# The Colorado Governmental Immunity Act (CGIA)

Tips, Tricks, and Pitfalls for Cases Involving the CGIA

# The Colorado Governmental Immunity Act ("CGIA")

## C.R.S. 24-10-101 *et seq*.

Colorado's Governmental Immunity Act codifies the doctrine of governmental immunity. C.R.S. § 24-10-101, *et. seq*. Public entities are immune from suit for all actions that lie in tort or could lie in tort unless an enumerated exception applies. C.R.S. §§ 24–10–105, –106; *Gray v. University of Colorado Hosp. Auth.*, 284 P.3d 191, 195 (Colo. App. 2012).

# The Colorado Governmental Immunity Act ("CGIA")

## Legislative Purpose, C.R.S. § 24-10-102

- The legislature expressly recognizes that the CGIA may operate as an "inequitable doctrine" but that without it, taxpayers would ultimately bear the "fiscal burdens of unlimited liability."
- Some limitations of liability are therefore necessary.
- Because governmental immunity under the CGIA is in derogation of Colorado's common law, courts narrowly construe the CGIA's immunity provisions and broadly construe the CGIA's waiver provisions. *Daniel v. City of Colorado Springs*, 2014 CO 34, ¶ 13, 327 P.3d 891, 895.

# Issue of Subject Matter Jurisdiction

- Governmental immunity is a question of subject matter jurisdiction.
  - The defense cannot be waived.
- Claims under the CGIA implicate the court's subject matter jurisdiction and may find redress under a Rule 12(b)(1) motion to dismiss. *Medina v. State*, 35 P.3d 443, 451-52 (Colo. 2001).
- Unlike Rule 12(b)(5) motions, which require the court to take Plaintiff's allegations as true and draw all inferences in their favor, 12(b)(1) motions permit the court to "weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Medina v. State*, 35 P.3d 443, 53 (Colo. 2001) (quoting *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993)).

# Issue of Subject Matter Jurisdiction

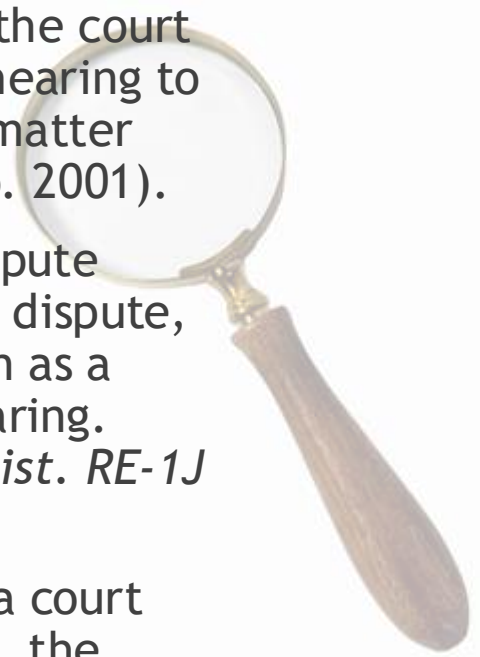
## Jurisdictional Discovery

- “If a public entity raises the issue of sovereign immunity prior to or after the commencement of discovery, the court shall suspend discovery, except any discovery necessary to decide the issue of sovereign immunity and shall decide such issue on motion. The court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.” C.R.S. 24-10-108.

# Issue of Subject Matter Jurisdiction

Jurisdictional Discovery

- Where the resolution of the court's subject matter jurisdiction is contingent upon the resolution of a factual dispute, the court may permit limited discovery and hold an evidentiary hearing to make findings of fact that bear on the court's subject matter jurisdiction. *Medina v. State*, 35 P.3d 443, 460-61 (Colo. 2001).
- However, where the relevant evidence underlying a dispute regarding a court's subject matter jurisdiction is not in dispute, the court may determine its subject matter jurisdiction as a matter of law and need not conduct an evidentiary hearing. *Medina*, 35 P.3d at 452; *see also St. Vrain Valley Sch. Dist. RE-1J v. A.R.L. by & through Loveland*, 2014 CO 33, ¶ 9 .
- The Colorado Supreme Court has also held that where a court assumes all of the plaintiff's factual allegations as true, the court need not hold an evidentiary hearing, even if the relevant jurisdictional facts are in dispute. *Padilla ex rel. Padilla v. Sch. Dist. No. 1 in City & Cnty. of Denver*, 25 P.3d 1176, 1180 (Colo. 2001).



