Warning Signs: Premises Liability & Recreation Activity on Municipal Lands

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INTRODUCTION

Does your municipality own[i] or have another interest in land or waters that it makes available to the public for recreational purposes? Or is your municipality considering opening property it owns for public recreation? If your answer to either of these questions is yes, then you may be aware of the dangers inherent to recreational lands, including hazardous terrain, wildlife encounters, changing weather and water conditions, and rock and tree falls, which may lead to serious injury and even death, thus presenting a premises liability[ii] risk for your municipality as landowner.

With knowledge of these risks, you may wonder why your municipality opened, or is considering opening, its property to public recreation in the first place. Or maybe you believe recreation opportunities are important enough to justify the liability risks as an accepted cost of offering them. Whatever you're thinking, the good news is Colorado law provides municipalities with protections against liability to users of recreational lands and waters for recreational purposes. While these liability protections are not absolute, by understanding your municipality's immunity and liability protections, you can help protect your organization from liability while promoting safe public access to recreational areas.

LEGAL FRAMEWORKS

A. Governmental Immunity

Municipal tort liability exposure is governed by the Colorado Governmental Immunity Act (CGIA). Under the CGIA, a municipality can only be sued in an area where governmental immunity is waived. In other words, to proceed against a municipality in a premises liability suit, a claimant first must establish a claim fitting within a waiver of immunity under the CGIA.

Most pertinent to recreational land is the CGIA waiver, set forth in C.R.S. §24-10-106(1)(e), for injuries caused by a dangerous physical condition of a public facility located in a recreation area maintained by a public entity.[iii] While "public facility" is not defined in the CGIA, courts have interpreted the term to include both prototypical brick-and-mortar structures and a collection of items that serve a greater purpose. For example, in *Loveland ex rel. Loveland v. St. Vrain Valley School District*, 395 P.3d 751 (Colo. 2017), the Colorado Supreme Court found that the collection of play areas and structures of a public school playground providing recreation for school children was a "public facility" as contemplated under the CGIA.

By contrast, in *Young v. Brighton School District 27J*, 325 P.3d 571 (Colo. 2014), the Colorado Supreme Court determined that a walkway leading from a school building to a playground was not a component of the public playground facility because the walkway did not promote the broader, overall purpose of children's play in the same way as the individual playground components (e.g., swing sets and sandboxes). However, the Court qualified that a pathway *could* qualify as a public facility under the CGIA if there were a strong enough relationship between the pathway and other recreational equipment, such as a walking/running path that traverses a system of exercise equipment located at intervals along the path. That said, no reported case has addressed the 'pathway-recreation equipment' scenario head on, and thus the Court's statement in *Young* serves only to illustrate how a court might examine a case with similar facts.

However, to establish the "recreation area" waiver, it is not enough that an injury occurred within a public facility; a claimant must further demonstrate the existence of, and that the claimant's injury was caused by, a dangerous condition of a physical or structural improvement to a public facility. Additionally, a claimant must demonstrate that the public entity knew of the dangerous condition or should have discovered it in the exercise of reasonable care. Furthermore, a dangerous condition cannot exist solely because the design of a facility is inadequate; it must be proximately caused by the negligent act or omission of the public entity in constructing or maintaining the facility. Lastly, the mere existence of weather conditions, such as wind, water, snow, ice, or temperature, cannot by itself constitute a dangerous condition.

While the playground in the *Loveland ex rel. Loveland* case discussed above was determined to be a public facility located in a recreation area, the Court ultimately held that the CGIA barred a claim brought against the School District by the parents of a child who was injured falling off a zipline within the playground. Why? Because the Court found that the injury occurred as the result of the playground's design, and not as the result of any construction defect in the zipline or negligent failure of the School District to maintain it. In other words, while the zipline may have been inherently dangerous, it was not defective and worked as it was designed and intended.

