the entire goal of which is to provide strict liability in a predictable, streamlined, cost-contained system to ensure that every covered

scaffold-law-construction-cost/2525477002/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z112821e008400v112821b0032xxd003265&gca-ft=195&gca-ds=sophi (last accessed Nov. 12, 2025).

[5] Available at https://drive.google.com/file/d/1lbAXQPAaGk4F56wtivMO3j2pgdmhV_HJ/view (last accessed Nov. 10, 2025).

employee receives compensation for worksite injuries. *See* APCIA Amicus Br. 8–10.

The threat of massive liability and associated costs may drive businesses out of jurisdictions that tolerate nuclear verdicts. *See* Silverman 2024, *supra*, at 52; *cf.* Deborah Lockridge, *Freight Recession, Litigation Force Closure of 71-Year-Old Trucking Company*, Heavy Duty Trucking (August 1, 2025) (explaining that excessive personal-injury suits contributed to the business's closure).[6] As businesses shutter their doors or relocate to different jurisdictions—or decide not to enter a jurisdiction—state and local economies suffer. Yet tort costs continue to rise. *See* U.S. Chamber of Commerce Institute for Legal Reform, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* 7–8 (David McKnight and Paul Hinton, eds., 3d ed. Nov. 2024).[7]

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[6] Available at: https://www.truckinginfo.com/10244965/freight-recession-litigation-force-closure-of-71-year-old-trucking-company (last access Nov. 12, 2025).

[7] Available at: https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf#:~:text=This%20edition%20of%20Tort%20Costs%20in%20America%2C%20conducted,achieved%20when%20leaders%20address%20this%20challenge%20with%20dedication (last accessed Nov. 12, 2025).

This is increasingly the trend in Colorado, where tort-reform protections have eroded over time, allowing greater opportunities for nuclear damages awards. *See*, *e.g.*, *Banner Health v. Gresser*, 2025 CO 60, ¶ 33 (reinstating jury's nearly $40 million verdict in medical liability matters); *Bianco v. Rudnicki*, 2025 CO 49, ¶ 20 (allowing prefiling, prejudgment interest to exceed damages limitations).

II. Unrestrained physical-impairment damages conflict with the common law and undermine Colorado's critical tort reforms.

The district court left physical-impairment damages unbounded and undefined. This conflicts with their common-law origins, as well as Colorado's pattern instructions, and undermines Colorado's critical statutory reforms limiting tort damages and workplace-injury claims.

A. Physical-impairment damages compensate injuries distinct from noneconomic and economic damages.

The common-law history of physical-impairment damages teaches that they were never meant to be a residual catch-all bucket for damages that do not fit neatly into economic or noneconomic damages. Instead, they were meant to compensate a limited subset of plaintiffs who could prove a distinct injury related to the permanent consequence of a physical impairment, regardless of whether the impairment caused them "pain and suffering." This narrow purpose underscores

why the district court in this case should have at least precisely instructed the jury on the definitions of economic and noneconomic damages.

Neither the General Assembly nor Colorado courts have precisely defined physical-impairment damages. *See Wolven v. Velez*, 2024 COA 8, ¶ 36 (observing that even when given the opportunity, the Colorado Supreme Court declined to provide a definition of "physical impairment"). The Colorado Supreme Court explicitly acknowledged that physical-impairment and disfigurement damages derive from Colorado common law. *Preston v. Dupont*, 35 P.3d 433, 441 (Colo. 2001) (stating that "[p]hysical impairment and disfigurement are often the most serious and damaging consequences of a defendant's negligence or misconduct," without defining the terms further), *superseded by statute on other grounds as recognized in Pringle v. Valdez*, 171 P.3d 624, 631 (Colo. 2007).

