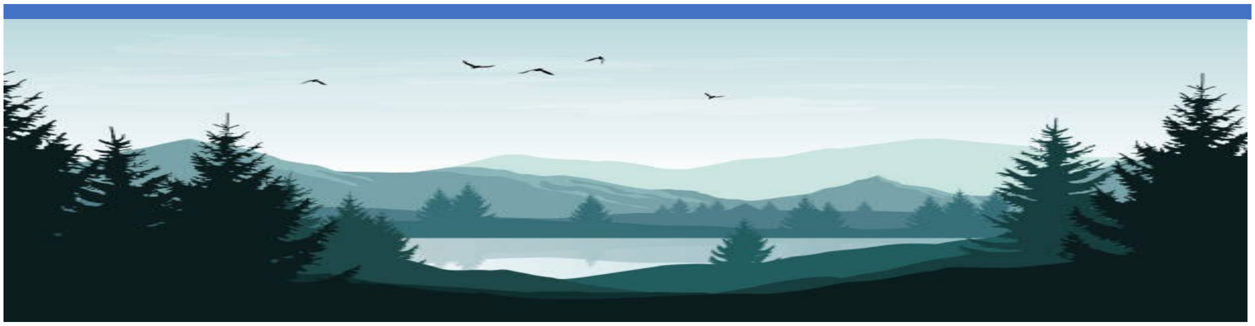

CDLA CASE LAW DIGEST – 2025-2026

Colorado Supreme Court

Veolia Water Techs., Inc. v. Antero Treatment LLC - economic loss rule-- 2026 CO 52 (06/23/26). The supreme court granted certiorari to consider whether the economic loss rule bars a fraud claim when the parties were in a contractual relationship, the fraud claim allegedly sought the same relief as a breach of contract claim, and the fraud allegedly concerned a party's performance under the contract. The court concluded that because (1) the interrelated contracts doctrine did not apply to a series of contracts between two parties when each contract represents a stand-alone transaction and (2) the fraud alleged here occurred prior to the formation of the pertinent contract and, on the facts presented, the fraud induced the other party to sign that contract, the economic loss rule does not bar the fraud claim in this case.

J.B. v. MKBS, LLC – *Merits matter!* - 2026 CO 50 (06/23/26). The Supreme Court held that a defaulting defendant may testify as a witness in a co-defendant's trial even if the testimony contradicts facts deemed admitted by the default. The default binds only that defendant's liability and does not limit a non-defaulting party's right to present relevant evidence. The Court further held that the trial court did not abuse its discretion in setting aside a default judgment against the defendant based on excusable neglect, a meritorious defense, and on equitable considerations. The trial court properly entered judgment in the defendant's favor to avoid inconsistent outcomes after a jury found no assault and no damages in the co-defendant's trial. The court emphasized a strong preference for resolving cases on the merits and avoiding judgments that conflict with jury verdicts, even where a party initially failed to respond to the complaint.

In Re Arrowhead v. Roxborough Park Foundation – *Civil procedure rules* - 2026 CO 54 (06/23/26). The trial court denied the landowner's request for expedited discovery, concluding that neither the eminent domain statutes nor the Colorado Rules of Civil Procedure allowed for discovery before the case was "at issue." The supreme court reversed, holding that the Colorado Rules of Civil Procedure [specifically Rules 26(d), 26(b)(2), and 16(b)(1)] grant trial courts discretionary authority to order prehearing discovery, including in condemnation proceedings. The court emphasized that Rule 26(d) expressly permits discovery by court order prior to a case management order, and Rule 16(b)(1) allows courts to deem a case “at issue” at a time of their choosing, thereby enabling discovery even absent traditional pleadings.

Moreno v. Circle K Stores -*Wrongful Termination- Public-Policy Exception*- 2026 CO 46 (06/15/26). The Supreme Court answers the following certified question of law: Does Colorado law recognize a public-policy exception to the at-will employment doctrine that allows an employee to bring a wrongful termination claim in the event the employee is terminated for actions taken in self-defense? Applying the test established in Martin Marietta Corp. v. Lorenz, the supreme court concludes that the right to self-defense, established by statute and constitution, supports a public-policy exception to the at-will employment doctrine.

Pinto v. USAA - *Discovery dispute* - 2026 CO 44 – (06/06/26). Samantha Pinto was rear-ended in December 2020 and claimed injuries including a concussion and cognitive issues. After receiving $500,000 (the full policy limit) from the other driver's insurer, she filed an uninsured motorist (UM) claim with her own insurer, USAA, arguing her damages exceeded that amount. USAA valued her claim at roughly $144,000 and offered nothing further. Pinto then sued USAA for breach of contract. During litigation, USAA sought to compel Pinto to produce unredacted medical records, documents from a separate April 2022 accident in which she claimed similar injuries, and to submit to an independent medical examination (IME). Pinto resisted, relying on Schultz v. GEICO (2018), which held that in bad faith claims, a court reviews only the evidence the insurer had when it made its coverage decision. She argued this evidence post-dated USAA's decision and so should be off-limits. The court ruled against Pinto on every point. Schultz does not extend to breach of contract claims. Its logic is confined to bad faith claims, which turn on the reasonableness of the insurer's conduct at the time of its decision. A breach of contract claim instead asks only whether the insured is entitled to benefits under the policy, so later-developed evidence is not barred. The trial court did not abuse its discretion in compelling the unredacted medical records and the April 2022 accident documents, because they are relevant to determining which injuries actually stem from the 2020 accident. The court noted Pinto could seek a protective order to address privacy concerns. The trial court did not abuse its discretion in ordering the IME, because Pinto placed her mental condition "in controversy" by claiming the accident caused specific cognitive impairments —not merely generic emotional distress.

Progressive Direct Ins. v. Ortiz-Uninsured Motorist - *UM* - 2026 CO 40 The supreme court granted certiorari to review whether it should reconsider its decision in State Farm Mutual Automobile Insurance Co. v. Brekke, 105 P.3d 177 (Colo. 2004). There, the supreme court held that to provide a court with the information necessary to determine an uninsured motorist insurer's level of participation in tort litigation between its insured and an uninsured motorist, a UM insurer must plead with particularity the legitimate defenses it intends to raise as soon as practicable. With one minor clarification regarding C.R.C.P. 8 and C.R.C.P. 9(b), the Supreme Court declined to overrule *Brekke*. Instead, the court concluded that Brekke's guiding principles stand. To provide a court with the information needed to timely determine a UM insurer's appropriate level of participation in tort litigation between its insured and an uninsured motorist, an insurer must, as soon as practicable, plead its legitimate defenses specifically. Rule 9(b) does not apply unless a UM insurer asserts fraud or mistake as a legitimate defense. Because the UM insurer in this case failed to meet Brekke's requirements, the Supreme Court concluded that the district court did not abuse its discretion in barring the UM insurer from contesting liability in the tort litigation between its insured and an uninsured motorist.

Boe v. Children's Hosp. Colo. – *preliminary injunction* - 2026 CO 32. In this original proceeding under C.A.R. 21, the supreme court concluded that petitioners satisfied all the required factors for granting a preliminary injunction under Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982), and the trial court therefore abused its discretion by denying petitioners' motion for a preliminary injunction. Under the public-interest factor, the court holds that, when anti-discrimination laws and protected classes are involved, it is inappropriate for a trial court to conduct a purely numerical comparison of the number of people who will or might be harmed if a preliminary injunction is or is not issued. It also held that the balance-of-the-equities factor tends to support granting an injunction when the alleged harm to the nonmoving party is speculative and the moving party has demonstrated actual harm.

USAA v. Wenzell – *Scope of duty to cooperage statute* - 2026 CO25 (94/27/2026). The Supreme Court considered which insurer defenses are covered by section 10-3-118. The court concluded that only defenses based in the general cooperation clause not enumerated conditions precedent must be raised in compliance with section 10-3-118's procedural requirements. The court also considered whether an excess insurer may include an exhaustion clause in its policy to determine when its duty to investigate, adjust, and pay out a claim begins. The court concluded that while these clauses are valid, exhaustion must be defined by a policyholder's undisputed damages not the payment of benefits by an underlying insurer.

