



CIRSA 101 – Real-Life Risk Management

Tort Liability Under the Governmental Immunity Act

Presented by Sam Light, CIRSA General Counsel

Tort Liability Under the GIA

- The Colorado Governmental Immunity Act (GIA) is the state law governing claims against public entities/employees for injury or damages due to negligence or willful and wanton conduct.
 - Applies to TORT actions.
 - Applies to all public entities and public employees, including elected and appointed officials, employees.
- Key protections: immunities, monetary limits, notice requirements.

Tort Liability Under the GIA

Current Liability Limits



UNITED STATES OF AMERICA } ss. CERTIFICATE.
STATE OF COLORADO }

*J. Wayne W. Williams, Secretary of State
of the State of Colorado, do hereby certify*

that in accordance with C.R.S. 24-10-114(1)(b), the limitations on judgments set forth in C.R.S. § 24-10-114(1)(a)(I)&(II) are as follows:

For all claims for relief that accrue on or after January 1, 2018, and before January 1, 2022, the adjusted limitation is:

\$387,000 for any injury to one person in any single occurrence.

\$1,093,000 for any injury to two or more persons in any single occurrence; except that, in such instance, no person may recover in excess of \$387,000.

Tort Liability Under the GIA

- The GIA is an IMMUNITY act.
- It states public entities are immune from tort claims EXCEPT in areas where immunity is specifically waived.
- In waived areas, liability is determined generally in same manner as for private individuals. That is, there must be both a waiver of immunity and liability for a claimant to recover.
- Members do not waive immunities or limits of liability by purchase of insurance.

Tort Liability Under the GIA

- The GIA applies only to STATE LAW torts and does not apply to:
 - Breach of contract claims
 - Federal law claims (such as civil rights claims)
 - Claims under newly adopted C.R.S. 13-21-131 (SB 20-217)
 - Non-monetary relief claims, such as claims for injunctive, declaratory or other forms of relief; for example:
 - Claims of violation of open meetings / open records law
 - Claims pursuant to Rule 106

6 GIA Waivers Pertinent to Municipalities

- Operation of motor vehicle by public employee
- Dangerous condition of a public highway, road, or streets within corporate limits of municipality
- Dangerous condition of public hospital, jail, public facility in a park or recreation area maintained by a public entity, or of public water, gas, sanitation, electrical, power, or swimming facility
- Operation and maintenance of public water, gas, sanitation, electrical, power, or swimming facility
- Dangerous condition of public building
- Operation of public hospital, correctional facility, or jail

GIA – Key Terms “Dangerous Condition”

- City/Town can be liable for a “dangerous condition.” This is:
 - A physical condition
 - That creates an unreasonable risk
 - That is known or should have been known to exist
 - And is proximately caused by negligence in public entity’s construction/maintenance
- Design deficiencies are NOT a “dangerous condition” under the GIA.

GIA – Key Terms “Dangerous Condition”

•And, for there to be liability for a dangerous condition of a public building, the claim must relate to the physical condition of building, not the activities conducted in the building. To illustrate, Colorado appellate courts have found:

- No waiver of immunity for the public entity where drinking in public building leading to an auto accident, or where a heavy barbell slipped from a user’s hands at a public gym.
 - But, immunity is waived for injuries from a faulty elevator falling down, and from a collision with an unpadded gym wall.
- Is the waiver at issue for any COVID-related claims?

GIA – Key Terms “Dangerous Condition”

- There can also be liability for the dangerous condition of a street, or a dangerous condition of a facility in a park or recreation area. To illustrate, Colorado appellate courts have found:
 - There is a waiver for an accident caused by a non-operating traffic light, and for injuries resulting for a fall in a golf course parking lot that is not well-lit.
 - But, there is no waiver for an accident caused when a motorcycle rider has to swerve around a rut in a well-worn street, or for injuries a patron suffered when he rolled a golf cart.
 - Nor is there a waiver for injuries resulting from the “natural condition of unimproved land;” for example, when rocks fell at Red Rocks or when a tree limb fell at a campsite.

GIA – Operational Liability

- The GIA also waives immunity for claims from certain operations, such as operation of water or sanitation facilities or a swimming pool.
- BUT, sometimes it's not clear what's a "facility." For example, a "water facility" does not include a natural watercourse or an irrigation ditch.
- AND, sometimes accidents happen and it may be nobody's fault.
 - Water/sewer backups are a great example.
 - CIRSA has a limited "no-fault" water line rupture/sewer back-up coverage for members who elect this coverage.
- SO, contact CIRSA for assistance regarding these incidents.

GIA Personal Liability – Stay Away from Bad Stuff!

- Although both public entities and public employees have immunity (except in 6 waived areas), public employee also cannot be engaged in:
 - WILLFUL AND WANTON conduct; or
 - Activities OUTSIDE THE SCOPE of employment or not within performance of public employee duties.
- In particular, willful and wanton conduct can have severe consequences:
 - Can result in loss of immunity, and in potential personal liability.
 - Can also result in loss of insurance coverage. Coverages follow these “course and scope” & “willful and wanton” concepts and have provisions excluding coverage where liability is based on willful & wanton conduct, fraud, ill-gotten gain or malicious acts.
- Public entity is not responsible for punitive damages against employee, and punitive damages also are NOT INSURED!

• PEL policies do not insure against punitive damages.

GIA – Notice Issues

- The GIA's notice requirement is a powerful protection.
- Notice required within 182 days after discovery of injury.
- Untimely notice forever forecloses lawsuit.
- Must be filed with governing body or attorney of public entity.
 - The GIA notice is not a lawsuit, but is a prerequisite to a lawsuit.
 - Send your GIA notices to CIRSA.

GIA Risks – Parting Thoughts

- Embrace a safety culture.
- Be proactive in identifying and addressing risky conditions and practices.
- Adopt and maintain current safety policies, and insist folks follow them.
- Get frequent training.
- Assign appropriate staff to address and manage claims.
- Contact CIRSA when, if and as desired or needed. We are Safer Together.



Liability Risk Management **HOTLINE**

Do you have questions about liability risks related to:

- Employee Termination and Discipline Issues
- Personnel Policies or Personnel Management
- Public Works, Parks and Rec or Police Liability
- Conducting Quasi-Judicial Proceedings
- Zoning or Land Use Liability
- Drug Testing Policies
- Marijuana – Related Issues

Call CIRSA's Liability Risk Management Hotline and Sam Light, CIRSA General Counsel, can assist. The Hotline is a free service to CIRSA Property/Casualty members to help you identify, manage and avoid potential claims, and assist with your municipal liability questions.

CONTACT THE LIABILITY RISK MANAGEMENT HOTLINE IF:

- you're considering taking an employment action that could lead to liability;
- you'd like a policy or contract document reviewed from CIRSA's liability risk management perspective;
- you'd like help identifying options for handling a potential claim situation;
- you need to get up-to-speed on a current municipal liability issue; or
- you just need to bounce an idea or issue off a neutral source.

Please Note: At CIRSA's discretion, a courtesy contact may be made by CIRSA to the member's chief administrative officer and/or legal counsel to inform them of any Hotline inquiry. The Hotline is not a substitute for legal advice from the member's municipal attorney.

To make an inquiry, or if you have questions, please contact General Counsel Sam Light at 720-605-8002 or 1-800-228-7136, or saml@cirsa.org.



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**Thank you for your time and
your public service!**

CIRSA Liability Hotline

1-800-228-7136

<https://www.cirsa.org/wp-content/uploads/2020/04/Liability-Hotline-2020.pdf>



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