CDLA CASE LAW DIGEST – 2024-2025

Colorado Supreme Court

Cantafio v. Schnelle *-Malicious Prosecution – rebuttable presumption as probable Cause* - - 2025CO 39 (06/16/25). The issue in this case was whether to answer whether a court's denial of a summary judgment or directed verdict motion in a prior civil case raises rebuttable presumption that there was probable cause to bring the original claim in a subsequent malicious prosecution action. The court concluded that, while the denial of either motion in a prior civil case is a *factor* that a district court may consider in ruling on a motion to dismiss in a subsequent malicious prosecution case, the prior denial of a summary judgment or directed verdict motion does not create a rebuttable presumption of probable cause.

Mid-Century Insurance Company v. HIVE Construction, Inc. *- Economic Loss Rule - Willful and Wanton Conduct - Construction Contracts* - 2025 (04/21/25). Because Plaintiff had alleged willful and wanton conduct by defendant contractor, the economic loss rule did not preclude it from asserting a negligence claim notwithstanding the existence of the contract. The Supreme Court held that no exception to the economic loss rule exists for allegations of willful and wanton conduct. The court further concluded, based on longstanding economic loss rule principles, that the rule barred plaintiff from asserting a negligence claim premised on a duty established by the contract in this case.

People v. Martinez *- Expert witness qualification* - 23SC197. The issue in this case was whether (1) testimony that otherwise meets the requirements of CRE 702 and *People v. Shreck*, 22 P.3d 68, is rendered inadmissible because the witness was not formally offered and accepted as an expert during their testimony; and (2) whether it is plain error to admit expert testimony without a formal offer and acceptance when the record demonstrates that the requirements of CRE 702 and Shreck have been met. The Supreme Court concluded a formal offer and acceptance of an expert was neither required nor prohibited if it otherwise complied with the requirements of CRE 702 and *Shreck*.

Klabon v. Travelers-Workers' **Compensation Automobile Insurance –** Employee – worker's comp – UM/UIM - 2024CO66 (09/30/24). The US District certified the question to the Supreme Court: Whether an employee injured in the course of his employment by the acts of an underinsured third-party tortfeasor, and who receives worker's compensation benefits as a result, is barred, under Colorado's Workers' Compensation Act, from bringing suit against his employer's UM/UIM insurer? The Supreme Court held that under Colorado law, an employee who is injured in the course of their employment by a third-party tortfeasor and who receives workers' compensation benefits as a result of that injury can also sue to recover benefits from their employer's separate UM/UIM carrier. The court held that the plain language of the pertinent section of the Workers' Compensation Act immunized only employers and their workers' compensation insurance carriers from liability. The court further determined that when an employee is injured by the negligence of a third party, rather than by an employer or co-employee, a suit to recover UM/UIM benefits does not constitute a suit against the employer or co-employee and, therefore, is not barred by the exclusivity clause of the WCA.

Fear v. GEICO Casualty Company-Insurance - *Non-Economic Damages-Underinsured Motorist Coverage* – 2024CO77 (12/23/24) . Fear argued whether it is reasonable as a matter of law for an underinsured motorist ("UIM") insurer to refuse to pay non-economic damages to an insured on the ground that such damages are "inherently subjective" and, thus, are always reasonably disputed until resolution of the remainder of the insured' s claims. The Supreme Court also granted certiorari to decide whether an insurer's internal settlement evaluation is admissible as evidence of undisputed "benefits owed" under *State v . Fisher,* 2018 CO 39,418 P.3d 501. The Court first concluded that CRE 408 bars the admission of the kind of claim evaluation at issue here to show an amount of undisputed benefits owed, although the evaluation may be admissible for other purposes, including, for example, to establish an insurer's good or bad faith. Next, the Court concluded that because such damages are inherently subjective and therefore are always subject to reasonable dispute under *Fisher,* it is conceivable that non-economic damages (or some portion of alleged non-economic damages) could be undisputed (or not subject to reasonable dispute) in a particular case, and in such a case, under *Fisher,* an insurer would be required to pay those damages without obtaining a release of an insured's entire claim. Here, however, the sole evidence amounted to nothing more than an assertion that the claim evaluation proves the amount of the allegedly undisputed non-economic damages, which the court concludes is inappropriate under CRE 408.