Hertz Corp. v. Babayev- *Car rental not insurer* - 2026 CO 26 - The Supreme Court holds that, although a car rental company may offer its customers supplemental insurance through its own insurer, that arrangement does not impose on the car rental company a nondelegable duty, under either statute or the common law, to act as an insurer. Rather, that duty remains where the law has placed it -: with the insurer named on the policy providing supplemental insurance (that is, the car rental company's insurer). While Cary v. United of Omaha Life Insurance Co., 68 P.3d 462 (Colo. 2003), extended the common-law duty of good faith and fair dealing beyond insurers (to a narrow class of third-party administrators) that holding does not encompass the car rental company in this case.

Bianco v. Rudnicki - *Damages cap exception* - 2025 CO 49 (09/08/25). Colorado's Heath Care Availability Act (the "HCAA") generally imposes a $1 million limit on medical malpractice damages awards. § 13-64-302. But the HCAA also provides an exception: in cases where good cause is shown, courts may find that applying the cap would be unfair and award economic damages beyond the $1 million cap. The HCAA further provides that prevailing interest is deemed part of the damages awarded in the action. In this case, the Supreme Court held that prefiling interest accruing on economic damages is part of the economic damages award and thus falls within the good cause exception to the HCAA's general $1 million cap.

By the Rockies v. Perez-Labor and Industry 2025 CO 56 - The Supreme Court decided which statute of limitations applies to claims asserted under the Minimum Wage Act, § 8-6-118, C.R.S. (2024). The Act itself is silent on this topic. The district court below concluded that the two- or three-year limitations period applied. Since Perez's complaint was untimely (Perez filed his complaint was filed five years five years after By the Rockies, LLC allegedly violated the Minimum Wage Act) it granted summary judgment. The Supreme Court affirmed the district court concluded that the two- or three-year statute of limitations period in the Wage Claim Act applies to claims brought under the Minimum Wage Act.

Banner Health v. Gresser- Damages cap -2025 CO 60 (Colo. Oct. 20, 2025). The Supreme Court interpreted the Health Care Availability Act's ("HCAA") damages cap and considered how a trial court should determine the appropriate amount of damages to award if the court determines that it is appropriate to exceed the cap under the exception provided by the legislature in section 13-64-302(1)(b), C.R.S. (2025). The Supreme Court held that once a trial court has determined that the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair, the court's subsequent determination as to the proper amount of damages is governed by common law; meaning, under subsection 302(1)(b)'s exception, the jury retains its authority to determine the amount of damages, subject only to the court's remittitur authority and its authority to review the award for the sufficiency of the evidence.

Mostellar v. City of Colo. Springs-*Governmental Immunity - Public Entities - Personal Injury*. 2026 CO 22 (04/13/26). The district court had found that the deadline to provide notice under the Colorado Governmental Immunity Act did not begin to run until the City of Manitou Springs informed the plaintiff of an intergovernmental agreement that made the defendant potentially liable for her accident. The supreme court granted certiorari to consider whether the issue and whether the CGIA should require strict compliance when such compliance is impossible based on one public entity's failure to inform the claimant of the potential liability of another public entity. The Court concluded that this case did not implicate a scenario in which strict compliance with the CGIA was impossible or a defendant prevented strict compliance by misleading a plaintiff. Having decided this, the Court further concluded that under section 24-10-109(1), C.R.S. (2025), the notice period began to run on the date on which the claimant was injured, not on the date that Manitou Springs informed her of the intergovernmental agreement.

The Sentinel Colorado v. Rodriguez *—Municipal, County, and Local Government—Attorney Fees—Attorney-Client Privilege* - 2025 CO 58 (10/07/25). The supreme court determined that The Sentinel Colorado newspaper, as a corporation, is a "citizen" under the Colorado Open Meetings Law. Accordingly, the supreme court held The Sentinel may recover attorney fees from the Aurora City Council for the Council's violation of the COML if it is ultimately the prevailing party. Further, the Court determined that a public letter disclosing the fact that a stipulated agreement was discussed during an Aurora City Council executive session does not waive the attorney-client privilege because it did not detail the communications between the Council and its attorney.

Pub. Serv. Co. of Colo. v. Cuevas—Public Utilities—*Electricity— Personal Injury* - 2026 CO 6. The question in this case was whether (1) a provision in Public Service Company of Colorado's ("PSCo's") tariff purporting to limit its liability to "persons" applies to non-PSCo customers like respondent; (2) whether the Colorado Public Utilities Commission ("PUC") had the authority to approve a tariff limiting PSCo's liability to non-PSCo customers; (3) whether respondent was a "person" subject to the notification requirements of the High Voltage Safety Act ("HVSA"); and (4) whether section 9-2.5-104(2), C.R.S.(2025), of the HVSA requires a causation analysis. The Supreme Court concluded that (1) assuming without deciding that the tariff's limitation of liability provision is broad enough to apply to non-PSCo customers like respondent, the PUC lacked the authority to approve such a tariff; (2) because respondent was not the contracting party, he was not subject to the HVSA's notification requirement; and (3) section 9-2.5-104(2) of the HVSA does not require a causation analysis.

Ralph L. Wadsworth Construction Co., LLC v. Regional Rail Partners, *construction claim – excessive amount* - 2026 CO 19 (04/06/2026). RTD hired Regional Rail Partners to design and build the North Metro Rail Line between Denver Union Station and Thornton, and Regional Rail in turn subcontracted Wadsworth to build segments of the line. The project was plagued by delays. Wadsworth blamed those on Regional Rail. Among them were those segments not being ready on time, unfinished land acquisitions, right-of-way problems, and incomplete plans. Under the Colorado Claim Act, Wadsworth filed a "verified statement of claim" for roughly $12.8 million it believed it was owed for labor, materials, and other project costs. Under statute, a contractor forfeits all rights to the amount claimed if it files a statement for more than what is actually due, without a reasonable possibility the amount is owed, and knowing the claim is inflated. Regional Rail argued Wadsworth's claim was "excessive" because it included disputed and unliquidated amounts (like delay and disruption damages that had not been fixed in a set sum), and that this should wipe out Wadsworth's entire claim. The Supreme Court held that subcontractors on public projects may seek recovery of disputed or unliquidated amounts, including delay and disruption damages, on verified statements of claim under the Public Works Act. In other words, including contested sums does not automatically make a claim "excessive." It also held that the penalty for filing an excessive claim is forfeiture of statutory remedies only, leaving common law claims available.

Sandoval v. City of Colorado Springs, - GIA – *multifunctioning signals* - 2026 CO 34 (05/26/2026). The issue was the interpretation of CRS § 24-10-106(1)(a)(II), which waives sovereign immunity when a public entity fails to repair a traffic control signal displaying "conflicting directions," causing a dangerous condition. The Supreme Court ruled that under these circumstances, signals displaying conflicting directions caused a dangerous condition. As a result, Colorado Springs waived its sovereign immunity.

CenturyLink, Inc. v. Houser – *ethics – cut and paste* -2026 CO 20 (04/06/26) The case is a shareholder securities class action. The Colorado Supreme Court took it up to decide a procedural question: does an attorney satisfy C.R.C.P. 11(a)'s duty to conduct an "objectively reasonable inquiry" when the attorney copies allegations, including statements from confidential witnesses, out of complaints filed in related lawsuits against some of the same defendants? The Court answered that counsel must conduct a sufficient investigation to support a complaint's allegations, at least on information and belief, but the amount of investigation required is highly fact dependent. Critically, copying allegations from related lawsuits does not by itself violate Rule 11(a). A trial court has to evaluate the matter in the context of each case.

English v. Thorpe - Civil *Procedure — C.R.C.P. 15(a) vs. C.R.C.P. 41(a)(2) — Partial Withdrawal of Claims — Judicial vs. Evidentiary Admissions Issue* 2026 COA 29 (Apr. 16, 2026). The estate of Joseph English sued Shirley Thorpe for unjust enrichment and conversion. Thorpe counterclaimed, alleging a business partnership, then moved to amend to drop the partnership counterclaims. The district court denied the motion under Rule 41(a)(2), citing prejudice. The Court of Appeals reversed, holding application of Rule 41 was error and not harmless given Rule 15(a)'s more liberal standard. The division added that dismissal would have been warranted even under Rule 41(a)(2), as any prejudice could be cured by treating the withdrawn allegations as evidentiary rather than judicial admissions. Once amended out of a pleading, prior allegations are no longer conclusive judicial admissions. TAKEAWAY. Withdrawn allegations remain usable at trial as evidentiary admissions but lose their conclusive effect.