For purposes of immunity, the CGIA makes a further distinction between the built environment and natural environment. Specifically, under C.R.S. § 24-10-106(1)(e), governmental immunity is expressly *not waived* "for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area." For example, courts have held the CGIA to bar claims for injuries sustained from falling trees and rocks and for drownings in natural lakes.[iv]

Establishing a CGIA waiver is a jurisdictional requirement, and thus if a claimant cannot make a threshold showing that the claimant's injury was caused by a dangerous physical condition of a public facility arising from the public entity's own negligence in constructing or maintaining the public facility, then governmental immunity bars the claim resulting in its dismissal. If, conversely, the claimant can establish a waiver of governmental immunity, then the claimant must still establish the elements of premises liability to hold the public entity liable for the claimant's injury.

B. Premises Liability

1. Colorado Recreational Use Statute (CRUS)

Where governmental immunity does not bar a suit, Colorado has a Recreational Use Statute (CRUS), C.R.S. §§ 33-41-101–106, that provides certain additional liability protections for owners of lands and waters, including municipalities,[v] who either directly or indirectly invite or permit, without charge, any person to use the land for recreational purposes. Thus, if your municipality does not charge a fee for entry to your recreation area, then the CRUS may apply to further protect your entity from premises liability.

Under C.R.S. § 33-41-104(1)(a), public entities that allow use of their land for recreational purposes without charge are not liable for injury or death to recreational users except in the case of a "willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm." This is a very high standard, which requires actual knowledge of both the dangerous condition and the likelihood that the dangerous condition will cause harm, and purposeful or voluntary failure to guard or warn against the condition with conscious disregard for the consequences of that failure, with no justifiable excuse.[vi]

In 2024, the Colorado legislature amended the CRUS, by Senate Bill 24-058, to specify that an owner that makes lands or waters available to the public for recreational purposes does not commit a willful or malicious failure to guard or warn against a known dangerous condition if the owner posts a warning sign at the primary access point (or points) where the

land is entered. Warning signs must use the warning text and conform to the size and visibility specifications described in statute, or else they may not serve to provide further protection. The CRUS also requires owners to maintain photographic or other evidence of its warning signs.

To protect the owner against a premises liability claim, a warning sign must have described the *specific* dangerous condition, use, structure, or activity that caused the injury or death *that is the subject of the claim*. For that reason, it's important that signs identify all hazards known to exist on the land accessible from the primary access point.[vii] Under the CRUS, "primary access point" means "a location at a trailhead or along a trail, route, area, or roadway upon an owner's land where the owner allows individuals to legally enter the land for recreational purposes," which suggests there may be multiple primary access points to a recreation area. Therefore, municipal personnel should also take care in identifying locations for warning signs.

The warning text required under the CRUS includes a statement that individuals leaving the designated trail, route, area, or roadway, will be deemed trespassing. This serves to protect recreational landowners because, under Colorado law, C.R.S. § 13-21-115(4)(a), a trespasser may only recover damages "willfully or deliberately caused by the landowner. While this provision obviously is helpful to private owners, it is also helpful to municipal owners, for example, in situations where lands opened and closed to the public are adjacent to one another, as might be the case with a utility property located adjacent an open space trail area. In this context, posting compliant no trespassing signs not only serves the obvious purpose, but also has the legal effect of further insulating the entity from claims by the trespasser.

2. Colorado Premises Liability Act (PLA)

If your municipality charges a fee for entry to the recreation area or a portion of the recreation area, the CRUS does not limit your entity's liability for injuries suffered by a person entering the area for recreational purposes and, where governmental immunity does not bar a suit, your municipality's duties and potential liability to recreational users will be governed instead by Colorado's Premises Liability Act (PLA), C.R.S. § 13-21-115.

The PLA establishes standards of care based on whether the person entering the land is a trespasser, a licensee, or an invitee, affording the highest standard of care to invitees and the lowest to trespassers. In most cases, a person paying a fee to enter a recreation area would be considered a licensee or invitee. However, a person entering areas not designated for recreation, or entering the designated recreation area when closed, may be considered trespassers. The standards for licensees and invitees are each lower than the "willful or malicious failure" standard in the CRUS, requiring only an "unreasonable failure" to warn or protect against hazards, which are known to the owner in the case of licensees, or which the owner knew or should have known about in the case of invitees.