Hushen v. Gonzales - *Quasi-Judicial— Absolute Privilege—Title IX. 2025 CO 37* (06/09/25). The Supreme Court held that Colorado law applies only one type of inquiry to determine whether a proceeding is quasi-judicial, which is whether the proceeding addresses the interests of a specific individual or individuals by

applying previously established law or policy to present or past facts. If so, the Court continued, its participants are entitled to assert privilege, protecting them from tort liability for the statements they make during that proceeding. This case involved a Jefferson County School District's Title IX investigation, and it was found to be a quasijudicial proceeding. Accordingly, its participants were entitled to assert that the statements they made during the proceeding are absolutely privileged and cannot serve as the basis of a tort suit against them.

Jefferson Cnty. v. Dozier – *Governmental Immunity* - 2025 CO 36 (06/09/25). The supreme court held that when a public entity asserts immunity under the CGIA and the disputed jurisdictional facts are inextricably intertwined with the merits of the plaintiff's claim, the plaintiff must demonstrate a likelihood of the existence of the facts necessary to establish a waiver of CGIA immunity. The court also held that the plaintiff must show that the public entity's negligent act or omission proximately caused the condition in question for the dangerous condition exception to apply. Here, the Court found the plaintiff had failed to establish a likelihood of the facts necessary to establish that the dangerous-condition exception applied and that it lacked jurisdiction over her claims.

Terra Mgmt. v. Keaten -*Sanctions - Spoliation-Adverse Inference - Duty to Preserve Evidence-Pending or Reasonably Foreseeable Litigation*. 2025 CO 40 (06/23/25). The Supreme Court held that a court may sanction a party for the destruction of evidence if the party knew or should have known that (1) litigation was pending or reasonably foreseeable and (2) the destroyed evidence was relevant to that litigation. The court further held that a party has a duty to preserve evidence relevant to litigation when the party knows or should know that litigation is pending or reasonably foreseeable. The court stated this was an objective standard and claims to have provided considerations for determining whether litigation is reasonably foreseeable and for imposing sanctions for the destruction of evidence.

Colorado Court of Appeals

BNC Metro 1 v. BNC Metro 3 — *Torts — Breach of Fiduciary Duty; Government — Colorado Governmental Immunity Act — Actions Against Public Employees — Acts or Omissions Outside the Scope of Employment — Notice of Claim* 2025COA52 (05/22/25) Two plaintiff metropolitan districts appeal the district court's order dismissing their breach of fiduciary duty claim against former members of their boards of directors under the Colorado Governmental Immunity Act. Because the plaintiff districts failed to sufficiently allege that the individual defendants acted outside the scope of their employment, the "requirements and limitations" of the CGIA apply. One such requirement is that the plaintiff must provide notice of the claim. § 24-10-109(1), C.R.S. 2024. This is so even when the lawsuit involves a public entity suing its own employees. Because notice is a jurisdictional prerequisite under the CGIA, the plaintiff districts' failure to provide notice means their tort claim is "forever barred."

Caylao-Do v. Logue — *Evidence — Competency of Juror as Witness — Inquiry into Validity of Verdict* - 2025 COA 42 (05/01/25) In this negligence action, plaintiff sued defendant, a police officer, for damages sustained when the officer's patrol car hit the plaintiff. The jury returned a verdict in favor of the plaintiff and awarded damages that exceeded the CGIA cap. A division of the court of appeals held that the constitutional exception to CRE 606(b)'s no-impeachment rule does not apply to an allegation that, during deliberations, a juror expressed anti-police bias. Finally, the division confirms that the CGIA's damages cap is inclusive of costs and prejudgment interest.

Johnson v. Staab — *Damages — Civil Action for Deprivation of Rights* - 2025COA45 (05/01/25). A division of the court of appeals concludes for the first time that, for purposes of seeking damages under section 13-21-131, C.R.S. 2024, no constitutional violation occurs where a police officer's material omissions from and false statements in a search warrant affidavit were the result of negligence or mistake, as opposed to having been made intentionally or with reckless disregard for the truth.

Waugh v. Veith — *Damages — Civil Action for Deprivation of Rights* - 2025COA41 (04/24/25). Under a newly enacted civil rights statute, "the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous." § 13-21-131(3), C.R.S. 2024. The Court of Appeals held that subsection 13-21-131(3) precludes the court from awarding costs to the defendants without finding that the plaintiff's claims were frivolous.

Willis v. Twin Shores Master Owner Association, Inc. —*Premises Liability; Injured Party's Status — Invitee* - 2025COA37(04/03/25) The Cour of Appeals held that a unit owner's guest who is injured in the common elements of the association is an invitee under the PLA.