Elk Creek Ranch Owners Ass'n v. Elk Creek Ranch Dev., Inc. - *Finality of post judgment fee orders* 2026 COA 58 (07/09/26). In a case involving multiple parties and multiple fee requests, an order denying one party's fee request is not final and appealable until the district court has resolved all parties' fee requests. The trial court

erred by equating an undefined, lowercase "default" in the fee-shifting clause with a specifically defined, capitalized "Default" (limited to "Default by Tenant") elsewhere in the lease. The undefined term must be given its plain and ordinary meaning, and a breach of the implied duty of good faith and fair dealing qualifies as a "default" triggering fee-shifting. Further, the Court held that unreasonable hours (including, overstaffing and time on non-compensable claims) must be excluded before the lodestar is calculated—not through a percentage reduction applied afterward.
Dreifus v. Glenarm Dining Services, Inc., federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act - 2026 COA 59 (07/09/26). The COA affirmed the denial of the employer's motion to compel arbitration of the tort claims. EFAA applies case-wide, not claim-by-claim. The division held that the EFAA's use of the word "case" reaches the entire proceeding, provided the claims "relate to" the sexual harassment dispute. Retaliation for reporting sexual harassment is sufficiently related. The plaintiff's post-filing termination allegations (tied both to her lawsuit and to her role as a witness in a Denver Labor wage investigation) remained related to her sexual harassment claims and thus fell within the EFAA. Although motions to compel arbitration are properly evaluated under Rule 12(b)(1), the defendant did not request an evidentiary hearing or identify specific disputed jurisdictional facts. Arguments of counsel alone do not create factual disputes requiring a Trinity Broadcasting-type hearing.

Bechtholdt v. Extraction Oil & Gas, Inc - *54(b) certification when a quiet title claim remains unresolved.* - 2026 COA 57 (07/09/26). This appeal was dismissed for lack of jurisdiction; The dispute involved a tangled chain of title to a severed mineral estate underlying a Weld County parcel developed for oil and gas production. Where resolution of a plaintiff's other claims (here, mineral trespass, unjust enrichment, and requests for accounting and restitution) directly affects what relief the plaintiff or other interested parties may obtain in a pending quiet title action, Rule 54(b) certification of those other claims is improper. The certified rulings did not "dispose of an entire claim for relief" because the legal interests were inextricably linked to the unresolved quiet title claim.

SOME OF THE THINGS YOU SHOULD KNOW ABOUT THE 'SLAPP' STATUTE.

In 2019, the General Assembly enacted C.R.S. § 13-20-1101 with a dual purpose: to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law, and at the same time, to protect the rights of persons to file meritorious lawsuits for demonstrable injury CO ST § 13-20-1101. Because the statute closely resembles California's anti-SLAPP statute, Colorado courts have consistently looked to California case law for guidance in construing and applying it Rosenblum v. Budd, 538 P.3d 354 (2023).
Colorado's Anti-SLAPP (Strategic Lawsuit Against Public Participation) statute provides a special 'motion to dismiss' procedure that allows defendants to obtain early dismissal of claims arising from protected activity [with mandatory attorney fee awards for prevailing defendants]. Courts apply a two-step burden-shifting framework: the defendant first shows the claim arises from protected activity in connection with a public issue, then the burden shifts to the plaintiff to demonstrate a reasonable likelihood of prevailing.

The statute applies in federal diversity cases, though certain procedural provisions — including the automatic discovery stay and the 63-day filing deadline — do not apply in federal court.

Important Negative Treatment [and why we included it in these materials]: In February 2026, the Colorado Supreme Court in Hinds v. Foreman declared C.R.S. § 13-20-1101(7) unconstitutional to the extent it permits the court of appeals to review final judgments of county courts, holding that appellate review of such final judgments is reserved to the district court and the Colorado Supreme Court.

Section 13-20-1101(2)(a) defines this protected activity to include four categories: (I) any written or oral statement or writing made before a legislative, executive, or judicial proceeding or any other official proceeding authorized by law; (II) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body or any other official proceeding authorized by law; (III) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or (IV) any other conduct or communication in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest

The Colorado Supreme Court, in ***Lind-Barnett v. Tender Care Veterinary Center, Inc.,*** 580 P.3d 573 (2025), established the authoritative two-step test for determining whether speech or conduct qualifies as being made in connection with a public issue or issue of public interest under category (IV). **Under step one,** a court must determine whether an objective observer could reasonably understand that the challenged speech or conduct, considered in light of its content and context, was made in connection with a public issue or an issue of public interest — even if it also implicates a private dispute. Statements that tend to implicate a public issue typically fall into one of three categories: (1) those that concern a person or entity in the public eye; (2) conduct that could directly affect a large number of people beyond the direct participants; or (3) a topic of widespread public interest (note: not an xhaustive list). The Supreme Court held that speech arising from or concerning a private dispute does not automatically lose the statute's protections, because those who speak on public issues are often driven to do so by circumstances that affect them personally.

Under step two, a court must examine the relationship between the challenged speech or conduct and the identified public issue, asking whether the challenged activity contributed to public discussion or debate regarding that issue. The broader context, including the audience, the speaker, the location, and the purpose of the speech, is critical to this inquiry.

A speaker's motive is not relevant to determining whether the challenged speech or conduct is made in connection with a public issue or issue of public interest. A defendant may have a malicious motive for their speech or conduct, but the challenged activity may still implicate a public issue or issue of public interest. The Supreme Court stated that the question of motive is not pertinent at the first step of the analysis.

The Two-Step Burden-Shifting Framework

Step One —The defendant filing the motion must make a threshold showing that the anti-SLAPP statute applies, which mean does plaintiff's claim arises from an act made in furtherance of the defendant's right of petition or free speech in connection with a public issue. Case law indicates this burden is not particularly demanding. If the defendant fails to make this showing, the motion is denied and the case proceeds under the ordinary rules applicable to all civil cases.

Step Two — If the defendant clears the first hurdle, the burden shifts to the plaintiff to demonstrate a reasonable likelihood of prevailing on the claim The Colorado Court of Appeals held (in ***Salazar v. Public Trust Institute***, 522 P.3d 242 (2022)) that ‘reasonable likelihood’ is synonymous with ‘reasonable probability.’ The court is to consider the pleadings and supporting and opposing affidavits but is not simply to accept the truth of the allegations or make an ultimate determination of their truth. Instead, the court is to assess whether the allegations and defenses are such that it is reasonably likely that a jury would find for the plaintiff. The court is not to weigh evidence or resolve conflicting factual claims; rather, it is to accept the plaintiff's evidence as true and evaluate the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. The plaintiff need not prove the case at this stage, nor does the court decide whether the plaintiff will ultimately prevail.

In defamation cases involving a matter of public concern, to survive a special motion to dismiss, the plaintiff must demonstrate a reasonable likelihood of proving actual malice, not mere negligence. Additionally, courts require proof of the statement's material falsity. Minor inaccuracies do not amount to falsity so long as the substance or gist of the statement was true. To qualify as a material falsehood, the challenged statement must be false and likely to cause reasonable people to think significantly less favorably about the plaintiff than if they knew the whole truth.

Appellate courts review a district court's ruling on an anti-SLAPP special motion to dismiss *de novo,* applying the same two-step analysis.

Procedural Mechanics

Filing Deadline: The special motion must be filed within 63 days after service of the complaint or, in the court's discretion, at any later time upon proper terms In **N.D. v. N.J.D., --- P.3d ---- (2026),** the Colorado Court of Appeals held for the first time that when a district court considers a special motion to dismiss under the anti-SLAPP statute, it **must hold a hearing** and cannot decide the matter solely on the briefs. The statute's use of the word must in requiring a hearing to be scheduled within 28 days of service of the motion is mandatory, not directory. The only exception to the mandate is the timing of the hearing — not whether a hearing must be held at all N.D. v. N.J.D., --- P.3d ---- (2026).

Discovery Stay: All discovery proceedings in the action are automatically stayed upon the filing of the special motion to dismiss and remain stayed until entry of the order ruling on the motion. However, a court may, on noticed motion and for good cause shown, order that specified discovery be conducted notwithstanding the stay. Good cause requires the requesting party to show that discovery is necessary and tailored to oppose the anti-SLAPP motion Jogan Health,

Interlocutory Appeal: An order granting or denying a special motion to dismiss is appealable to the Colorado Court of Appeals. However, in ***Hinds v. Foreman***, the Supreme Court **held** that C.R.S. §§ 13-20-1101(7) and 13-4-102.2 are unconstitutional to the extent they permit the court of appeals to review a final judgment of a county court, as it found that appellate review of a final judgment issued by a county court on an anti-SLAPP special motion to dismiss is reserved to the district court and the Colorado Supreme Court. Additionally, if a trial court denies the motion on the grounds that the action is exempt under subsection (8), the appeal provisions do not apply.

