
TREECE ALFREY MUSAT P.C. COLORADO LEGAL UPDATE



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TAM WINS APPEAL STRENGTHENING GOVERNMENTAL IMMUNITY IN COLORADO

June 19, 2015

In [Smokebrush Foundation et al. v. City of Colorado Springs](#), No. 14CA0228, a unanimous panel of the Court of Appeals agreed that TAM's client is, in fact, immune from the claims asserted in the case under the Colorado Governmental Immunity Act, Colo. Rev. Stat. § 24-10-101 *et seq.* ("GIA").

The case involves an underlying environmental claim by a neighboring landowner and its principals against the City of Colorado Springs ("City"), who owned property that once was used to produce streetlamp gas from the late 1800s to 1931. The City owned and operated the plant from 1925 to its idling. By the 1950s the plant had been demolished, and in the 1960s a City office building was built on the property.

In the early 2000s the City vacated the office building and, by 2012, decided to raze it. During the demolition and after asbestos abatement, a Plaintiff principal claimed she has asbestos fibers blown on her during a dust storm. The environmental suit claims injuries related to the "asbestos wind" and coal gasification byproduct subsurface contamination affecting their property and health.

TAM moved to dismiss under the GIA and, after a lengthy evidentiary hearing, the trial court broadly interpreted the GIA to find that the City had waived immunity for operating a gas facility and for the existence of a dangerous condition on the property. TAM appealed and, in a matter of first impression, argued that the trial court improperly applied the terms of the 1972 GIA retroactively to conduct that occurred at the latest 80 years prior to the date of injury, and that the demolition of a building did not fit the "operation and maintenance" carve-outs to immunity.

The Court of Appeals agreed, holding that statutory language and canons of interpretation rendered the trial court's denial as error. After adopting TAM's analysis of the history of the GIA and Colorado precedent, the Court reversed the trial ruling and remanded with instruction to dismiss the City under the GIA. The opinion clarifies issues of retroactivity and the scope of waiver under statutory interpretation principles that will be useful to governmental entity defense.

TAM shareholder [Rob Zavaglia](#) and Special Counsel [Kathy Byrne](#) represent the City in both the trial court and appellate action. Audio of the oral argument can be heard [here](#).