# Issue of Subject Matter Jurisdiction

Burden of Proof

- The burden of proof is on the plaintiff to prove the government has waived its immunity, but this burden is relatively lenient, as the plaintiff is afforded the reasonable inferences from her undisputed evidence. *City & Cnty. of Denver v. Dennis*, 2018 CO 37, ¶ 11, 418 P.3d 489, 494.
- *In* ***Jefferson Cnty. v. Dozier*****, 2025 CO 36**, the Supreme Court recently clarified this standard under two different applications:

**Prima facie showing:** This evidentiary burden is appropriate when the district court relies only on documentary evidence and thus doesn't need to engage in factfinding

**Likelihood Standard:** This evidentiary burden is appropriate when disputed jurisdictional facts are "bound up with the claim on the merits."

# Could lie in tort?

## Preliminary Question: The Nature of the Injury

- "Under the CGIA, courts must ask a fundamentally expansive question, i.e., whether the nature of the injury and the relief sought lies in tort or *could* lie in tort." *City of Aspen v. Burlingame Ranch II Condo. Owners Ass'n, Inc.*, 2024 CO 46, ¶ 5.
  - In *City of Aspen*, the Supreme Court held the economic loss rule could not operate to save a claim otherwise barred by the CGIA.
  - Question of jurisdiction under the Colorado Governmental Immunity Act (CGIA) must be resolved before the economic loss rule may enter the picture; if there is no subject matter jurisdiction under the CGIA because the defendant is entitled to governmental immunity, the economic loss rule is irrelevant, and the claim must be dismissed.
  - Immunity protections of the Colorado Governmental Immunity Act (CGIA) exist not merely to eliminate prima facie tort claims brought against public entities, but also to eliminate almost any liability for compensatory damages based on claims that could be pled in tort.
- Examples of claims not covered:
  - Defamation
  - Tortious interference with contracts or prospective business advantage
  - Personal injuries occurring in circumstances that fall outside the CGIA's specific waiver provisions
    - E.g., parking lots; except in public recreation areas! *Cf. Daniel v. City of Colorado Springs*, 2014 CO 34, ¶ 13.
- But watch out for creative plaintiffs!

# The Notice Requirement

- Notice requirements are codified under section 24-10-109 of the CGIA.
- Subsection (1) requires claimants to file a "written notice" within 182 days after the date of the discovery of the injury.
- Failure to file a written notice within 182 days "is an absolute bar to suit." *See, e.g.*, *Villalpando v. Denver Health & Hosp. Auth.*, 181 P.3d 357, 361 (Colo. App. 2007); *Gallagher v. Bd. of Trustees for Univ. of N. Colo.*, 54 P.3d 386, 390–91 (Colo.2002); *Mesa Cnty. Valley Sch. Dist. No. 51 v. Kelsey*, 8 P.3d 1200, 1206 (Colo. 2000).

# The Notice Requirement

## Method of Delivery

- Notice under the statute is effective "*upon mailing by registered or certified mail*, return receipt, or upon personal service." C.R.S. § 24-10-109(3)(a) (emphasis added).
- Conversely, if a notice is sent by regular mail, it is effective on the date of receipt. *Reg'l Transp. Dist. v. Lopez*, 916 P.2d 1187, 1189 (Colo. 1996) (The statute clearly and unambiguously sets out that, for purposes of mailing, notice shall be effective upon mailing by certified or registered mail.).

# The Notice Requirement

Method of Delivery

## *What about email or electronic written notice?*

- *Cikraji v. Snowberger*, 410 P.3d 573 (Colo. App. 2015)
  - Parent failed to establish compliance with notice of claim requirement of the Colorado Governmental Immunity Act (CGIA), and thus the court lacked jurisdiction to hear parent's claims; the emails parents sent to various defendants did not contain the information required under the CGIA, and they were not properly served.
- *But see Scott v. Cary*, 829 F. App'x 334, 337 (10th Cir. 2020) (citing *Finnie v. Jefferson* Cnty. Sch. Dist. R-1, 79 P.3d 1253, 1258 (Colo. 2003)
  - "[A] plaintiff can comply with § 24-10-109(3) by sending notice to a party not expressly contemplated by the statute."
  - The principles of agency and equity guide this consideration on a case-by-case basis.

# The Notice Requirement

Method of Delivery

## *Equitable Considerations*

The purposes of the CGIA's notice provision include: (1) avoiding prejudice to the governmental entity, (2) encouraging settlement, and (3) providing public entities with the opportunity to investigate claims, remedy conditions, and prepare a defense to claims.

"We reiterate that the GIA's notice provision should not act as a 'trap for the unwary.' …. We recognize that case-by-case determinations of compliance, which consider principles of agency and equity, the purposes of the statute, and concerns of protecting plaintiffs from misrepresentations by governmental entities, are required." *Finnie v. Jefferson Cnty. Sch. Dist. R-1*, 79 P.3d 1253, 1258 (Colo. 2003).