Statutory Exemptions

The statute does not apply to three categories of actions CO ST § 13-20-1101:

1. Government enforcement actions: Actions brought by or on behalf of the state or any subdivision of the state enforcing a law or rule or seeking to protect against an imminent threat to health or public safety.

2. Public interest actions: Actions brought solely in the public interest or on behalf of the general public, provided that (A) the plaintiff does not seek relief greater than or different from the relief sought for the general public or a class; (B) the action, if successful, would enforce an important right affecting the public interest and confer a significant benefit on the general public or a large class of persons; and (C) private enforcement is necessary and places a disproportionate financial burden on the plaintiff.

3. Commercial speech: Causes of action against persons primarily engaged in the business of selling or leasing goods or services, where the statement or conduct consists of representations of fact about business operations made for the purpose of obtaining approval for, promoting, or securing sales, and the intended audience is actual or potential buyers or customers. This commercial speech exemption does not apply to publishers, editors, reporters, or persons connected with newspapers, magazines, periodicals, press associations, wire services, radio or television news reporters, or persons engaged in disseminating ideas in books or academic journals, nor to actions based upon the creation or dissemination of dramatic, literary, musical, political, or artistic works

Recent Developments

Colorado's Anti-SLAPP statute is relatively young, and its body of interpretive case law has grown rapidly since 2022. The Colorado Supreme Court issued two significant decisions in 2025 and 2026. In ***Lind-Barnett v. Tender Care Veterinary Center, Inc.,*** 580 P.3d 573 (2025), the Court resolved a split among Court of Appeals divisions by establishing the definitive two-step test for determining whether speech concerns a public issue and by holding that speaker motive is irrelevant to that inquiry. In ***Hinds v. Foreman,*** 583 P.3d 118 (2026), the Court addressed the intersection of the anti-SLAPP statute with defamation law, confirming that when a defendant's allegedly defamatory statements involve a matter of public concern, the plaintiff must demonstrate a reasonable likelihood of proving actual malice to survive a special motion to dismiss, not mere negligence. The Court also held that the statutory provisions authorizing court of appeals review are unconstitutional to the extent they permit the court of appeals to review final judgments of county courts.

The Colorado Court of Appeals has also continued to refine procedural requirements. In ***N.D. v. N.J.D.,*** --- P.3d ---- (2026), decided in early 2026, the court established that a mandatory oral hearing is required before ruling on a special motion to dismiss. The Tenth Circuit's 2024 decision in ***Coomer v. Make Your Life Epic LLC,*** 98 F.4th 1320 (2024) created an important divergence between state and federal practice by holding that denials of anti-SLAPP motions are not immediately appealable in federal court under the collateral-order doctrine, which is a significant departure from the approach taken by the Ninth, Fifth, and First Circuits with respect to their states' anti-SLAPP statutes.

Wilburn v. Guthrie — *Anti-SLAPP — Accusation of Crime* - 2026COA13 (03/12/26). In this action under the anti-SLAPP statute, § 13-20-1101, a division of the court of appeals addresses the line between fact and opinion when one person publicly accuses another of committing a crime. The division holds that if the speaker fully and accurately discloses the conduct on which the accusation is based, the speaker's characterization of that conduct as a crime is a constitutionally protected opinion that cannot sustain a defamation claim. In contrast, when the speaker does not fully and accurately disclose the factual context for the accusation, or when the speaker asserts or implies that the other person has done something they have not, the statement may be an actionable assertion of fact.

Colorado Court of Appeals

Town of Superior v. Board of County Commissioners of Jefferson County — *Constitutional Law — Federal Supremacy and Preemption* - 2026COA14. A division of the court of appeals holds that federal law preempts a claim for injunctive relief requiring an airport to ban certain aircraft operations to abate aircraft noise. Under City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 638 (1973), state and local regulation of aircraft noise is preempted by federal law. Further, the court held that although the proprietor of an airport retains authority to impose certain noise restrictions in its role as airport proprietor, a state court may not order the proprietor to do so because such an injunction would constitute impermissible local control over aircraft noise.

Barba v. Industrial Claim Appeals Office — *Workers' Compensation* — 2026COA15 (03/12/26). The court of appeals addresses a novel issue regarding the impact of section 8-42-107(8)(f), C.R.S. 2025, a provision of the Workers' Compensation Act of Colorado, on the information employers may include in a final admission of liability. That statute requires employers submitting a final admission of liability to "admit liability for related reasonable and necessary medical benefits by an authorized treating physician" in all claims when "an authorized treating physician recommends medical benefits after maximum medical improvement," and the record does not contain a "contrary medical opinion." The division interpreted the statutory provision stating that the "related reasonable and necessary medical benefits" admitted in a final admission of liability "are not limited to any specific medical treatment" to mean that an employer cannot limit maintenance medical benefits to any specific medical treatment and that any attempt to do so is a nullity. In addition, the division concludes that section 8-42-107(8)(f) neither prohibits an employer from referring to a physician's report in a final admission of liability when admitting liability for maintenance medical benefits nor implies that such a reference constitutes an impermissible limitation on benefits.

Bohanan v. Esurance Property & Casualty Insurance Co.- *Required Disclosures* - 2026COA6 (02/25/26). This case interpreted the phrase "is or may be relevant" as used in section 10-31117(2)(a). The plaintiff was injured in a motor vehicle accident caused by a driver who obtained liability coverage through an insurance policy apparently issued after the incident occurred. The majority concluded that the insurer was obligated under section 10-31117(2)(a) to provide a copy of the policy to the plaintiff because it was relevant or potentially relevant to her contemplated claim against the driver. Because the insurer failed to provide a copy of the policy for over a year, the majority concludes that it is liable to the plaintiff in the amount of $100 per day, calculated from the date the insurer was statutorily obligated to provide a copy of the policy until the day it provided the policy to the plaintiff. The dissent argues that the insurer's determination that the policy was purchased after the accident relieved it of any obligation to provide the plaintiff with a copy of the policy.

Keep Airport v. BOCC Boulder — *Jurisdiction of Courts — Standing— Conservation Easements — Termination* - 2026COA5 (01/29/26)) A division of the court of appeals considered whether adjacent property owners and other interested residents (the neighbors) have standing to challenge a board of county commissioners' decision to terminate a conservation easement that burdens private land. The division concluded that the neighbors lack standing to challenge the termination of the conservation easement because they do not have a legally protected interest recognized by common law or by the applicable land use code.

Macomber v Nations Roof — *Landlords and Tenants — Colorado Premises Liability Act — Landowner* 2025COA59 (06/18/2025). As a matter of first impression, a division of the court of appeals addressed whether the Premises Liability Act (PLA) contains a physical proximity requirement that limits "[l]andowner" status under section 13-21-115(7)(b) to the area on the property where the putative landowner is performing work and excludes a separate area on the property where the plaintiffs sustained injuries. Applying the statute's expansive definition of landowner, the division concludes that the PLA contains no such physical proximity requirement. Thus, roofing companies that placed a gas-powered generator on the roof of a retail store that emitted carbon monoxide into the store's interior through the HVAC system, causing alleged injuries to the store's employees, qualified as landowners under the PLA, notwithstanding that the roofing companies limited their work to the store's roof.

Spectrum v. Continental — *Insurance — COVID-19 — Direct Physical Loss — Property Rendered Uninhabitable* - 2025COA57 (06/18/2025). Colorado Court of Appeals addressed whether COVID-19 and the resulting governmental orders restricting business operations constituted a compensable loss under an insurance provision insuring against a direct physical loss. The court also addressed, as a matter of first impression, potential coverage for COVID-19 related losses incurred under a health care endorsement added to the insurance policy. The majority concluded that the insured party failed to allege facts that support coverage for a direct physical loss, while the dissent disagreed. The division unanimously concluded that the insured stated a viable claim to recover some of its asserted losses under the health care endorsement.