Under the common law, "[p]hysical impairment and disfigurement constitute a permanent injury irrespective of any pain or inconvenience. The tortfeasor caused the victim to have a permanent injury that [he] did not have before." *Pringle*, 171 P.3d at 631 (citing *Thompson v. Nat'l R.R. Passenger Corp.*, 621 F.2d 814, 824 (6th Cir. 1980) ("Permanent impairment compensates the victim for the fact of being permanently injured whether or not it causes any pain or

inconvenience; pain and suffering compensates the victim for the physical and mental discomfort caused by the injury.")). Damages for physical impairment and disfigurement thus "constitute a separate category" from noneconomic and economic damages. *Id.*[8]

At common law, awards for physical impairment generally followed two patterns. In some cases, the damages were awarded for permanent impairment that would cause "future pain." *Barter Mach. & Supply Co. v. Muchow*, 453 P.2d 804, 805 (Colo. 1969). "The general law concerning instructions to the jury on the issue of permanent injury" required not only that a plaintiff show "present pain," but also that the plaintiff testify "with reasonable certainty" that he "would suffer, and . . . how much [he] would suffer, in the future." *Id.* (cleaned up). Where "[t]he evidence did not show to a reasonable certainty that the plaintiff would endure pain and suffering in the future," any instruction on physical impairment "would leave

[8] The Colorado Pattern Jury Instructions define "noneconomic losses or injuries" to include "physical and mental pain and suffering, inconvenience, emotional stress, impairment of the quality of life," and other like types of damages; they define "economic losses or injuries" as injuries including "loss of earning or damage to . . . ability to earn money in the future, . . . medical, hospital, and other expenses," and other similar damages. CJI-Civ. 6:1. Both definitions explicitly exclude physical-impairment and disfigurement damages. *Id.*

the jury to conjecture whether or not" an injury would affect a plaintiff's "future health and strength." *Id.* (emphasis added) (cleaned up).

In other cases, physical-impairment damages were described in tandem with damages compensating a plaintiff for the loss of enjoyment of life, instead of the pain itself. *See Denver Tramway Corp. v. Gentry*, 256 P. 1088, 1090–91 (Colo. 1927) (allowing jury to consider as a separate category of damages whether, if the plaintiff's "use of her legs [was] impaired," she was thereby "deprived of the pleasure and satisfaction in life").

More recently, the Colorado Supreme Court has suggested that "impairment of the quality of life [is] included in the meaning of 'pain and suffering,'" while physical-impairment damages remedy "a permanent injury" that "has taken away something valuable which is independent and different from other recognized elements of damages such as pain and suffering and loss of earning capacity." *Pringle*, 171 P.3d at 630–31 (cleaned up).

The constant is that courts distinguished physical-impairment injuries from the "pain and suffering" injuries for which noneconomic damages are generally awarded. For example, in *Heckman v. Warren*, the Colorado Supreme Court explained that the plaintiff alleged three kinds of injuries: "the expenditure of large

sums of money for . . . medical services" (economic damages); being "subjected to great pain and suffering, both physical and mental" (noneconomic damages); and "injuries . . . of a permanent nature" that prevented him from engaging in life for "an extended period of time" (physical impairment). 238 P.2d 854, 856 (Colo. 1951). By acknowledging these separate categories of damages, the court made it clear that physical-impairment damages were meant to compensate plaintiffs for a unique injury, apart from pain and suffering or economic damages.

Recovery of physical-impairment and disfigurement damages "at common law thus flowed from the general principle that whoever unlawfully injures another shall make her whole," and making a permanently injured plaintiff whole required "a separate sum in addition to the compensation for the other elements." *Preston*, 35 P.3d at 441 (cleaned up). In short, physical-impairment and disfigurement damages were meant to address a specific, distinct circumstance: permanent impairment or disfigurement resulting in an injury that would extend into the future. *See*, *e.g.*, *Rein v. Jarvis*, 281 P.2d 1019, 1020–21 (Colo. 1955) (affirming damages for permanent facial disfigurements). The economic effects of that injury—that is, the expenses incurred to manage the permanent impairment or

disfigurement and any indirect loss of income—have always been a separate category.

B. Without limiting principles, physical-impairment damages undermine Colorado's critical statutory tort reforms restraining nuclear verdicts.