# Contents of the Notice

- Subsection (2) of the notice provision in the CGIA requires the notice to a public entity to contain several pieces of background information, such as the circumstances of the injury and the identity of persons involved. C.R.S. § 24-10-109(2).
- The content requirements are generally subject to substantial compliance. *Mesa Cnty. Valley Sch. Dist. No. 51 v. Kelsey*, 8 P.3d 1200, 1204 (Colo. 2000).

# The Notice Requirement

Contents of the Notice

## *A Tale of Two Decisions*

- *Mesa Cnty. Valley Sch. Dist. No. 51 v. Kelsey*, 8 P.3d 1200 (Colo. 2000)
  - Held that the contents of a notice must contain an express written demand for payment of monetary damages.
  - "We view the claimant's request or demand for payment of monetary damages to be the very essence of the written notice required by section 24-10-109(1). In other words, the request for payment of monetary damages is what shows that a document is a notice of a claim under section 24-10-109(1). Accordingly, we must apply the standard of strict compliance required by section 24-10-109(1), and not the standards of compliance applicable to other subsections of the notice-of-claim statute." 8 P.3d at 1205 (citation modified).
- *Bradley v. School District No. 1*, 2021 COA 140, 504 P.3d 979
  - Weakens decision in *Mesa Cnty*, holding that the explicit requirement is met if the notice, read as a whole, can be "reasonably and objectively…inferred" as a demand for payment of monetary damages. 2021 COA 140, ¶ 3.

# Common Waivers of Immunity Litigated Against Public Entities

The CGIA waives immunity for injuries caused by:

- The operation of a motor vehicle owned or leased by a public entity. C.R.S. § 24-10-106(1)(a).
- The dangerous condition of public buildings. C.R.S. § 24-10-106(1)(c).
- The dangerous condition of a public highway, road, street, or sidewalk which physically interferes with the movement of traffic, including dangerous accumulations of snow, ice, sand, or gravel. C.R.S. § 24-10-106(1)(d)(I).
- A dangerous condition caused by an accumulation of snow ***and*** ice which physically interferes with public access on walks leading to a public building. C.R.S. § 24-10-106(d)(1)(III) (emphasis added).
- A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. C.R.S. § 24-10-106(1)(e).

# Dangerous Conditions under the CGIA

Statutory Definition

- "Dangerous condition" means either a physical condition of a facility or the use thereof that constitutes an ***unreasonable risk*** to the health or safety of the public, which is known to exist or which in the exercise of reasonable care ***should have been known to exist*** and which condition is proximately ***caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility***. For the purposes of this subsection (1.3), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. ***A dangerous condition shall not exist solely because the design of any facility is inadequate***. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition. C.R.S. § 24-10-103(1.3).

# Dangerous Conditions under the CGIA

Statutory Definition

- "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure. "Maintenance" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility. C.R.S. § 24-10-103(2.5) (emphasis added).

# Dangerous Conditions under the CGIA

## The Dangerous Condition Test

- The Colorado Supreme Court has segregated the CGIA's definition of a "dangerous condition" into a four-factor test. *See St. Vrain Valley Sch. Dist. RE-1J v. Loveland by & through Loveland*, 2017 CO 54, ¶ 16.
- The waiver applies if the injuries occurred as a result of:
  - (1) the physical condition of the public facility or the use thereof;
  - (2) which constitutes an unreasonable risk to the health or safety of the public;
  - (3) which is known to exist or should have been known to exist in the exercise of reasonable care; **and**
  - (4) which condition is "proximately caused by the negligent act or omission of the public entity in constructing or maintaining the facility."
- Additionally, "[a] dangerous condition shall not exist solely because the design of any facility is inadequate." § 24-10-103(1.3).

# Dangerous Conditions under the CGIA

## The Dangerous Condition Test

- **Critical Distinction:**
  - "[T]he second through fourth factors of the dangerous-condition test modify the first, such that whether something is a 'physical condition' cannot be determined without reference to the other factors; if any one of those other factors is not satisfied, there can be no 'physical condition' for purposes of the dangerous-condition test."
    - *St. Vrain Valley Sch. Dist. RE-1J v. Loveland by & through Loveland*, 2017 CO 54, ¶ 18.

# Dangerous Conditions under the CGIA

## Essential Elements

- The physical condition must be unreasonably dangerous;
- The physical condition was known to exist or should have been known to the public entity; and
- The physical condition was caused by a failure to maintain or construct—not the design of a public facility.