Sebastian Holdings, Inc. v. Johansson — *Civil Procedure — Process — Substituted Service — Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* —2025COA60 (06/18/2025) A division of the court of appeals considered whether the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 (the Hague Service Convention), permits a Colorado court to authorize

substituted service of foreign process within the state. The division held that Article 19 of the Hague Service Convention allows for service of process in Colorado through any method authorized by Colorado law, including through substituted service as provided by C.R.C.P. 4(f). The division also held that personal jurisdiction over a defendant in a foreign action is not required before a Colorado court may authorize substituted service of process. Because the plaintiffs exercised due diligence to effectuate personal service on the defendant, and the requested substituted service was reasonably calculated to give actual notice of the foreign action, the division affirmed the district court's refusal to quash substituted service in this case.
Smith v. City and County of Denver - *Colorado Governmental Immunity Act — Sovereign Immunity a Bar — Interlocutory Appeal — Appeal Filed at Conclusion of Case* 2025COA70 (07/31/2026). In this proceeding under the Colorado Governmental Immunity Act (CGIA), a division of the court of appeals considered as a matter of first impression whether section 24-10-108, requires a plaintiff to immediately appeal a district court's order dismissing some of the plaintiff's claims for lack of subject matter jurisdiction when some of the plaintiff's other claims remain unresolved. The division held that, in those circumstances, section 24-10-108 permits a plaintiff to challenge the court's order granting immunity to a public entity either in an immediate interlocutory appeal or in an appeal filed at the conclusion of the case. Because the plaintiffs here filed a timely appeal following the final disposition of the case, the division concluded that it had jurisdiction to review the merits of the plaintiffs' challenges to the district court's order dismissing their claims against a public entity on CGIA grounds. Because the division further concluded that the court did not err by determining that the public entity is immune from liability under the CGIA, the division affirmed the court's judgment of dismissal.

1046 Munras Properties, L.P. v. Kabod — *Courts and Court Procedure — Attorney Fees; Contracts — Feeshifting Provisions — Fees-on-Fees* 2025COA71 (08/07/26) This is the first Colorado decision to consider whether, under a contractual fee-shifting provision, a prevailing party may recover the attorney fees it incurred to enforce such provision, known as "fees on fees." A division of the court of appeals concluded that, under the subject contracts' fee-shifting provisions, the prevailing party is entitled to an award of fees on fees.

Nesjan v. J & A Distributing, Inc. — *Limitation of Actions — general Limitation of Actions Three Years — Tort Actions for Bodily Injury or Property Damage Arising out of the Use or Operation of a Motor Vehicle* – 2025 COA 81 (10/02/2026). Under section 13-80-101(1)(n)(I), all tort claims for bodily injury or property damage arising out of the use or operation of a motor vehicle must be brought within three years after the claim accrues. In this negligence action involving a plaintiff who suffered injuries while inspecting a customer's box truck, the court of appeals interpreted the phrase "use . . . of a motor vehicle" in the statute of limitations. The division held that this phrase encompasses a person who was hired to inspect and repair a motor vehicle and who sustained bodily injuries during performance of those maintenance-related activities.

Castillo v. STEM — *Government — Colorado Governmental Immunity Act — Claire Davis School Safety Act; Justiciability — Mootness* - 2025COA88 (11/13/2026). As a matter of first impression, the court of appeals considers whether the Claire Davis School Safety Act, § 2410-106.3, requires a case to proceed to a jury trial after the parties have completed full discovery, the defendant deposits with the court the maximum amount of damages that the plaintiffs could recover at trial, and the defendant agrees that the sum may be released to the plaintiffs but does not admit liability. The division concludes that in these circumstances, a district court does not err by dismissing the case as moot.

Sommers v. MarketPlace Realty, LLC —*Colorado Wage Claim Act — Wages — Severance Pay* - 2025COA97 (12/24/2025). The court of appeals interprets the statutory exclusion of severance pay from the definition of wages under the Colorado Wage Claim Act (CWCA), § 8-4-101(14)(b), and concludes that an employment agreement providing for severance compensation in the event of an employee's termination constituted severance pay under the CWCA.

Ramirez v. KLM Construction — *Workers' Compensation — Coverage and Liability — Contractors and Lessees — Rejection of Coverage by Corporate Officers and Others — Statutory Damages Cap* - 2025COA99 (12/31/2025). A division of the court of appeals considers whether a corporate officer of a single-member corporation who rejects workers' compensation insurance coverage under section 8-41-202, of the Workers' Compensation Act of Colorado is subject to the statutory damages cap set forth in section 8-41-401(3). Applying the supreme court's interpretation of section 8-41-401(3), and principles of agency law, the division concludes that the damages cap applies only if the rejecting corporate officer is a "principal."

In re Marriage of Carey — Colorado Rules for Magistrates —— Orders or Judgments Entered When Consent Not Necessary - 2026COA3 (01/15/26). A division of the court of appeals addresses the interplay between (1) finality for purposes of district court review of a magistrate's decision resolving some, but not all, issues; and (2) finality for purposes of review by the COA of a district court order or judgment. The division also addresses the application of the statutory ninety-one-day period during which a court may not enter a decree dissolving a marriage after acquiring jurisdiction over the respondent when the initial pleading in this case was a petition for invalidity rather than a petition for dissolution.

Smith v. Terumo BCT, Inc., - *Standing* - 2025COA85. The Colorado Court of Appeals held that a plaintiff lacks standing to sue based solely on allegations that a defendant's negligence may increase the plaintiff's future risk of illness or injury. To establish standing, a plaintiff must demonstrate an actual injury in fact rather than a speculative possibility of future harm. A concurring opinion questions how recent state and federal precedent may affect the interpretation of C.R.C.P. 60(b)(5), noting potential tension between existing authorities.

Weatherill v. State Farm - *Two-Year Limitations* - 2026COA11, Section 10-3-117, C.R.S., requires insurers to provide certain policy information upon request to a person with a potential automobile liability claim against the insured. An insurer that fails to respond within thirty days may be liable for statutory damages of $100 per day. The court addressed when such claims accrue and what limitations period applies. Rejecting a prior Court of Appeals decision, this division concluded that § 10-3-1117 is not a penalty statute subject to a one-year statute of limitations. Instead, claims are governed by Colorado's two-year 'catchall' limitations period. The court further held that a claim accrues when the insurer's noncompliance is discovered or reasonably should have been discovered.

Barba v. Industrial Claim Appeals Office - *Limits on Employers' Ability to Restrict Future Medical Benefits* - 2026COA15. Addressing an issue of first impression under Colorado's Workers' Compensation Act, the Court of Appeals interpreted § 8-42-107(8)(f), which governs final admissions of liability involving post-MMI medical benefits. The court held that when an employer admits liability for maintenance medical benefits, it may not limit those benefits to specific forms of treatment. Any such limitation is ineffective and treated as a nullity. At the same time, the court clarified that an employer may reference an authorized treating physician's report in a final admission of liability without creating an impermissible restriction on benefits.

Michel L. Schlup Revocable Trust v. Attorneys Title Guaranty Fund, Inc., - *Complete Defense Rule Does Not Apply to Title Insurance* 2026COA16. In a matter of first impression, the Court of Appeals considered whether the "complete defense rule" applicable in many liability insurance cases also applies to title insurance. The complete defense rule generally requires an insurer to defend all claims in a lawsuit if even one claim is arguably covered under the policy. The court concluded that this rule does not extend to title insurance policies. Because the title insurer properly denied coverage under the policy at issue, the court affirmed summary judgment in favor of the insurer.

N.D. v. N.J.D., *Anti-SLAPP Motions Require a Hearing* - 2026COA18. The Court of Appeals held that Colorado's anti-SLAPP statute requires a district court to conduct a hearing on a special motion to dismiss. A trial court may not decide an anti-SLAPP motion solely on the written submissions. Section 13-20-1101(5) mandates a hearing before the court rules on the motion.

People v. Peters - *Limits on Presidential Pardons and Supremacy Clause Immunity* - In a significant decision addressing federalism issues, the Court of Appeals considered whether a presidential pardon can extinguish liability for state crimes and whether Supremacy Clause immunity may protect a private individual acting in service of the federal government. The court held that the President's pardon power does not extend to state-law offenses. The court also held that Supremacy Clause immunity does not protect a person who is neither a federal officer nor a federal agent from state criminal prosecution. Although the court affirmed Peters' convictions, it reversed her sentence because the sentencing court improperly relied in part on her exercise of First Amendment rights. The case was remanded for resentencing. These revised summaries are written in a CLE-style format that emphasizes the practical holdings and significance of each decision for Colorado practitioners.