When left undefined and untethered to any clear limiting principle, physical-impairment damages are vulnerable to abuse, undermining Colorado's critical statutory tort reforms. Plaintiffs and their counsel easily can make massive requests for such damages, and defendants have no clear standard upon which to challenge the award. This strategy transforms physical-impairment damages into a residual "catch-all," allowing parties to evade statutory damages caps intended to restrain nuclear verdicts.

The Colorado General Assembly has endeavored to avoid nuclear verdicts altogether by establishing caps on general noneconomic damages (the traditional source of nuclear verdicts). The General Assembly enacted section 13-21-102.5, C.R.S., as part of "tort reform legislation in 1986 in response to concerns about dramatic increases in the cost of insurance and the difficulties people and businesses experienced obtaining insurance." *Gen. Elec. Co. v. Niemet*, 866 P.2d 1361, 1364 (Colo. 1994). It states:

> The general assembly finds, determines, and declares that awards in civil actions for noneconomic losses or injuries often unduly burden the economic, commercial, and personal welfare of persons in this state; therefore, for the protection of the public peace, health, and welfare, the general assembly enacts this section placing monetary limitations on such damages for noneconomic losses or injuries.

§ 13-21-102.5(1), C.R.S. The statute goes on to establish caps on noneconomic damages for civil actions. *Id.* § 13-21-102.5(3)(a). These caps promote stability and predictability in Colorado's tort system and protect the business community and Coloradans from the deleterious effects of nuclear verdicts by statute, precisely to avoid verdicts like the one here.

To be sure, section 13-21-102.5 exempts physical-impairment and disfigurement damages from the caps on noneconomic damages. *See id.* § 13-21-102.5(5). But the legislature did not intend for that exemption to be a loophole swallowing the caps in a remedy system designed to protect Coloradans from "unduly burden[some]" damages awards. Although physical-impairment damages may not be capped, that exemption confirms that the General Assembly understood that—as at common law, *see Preston*, 33 P.3d at 440–41—physical-impairment damages represents a distinct, limited category of damages separate from noneconomic damages, designed to remedy only a specific subset of permanent injuries. But the nuclear verdict here—and the insufficiently precise

jury instructions underlying it—set a dangerous precedent that will encourage an end-run around Colorado's caps on noneconomic damages by mischaracterizing these damages instead as uncapped physical-impairment damages.

The General Assembly is presumed to be aware of the narrow purpose of physical-impairment damages—to compensate specific, permanent injuries. *See Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 403 (Colo. 2010) (presuming the legislature knows the state of the law when it enacts legislation). It is inconceivable that the General Assembly intended physical-impairment damages to fuel massive, covert awards of noneconomic damages by a different name, circumventing the statutory caps.

Moreover, unrestrained physical-impairment damages undermine Colorado's exclusive workers' compensation system for workplace injuries, which also restrains nuclear verdicts. *See Horodyskyj v. Karanian*, 32 P.3d 470, 474 (Colo. 2001) ("The Workers' Compensation Act provides exclusive remedies for employees suffering work-related injuries and occupational diseases."). To see the benefits of this system, the Court need only compare Colorado's scheme to New York's experience under its nineteenth century "Scaffold Law," which imposes absolute liability outside the workers' compensation system on employers for

"elevation-related" injuries at construction sites. *See Runner v. N.Y. Stock Exch., Inc.*, 922 N.E.2d 865, 867 (N.Y. 2009) (discussing the applicability of New York Labor Law § 240(1)); Silverman 2024, *supra*, at 22. That liability produced an unusually high percentage of nuclear verdicts based on premises-liability claims. *See* Silverman 2024, *supra*, at 21–22, 48–49. By contrast, in Colorado, workers' compensation provides a predictable remedy for this and similar categories of personal injuries. Where workers' compensation systems prevent juries from arbitrarily awarding huge sums in noneconomic or physical-impairment damages—as Colorado's system is supposed to ensure—the system of remedies remains predictable and defendants are reasonably protected from business-ending verdicts. But if the nuclear verdict here stands, Colorado could lose these benefits of its workers' compensation system. *See* APCIA Amicus. Br. 20–23.

