

Someone Injured in your Municipality, What Now?

(empowering Local Government
Attorneys to be proactive in litigation)

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City of Lakewood

The world seems like a scary place

And, people get injured in weird ways

And, municipalities, they've got a lot of money

And, people think municipalities have to do what they want



But, why care?

Three Reasons:

1. You give advice based on liability all day
2. Lawsuits are no fun for a municipality
 - No fun for staff
 - No fun for your governing body
 - No fun for you?
3. \$\$\$
 - Deductibles
 - Lost productivity
 - Unnecessary spending (ROI)

Enter our hero!

The CGIA!!
C.R.S. 24-10-101



What's most awesome about the CGIA

1. Jurisdictional (more on this later)
 - A. "cost of defense" "nuisance value"
2. Generally immune
 - Most instances- must be a dangerous condition
 - Pools and Cars
3. Notice
4. Money limitations

So, ask yourself:

1. Is immunity waived?
2. Is the cause of injury a dangerous condition?
3. Did we know about it?

Generally immune – except for:

- Operation of a motor vehicle owned or leased by a public entity, by a public employee while in the course of employment.
- Operation of a public hospital, correctional facility or jail.
- A dangerous condition of any public building.
- A dangerous condition of a public highway, road or street.
- A dangerous condition of a public facility located in any park or recreational area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility.
- The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity.
- The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement.
- Failure to perform an education employment required background check as described in 13-80-103.9, C.R.S.

Generally Immune – Dangerous Condition

1. Definition: Dangerous Condition –
 - “UNREASONABLE risk to the health and safety of the public”
 - Which is known (or should be known)
 - Must be based on construction/maintenance
 - **(CANNOT be design)**

Generally Immune – Dangerous Condition

1. Read Maphis v. Boulder
 - Can be read as 'must be crazy'
2. Based on how the alleged dangerous condition exists, not how the injury occurred – tree example

Notice

1. Must give notice within 6 months of discovery
 - Must be an injury, and
 - Governmental entity **may** be the cause of injury



Money Limitations!

1. 424k per one person
2. 1.195mm total for event

(compare to 1983 cases and 20-217)

An Example

1. Toilet lid vs. Flooding Stormwater

Trinity Hearing

Trinity Broadcasting v. Westminster, 848 P.2d 916

1. A lot of judges don't know about this
 - A. May need to do a ton of education
 1. Both as to the hearing in general and as to the CGIA
 - B. Has Immunity been waived?
 1. Delineated waiver (under CGIA)
 2. Proper CGIA notice
2. Jurisdictional
3. Limited discovery
4. ATTORNEY'S FEES if you win!
 - A. Joint and several

So, Stuff Happens

1. An injury occurs
 - a. Staff tells you
 - b. An individual calls risk management/ submits a claim
 - c. You get a notice letter
2. Do some investigation
 - a. Go out to the scene
 - Woman falls in a restroom
 - Car crash due to a median
 - Woman falls in a manhole
 - Golf course

So, Stuff Happens - What to do?

1. An injury occurs
 - a. Staff tells you
 - Settle?
 - Wait?

So, Stuff Happens - What to do?

1. An injury occurs
 - a. Staff tells you
 - b. **An individual calls risk management/submits a claim**
 - a. Write a SPECIFIC letter
 - Designed to be read by both an individual and an attorney
 - Dissuade lawsuits



So, Stuff Happens - What to do?

1. An injury occurs
 - a. Staff tells you
 - b. An individual calls risk management/ submits a claim
 - c. **You get a notice letter**
 - i. Explain why the injury is not compensable
 1. Dangerous Condition
 - i. Use Caselaw
 - ii. Maphis
 2. Notice
 3. Explain the Trinity Hearing and attorney's fees

The Letter

- i. Explain why the injury is not compensable- (Dangerous condition and notice):
 - B. 24-10-103(1.3) – the ‘Dangerous Condition’ must exceed the bounds of reason AND the sovereign entity must be on notice of the existence of the dangerous condition.
 - Under *Maphis v. Boulder*, 504 P.3d 287 (2022), the Colorado Supreme Court held that the alleged dangerous condition must create a chance of injury, damage, or loss which ‘exceeds the bounds of reason.’ This is more than simply a foreseeable risk of harm. *City and Cty. of Denver v. Dennis*, 2018 Co 37 (2018). While not overly common, traffic signals malfunction or cease to work commonly enough that there is a C.R.S. section which covers the law on how a motorist is to proceed – 42-4-612. That alone is adequate evidence to show that a malfunctioning signal does not create a risk of injury that exceeds the bounds of reason.
 - C.R.S. § 24-10-106 further defines dangerous condition as “a physical condition **which is known to exist or which in the exercise of reasonable care should have been known to exist**”. There is no evidence that the alleged malfunction of the traffic signal was known to the City of Lakewood prior to the injury.