Tenth Circuit Court of Appeals

City of Fort Collins v. Open International - *Constitutional Law / Second Amendment* No. 24-1152 *(10th Cir. July 23, 2025),* The Tenth Circuit affirmed a nearly $20 million restitution award after a jury found that a software vendor fraudulently induced the City of Fort Collins to enter a contract for a utility-billing system by overstating the capabilities and readiness of its software. Applying Colorado law, the court held that fraudulent inducement and negligent misrepresentation claims based on pre-contract representations are not barred by the economic-loss rule because they arise from duties independent of the contract. The court also concluded that general merger and limitation-of-liability provisions did not preclude the City's fraud claims, that sufficient evidence supported the jury's verdict, and that the City had not waived its right to rescind the contract because it did not fully discover the alleged fraud until shortly before termination. The decision underscores that pre-contract misrepresentations may support tort liability notwithstanding contractual integration clauses and other contractual risk-allocation provisions.

Iron Bar Holdings v. Cape - *The Case of the Invisible Trespass* - No. 23-8043, 131 F.4th 1153 (decided March 18, 2025; cert. petition filed July 2025). Imagine a giant Wyoming ranch laid out like a checkerboard. The black squares are private land. The red squares are public land. Now imagine some elk hunters who want to go from one public square to another public square. The catch? The public squares touch only at the corners. The hunters' solution was delightfully geometric: step from one public parcel to the next at the exact corner where they meet, without touching the private land underneath. Iron Bar Holdings, the ranch owner, was not amused and sued for trespass. Iron Bar conceded the hunters never set foot on the ranch's surface. Instead, the ranch argued that, while corner-crossing, the hunters briefly passed through the airspace above the private property and thereby committed trespass. Ordinarily, property owners do have rights in the immediate reaches of the airspace above their land. This was not a completely frivolous argument. However, attempts to exclude the public from otherwise inaccessible federal lands conflicted with the federal Unlawful Inclosures Act of 1885 (UIA). The court concluded that, although Wyoming property law recognizes a landowner's right to exclude others from its airspace, the UIA preempts the use of that right to effectively enclose and block access to checkerboarded public lands. Accordingly, the court affirmed summary judgment for the hunters, recognizing a limited right to traverse the infinitesimal corner where public parcels meet, so long as the crossing does not physically contact or damage the private land.

Berryman v. Niceta, No. 23-1263 (10th Cir. July 8, 2025). The Tenth Circuit addressed immunity defenses asserted by a county child-protection case worker accused of making false statements during a child-abuse investigation that led to the removal of a father's daughters from his custody for approximately eighteen months. The family brought § 1983 claims alleging violations of their procedural and substantive due process rights. The court held that the defendant was not entitled to qualified immunity at the motion-to-dismiss stage because she failed to adequately develop and support the defense, instead offering only a cursory assertion. However, the court also held that she was entitled to absolute testimonial immunity for statements made while testifying in a custody hearing, although not for allegedly false statements made outside the hearing during the investigation or related proceedings.

Berryman v. Niceta, No. 23-1263 (10th Cir. July 8, 2025) (published)
The court addressed the scope of civil liability and qualified immunity arising from a social worker's conduct during a child-abuse investigation. Plaintiff alleged that a county caseworker made false statements in connection with the investigation. The decision provides guidance regarding constitutional claims against child-welfare investigators and the circumstances under which qualified immunity may shield investigative conduct.

Stepp v. Lockhart (2025/2026). In litigation involving school officials, the court held that defendants were entitled to qualified immunity on a procedural due-process claim but not on an equal-protection claim arising from alleged sex-based class segregation. The court also denied qualified immunity on certain retaliation claims while granting immunity on a substantive due-process claim.

Armendariz v. City of Colorado Springs, No. 24-1201 (10th Cir. Feb. 24, 2026)
Following a housing-rights protest, law-enforcement officers obtained warrants authorizing searches of a protester's electronic devices and a nonprofit organization's Facebook account. The Tenth Circuit held that plaintiffs plausibly alleged that the data-search warrant and social-media warrant were unconstitutionally overbroad under the Fourth Amendment's particularity requirement. Although the court affirmed qualified immunity as to the initial device-seizure warrant, it reversed dismissal of claims challenging the subsequent data-search and Facebook warrants and reinstated related municipal-liability claims.

Stark v. Reliance Standard Life Insurance Co., No. 24-6137 (10th Cir. July 8, 2025) (published). A disability-benefits dispute involving ERISA-governed insurance coverage. The opinion provides guidance concerning judicial review of benefits determinations and administration of disability claims.

UNITED STATES DISTRICT COURT FOR COLORADO

Svoboda v. State Farm Mutual Automobile Insurance Co. – Bad faith - No. 23-cv-01112-CNS-NRN (D. Colo. July 16, 2025) (Sweeney, J.) Svoboda v. State Farm Mutual Automobile Insurance Co., No. 23-cv-01112-CNS-NRN (D. Colo. July 16, 2025) (Sweeney, J.) The court denied State Farm's motion for partial summary judgment on its insured's statutory and common-law bad-faith claims. Gail Svoboda was injured in an April 18, 2018 car accident. She settled with the at-fault driver for the driver's $100,000 bodily-injury policy limit, then sought underinsured-motorist (UIM) benefits from State Farm. State Farm relied on two reports to value the claim: a utilization-review physician, Dr. Stull, opined that Svoboda had suffered at most a minor strain that would have resolved within four to six weeks, and an engineering firm concluded that the change in velocity (delta-V) was under five miles per hour. Based on these reports, State Farm valued the claim within the at-fault driver's limits and paid no UIM benefits. Under Colorado law, a common-law bad-faith claim requires the insured to show that (1) the insurer acted unreasonably and (2) the insurer knew of, or recklessly disregarded, the unreasonableness of its conduct. The statutory claim prohibits an insurer from unreasonably delaying or denying payment of benefits owed to a first-party claimant. Reasonableness is generally a question of fact for the jury. The court identified three genuine disputes of material fact that precluded summary judgment: (1) accident severity — State Farm's expert estimated the impact at under five mph, while Svoboda's reconstruction expert estimated it could have exceeded ten mph; (2) causation — whether Svoboda's neck and back pain arose from the 2018 accident or from an earlier 2000 accident, bearing on the reasonableness of State Farm's investigation; and (3) injury severity — whether Svoboda's injuries were as minor as Dr. Stull concluded. The key holding: summary judgment was inappropriate because the record did not indisputably establish that State Farm's conduct was reasonable.

Tracy v. State Farm Mut. Auto. Ins. Co., - UIM/Umbrella – expert testimony - No. 24-cv-01455-NRN (D. Colo. July 23 & 28, 2025) (Neureiter, Mag. J.) — In a UIM breach-of-contract action arising from a 2019 collision, the court resolved competing summary judgment motions and two motions in limine. On coverage, the court held that the "reside primarily with" requirement in the definition of "insured" in the named insured's $2 million personal umbrella policy was void as against Colorado public policy because it improperly narrowed the statutory class of insureds under Colo. Rev. Stat. § 10-4-601(5), which requires only that a relative "reside" in the household. Distinguishing Apodaca v. Allstate, 255 P.3d 1099 (Colo. 2011), on the ground that State Farm voluntarily sold and charged premiums for UM/UIM coverage under the umbrella policy—thereby subjecting that coverage to Colorado's regulatory framework—and following Grippin v. State Farm, 409 P.3d 529 (Colo. App. 2016), the court denied State Farm's motion, ordered the endorsement reformed to the statutory definitions, and granted the plaintiff's declaratory-relief motion only as to voiding the offending language, leaving whether she "resides" in her father's household a jury question under

Boatright. On the in limine motions, the court (1) denied the challenge to defense physiatrist Dr. Basse, holding her qualified to opine on malingering and deferring cumulativeness and Rule 403 objections to trial; and (2) granted in part and denied in part the challenge to defense neuropsychiatrist Dr. Wortzel—barring testimony about redactions in the medical records and about the motivations or prior litigation involvement of the plaintiff's treating providers, but, following Gould v. Union Pacific R.R., 2021 WL 4428286 (D. Colo. 2021), permitting his malingering and "evolving narrative" opinions as reliable medical conclusions that do not usurp the jury's credibility function.