# Dangerous Conditions under the CGIA

Risk of injury must be unreasonable.

- The CGIA requires more than a foreseeable risk of harm; it requires an unreasonable risk of harm. To prove this element, "the plaintiff must prove that the [dangerous condition] created a chance of injury, damage, or loss which exceeded the bounds of reason." *City and Cnty of Denver v. Dennis*, 418 P.3d 489, 496 (Colo. 2018).
  - *See also Maphis v. City of Boulder*, 2022 CO 10 (holding same).

# Dangerous Conditions under the CGIA

**“Known to exist or should have been known to exist”**

“[A] dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered[.]” C.R.S. § 24-10-10(1.3).

# Dangerous Conditions under the CGIA

**"Known to exist or should have been known to exist"**

- *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996)
  - No constructive knowledge where there was no evidence concerning how long the ice had been present, when it accumulated, or under what conditions it appeared.
- *Johnsen v. Town of Grand Lake*, No. 05-CV-01169-WDMMJW, 2006 WL 686487 (D. Colo. Mar. 17, 2006)
  - No waiver where dock had been inspected 7 days prior to injury and loose board located in such a way "it would be virtually impossible not to step on."
- *Maphis v. City of Boulder*, 2022 CO 10, ¶ 1
  - No waiver even though city was aware of 2.5" deviation in sidewalk and had scheduled area for repair weeks before plaintiff's accident.
- *Jefferson Cnty. v. Dozier*, 2025 CO 36, ¶ 21
  - No waiver of immunity where only a few minutes had passed between the County learning of the spill and plaintiff's slip-and-fall.
- *Martinez v. Weld Cnty. Sch. Dist. RE-1*, 60 P.3d 736 (Colo. App. 2002)
  - Greater onus for "known problem areas" or "chronic and continuing" conditions.

# Dangerous Conditions under the CGIA

## The Design/Maintenance Distinction

- The design of a building or public facility, even if inherently dangerous, does not satisfy the waiver of immunity for dangerous conditions of public facilities.
  - *See, e.g., St. Vrain Valley Sch. Dist. RE-1J v. Loveland by & through Loveland*, 395 P.3d 751, 757 (Colo. 2017) (The CGIA does not waive immunity for "blanket claims of danger based on the design of a public facility. On the contrary, it explicitly precludes such claims.").
- Nor is a public entity under any duty to upgrade or improve the design of a building. C.R.S. § 24-10-103(2.5).

# Dangerous Conditions under the CGIA

The Design/Maintenance Distinction

## ***What is the difference between dangerous conditions attributable to design versus those attributable to maintenance?***

- "'Maintenance'" under the CGIA is narrowly defined as 'preserving a facility from decline or failure.'" C.R.S. 24-10-103(2.5).
- "[T]he critical distinction between maintenance and design is temporal." *Est. of Grant v. State*, 181 P.3d 1202, 1205 (Colo. App. 2008).
- "[A]n injury results from a failure to maintain when it is caused by a condition of the [building] that develops ***subsequent*** to the [building's] initial design. An injury results from inadequate design, in contrast, when it is caused by a condition of the [building] that ***inheres*** in the design and persists to the time of the injury." *Medina v. State*, 35 P.3d 443, 449-50 (Colo. 2001) (emphasis added).

# Dangerous Conditions under the CGIA

The Design/Maintenance Distinction

**Examples:**

- A malfunctioning elevator or a crumbling staircase may constitute a "dangerous condition" under the CGIA because the condition deteriorated over time. *Jenks v. Sullivan*, 826 P.2d 825, 827 (Colo. 1992).
- However, a traffic lane that ends abruptly cannot constitute a dangerous condition because the abrupt transition is attributable solely to a road's design, not its degradation. *Swieckowski by Swieckowski v. City of Ft. Collins*, 934 P.2d 1380, 1386 (Colo. 1997).

# Dangerous Conditions under the CGIA

## Maintenance – How to deal with Improvements

- "'Maintenance'" under the CGIA is narrowly limited to 'preserving a facility from decline or failure.'" C.R.S. 24-10-103(2.5). "Maintenance" does not include a duty to upgrade, modernize, modify, or improve the design or construction of a facility. *Id.*
- The law in Colorado is currently split on how to interpret improvements to public facilities.