Ross v. Public Service - *Damages — Wrongful Death — Limitation on Damages — Felonious Killing Exception — Corporations* - 2025COA31 (03/20/25). The Court of Appeals held that "felonious killing exception" to the noneconomic damages cap in the Wrongful Death Act applies to both corporations and individuals; so corporations that commit felonious killings are subject to uncapped noneconomic damages in wrongful death claims. It also held that the court erred by apportioning the plaintiff's damages according to the jury's fault allocations before applying the damages cap.

Martinez v. Cast, LLC - *Landlords and Tenants — Colorado Premises Liability Act — Actions Against Landlords — International Fire Code* - 2025COA32 (03/20/25). The issue in this case was which version of a local fire safety ordinance applied in this premises liability case arising from a fire at a leased dwelling. The COA concluded that, under the facts of this case, the applicable ordinance was the one in effect at the time the plaintiff children were injured,

not the one in effect at the time the dwelling was built or the one when the lease was executed. The COA also concludes that, under the applicable edition of the International Fire Code (the edition incorporated into the applicable ordinance), landowners are not required to comply with the smoke alarm requirements so long as (1) a building code was in effect at the time of construction; (2) such code required smoke alarms; and (3) smoke alarms complying with those requirements were already provided in the dwelling. The division concluded that the trial court erred by instructing the jury on an earlier version of the ordinance than the one in effect at the time the children were injured. It also held that certain officers and agents of property owners, managers, and similar entities could be deemed landowners under the PLA.

Gilley v. Oviatt - *Damages — Past Medical Expenses — Substantial Evidence — Necessary and Reasonable Treatment* 2025COA27 (03/13/25). The COA held that when a plaintiff seeks recovery for medical damages, a defendant is not entitled to a directed verdict solely on the basis that no qualified witness stated the amount billed for medical treatment was reasonable, where *plaintiff* presented evidence of the bills received and testimony that the treatment was necessary, reasonable, and incurred as a result of the accident.

Curry, J. v Brewer, C. —*Workers' Compensation — Coverage and Liability — Contractors and Lessees* — 2025COA28 (03/13/25). This case involved two independent contractors who work with each other and not for each other, and who had no agreement between them to perform work for one another. The issue was whether they were subject to the workers' compensation act and its limitation on damages found in section 8-41-401(3). The Court concluded that an independent contractor who is injured on the job by the negligence of another independent contractor may recover damages in excess of the $15,000 WCA limit because they are third parties as to each other, not co-employees, are not "in the same employ."

Giron v. Hice — *Government —GIA — Immunity and Partial Waiver — Emergency Vehicles* 2025COA17 (03/13/25). In *Hice v. Giron*, 2024 CO 9, the Colorado Supreme Court held that "an emergency driver waives CGIA immunity when a plaintiff's injuries could have resulted from the driver's failure to use alerts while speeding in pursuit of a suspected or actual lawbreaker." Applying this test for the first time in a published decision, the COA held that the officer's failure to use his lights or siren until the final five to ten seconds of his pursuit could have contributed to the accident. Accordingly, the division reversed the district court's judgment granting governmental immunity to the officer.

Craig Hospital v. Blue Cross Blue Shield of Kansas - *Insurance — Health Insurance — Nonresident Insurer; Jurisdiction of Courts — Personal Jurisdiction — Longarm Statute* 2024COA74—The COA affirmed the district court's conclusion that it lacked personal jurisdiction over a nonresident health

insurance company. It held that a nonresident insurer's pre-approval and coverage of a nonresident's health care in the forum, through BlueCard or a similar national health insurance program, does not confer personal jurisdiction where the insurer did not initiate the request for out-of-state health care and did not otherwise direct activities toward the forum.

Quarky, LLC v. Gabrick — *Real Property — Common Interest Communities — Right of First Refusal* - 2024COA76. In this real property dispute among neighbors in a multi-unit condominium complex, the COA determined whether a current owner's offer to purchase a fellow owner's unit constitutes a third-party offer that triggers a right of first refusal held by the remaining owners under the complex's governing declaration. The COA concluded the answer is "no." It held that, absent specific language in the declaration or other instrument containing the right of first refusal, a condominium unit owner who offers to purchase a selling owner's unit is not a third party whose offer triggers a right of first refusal held by the remaining owners.

Trudgian v. LM General Insurance Co. —*Claims Practices for Property Damage; Remedies — Implied Private Right of Action* - 2024COA87. The COA considered whether there is an implied private right of action to enforce section 10-4-639(1). The division concluded there is not under *Parfrey,* 830 P.2d 905 (Colo. 1992). The division therefore affirms the grant of summary judgment to defendant.