Macias v. American Family Insurance Company, No. 1:25-cv-00507-CNS-TPO (D. Colo. Aug. 1, 2025) (Sweeney, J.). Luis Angel Macias and Cecelia Figueroa sued American Family Insurance over the homeowner's policy on their property in Thornton, Colorado. Their claims arose from two incidents: a May 30, 2024 hailstorm that damaged the roof, and July 21, 2024 interior water damage. In both cases, the plaintiffs alleged the insurer underpaid. On the hail claim, the insurer's adjuster found only $1,104.97 in damage (below the deductible) and treated the roof damage as non-hail-related, while the plaintiffs' public adjuster found widespread hail damage to the roof shingles and estimated total property damage at roughly $68,742. On the water claim, the insurer paid about $2,337, which the plaintiffs contended severely underestimated the cost of repairs. American Family had filed a motion to dismiss the amended complaint, which asserted four claims: two breach-of-contract claims (one per incident), statutory bad faith under C.R.S. § 10-3-1115, and common-law bad faith. As a threshold a matter, the Court relied on the Policy itself even though the plaintiffs failed to attach it to the amended complaint, reasoning that the Policy was central to the claims, referred to throughout the complaint, and of undisputed authenticity—so of first impression, the Court of Appeals considered it without converting the motion into one for summary judgment. The Court DENIED the motion to dismiss as to all four claims. Applying the Rule 12(b)(6) plausibility standard, the Court held that the plaintiffs had pleaded enough factual content on each claim. On the breach claims, the Court found the plaintiffs adequately identified the relevant policy provisions and alleged a breach plus resulting damages. It distinguished the insurer's principal authority, Ryals v. American Family, on the ground that the Ryals plaintiff had failed to identify both a specific policy provision allegedly breached and the amount the insurer had paid—whereas here the plaintiffs supplied both by placing the Policy before the Court and pleading the insurer's valuation of Claim One. On bad faith, the Court rested its analysis on the Claim One (hail) facts alone, finding them sufficient. For the statutory claim, it reasoned that reasonableness is judged objectively against industry standards and is ordinarily a question of fact for the jury, and that the allegations—denying coverage for a hail-damaged roof without explanation or adequate investigation, when the Policy expressly covered the loss—plausibly supported an inference of unreasonableness. The common-law claim required the same showing plus one additional element: that the insurer knowingly or recklessly disregarded that its conduct was unreasonable. The Court inferred that element from the plaintiffs' submission of the public adjuster's estimate to the insurer, combined with the allegations supporting the statutory claim. The Court again distinguished Ryals on the bad-faith claims, noting that the Ryals plaintiff had failed to identify specific deficiencies in the insurer's estimate or any policy or regulatory provision requiring repair.

Semaho, Inc. v. AMCO Insurance Company (D. Colo., No. 1:24-cv-01861) (Sept. 30, 2025), the court ruled on cross-motions for summary judgment in a commercial property coverage dispute and split the outcome: it granted summary judgment to the policyholder on the contract claim, but to the insurer on the bad faith claims. The dispute arose after a windstorm damaged the roofs of Saaho's two commercial buildings in Broomfield, Colorado. Semaho hired a contractor to make repairs, and the contractor staged roofing materials on one building's roof. Before the work was finished, a second windstorm destroyed or severely damaged most of those materials. AMCO did not dispute that the loss was covered; the fight was over which deductible applied under the policy's Windstorm or Hail Percentage Deductible Endorsement. Each building had an agreed value of $22 million, with a 2% windstorm deductible—$440,000 per building. AMCO's view was that the staged roofing materials were covered as builders' risk property under the policy's "Building" coverage, so the deductible should be 2% of the $22 million building value. whether the "complete defense rule" applicable in many liability insurance cases also applies to title insurance. The complete defense rule generally requires an insurer to defend all claims in a lawsuit if even one claim is arguably covered under the policy. The court concluded that this rule does not extend to title insurance policies. Because the materials loss did not exceed $440,000 under that reading, AMCO paid nothing. Semaho argued that, under Colorado law, uninstalled construction materials remain personal property, so the materials fell within the endorsement's "personal property in the open" category, meaning the deductible should be 2% of the value of the materials, not the building. On the contract claim, the court found neither party's interpretation unambiguously correct and concluded the endorsement was ambiguous as to how the deductible applies to uninstalled materials. Under Colorado law, that ambiguity had to be resolved in the policyholder's favor, so the court held the deductible must be calculated as 2% of the value of the lost materials and granted summary judgment to Semaho on contract liability. On the bad faith claims, the result flipped. Semaho had brought statutory bad faith claims under §§ 10-3-1115 and -1116, plus a common law bad faith claim. The court granted summary judgment to AMCO on both theories, reasoning that even though AMCO lost on the contract issue, its interpretation of the ambiguous language was objectively reasonable—and an insurer does not act in bad faith merely by advancing a reasonable reading of ambiguous policy terms. The court also found no evidence of unreasonable claims handling apart from the coverage disagreement and held that a mere dispute over valuation cannot establish bad faith.

Uhl v. Progressive Direct Insurance Co. (D. Colo., No. 23-cv-01904, decided February 11, 2025). This case arose from a 2022 motorcycle accident in Wyoming that left David Uhl with catastrophic injuries. Uhl was insured under a Progressive motorcycle policy carrying $500,000 in uninsured motorist (UM) coverage, and Progressive eventually paid that full $500,000 policy limit without any reservation of rights. He then sued, alleging Progressive unreasonably delayed payment (roughly four months) and acted in bad faith in handling his claim. His two claims were common-law bad faith breach of contract and a statutory unreasonable-delay claim under Colo. Rev. Stat. §§ 10-3-1115/1116. Two motions were resolved, both in Uhl's favor. The first, a motion for partial summary judgment, was granted. The central question was whether Uhl had to re-prove his entitlement to the UM benefits Progressive had already paid in order to pursue his bad faith claims. Progressive argued he did. The court disagreed, holding as a matter of law that entitlement to benefits is not an element of either a common-law bad faith or statutory delay claim. Relying on the Colorado Supreme Court's decision in Schultz v. GEICO, the court reasoned that once Progressive made the coverage decision to pay policy limits in full and without reservation, coverage was no longer a "live title insurer properly denied coverage under the policy at issue" and any potential breach-of-contract dispute was mooted. The only remaining coverage-related question was the reasonableness of Progressive's decision itself. As to a second motion - to amend to add punitive damages, that motion was granted. Applying Colorado's exemplary-damages statute (§ 13-21-102), the court found Uhl made the required prima facie showing of willful and wanton conduct. The evidence—primarily deposition testimony from the adjuster, James Kern, and a bad-faith expert's opinion—suggested Progressive failed to train Kern on handling medical liens against UM benefits, that Kern lacked knowledge of the relevant law and didn't use available resources, and that Progressive may have deliberately "slow-played" payment, promptly paying only after Uhl obtained counsel. , the court affirmed summary judgment in favor of the insurer.

Chancellor v. State Farm Mutual Automobile Insurance Co., - non-OEM – collision repairs - No. 23-cv-02115-NYW-TPO, 2026 WL 878682 (D. Colo. Mar. 31, 2026). Insureds sued their automobile insurer for breach of contract, statutory unreasonable delay or denial of benefits under Colo. Rev. Stat. §§ 10-3-1115 and -1116, and common law bad faith after the insurer underpaid for collision repairs. Ruling on the insurer's Daubert motion and its motion for summary judgment, the court granted each motion in part and denied each in part. On the expert motion, applying the rule that an expert may refer to the law but may not offer legal conclusions, the court excluded the plaintiffs' expert's opinions cast as legal conclusions, his speculation about the insurer's intent, and his conclusory opinion that the insurer failed to provide a reasonable explanation for its denial; it admitted his opinions on prevailing industry standards — including that the insurer's "steering" letter violated a standard barring insurers from directing insureds toward particular repair shops — and on competitive pricing, repair processes, and miscellaneous charges, holding the insurer's challenges went to weight rather than admissibility. On summary judgment, the court allowed the breach of contract claim to proceed, reasoning that although the policy permitted non-OEM parts, whether those parts restored the vehicle to pre-loss condition was a jury question; it granted judgment only on the narrow theory that the policy afforded no coverage for an unreimbursed loan payment and related fees and interest, while noting those amounts might still be recoverable as consequential damages. The court denied summary judgment on both bad faith claims, holding that the objective reasonableness of the insurer's conduct was a fact question supported by the surviving expert testimony, rejecting the insurer's attempt to recharacterize the matter as a mere valuation dispute, and finding that because directing an insured to a particular repair shop is prohibited by Colo. Rev. Stat. § 10-4-120(2)(b), a jury could find the insurer knew of or recklessly disregarded the unreasonableness of its conduct.

