

COLORADO TORT HANDBOOK

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A. STATUTES OF LIMITATION

The following are some of the actions which must be brought within three years after the cause of action accrues: (1) contract actions, including personal contracts and actions under the Uniform Commercial Code; (2) all actions for fraud, misrepresentation, concealment, or deceit; (3) all actions for breach of trust or breach of fiduciary duty; (4) all claims under the Uniform Consumer Credit Code; (5) all actions of replevin or for taking, detaining, or converting goods or chattels; (6) all actions under the Motor Vehicle Financial Responsibility Act; (7) all actions under the Colorado Auto Accident Reparations Act; (8) all actions accruing outside Colorado if the limitation of actions of the place where the cause of action accrued is greater than that of Colorado; and (9) all tort actions for bodily injury or property damage arising out of the use or operation of a motor vehicle except for actions based upon strict liability, absolute liability, or failure to instruct or warn.¹

The following are some of the actions which must be brought within two years after the cause of action accrues: (1) tort actions, including but not limited to actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract; except for torts arising out of the use or operation of a motor vehicle; (2) all actions for strict liability, absolute liability, or failure to instruct or warn; (3) all actions against any veterinarian; (4) all actions for wrongful death; (5) all actions against any public or governmental entity; and (6) all other actions of every kind for which no other period of limitation is provided.²

The following are some of the actions which must be brought within one year after the cause of action accrues: (1) the following tort actions: Assault, battery, false imprisonment, false arrest, libel, and slander; (2) all actions for escape of prisoners; (3) all actions against sheriffs, coroners, police officers, firefighters, national guardsmen, or any other law enforcement authority; (4) all actions for any penalty or forfeiture of any penal statutes; and (5) all actions against a person alleging liability for a penalty for commission of a class A or a class B traffic infraction.³

Colorado also recognizes special limitations on actions against certain classes of individuals. For example, most tort or contract actions against hospitals or health care providers must be brought within two years after the cause of action accrues, and in no instance shall an action be brought more than three years after the act or omission which gave rise to the action.⁴ Actions against contractors, architects, and others who furnish construction related services must also be brought within two years after the cause of action accrues, and in no instance can such an action be brought more than six years after the services were provided.⁵ Manufacturers of products are also generally afforded a two year statute of limitations regardless of the claim.⁶ There are other more narrow classifications which receive special treatment by the Colorado legislature and the practitioner should review Colo. Rev. Stat. 13-80-101 et seq. prior to offering an opinion on a statute of limitations question.

B. "NO-FAULT" LIMITATIONS

The Colorado Automobile Accident Reparations Act (No-Fault Act), C.R.S. § 10-4-701, *et seq.*, was repealed on July 1, 2003.

C. THE STANDARD FOR NEGLIGENCE

The standard for negligent conduct is well established in Colorado.⁷ In order to recover in a negligence action the plaintiff must prove:

1. The plaintiff incurred damage;
2. The defendant was negligent, which means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect others from harm. (Reasonable care is defined as that degree of care which a reasonably careful person would use under the same or similar circumstances.); and

3. The defendant's negligence was a cause of the plaintiff's injuries.

D. CAUSATION

1. Proximate Cause:

In order to be held liable for negligence, a defendant must be the cause of the plaintiff's injury.⁸ In Colorado, the "but for test" is followed when analyzing the proximate cause issue. Thus, but for the defendant's negligence, the plaintiff's injury would not have occurred.⁹ Likewise, the proximate cause of a plaintiff's injury occurs when in the natural and continued sequence, unbroken by any efficient intervening cause, the defendant causes the plaintiff's claimed injury, and had it not have been for the defendant's actions the injury would not have occurred.¹⁰ Under Colorado law, an act is a proximate cause when it substantially contributes to the plaintiff's injury.¹¹

2. Foreseeability:

Foreseeability is the touchstone of proximate cause.¹² "The duty to exercise reasonable care extends only to foreseeable damage and injuries which occur to foreseeable plaintiffs."¹³ Thus, remote damages and injuries to unexpected persons will not constitute proximate cause.

3. Concurrent Causes:

When several events may have brought harm to the plaintiff and if the defendant's negligence is the predominate cause of the plaintiff's injuries, then the defendant will be held liable.¹⁴ However, if it appears that another event was the predominate cause of a plaintiff's injuries, then the defendant cannot be considered the substantial factor of that plaintiff's injuries.¹⁵ Additionally, the defendant will be held liable for the plaintiff's entire harm if the defendant cannot prove to what extent the other concurrent causes contributed to the plaintiff's injuries.¹⁶

4. Intervening and Superseding Causes:

An intervening act is an act by a third person that relieves the defendant from liability.¹⁷ A defendant can be relieved of liability for negligence if an intervening cause was not reasonably foreseeable.¹⁸ On the other hand, foreseeable negligent acts of third persons do not relieve the defendant of liability for his or her own negligence.¹⁹ Reasonably foreseeable intentional torts or criminal acts by third persons are not considered superseding causes which shield the defendant from liability.²⁰

5. Unavoidable Accident:

An "unavoidable act" is one which happens unexpectedly and suddenly.²¹ A defendant is not considered liable for injuries that result from an unavoidable accident.

6. Act of God

The "act of God" defense is available only to defendants that can prove a plaintiff's injury resulted entirely from an act of God; thus, the defendant must be free from contributory negligence.²²

E. COMPARATIVE NEGLIGENCE

Like virtually every other state, Colorado has abolished contributory negligence as a complete defense and adopted a rule of modified comparative negligence.²³ Plaintiffs can not recover if their negligence is greater than that of the defendants.²⁴ This means that a 50-50 verdict is a defense verdict and the plaintiff does not recover.