***Previously…***

- Old designs fold into new (even temporary) designs when improving a roadway or facility.
- *Est. of Grant v. State*, 181 P.3d 1202, 1206 (Colo. App. 2008)
  - Old design of a highway no longer a relevant consideration where accident occurred on newly designed but temporarily re-routed roadway during highway construction project.
  - **"Proper inquiry is whether the accident arose during or after the design phase of the reconstructed, temporary road."**

***Now…***

- New designs may be considered maintenance decisions if they were implemented for maintenance purposes.
- *Cnty. of Jefferson v. Stickle*, 2024 CO 7
  - Plaintiff tripped on optical illusion created by walkway resurfaced as same color as parking lot. Decision to make the walkway and the parking surface the same color was a design decision. Court still held CGIA's four-factor test was satisfied because the decision was motivated by a desire to preserve the facility from decline or failure, i.e., by preventing water, mag-chloride, and salt from infiltrating the parking lot.

# Dangerous Conditions under the CGIA

## Dangerous Activities v. Dangerous Conditions

- **Dangerous activities should not be conflated with dangerous conditions.**
- Colorado courts previously permitted a waiver of immunity for the dangerous condition of a public building when an entity's use of the building rendered an integral part of that facility dangerous.
- The Supreme Court has since clarified that "the physical condition [or defect] must be caused by some negligent act or omission of the public entity in constructing or maintain the facility."
  - *St. Vrain Valley Sch. Dist. RE-1J v. Loveland by & through Loveland*, 395 P.3d 751, 757 (Colo. 2017) (The CGIA does not waive immunity for "blanket claims of danger based on the design of a public facility. On the contrary, it explicitly precludes such claims.").
- Nor is a public entity under any duty to upgrade or improve the design of a building. C.R.S. § 24-10-103(2.5).

# Dangerous Conditions under the CGIA

## Dangerous Activities v. Dangerous Conditions

**Other Notable Decisions on the dangerous condition/activity distinction**

- *Douglas v. City & Cty. of Denver*, 203 P.3d 615, 619 (Colo. App. 2008)
  - Immunity not waived when decedent killed after a barbell fell on top of him during unsupervised exercise.
- *Curtis v. Hyland Hills Park & Recreation Dist.*, 179 P.3d 81, 84 (Colo. App. 2007)
  - Immunity not waived for negligent operation of water park attraction, where plaintiff injured on water slide that did not regulate spacing between rafts.
- *Sanchez v. Sch. Dist. 9-R*, 902 P.2d 450, 451 (Colo. App. 1995)
  - Immunity not waived for injuries sustained by student while performing gymnastic exercises without a spotter during gym class.
- *Padilla ex rel. Padilla v. Sch. Dist. No. 1 in City & Cnty. of Denver*, 25 P.3d 1176, 1183 (Colo. 2001)
  - No waiver of immunity where plaintiff "merely alleged that the government used the facility in an unsafe manner, thus only alleging that the government was negligent in its use of the facility."

# Dangerous Conditions under the CGIA

## The Maintenance Activity Exception

- ***But see Walton v. State*, 968 P.2d 636, 645 (Colo. 1998)**, where the Supreme Court found a waiver of immunity under the dangerous condition exception after a student was asked to clean the loft of an art classroom but fell after climbing a ladder that was not braced securely on a slippery floor. The Supreme Court determined that the injury was caused by a "use of the building" that was "connected with its maintenance." *Id.*

# Dangerous Conditions under the CGIA

## The Maintenance Activity Exception

- There are accordingly two possible avenues for satisfying the "maintenance" prong of the four-factor dangerous condition test:
  - (1) Demonstrating the dangerous condition arose due to degradation.
    - "[T]he state's duty to maintain is no more than a duty to hold the status quo. Some risk is inherent in every design. The state's maintenance obligation only requires it to ensure that this risk does not increase, due to degradation[.]" *Medina v. State*, 35 P.3d 443, 458 (Colo. 2001).
  - (2) Demonstrating the dangerous condition was created through the "use of a building" as the result of a maintenance activity or decision.
    - *See* ***Walton v. State***, 968 P.2d 636, 645 (Colo. 1998)
    - *See Cnty. of Jefferson v. Stickle*, 2024 CO 7

# Dangerous Conditions under the CGIA

**Snow and Ice**

- The CGIA generally waives immunity for slip and falls caused by dangerous accumulations of snow and ice.
- Under subsection 106(1)(d)(I) immunity is explicitly waived for injuries caused by a dangerous condition of "a highway, road, street, or sidewalk," including conditions created by dangerous accumulations snow or ice.
- Similarly, subsection 106(1)(d)(III) waives immunity for dangerous conditions caused by "an accumulation of snow and ice" on "walks" leading to a public building.
- Under either provision, the accumulation of snow and ice must "interfere" with public access or traffic. The public entity must also have notice of the accumulation and a reasonable time to act to correct it.
  - "[T]his is Colorado, and the mere presence of snow and ice, by itself, does not equate to a dangerous condition." *Montoya v. Jefferson Cnty. Sch. Dist. R-1*, No. 2020CV30814 (Colo. Dist. Ct. Dec. 9, 2020).
- Following mitigation protocols does not by itself clear a public entity of liability.
  - *Martinez v. Weld Cnty. Sch. Dist. RE-1*, 60 P.3d 736, 739 (Colo. App. 2002).