INSURANCE COVERAGE DECISIONS

Paloma Resources, L.L.C. v. Axis Ins. Co., No. 22-20228 (5th Cir. July 7, 2025) The Fifth Circuit vacated a coverage denial under an intellectual property exclusion, holding that the policy's use of the article "the" before "misappropriation of ideas or trade secrets" created ambiguity over whether the "actual or alleged" qualifier applied to that clause. Applying grammatical canons and Texas law, the court found the policyholder's interpretation reasonable and reiterated that ambiguous exclusions must be construed in the insured's favor. The decision is a reminder that even tiny syntactic choices in exclusionary language can shift outcomes.

Maxus Metropolitan LLC v. Travelers Property Casualty Co. of America, No. 24-1176 (8th Cir. Nov. 17, 2025). The Eighth Circuit held that microscopic soot and water damage following a fire constituted "direct physical loss or damage" under a commercial property insurance policy, rejecting the insurer's arguments that only visible or tangible damage was covered. The decision distinguished microscopic contaminants like soot from viruses, reaffirming broad coverage principles for property damage.

U.S. SUPREME COURT DECISIONS (2025–26) LIKELY TO AFFECT CIVIL LITIGATION IN COLORADO

Berk v. Choy, 607 U.S. ___ (Jan. 20, 2026) —This is the decision most directly relevant to Colorado civil practice. The Court unanimously held that state affidavit of merit requirements does not apply to medical malpractice suits brought in federal court on the basis of diversity jurisdiction, because such requirements conflict with Federal Rule of Civil Procedure 8's "short and plain statement" pleading standard. C.R.S. § 13-20-602 requires plaintiffs to file a "certificate of review" within 60 days of service in any action for professional negligence against a licensed professional (doctors, lawyers, engineers, architects, accountants, surveyors, and others), attesting that counsel has consulted an expert who has reviewed the claim. Failure to file results in dismissal. The Colorado statue was expressly cited in the *Berk* briefing as one of the analogous state schemes. After *Berk*, plaintiffs filing professional-negligence actions in the U.S. District Court for the District of Colorado (whether by diversity or supplemental jurisdiction over state claims) should no longer be subject to the § 13-20-602 certificate requirement. Rule 8 displaces it, and Rule 12(d) prohibits courts from considering "matters outside the pleadings" when evaluating a motion to dismiss.

PRACTICE: Forum selection becomes more consequential. Plaintiffs with weaker expert support may prefer federal court; defendants may now find federal court less protective at the pleading stage. The decision's broader implication may be its impact on state anti-SLAPP statutes, which often impose procedural requirements that could similarly conflict with federal rules. Colorado's anti-SLAPP statute, C.R.S. § 13-20-1101, has analogous early-stage procedural requirements that may now be vulnerable in federal courts.

Hain Celestial Group, Inc. v. Palmquist, 607 U.S. ___ (Feb. 24, 2026) — Removal and fraudulent joinder - The Supreme Court unanimously held that a federal court's final judgment must be vacated and the case remanded to state court when an appellate court later determines that the district court erred in dismissing a nondiverse defendant after the case was removed. Removal practice on improper-joinder/fraudulent-joinder theories is common in Colorado product liability, premises liability, and insurance bad-faith cases where plaintiffs join a local agent, retailer, or insurance adjuster. After Hain Celestial, Defendants contemplating removal on improper-joinder theories will have to assess the risk that, if a court of appeals later disagrees, a defense verdict after trial will be wiped out and the case restarted in state court.

Trump v. CASA, Inc., 606 U.S. ___ (June 27, 2025) — End of universal injunctions- Plaintiffs challenging federal action (the Colorado AG's office and Colorado-based advocacy organizations have brought many such suits) can no longer obtain nationwide relief through a single suit. Plaintiffs seeking to challenge the legality of a federal statute or executive action may obtain relief that is "statewide, regionwide, or even nationwide" depending on the makeup of the class. This means Rule 23 class actions are now the primary vehicle for broad relief, with all the certification hurdles that it brings.

Monsanto Co. v. Durnell, No. 24-1068, June 25, 2026. In a 7–2 decision, the U.S. Supreme Court held that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) expressly preempts state-law failure-to-warn claims alleging that Monsanto/Bayer should have included a cancer warning on the label for Roundup (glyphosate). The Court reasoned that EPA has repeatedly determined that glyphosate is not likely to cause cancer and has approved labeling that does not contain a cancer warning. Therefore, a state tort verdict requiring such a warning would impose labeling requirements "in addition to or different from" federal law.

KEY TAKEAWAY. Plaintiffs may no longer pursue state-law claims premised on the theory that Roundup's label should have warned users of a cancer risk where EPA-approved labeling contains no such warning. Colorado state-law failure-to-warn claims involving EPA-approved pesticide labels will face significant federal preemption challenges. Plaintiffs alleging injury from glyphosate-based products can no longer rely on the theory that a state-law duty required a cancer warning inconsistent with EPA-approved labeling.

Coney Island Auto Parts Unlimited, Inc. v. Burton, 607 U.S. ___ (2026). In a unanimous 9–0 decision, the U.S. Supreme Court held that Federal Rule of Civil Procedure 60(c)(1)'s requirement that a Rule 60(b) motion be filed within a "reasonable time" applies even when the movant argues that the underlying judgment is void under Rule 60(b)(4).The case arose from a bankruptcy adversary proceeding in which a default judgment was entered against Coney Island Auto Parts after allegedly defective service of process. Although Coney Island claimed the judgment was void for lack of proper service and personal jurisdiction, it waited several years before seeking to vacate the judgment. The bankruptcy court, district court, and Sixth Circuit all denied relief as untimely. The Court emphasized the importance of finality and rejected the argument that void judgments may be challenged at any time.

Enbridge Energy, LP v. Nessel, 608 U.S. ___ (2026) The Supreme Court unanimously held that the 30-day deadline for removing a case from state court to federal court under 28 U.S.C. § 1446(b)(1) cannot be equitably tolled. The dispute arose from Michigan Attorney General Dana Nessel's 2019 lawsuit seeking to shut down Enbridge's Line 5 pipeline in the Straits of Mackinac. Although Enbridge argued that federal interests justified federal jurisdiction, it did not remove the case until more than two years after service of the complaint. The Court affirmed the Sixth Circuit and ruled that § 1446(b)(1)'s removal deadline is mandatory and not subject to equitable exceptions. Because Enbridge failed to remove the case within 30 days, its removal was untimely, and the case had to be remanded to Michigan state court. The decision reinforces strict compliance with federal removal deadlines even where significant federal questions exist.

Keathley v. Buddy Ayers Construction, Inc - The Keathleys were involved in a motor vehicle accident with a Buddy Ayers employee in August 2021. They had an open Chapter 13 repayment plan but did not disclose the claim in the bankruptcy case after the accident occurred or when they filed suit. Buddy Ayers learned of the bankruptcy and moved for summary judgment in March 2023, arguing the Keathleys had taken inconsistent positions—first denying the claim in bankruptcy then later asserting it in the personal injury case. Buddy Ayers argued judicial estoppel barred the Keathleys from pursuing the personal injury claim because they had previously denied it existed in bankruptcy. The district court granted summary judgment, which the Fifth Circuit affirmed. The Supreme Court reversed on narrow grounds, finding both lower courts used the wrong standard. Judicial estoppel is an equitable doctrine. "[W]hen a court conducts an equitable inquiry, it must act on a case-by-case basis, considering all relevant facts and circumstances." Reversed and remanded.

T. M. v. University of Md. Medical System Corporation - The U.S. Supreme Court held that the Rooker-Feldman doctrine bars federal district court jurisdiction over suits seeking review and rejection of state-court judgments, regardless of whether the judgment is still subject to further review in state appellate proceedings. The Court affirmed, clarifying that this bar applies even if the state-court judgment is not yet final in the sense required for Supreme Court review. (The Rooker–Feldman doctrine holds that lower federal courts lack jurisdiction to review or overturn final state-court judgments; such review lies exclusively with the U.S. Supreme Court. It bars cases brought by state-court losers complaining of injuries caused by those judgments and seeking federal court relief that would effectively invalidate them).