Houser v. CenturyLink - *Signing of Pleadings — Obligations of Parties and Attorneys — Reasonable Inquiry — Pleading Grounded in Fact* - 2024COA96. The COA considered whether an attorney's inquiry is objectively reasonable under C.R.C.P. 11(a) if the attorney copies confidential witnesses' factual statements from a complaint in another case without speaking to the confidential witnesses to confirm their statements. The COA concluded that C.R.C.P. 11(a) does not require an attorney to speak with confidential witnesses who are the source of factual allegations taken from a complaint in another case before incorporating those allegations into the complaint in the attorney's case; rather, the attorney can satisfy the obligation to conduct a reasonable inquiry in other ways.

Bennett v. Colorado Department of Revenue —*Notice — Process — Service by Mail* 2024COA97. In this interlocutory appeal the COA considered as a matter of first impression whether the notice provision of section 24-4-106(4) authorized service of process by mail in an action for judicial review of an agency decision. The division holds that section 24-4-106(4) does not authorize initial service of process for a judicial review complaint by mail and reversed the district court.

Peitz v. Industrial Claim Appeals Office - *Workers' Compensation Rules of Procedure — Division Independent Medical Examination (DIME) — Scope of Evaluation* - 2024COA102 (09/12/24). In this workers' compensation proceeding, the COA considered whether Rule 11-5 of the Workers'

Compensation Rules of Procedure prohibits a physician performing a division independent medical examination (DIME) from evaluating all aspects of a worker's injury in determining whether the worker has obtained maximum medical improvement (MMI). WCRP 11-5 establishes a schedule of fees that a physician may charge for a DIME, based primarily on the designated body parts and date of injury on the application for a DIME. The division rejected respondents' argument that the number of body parts selected pursuant to the fee schedule limits the scope of a DIME physician's examination to determine MMI.

Pool Company v. MW Golden — *Courts and Court Procedure — Arbitration — Appeals* - The COA held that a party may not appeal a district court's order denying a motion to remand a case to an arbitrator for clarification of an award. This builds on case law applying section 13-22-228, which identifies the types of orders in cases involving arbitrations from which a party may appeal.

McLellan v. Weiss - *Courts and Court Procedure — Award of Actual Costs and Fees When Offer of Settlement Was Made — Subsequent Statutory Offers* 2024COA114. In this personal injury action, the plaintiff's final judgment did not exceed an earlier offer but exceeded the subsequent offer. The COA was asked to determine if a subsequent offer of settlement made under statute impacts a defendant's entitlement to an award of costs based on an earlier offer when The division concluded that a subsequent offer does not extinguish a previous offer or limit the costs the defendant is otherwise entitled to recover based on the earlier offer. Rather, the parties' respective rights under section 13-17-202 are to be determined as to each statutorily compliant offer made.

Maldonado v. GeneDx — *Health and Welfare —Limitation of Actions — Genetic Testing and Counseling* 2024COA121. A division of the court of appeals interprets for the first time section 13-64-502(1), holding that the parents alleged a plausible claim for relief against medical professionals and health care institutions for damages arising from allegedly negligent genetic testing and counseling that could have prevented or avoided the birth of twins with a medical disorder if the professionals and institutions had exercised the ordinary standard of care.

LTCPRO v. Johnson -— *Contracts — Effect of Integrated Agreement on Prior Agreements — Parol Evidence Rule* - 2024COA123. The COA held that, absent unambiguous contractual language to the contrary, a completely integrated contract discharges prior agreements only to the extent they are within its scope. In determining whether a prior contract is within the scope of an integrated contract, a court must consider all relevant evidence and the interpretation of both contracts.

Coomer v. Salem —*Torts — Civil Conspiracy — Intentional Infliction of Emotional Distress — Defamation — Respondeat Superior* 2025COA2 (01/16/24) Applying Colorado's anti-SLAPP statute, § 13-20-1101, C.R.S. 2024, the COA concluded that the plaintiff established a reasonable likelihood that he will prevail on his claims for defamation and intentional infliction of emotional distress against the defendants for statements made on a radio station where hosts and their guests asserted that the plaintiff talked about, and then followed through on, undermining the 2020 presidential election. In reaching this conclusion, the CAO determined that the doctrine of respondeat superior may apply to a claim for defamation.

Good Life v. WLCO — *Attorneys and Clients — Rules of Professional Conduct — Lawyer as Witness — Substantial Hardship Exception* 2025COA8 (01/23/24) This is the first published opinion in Colorado to consider whether the general rule of Colo. RPC 3.7(a) that an attorney must be disqualified from representing a client when the attorney is a necessary witness on a contested issue only applies to cases set for a jury trial. In addition, it examines whether a lawyer who represents a limited liability company in litigation in which the lawyer is a necessary witness can avoid disqualification under the "substantial hardship" exception to Colo. RPC 3.7(a), when the lawyer offers the client favorable payment terms, which the client cannot obtain from another lawyer, because of the lawyer's personal ties to the client. A division of the court of appeals concludes that Colo. RPC 3.7(a) is not limited to cases that will be tried to a jury and that the "substantial hardship" exception does not preclude disqualification of the attorney-witness in this case.