C. GGIA Limitation on Damages

Even if a claimant manages to establish a CGIA waiver of immunity and subsequently prevails in a premises liability suit against your municipality—under the CRUS or PLA, as applicable—the damages that may be awarded against your entity, under the CGIA, are capped at specified thresholds established pursuant to C.R.S. § 24-10-114(1)(a).[viii]

CONCLUSION

As Colorado residents, we enjoy access to breathtaking landscapes and diverse outdoor recreational activities and facilities, which enhance our quality of life, promote tourism, and contribute to the overall economic and social well-being of our communities. However, there are dangers inherent to recreational lands and facilities that present liability risks to their owners. In recognition of these benefits and risks, Colorado law provides municipalities with multiple layers of protection against premises liability claims arising from use of recreational lands and facilities. By understanding these protections and

taking steps to warn against hazards, your municipality can confidently offer recreational opportunities to the public while mitigating potential liability risks.

If you have questions about this article, contact CIRSA's Associate General Counsel, Nick Cotton-Baez, at nickc@cirsa.org.

Note: This article is intended for general information purposes only and is not intended or to be construed as legal advice on any specific issue. Readers should consult with their entity's own counsel for legal advice on specific issues.

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i. While this article uses the term "own" and "owner", the laws and principles discussed in this article also apply when municipalities have interests in property other than full ownership (e.g., a fee interest in land, tenancy, occupancy, or conservation easement).

ii. Premises liability is a legal concept that holds property owners responsible for injuries that occur due to dangerous conditions on their property. While there are other ways a municipality may incur liability in connection with a recreation area, such as liability arising from willful and wanton acts of municipal employees, this article focuses on premises liability and such other liability risks are beyond its scope.

iii. While there are other CGIA waivers that may apply within recreation areas, such as the waiver for the operation of a swimming facility or dangerous condition of a public road, discussion of such waivers is beyond the scope of this article.

iv. See, e.g., Burnett v. State Dep't of Nat. Res., Div. of Parks & Outdoor Recreation, 350 P.3d 853 (Colo. App. 2013) (CGIA held to bar claim for injury resulting from tree falling on campground); Ackerman v. City and County of Denver, 373 P.3d 665 (Colo. App. 2015) (CGIA held to bar claim for injury resulting from rocks falling at Red Rocks Park); DeAnzona v. City & Cnty. of Denver, 222 F.3d 1229 (10th Cir. 2000) (while noting the record was unclear as to whether the lake was manmade or natural, the court stated that if the lake were natural, the city was immune from liability because the natural condition of land, even within a park, cannot lead to a waiver of immunity).

v. The CRUS definition of "owner" includes: the possessor of a fee interest; a tenant, lessee, or occupant; the possessor of any other interest in land, including a possessor or holder of a conservation easement, or any person having a right to grant permission to use the land; and, any public entity, as defined in the CGIA, that has an interest in land.

vi. See, e.g., Nelson v. United States, 915 F.3d 1243 (10th Cir. 2019). While Nelson did not involve a Colorado public entity or the CGIA, the case involves an interpretation of the CRUS and serves to illustrate how a landowner's intentional disregard of a known dangerous condition may lead to liability. In Nelson, the United States Court of Appeals for the Tenth Circuit held that an exception to the CRUS liability shield applied, where a biologist responsible for reporting safety and security concerns regarding United States Air Force Academy (USAFA) land had actual knowledge of, and willfully ignored, the dangerous condition of sinkhole on asphalt path located on USAFA land, and chose not to take any steps to warn or guard users, such that the USAFA could be held liable under the Federal Tort Claims Act for injuries to a bicyclist who fell into the sinkhole.

vii. Though it's helpful to users and owners for signs to warn of both natural and manmade hazards, purely from a liability perspective, it's most important to identify manmade hazards because claims against public entities for injuries arising from natural conditions of unimproved property are barred under the CGIA.

viii. Until January 1, 2026, $424,000 for an injury to one person in a single occurrence; and $1,195,000 for an injury to two or more persons in a single occurrence, except that no one person may recover more than $424,000.

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