The experience of other states confirms that undermining these key features of Colorado's remedy system erodes tort reform in a way that threatens the rule of law. "When damage awards increasingly display signs of lawlessness, the incentives shift to do business elsewhere." Silverman 2024, *supra*, at 52. And whether nuclear verdicts comprise primarily noneconomic damages or physical-impairment damages, the result is the same: a broken tort system.

Colorado has embraced tort reform. Historically, Colorado's reform legislation capping noneconomic damages awards and its robust workers' compensation system helped ensure that Colorado remains an economically vibrant and welcoming place for business, innovation, and employment. Denver Metro Chamber of Commerce, *Toward a More Competitive Colorado 2025*, at 8–11, 16–17 (2025).[9] Workers' compensation and healthcare costs have remained relatively affordable compared to jurisdictions without these limits. Notably, in these areas, physical-impairment damages are limited and available under the Workers' Compensation Act, *see, e.g.*, § 8-42-107, C.R.S. ("permanent medical impairment"); *id.* § 8-42-108 (disfigurement); *id.* § 8-42-111 (permanent total disability) or capped under Colorado's Health Care Availability Act. *See id.* § 13-64-302. These limitations provide predictability, allowing for efficient allocation of risk and premium pricing. *Cf.* U.S. Dep't of Health & Hum. Servs., *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System* 15 (2002) ("[T]here is a substantial difference in the

[9] Available at: 2025 Toward a More Competitive Colorado by... - Flipsnack (last accessed on Nov. 12, 2025).

level of medical malpractice premiums in states with meaningful caps . . . and states without meaningful caps.").

III. This Court should require precise jury instructions and rigorous appellate review for physical-impairment damages.

To avoid the harms discussed above, it is paramount that, at the least, jury instructions precisely explain that physical-impairment damages do not include other distinct damages categories (economic and noneconomic) and that appellate courts engage in rigorous review to prevent those categories from bleeding into physical-impairment damages.

A. Juries should be clearly instructed as to what types of damages cannot be awarded as physical-impairment and disfigurement damages.

To avoid misuse and abuse of physical-impairment damages, courts should clearly instruct the jury that it cannot include other categories of damages in a physical-impairment award.[10] Otherwise, the award of damages is wrongly and

[10] Of course, a division of this Court declined to reverse a lower court's verdict where the lower court refused to provide a jury instruction defining physical-impairment damages. *See Wolven*, ¶ 36. The issue here is different—NorGUARD simply asks that the jury be informed of damages that do not constitute physical-impairment damages. As discussed, failure to minimally constrain physical-impairment damages by defining both other distinct damages

entirely "left to the mere imagination or guesswork of the jury." *Cookman v. Caldwell*, 170 P. 952, 953 (Colo. 1918) (cleaned up).

Courts therefore must give juries instructions that distinguish the categories of damages, as the pattern instructions state. *See* CJI-Civ. 6:1. Absent these instructions, plaintiffs remain free to—and do—mischaracterize economic and noneconomic injuries as physical impairment. The result: unpredictable nuclear verdicts—like the one here—without any reasonable constraints or definitions.

The district court here denied NorGUARD's requested jury instruction providing this necessary clarification. NorGUARD argued that physical-impairment damages are not available at all, such that it objected to the jury receiving any physical-impairment instruction. While maintaining that objection, NorGUARD argued that, if the court were to give a physical-impairment instruction, it should follow the Colorado Pattern Jury Instructions by defining all three categories of damages and instructing the jury that "[i]n considering [physical-impairment and disfigurement damages], you shall not include damages again for losses or injuries already determined under [economic or noneconomic

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categories in the jury instructions risks opening a new avenue for nuclear verdicts and destabilizing Colorado's system of remedies.

damages].” The court instead defined physical-impairment damages as excluding only noneconomic damages and provided a substantive definition only for noneconomic damages—not economic damages. This left the jury with the misimpression that other damages not expressly excluded—like medical expenses or lost income—could be awarded as physical-impairment damages. This decision likely led to the erroneous award of millions in duplicative damages for economic injuries.