Al-Hamim v. Star Hearthstone, LLC - *AI and hallucinations in legal pleadings* - 2024COA128 (12/26/24). Since the use of generative artificial intelligence (GAI) tools has become widespread, lawyers and self-represented litigants alike have relied on them to draft court filings. Because the most commonly used GAI tools were not designed to create legal documents, a person unfamiliar with the limitations of GAI tools, such as the appellant in this case, can unwittingly produce text containing fictitious legal citations, known as "hallucinations." The COA considered the appropriate sanction when a self-represented litigant files a brief peppered with hallucinations. Under the facts of this case, the COA declined to impose sanctions against the appellant, but it puts lawyers and self-represented parties on notice that future filings containing GAI-generated hallucinations may may result in sanctions.

Veolia Water v. Antero — *Contracts — Breach of Contract — Economic Loss Doctrine — Intentional Fraud* - 2024COA126 (12/19/24). The COA held that in a contract dispute over the construction of a hydraulic fracturing wastewater treatment plant the district court did not err in finding that Veolia Water Technologies, Inc. breached the contract and committed fraud. Adding to the evolving application of the economic loss rule in Colorado, the COA held that

that the rule does not bar Antero's intentional tort fraud claims against Veolia because, here, Veolia's common law tort duties are independent of its contractual duties and of the implied duty of good faith and fair dealing that exists in every contract.

Frisco Lot v. Giberson Preserve — *Real Property — Common Interest Communities —Colorado Rules of Appellate Procedure — Briefs* - 2024COA125 (12/12/24). In this property dispute, the COA sets forth, as a matter of first impression, the test to determine whether a subdivision created before the enactment of the Colorado Common Interest Ownership Act (CCIOA) qualifies as a common-interest community. The COA concluded that a pre-CCIOA common-interest community exists when individual properties are burdened with a servitude that imposes an obligation to either (1) pay for the use of or contribute to the maintenance towards commonly held or enjoyed property or (2) pay dues or assessments to an association that provides a service or enforces a servitude on commonly held or enjoyed property. ***Additionally, the division concludes that under C.A.R. 28(h), a party may not both file a separate brief and incorporate by reference the brief of another party. Such a violation of Rule 28(h) may result in the striking of any improperly incorporated argument.***

Harrington v. Neutron Holdings — *Torts — Negligence —Electric Scooters* 2024COA120 (11/14/24). The COA held that, without more than the allegations made in this case, a company that rents electric scooters to third parties does not, by that act alone, owe a duty to the public to protect against injuries caused by users of its scooters. The division does not address the circumstances under which such a duty may arise based on other acts or omissions.

Norton v. Ruebel — *Attorneys and Clients — Retaining Liens — Other Property to Which Lien Attaches — Papers in Attorney's Possession* - 2024COA108 (10/03/24). The COA interpreted section 13-93-115, C.R.S. 2024, which grants an attorney a retaining lien on a nonpaying client's papers that have come into the attorney's "possession in the course of his or her professional employment" and "upon money due to his or her client in the hands of the adverse party in an action or proceeding in which the attorney was employed." The COA held that an attorney's release of certain, but not all, of the documents covered by a retaining lien does not result in a waiver of the entire lien. The division reversed the district court's grant of summary judgment to the defendant attorney and remanded the case for reconsideration of the plaintiffs' requests for files that the attorney contended are covered by a retaining lien.

Bakes v. Denver Health - *Labor and Industry — Health Care Worker Protection Act; Government — Colorado Governmental Immunity Act — Notice of Claim* 2025COA47 As a matter of first impression, the CAO considered whether any claims that might be asserted under the Health Care Worker Protection Act

(HCWPA), § 8-2-123, are subject to the notice requirement in the GIA. Without determining whether the HCWPA provides for a private right of action, the COA concluded that any claim that might be asserted under the statute is subject to the GIA's notice requirement. The COA concluded that a potential HCWPA claim is similar to a claim under the Whistleblower Act, which is subject to the CGIA's notice requirement.