The Letter

- ii. Explain the Trinity Hearing and attorney's fees:
 - As you are aware, waiver of the CGIA is a jurisdictional component of a lawsuit. Should you file a lawsuit in this matter, Lakewood would file an immediate motion to dismiss under CRCP 12(b). Lakewood would be entitled to conduct limited discovery prior to this hearing to establish whether immunity had been waived. If said motion were to be granted, under CRS 13-17-201, a court shall award attorney's fees to the prevailing defendant. Said award may be made joint and several between plaintiff and plaintiff's attorney. *Patterson v. James*, 454 P.3d 345. Lakewood has a firm policy of pursuing said attorney's fees and does not simply settle to avoid a frivolous lawsuit/appeal.



City of Lakewood

City Attorney's Office

Civic Center South
480 South Allison Parkway
Lakewood, Colorado 80226-3127
303-987-7450 Voice

June 15, 2022

Franklin D. Azar
Dylan C. Ungar
Franklin D. Azar and Associates, P.C.
14426 East Evans Avenue
Aurora, CO 80014-1480

Dear Mr. Azar/Ungar:

The City of Lakewood is in receipt of your notice of claim, dated June 8, 2022, based on an injury suffered on January 25, 2022. Upon review of your claim, we are denying for the following reasons:

1. Sovereign immunity.

If you would like to discuss this matter further, I am happy to do so.

Regards,

/s Alex Dorotik
Alex Dorotik
Deputy City Attorney
City of Lakewood
adorotik@lakewood.org
303-987-7456



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Dear Mr. Azar/Ungar:

The City of Lakewood is in receipt of your notice of claim, dated June 8, 2022, based on an injury suffered on January 25, 2022. Upon review of your claim, we have determined that Lakewood is immune from liability for this claim. The reason(s) that Lakewood is immune from liability are as follows:

1. Sovereign immunity:

A public entity (in this case, the City of Lakewood) is immune from liability in all claims for injury which lie in tort. This is what is commonly known as 'sovereign immunity'. The only exceptions from this complete immunity are found in C.R.S. 24-10-106, known as the "CGIA" or Colorado Governmental Immunity Act.

A. The alleged 'Dangerous Condition' did not physically interfere with the flow of traffic.

C.R.S. § 24-10-106 lists out specific circumstances where sovereign immunity has been waived. For any alleged dangerous conditions of a roadway, immunity is waived ONLY where there exists a dangerous condition which physically interferes with the movement of traffic on the paved portion of the public highway. Here, there exists nothing in the paved portion of the roadway which impairs traffic.

B. 24-10-103(1.3) – the 'Dangerous Condition' must exceed the bounds of reason AND the sovereign entity must be on notice of the existence of the dangerous condition.

1. Exceed the bounds of reason.

Under *Maphis v. Boulder*, 504 p.3d 287 (2022), the Colorado Supreme Court has held that the alleged dangerous condition must create a chance of injury, damage, or loss which 'exceeds the bounds of reason'. This is more than simply a foreseeable risk of harm. *City and Cty. of Denver v. Dennis*, 2018 Co 37 (2018). While not overly common, traffic signals malfunction or cease to work commonly enough that there is a C.R.S. section which covers the law on how a motorist is to proceed – 42-4-612. That alone is adequate evidence to show that a malfunctioning signal does not create a risk of injury that exceeds the bounds of reason.

2. Notice

C.R.S. § 24-10-106 further defines dangerous condition as “a physical condition which is known to exist or which in the exercise of reasonable care should have been known to exist”. There is no evidence that the malfunction of the traffic signal was known to the City of Lakewood prior to the injury.

Thus, it is the position of the City of Lakewood that under C.R.S. §24-10-106, there is no waiver of our general governmental immunity from suit for this factual situation. As a result, there is no waiver of our general governmental immunity.

As you are aware, waiver of the CGIA is a jurisdictional component of a lawsuit. Should you file a lawsuit in this matter, Lakewood would file an immediate motion to dismiss under CRCP 12(b). If said motion were to be granted, under CRS 13-17-201, a court shall award attorney’s fees to the prevailing defendant. Said award may be made joint and several between plaintiff and plaintiff’s attorney. *Patterson v. James*, 454 P.3d 345. Lakewood has a firm policy of pursuing said attorney’s fees and does not simply settle to avoid a frivolous lawsuit/appeal.

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