



## Colorado Supreme Court Clarifies What Structures are a “Building” for Purposes of Waiver of CGIA Immunity

Earlier this week in *County of Jefferson v. Stickle*, the Colorado Supreme Court held that a parking garage outside the Jefferson County Courts and Administration Building fits the definition of “building” as used in the Colorado Governmental Immunity Act (CGIA). Based on this holding, the Court went on to conclude that the plaintiff’s personal injury claims against the county could proceed under the premises liability exception to CGIA immunity.

Denver area residents are likely familiar with the Jefferson County Building even if they do not know what it is. Anyone returning to the area from a ski trip has seen the large, ornate building just north of the highway almost as soon as they emerge from the Foothills.

In *Stickle*, the plaintiff fell when stepping down from a walkway to a parking garage at that facility. The plaintiff subsequently sued the county, claiming the fall caused her to break her arm. The county moved to dismiss, asserting that the CGIA barred the plaintiff’s suit.

As the reader may know, the CGIA generally bars tort claims, such as personal injury suits, against governmental entities in Colorado unless the statute expressly provides an exception. One such exception is for personal injuries sustained because of a dangerous condition on the government’s land. In other words, generally, no immunity exists for premises liability suits against Colorado governments.

In the district court, the county had asserted this exception to CGIA immunity did not apply for two reasons: (1) a parking garage is not a “building”; and (2) even if the parking garage were a building, the plaintiff’s alleged injuries were the result of a choice in the “design” of the parking garage.

The district court held a hearing, known as a *Trinity* hearing, on the county's motion. After the hearing, the district court denied the county's motion finding that the parking garage is a "building" and thus the exception to CGIA immunity for premises liability suits applied. The county then appealed to the Colorado Court of Appeals, which affirmed.

The Colorado Supreme Court then agreed to review the Court of Appeals' decision. The Supreme Court affirmed, finding that the parking garage is a "building," and the allegedly dangerous condition was not solely a "design" choice.

Because the CGIA does not define "building," the Supreme Court turned to dictionaries and precedent to determine the definition of "building." Of particular importance, the Supreme Court reiterated its nearly 65-year-old precedent holding that "all stationary structures within Colorado, no matter of what substance they may be constructed, are within the term building, so long as they are designed for use in the position in which they are fixed." The *Stickle* court also emphasized that this definition is not limited to a "structure with walls and a roof" and is broad enough to capture every "structure which has a capacity to contain and is designed for the habitation of man or animals, or the sheltering of property."

The Supreme Court then easily found that the Jefferson County Building's parking garage fell within this definition because, although the top level of the garage had no roof, it was designed to shelter property – namely, vehicles. Additionally, the Court noted that the garage has "electricity for lighting and vehicle charging and a sprinkler system" and its "lower level is completely covered and is enclosed by a knee-high wall."

Turning to the second issue the county raised, that the allegedly dangerous condition was part of a "design" choice and thus not subject to the CGIA's premises liability exception, the *Stickle* court found that the choice made was part of a long-term maintenance project. The Court found that although an aspect of this maintenance program may have involved a design choice, it was nonetheless the result of facility maintenance, at least in part. Thus, because a dangerous condition must be solely because of design to avoid a finding of CGIA immunity waiver, the *Stickle* court affirmed the district court's and Court of Appeal's finding that the CGIA's premises liability waiver applied.

The Supreme Court's decision in *Stickle* has obvious application in the context of governmental liability. The Court's opinion makes clear that the premises liability exception to CGIA immunity applies to a broad swath of government-owned structures, not just habitable buildings like offices.

Beyond that context, the *Stickle* decision could have broad ramifications for many other areas, such as land use law, where many statutes and ordinances refer to and affect "buildings". The Supreme Court's clear adoption of an expansive definition of that term could lead local governments to assert land use authority over a larger set of structures than they traditionally have.

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