Macomber v Nations Roof — *Landlords and Tenants — Colorado Premises Liability Act* — 2025COA59 (06/19/25). Roofing companies that placed a gas-powered generator on the roof of a retail store that emitted carbon monoxide into the store's interior through the HVAC system, causing alleged injuries to the store's employees. The COA addressed whether the Premises Liability Act (PLA) contains a physical proximity requirement that limits "[l]andowner" status to the area on the property where the putative landowner is performing work and excluded a separate area on the property where the plaintiffs sustained injuries. Applying the statute's expansive definition of landowner, the COA concluded that the PLA contains no such physical proximity requirement.

Spectrum v. Continental — *Insurance — COVID-19 - Direct Physical Loss — Property Rendered Uninhabitable* - 2025COA57. The COA addressed whether COVID-19 and the resulting governmental orders restricting business operations constituted a compensable loss under an insurance provision insuring against a direct physical loss. The COA also addressed, as a matter of first impression, potential coverage for COVID-19 related losses incurred under a health care endorsement added to the insurance policy. By a 2-1 decision, the Court concluded that the insured party failed to allege facts that support coverage for a direct physical loss. The Court unanimously concluded that the insured stated a viable claim to recover some of its asserted losses under the health care endorsement.

TENTH CIRCUIT COURT OF APPEALS

Hollis Ann Whitson, as guardian ad litem for Peatinna Biggs v. The Board Of County Commissioners Of The County Of Sedgwick – *respondeat superior – municipal liability* (D.C. No. 1:18-CV-02076-DDD-SKC) (10th Cir. 07/05/24). Sheriff Thomas Hanna of Sedgwick County, Colorado, sexually assaulted an intellectually disabled prisoner while transporting her between county jails. The victim, Peatinna Biggs, filed this civil-rights suit by and through her guardian ad litem, Plaintiff Hollis Ann Whitson, against Sedgwick County, the Sedgwick County Sheriff's Department, and Sheriff Hanna in his individual and official capacities. The district court granted the motion of the County and the Sheriff's Department (the municipal defendants) to dismiss the complaint against them, reasoning that the County could be liable only if "the challenged conduct [had] been taken pursuant to a policy adopted by the official or officials," and "Hanna's actions were not pursuant to Department policies, but in direct contravention of

them." Hanna was then found liable by a jury in his individual capacity. Whitson appeals the dismissal of the claims against the municipal defendants, which are legally equivalent to claims against Hanna in his official capacity. Exercising jurisdiction under 28 U.S.C. § 1291, the 10th Circuit reversed. Sheriff Hanna's actions fell within the scope of his policymaking authority regarding the custody and care of prisoners and subjected the municipal defendants to liability.

Murphy v. Schaible – *Attorney malpractice – failure to inform* - Docket: 22-1421 (07/25/24). The case involves Dianna Murphy, who sued Thomas Schaible, her financial advisor and brother-in-law, for breaching his fiduciary duty. Thomas managed an investment account jointly held by Dianna and her husband Michael. Amidst marital difficulties, Michael instructed Thomas to transfer $2.5 million from the joint account to a bank account in Colorado, which Michael then moved to a Mexican account solely under his control. Dianna was not informed of this transfer and claimed that Thomas failed to protect her interests, despite knowing about the couple's marital issues and her interest in dividing their assets. The jury found Thomas liable for breaching his fiduciary duty and awarded Dianna $600,000 in economic damages. The United States Court of Appeals for the Tenth Circuit reviewed the case. The court affirmed the district court's judgment, holding that Thomas breached his fiduciary duty by failing to inform Dianna of the transfer and not advising her on steps to protect her interests. The court also upheld the award of prejudgment interest, rejecting Thomas's procedural arguments. The court emphasized that fiduciary duties include the duty to inform and act impartially, which Thomas failed to do.

Smith v. Albany County School District No. 1 – *Standing – facemask* - Docket: 23-8072 (11/26/24). Grace Smith, a high school junior, was repeatedly suspended from Laramie High School for refusing to comply with a COVID-19 indoor-mask mandate imposed by the Albany County School District No. 1 Board of Trustees. After her suspensions, she was arrested for trespassing on school grounds. Grace and her parents, Andy and Erin Smith, filed a lawsuit in the United States District Court for the District of Wyoming against the Board members, the superintendent, and the principal, alleging violations of Grace's constitutional rights and state law claims. The district court dismissed the federal claims for lack of jurisdiction, ruling that Grace did not suffer an injury in fact necessary for standing. The court reasoned that her injuries were hypothetical because the mask mandate had expired and she was no longer a student at LHS, and that her injuries were self-inflicted. The court declined to exercise supplemental jurisdiction over the state-law claims. The United States Court of Appeals for the Tenth Circuit reviewed the dismissal de novo and reversed the district court's decision. The appellate court held that Grace had standing to bring her claims because she suffered concrete and particularized injuries from the enforcement of the mask mandate, including suspensions and arrest. The court found that her injuries were directly inflicted by the defendants'

actions and were not self-inflicted. The case was remanded for further proceedings consistent with the appellate court's opinion.