# Dangerous Conditions under the CGIA

## Snow and Ice

**How do courts determine if an accumulation of snow and ice is unreasonably dangerous?**

- Although this is a fact-specific inquiry, previous decisions regarding this issue have highlighted the following factors:
  - The existence of alternative routes;
  - The lighting in the area;
  - The presence of any warning signs;
  - The time of day (e.g., was foot traffic expected at the time of injury?);
  - And whether or not the area where the fall occurred was "known to be a problem area."
    - *Martinez v. Weld Cnty. Sch. Dist. RE-1*, 60 P.3d 736, 738 (Colo. App. 2002).
- *But see Maphis v. City of Boulder*, 2022 CO 10, n. 3
  - Negligent failure to warn does not trigger a waiver of immunity under the CGIA.

# Dangerous Conditions under the CGIA

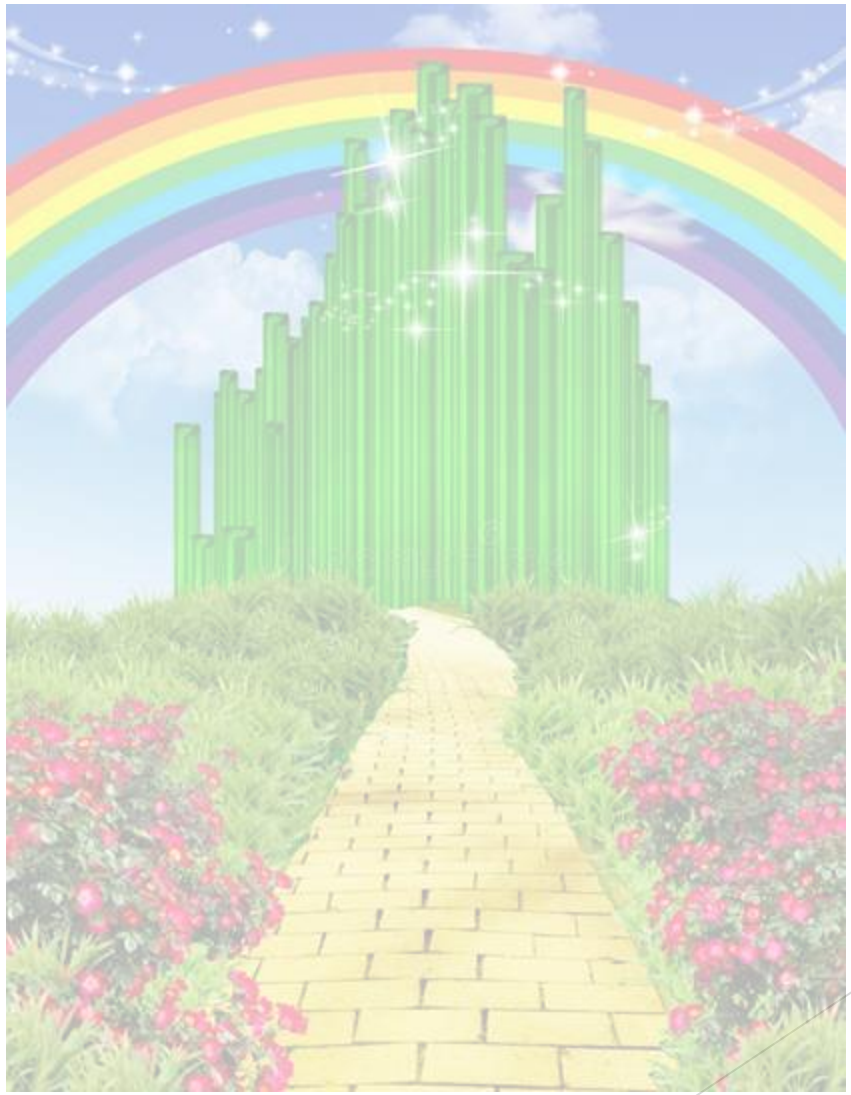
**Where the injury occurs matters!**

- The express language of the "walks" waiver provision, under section 106(1)(d)(III), requires snow ***and*** ice to be present, while the language for walks occurring on sidewalks or roads, under section 106(1)(d)(I), permits either snow ***or*** ice to be present.
- The CGIA does not generally waive immunity for slip and falls occurring in parking lots. *Jones v. City and Cnty. of Denver*, 833 P.3d 870 (Colo. App. 1992); *Daniel v. City of Colorado Springs*, 2014 CO 34.
  - The exception to this rule permits a waiver for injuries caused by the dangerous condition of a parking lot in a public recreation area. *Daniel*, 327 P.3d 891.
  - *Cnty. of Jefferson v. Stickle*, 2024 CO 7, 542 P.3d 688, also determined that parking garages do not meet this exception and constitute public buildings.
- Courts have similarly suggested the CGIA does not waive immunity for injuries caused by the dangerous condition of a driveway. *Stanley v. Adams Cty. Sch. Dist. 27J*, 942 P.2d 1322, 1325 (Colo. App. 1997) (Because school driveway "was used for service deliveries at the school, which necessitated that the vehicles be parked, it is analogous to a parking lot for which there is no waiver of immunity under the GIA.").

# Dangerous Conditions under the CGIA

## Snow and Ice - “Walks” v. “Sidewalks”

- Courts have construed the term “walk” both broadly and narrowly.
- In *Atachagua v. Mission Viejo Elementary School*, the court determined a basketball court constituted a walk because during the winter it was a natural choice for pedestrians to cross in the absence of a designated portion of an outdoor playground to be used as a walkway. 2007 WL 5721056 (Colo. Dist. Ct. Oct. 02, 2007).
- Conversely, in *Stanley*, the court determined that a service driveway utilized by a pizza delivery driver to drop off pizzas in a school cafeteria did not constitute a “walk” because traditional roadways or walkways interconnect public travel but a driveway only benefits the property where it is located. 942 P.2d at 1323.



# Dangerous Conditions under the CGIA

## Snow and Ice - Best practices

- **DO** take photos immediately after an accident.