Directing trial courts to maintain a clear distinction among economic, noneconomic, and physical-impairment and disfigurement damages will preserve the General Assembly’s express determination that noneconomic damages should be limited, *see* § 13-21-102.5(3)(a), C.R.S., and prevent serious harm to Colorado businesses and consumers. Absent this safeguard, Colorado remains ripe for unpredictable nuclear verdicts that could shake the foundation of Colorado tort law and have lasting, detrimental consequences for Colorado’s people, businesses, and economy.

B. Appellate courts should rigorously review large physical-impairment awards.

In addition to clear jury instructions, this Court should make plain that multi-million dollar physical-impairment awards like this one should be subject to

rigorous appellate review to ensure the award is in fact rooted in the evidence, rather than mere passion or prejudice against a specific industry or defendant.

There is precedent for this heightened inquiry. When punitive damages awards began to skyrocket, courts began to scrutinize and place procedural review requirements on awards to ensure they comported with due process. *See*, *e.g.*, *Honda Motor Co.*, 512 U.S. at 420, 434–35 (concluding the Due Process Clause "requires judicial review of the amount of punitive damages awards"); *Blood v. Qwest Servs. Corp.*, 224 P.3d 301, 310 (Colo. App. 2009) ("[I]ndiscriminately imposed exemplary damages constitute an arbitrary deprivation of property . . . ."). Colorado law further provides that a judgment is reversable if "the damages are so outrageous as to strike everyone with the enormity and injustice of them." *Higgs v. Dist. Ct. in & for Douglas Cnty.*, 713 P.2d 840, 860–61 (Colo. 1985) (allowing reversal of a jury award where the award is so excessive as to "shock the judicial conscience and . . . raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial"); *accord Colo. Springs & I. Ry. Co. v. Kelley*, 176 P. 307, 309–10 (Colo. 1918) (making clear jury verdicts may be disturbed for "injustice manifestly appearing").

This same level of scrutiny is warranted here. "A bedrock goal of tort law is to 'make the plaintiff whole.'" *LeHouillier v. Gallegos*, 2019 CO 8, ¶ 44 (citing *Stamp v. Vail Corp.*, 172 P.3d 437, 448 (Colo. 2007)); *see also Zwick v. Simpson*, 572 P.2d 133, 134 (Colo. 1977) (holding the goal of "compensatory damages is reimbursement of the plaintiff for the actual loss suffered"). "Tort law thus disfavors 'windfall' damage awards that make the plaintiff better off than she would have been had her legal rights not been violated." *LeHouillier*, ¶ 44 (placing limits on recoveries in legal malpractice cases to avoid hypothetical damages). The $80 million physical-impairment award here vastly exceeds any conceivable compensatory remedy for a permanent injury. *See Pringle*, 171 P.3d at 630–31. It is the very type of "windfall damage award" the Colorado Supreme Court rejected and prevented in *LeHouillier*.

This Court should engage in this same rigorous review here, ensuring that physical-impairment damages compensate plaintiffs only for the permanency of their injuries and nothing more. Such review will preserve the important distinctions between economic, noneconomic, and physical-impairment and disfigurement damages, further the General Assembly's tort-reform efforts, and,

perhaps most importantly, protect Colorado businesses and citizens from the devastating consequences of unpredictable nuclear verdicts.

CONCLUSION

The award here exceeding $145 million is excessive under any standard. Ensuring that physical-impairment damages remain confined to their historical purpose and do not bleed into other well-established, distinct damages categories will help ensure that Colorado remains economically vibrant and committed to the fair, consistent, and predictable resolution of tort lawsuits.

Dated: November 12, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025 a true and correct copy of the foregoing document was filed using the Colorado Courts E-filing System and served on all counsel of record.

/s/*Kendra N. Beckwith*
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