Curtis Park Group v. Allied World Specialty Insurance Company – *Builders Risk policy – coverage for defects* - Docket: 23-1307 (12/23/24). Curtis Park Group, LLC (Curtis Park) encountered a significant issue during the construction of a new development called S*Park, which included five buildings supported by a single concrete slab. The slab began to sag due to construction defects, and Curtis Park hired a consultant to determine the cause and necessary repairs. The repairs cost $2,857,157.78, which were fronted by the general contractor, Milender White, as per their agreement. Curtis Park had a builder's risk insurance policy with Allied World Specialty Insurance Company (Allied World) but did not include Milender White or subcontractors as named insureds. The United States District Court for the District of Colorado reviewed the case, where Curtis Park sued Allied World for breach of contract and bad faith after Allied World denied coverage for the repair costs. The district court ruled that Curtis Park could seek coverage for the repair costs even though Milender White had absorbed these costs. The jury found in favor of Curtis Park on the breach-of-contract and statutory bad-faith claims but not on the common-law bad-faith claim. Allied World's motions for a new trial and judgment as a matter of law were denied. The Tenth Circuit reviewed the case. The court held that the district court erred in interpreting the insurance policy to allow Curtis Park to recover repair costs it had not paid and had no obligation to pay. The policy explicitly limited recovery to the amount the named insured (Curtis Park) actually spent on repairs. The Tenth Circuit reversed the jury's verdict and remanded for a new trial, instructing that Curtis Park cannot recover the costs of repair that it did not pay. The court also vacated the remainder of the judgment and remanded for a new trial on all other issues.

New Hampshire Insurance Company; National Union Fire Insurance Company Of Pittsburgh v. TSG Ski & Golf, LLC; The Peaks Owners Association, Inc.; Peaks Hotel, LLC; H. Curtis Brunjes – *False statements – excluded coverage* - No. 23-1248 (02/24/25). The core issue was whether the insurers had a duty to defend or indemnify TSG in a lawsuit concerning a debt collection letter, due to knowledge-of-falsity exclusions in their policies. TSG Ski & Golf, along with other related entities and individuals, was sued for attempting to collect $15.5 million in unpaid assessments from a homeowner's association, even though they knew the homeowner had already paid. The insurance policies in question contained exclusions for claims arising from knowingly false statements. The insurers argued that these exclusions applied because the evidence at trial showed that TSG and others knew the statements in the debt collection letter were false when they were published. The 10th Circuit appellate court agreed with the lower court that the exclusions applied because the underlying lawsuit involved knowingly false statements made by TSG. The Tenth Circuit affirmed that two AIG carriers need not cover a ski resort's homeowners association and other insureds found liable for trying to induce the owner of

resort condo units to pay $15.5 million in fees it didn't owe, pointing to what are known as knowledge-of-falsity exclusions.

Iron Bar Holdings v. Cape – *Trespass – cross-corner* - Docket: 23-8043 (10th Cir. 03/18/25). Iron Bar Holdings, LLC, a private landowner in Wyoming, owns a checkerboarded ranch interspersed with federal and state public lands. The only way to access these public lands, other than by aircraft, is by corner-crossing, which involves stepping from one public parcel to another at their adjoining corners without touching the private land in between. In 2020 and 2021, a group of hunters from Missouri corner-crossed to hunt elk on the public lands within Iron Bar's ranch. Iron Bar's property manager confronted the hunters, and law enforcement was contacted, but no citations were issued. In 2021, the hunters were prosecuted for criminal trespass but were acquitted. Iron Bar then filed a civil lawsuit for trespassing, seeking $9 million in damages. The United States District Court for the District of Wyoming granted summary judgment in favor of the hunters, holding that corner-crossing without physically contacting private land and without causing damage does not constitute unlawful trespass. Iron Bar Holdings appealed the decision. The Tenth Circuit reviewed the case. The court held that while Wyoming law recognizes a property owner's right to exclude others from their airspace, federal law, specifically the Unlawful Inclosures Act (UIA) of 1885, which overrides state law in this context. The UIA prohibits any inclosure of public lands that obstructs free passage or transit over them. The court found that Iron Bar's actions effectively enclosed public lands and prevented lawful access, which is prohibited by the UIA. The court affirmed the district court's decision, allowing the hunters to corner-cross as long as they did not physically touch Iron Bar's land.

