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COLORADO LEGAL UPDATE

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Colorado Supreme Court Mixed Bag Monday For CGL Insurance Defense

April 14, 2015

On Monday, April 13, 2015, the Colorado Supreme Court issued two opinions that impact duties commonly attributed to businesses with CGL coverage. A précis of the holdings is provided here to help you navigate current and future matters touching on these issues.

Commercial Tenant Slip-and-Fall and Colorado's Premises Liability Act

In *Jordan v. Panorama Orthopedics & Spine Ctr., PC*, No. 13SC545, the Colorado Supreme Court held that, under certain conditions, a commercial tenant does not fall into the liability scheme of Colorado's Premises Liability Act, COLO. REV. STAT. § 13-21-115 (2014) (the "PLA").

Panorama Orthopedics, the primary tenant in a multi-tenant medical campus, was sued after a patient tripped on an uneven sidewalk, leading to an eye socket-breaking pavement face plant. The plaintiff claimed that Panorama fell under the PLA by claiming it was "in possession of" the sidewalk as the main tenant with exclusive use of facilities immediately adjacent to the hazard. The plaintiff also argued that Panorama was legally responsible for the sidewalk because sidewalk use was incidental to Panorama's business.

The Supreme Court sided with Panorama. The Court rejected the "possession" argument because proximity does not create a duty unless the tenant took steps to exert control of the property in question, whether directly for business use or incidentally for maintenance.

The Court also rejected the legal duty argument in light of Panorama's lease, which reserved to the landlord common area maintenance that covered the sidewalk in question. And even though Panorama had in its lease an indemnity obligation to the landlord for injuries that occur "in, upon or about" Panorama's leased premises, the Court held that merely professing indemnity to another does not create a legal duty to a third party.

Innkeepers and the New Duty to Evict Guests with Care

In *Westin Operator, LLC v. Groh*, No. 11CA363, the Court examined for the first time a duty of care a hotel owes to a guest during a lawful eviction.

Groh, a registered guest, returned to the Denver Westin after a night of clubbing with friends. Following an intoxicated confrontation with hotel security, Groh and her friends were evicted from the hotel into the cold Colorado night. When the visibly intoxicated ejectees attempted to re-enter the warmth of the hotel to wait for a taxi, staff turned them away, then observing the former guests walk past the taxi stand to a parking lot. Rather than hail a taxi, the group piled into a car and proceeded to drive into the back of a tow truck at a high speed, killing one passenger and rendering Groh into a persistent vegetative state.

The Court held that "a hotel that evicts a guest has duty to exercise

reasonable care under the circumstances. This requires the hotel to refrain from evicting an intoxicated guest into a foreseeably dangerous environment."

In a split opinion, the dissent noted that the majority holding opens the door to potential extension of its holding such that the Court's "reasoning would apply to impose a duty to provide safe transportation for evicted guests on the entire Colorado hotel industry—indeed, on all businesses involved in providing 'entertainment.'" We anticipate quick movement by the plaintiff's bar to expand the scope of this holding at the trial court level to include duty obligations outside of the traditional dram shop context for intoxicated invitees ejected from commercial premises.

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