- **DO** make detailed incident reports, e.g., What time did the incident occur? Before or after business hours? What kind of shoes were they wearing? Were they late or arriving/exiting in a hurry?
- **DO** preserve any surveillance footage available.
- **DO** report and log the location of where accidents occur.
- **DO** use warning signs during period of inclement weather or permanently affix them to “known problem areas.”
- **DO** use brightly colored ice-melt products.
- **DO** encourage or designate specific entrances or exits for the public to use during inclement weather days.

# Dangerous Conditions under the CGIA

Snow and Ice – Best Practices

**DON'T** say things you'll later regret.

**DON'T** wait to repair, correct, or mitigate, a deficiency.

**DON'T** just follow standard mitigation protocols if the circumstances call for more.

# Willful and Wanton Conduct

An end-around the CGIA?

- The CGIA states the following with respect to public employees:
  - A public employee shall be immune from liability in any claim for injury…which lies in tort or could lie in tort…unless the act or omission causing such injury was willful and wanton. C.R.S. § 24-10-118(2)(a).
- Heightened Pleading Requirements
  - The CGIA requires that "[i]n any action in which allegations are made that an act or omission of a public employee was willful and wanton, the specific factual basis of such allegations shall be stated in the complaint." Section 24-10-110(5)(a).

# Willful and Wanton Conduct

An end-around the CGIA?

- The CGIA does not define “willful and wanton” conduct.
- However, the Supreme Court has considered how the term has been defined in several other contexts when examining the waiver for public employees and identified a common feature: “namely, a conscious disregard of the danger.” *Martinez v. Estate of Bleck*, 379 P.3d 315, 323 (Colo. 2016).
- In the context of the CGIA, a claim for willful and wanton conduct must demonstrate that a public employee was either aware of the likelihood of the alleged harm or that they took action specifically calculated to cause the alleged harm. *Wilson v. Meyer*, 126 P.3d 276, 282 (Colo. App. 2005); *See also Cynthia Southway & Hayden Southway v. Crone*, No. 24CA0219, 2024 WL 5162947, at *5 (Colo. App. Dec. 19, 2024).

# Willful and Wanton Conduct

An end-around the CGIA?

*"However, shortly after reaching the conclusion that [the public employee] exhibited a 'conscious disregard' of the danger, the trial court said that [the employee] 'did not think of what the reactions or the consequences' would be when he sent the email, concluding 'that's why it's willful and wanton conduct because [the employee] didn't think.' If [the employee] 'didn't think' of the consequences of his actions, he couldn't have consciously disregarded them."*

- *Cynthia Southway & Hayden Southway v. Crone*, No. 24CA0219, 2024 WL 5162947, at *5 (Colo. App. Dec. 19, 2024) (emphasis in original) (citation modified).