Stacie Culp and Stephanie Peters - *Inconsistent verdict – material adverse retaliation* - No. 24-1022 (3/31/2025) .Plaintiffs both servers at Remington of Montrose Golf Club, LLC. They alleged they were sexually harassed by bartender Jason DeSalvo. They filed claims under Title VII of the Civil Rights Act of 1964 and the Colorado Anti-Discrimination Act (CADA) for sexual harassment and retaliation. Remington's management conducted a limited investigation, resulting in DeSalvo's suspension and demotion. Culp claimed her hours were reduced in retaliation, leading to her resignation. Peters alleged inadequate investigation and retaliation, including being scheduled to work with DeSalvo post-suspension, leading to her departure. The United States District Court for the District of Colorado granted summary judgment for Remington on Peters's retaliation claim but allowed other claims to proceed to trial. The jury found against Peters on her remaining claims and returned inconsistent special verdicts on Culp's claims, awarding her punitive damages under Title VII despite finding no violation of her rights. The United States Court of Appeals for the Tenth Circuit affirmed the district court's summary judgment on Peters's retaliation claim, holding that neither the inadequate investigation nor the scheduling with DeSalvo constituted materially adverse actions. However, the court found the jury's verdict on Culp's claims irreconcilably inconsistent and

vacated the verdict, remanding for a new trial on her harassment and retaliation claims. The court upheld the district court's evidentiary rulings, noting that objections to the admission of certain evidence were not properly preserved for appeal.

Adhealth, Limited v. PorterCare Adventist Health Systems – *insurance coverage – medical incident* - Docket: 24-1273 (05/02/25). PorterCare Adventist Health Systems had inadequate surgical-sterilization procedures for about two years, leading to over $40 million in liability from thousands of patients' claims. PorterCare sought coverage from AdHealth, its excess-liability insurer, for the full $40 million policy limit, arguing that the claims arose from one medical incident. AdHealth refused coverage, asserting that a medical incident covers injuries to a single person, not multiple people, and filed a complaint seeking a declaratory judgment. PorterCare counterclaimed for declaratory judgment and breach of contract. The United States District Court for the District of Colorado granted summary judgment to AdHealth, agreeing with its interpretation that a medical incident is limited to the acts or omissions causing injury to one person. The court found that AdHealth owed coverage only for the claims of a single patient that trigger the excess policy's liability threshold, not for multiple patients' claims grouped together. The United States Court of Appeals for the Tenth Circuit reviewed the case and affirmed the district court's decision. The appellate court held that the policy's definition of "medical incident" unambiguously applies to the injuries of a single person. Therefore, AdHealth is liable only for individual claims exceeding PorterCare's $2 million self-insurance retention, not for the aggregated claims of multiple patients.

U.S. SUPREME COURT OPINIONS

Waetzig v. Halliburton Energy Services, Inc. – Rule 41 F.R.C.P. – re-opening case - Docket: 23-971 (02/26/25). Gary Waetzig, a former employee of Halliburton Energy Services, Inc., filed a federal age-discrimination lawsuit against the company. He later submitted his claims for arbitration and voluntarily dismissed his federal lawsuit without prejudice under Federal Rule of Civil Procedure 41(a). After losing in arbitration, Waetzig sought to reopen his dismissed lawsuit and vacate the arbitration award, citing Federal Rule of Civil Procedure 60(b) as the basis for reopening the case. The U.S. District Court for the District of Colorado reopened the case, ruling that a voluntary dismissal without prejudice counts as a "final proceeding" under Rule 60(b) and that Waetzig made a mistake by dismissing his case rather than seeking a stay. The Supreme Court of the United States reviewed the case and held that a case voluntarily dismissed without prejudice under Rule 41(a) counts as a "final proceeding" under Rule 60(b). The Court reasoned that a voluntary dismissal is "final" because it terminates the case and aligns with the definitions and historical context of the term "final." The Court also concluded that a voluntary dismissal qualifies as a "proceeding" under Rule 60(b), encompassing all steps in an action's progression.

Medical Marijuana, Inc. v. Horn - *Civil Rico – recovery for personal injury* - Docket:23-365 (10th Cir. 04/02/25). The Supreme Court reviewed the case to determine whether civil RICO categorically bars recovery for business or property losses that derive from a personal injury. The Court held that under civil RICO, a plaintiff may seek treble damages for business or property loss even if the loss resulted from a personal injury. The Court emphasized that the statute's language allows recovery for business or property harms without excluding those that result from personal injuries.