# Caselaw Update

## Supreme Court

- *Jefferson Cnty. v. Dozier*, 2025 CO 36
  - Establishes a new "likelihood" standard governing a plaintiff's burden of proof to establish subject matter jurisdiction which applies in situations where "disputed jurisdictional facts are inextricably intertwined with the merits" of the underlying claim. *Id.* at ¶ 24.
  - Further underscores the "reasonableness" analysis underlying CGIA dangerous condition claims. *Id.* at ¶ 30.
- *City of Aspen v. Burlingame Ranch II Condo. Owners Ass'n*, Inc., 2024 CO 46
  - The economic loss rule is fundamentally different and unrelated to whether there has been a waiver of CGIA immunity. Even if a claim could not proceed in common law tort because the ELR bars such a tort claim that is immaterial to whether the CGIA applies since it applies, independently, to any claim that lies or could lie in tort.
- *Hice v. Giron*, 2024 CO 9
  - Law enforcement officers do not lose their CGIA immunity by failing to activate emergency lights or sirens for the "entire time" the officer pursues a suspected violator of the law. *Id.* at ¶ 13. They only waive immunity if the plaintiff's injuries could have resulted from the emergency driver's failure to use alerts.
- *Cnty. of Jefferson v. Stickle*, 2024 CO 7
  - Parking structures fall under the plain meaning of a "building" under the CGIA
  - A resurfaced walkway between the garage and an adjacent building that created optical illusion was not solely attributable to the design of the garage because it was part of a maintenance program; thus, the County was not immune.

# Caselaw Update

## Supreme Court

- *Maphis v. City of Boulder*, 2022 CO 10
  - City was immune from suit despite being aware of, and marking for repairs, a 2.5" sidewalk deviation because under the totality of the circumstances the deviation did not exceed the bounds of reason.
  - "'[N]o municipal sidewalk system is perfectly hazard-free at all times,' and local governments seeking to maintain their sidewalks are constrained not only by budgetary limitations, but also by the availability of contractors who can do the needed repairs." State and local governments are not required to keep walkways "like new at all times."
- *Denver Health & Hosp. Auth. v. Houchin*, 2020 CO 89
  - Colorado Anti-Discrimination Act claims do not and cannot lie in tort, thus, they are not barred by the CGIA. *See also Elder v. Williams*, 2020 CO 88 (holding same).
- *Teran v. Reg'l Transportation Dist.*, 2020 COA 151
  - Plaintiff was injured when a handrail came loose during a sudden stop on an RTD bus, and while the jury found the driver was not negligent, the found RTD was negligent in maintaining the handrail. CGIA immunity was waived because the injury resulted from the operation of a motor vehicle, even without a finding of driver negligence.

# Caselaw Update

## Court of Appeals

- *Grand Junction Peace Officers' Ass'n v. City of Grand Junction*, 2024 COA 89
  - Under the theory that CGIA immunity must be determined "at the earliest possible stage," courts can decide CGIA immunity before any class certification occurs after a class action lawsuit is filed. *Id.* at ¶ 1.
- *Jacobs Invs., LLC v. Fort Collins-Loveland Water Dist.*, 2024 COA 83
  - District did not waive immunity for failing to accurately mark its water lines because a water district's act of marking its water lines under the Excavation Requirements Statute, C.R.S. §§ 9-1.5-101 to -108, is not part of the operation and maintenance of its facilities.

# Caselaw Update

## Court of Appeals

- *Mostellar v. City of Colorado Springs*, No. 23CA1908, 2024 WL 4579318 (Colo. App. Oct. 24, 2024), cert. granted in part, No. 24SC761, 2025 WL 1307752 (Colo. May 5, 2025) (unpublished)
  - Plaintiff tripped over a remnant of a bus stop sign on a public sidewalk in Manitou Springs and timely notified the city, but over a year later was informed that Colorado Springs was responsible due to its intergovernmental agreement. She notified Colorado Springs 600 days after the injury, beyond the CGIA's 182-day notice deadline, and the Court of Appeals held the CGIA has a strict notice period plaintiff did not comply with.
  - Claimants are not required to know of their tortfeasor's identity for the notice period to begin and have the burden to investigate their claims.
- *Dodge v. Padilla*, 2023 COA 67
  - Despite pleading that a sheriff's office is not a legal entity under the CGIA but merely a colloquial term for its employees, the court held that a sheriff's office qualifies as a "public entity" under the CGIA and can be held liable under the doctrine of respondeat superior for its deputies' negligent acts.