F. ASSUMPTION OF THE RISK

In adopting a rule of modified comparative negligence, the Colorado Legislature eliminated the doctrine of assumption of the risk, as it was applied in the traditional contributory negligence setting.²⁵ Today, a knowing and voluntary assumption of a known risk is most routinely considered as an element of a plaintiff's comparative negligence.

G. RES IPSA LOQUITUR

Res ipsa loquitur is typically used to show a lack of proof as to negligence and operates to allow an inference of negligence when the evidence does not help define how the injury occurred.²⁶ Thus, the doctrine of res ipsa loquitur is not a cause of action, but rather it is a rule of evidence.²⁷ This rule of evidence defines situations under which the presumption of negligence will arise.²⁸ This presumption occurs when an unexplained event creates a prima facie case of negligence without proof as to specific conduct resulting in malfeasance.²⁹ This doctrine applies only when the accident is so unusual such that the accident itself is considered evidence of negligence.³⁰ Additionally, no other probable cause could be established to explain the cause of the injury.³¹

In order to establish a prima facie case of res ipsa loquitur, the plaintiff must present evidence of the following:

1. The event causing the injury is the kind which ordinarily does not occur in the absence of negligence;
2. The evidence sufficiently eliminates other responsible causes other than defendant's negligence; and
3. The presumed negligence is within the scope of the defendant's duty to the plaintiff.³²

In order to establish a prima facie case of res ipsa loquitur, "the plaintiff must produce evidence, which in the light most favorable to the plaintiff, established that the existence of each element of that doctrine is more probable than not."³³ However, the plaintiff is not required to eliminate

every possible cause other than the defendant's negligence in order to successfully establish a prima facie case.³⁴

H. NEGLIGENCE PER SE

Colorado recognizes negligence per se as a viable cause of action.³⁵ Negligence per se may be established where the defendant's actions are in violation of a statute enacted for the public's safety, and where it is established that the violation of the statute proximately caused the plaintiff's injury.³⁶ The plaintiff "must also show that he or she is a member of the class of persons whom the statute was intended to protect and that the injuries suffered were of a kind that the statute was enacted to prevent."³⁷

I. WRONGFUL DEATH

Causes of action for wrongful death in Colorado are a creature of statute.³⁸ A wrongful death action may be brought by the spouse of the deceased, the heirs of the deceased, or both.³⁹ The statute of limitations on wrongful death actions is two years.⁴⁰ Damages are generally limited to \$250,000, unless the court finds justification by clear and convincing evidence therefore. In no case shall the amount of such damages exceed \$500,000.⁴¹ There is no limitation on damages in the case of felonious killings.⁴² In order to recover damages under a wrongful death action, plaintiff must prove the nature and extent of damages by a preponderance of the evidence. Damages can include noneconomic losses, including grief, loss of companionship, impairment of the quality of life, inconvenience, pain and suffering, and emotional stress to the plaintiff, both present and future. Damages can also include economic losses, including reasonable funeral, burial, internment, or cremation expenses, and any net financial loss, which the plaintiff incurred as a result of the death. The net financial loss is the same as the financial benefit the plaintiff might reasonably have expected to receive from the decedent had he or she lived.⁴³

J. JOINT AND SEVERAL LIABILITY

Colorado has abolished joint and several liability except for cases in which defendants conspire or work jointly to commit an injury.⁴⁴ In a normal tort action, each defendant will only be liable for his or her own pro rata liability. In order to allow a defendant every opportunity for the fact finder to consider the culpable conduct of all applicable parties, defendants may designate non-parties who may be at fault in causing plaintiff's damages within 90 days of the commencement of an action.⁴⁵ If properly designated, the applicable jury instruction will contain spaces for the jury to assign a percentage of negligent conduct to each plaintiff, defendant and designated non-party.

K. INDEMNITY

In Colorado, the common law doctrine of indemnity has been abolished when one tortfeasor is required to reimburse a second joint tortfeasor for the entire amount paid in damages to an injured plaintiff due to the negligence of both joint tortfeasors.⁴⁶ Further, there has been no Colorado case law interpreting the area of indemnification in strict product liability cases.⁴⁷

However, § 3-21-111.5 should be applicable to both negligence and strict product liability cases.⁴⁸

L. WORKERS' COMPENSATION BAR TO EMPLOYEE ACTIONS AGAINST EMPLOYERS

Generally, Colorado's Workers' Compensation Act provides the exclusive remedy through which an employee may recover against an employer for work related injuries.⁴⁹ This prohibition against civil actions extends not only to actual employees of the employer, but to statutory employees as well.⁵⁰ Colorado courts have held that a statutory employee is anyone who performs the regular business of the employer, even if the employee is technically employed by a subcontractor hired by the employer.⁵¹ The Act ensures that employers meet their obligations under the Act by expressly stating that employers cannot use contracts or leases to avoid liability under the Act when the "subcontractor" or "lessee" is performing work typically performed by an employee.

M. PREMISES LIABILITY

In Colorado the law of premises liability is governed entirely by statute.⁵² The premises liability statute preempts the common law of creation of landowner duties.⁵³ The premises liability statute clearly defines the duties of landowners. The classification of a person who enters real property determines what duty a landowner owes to that person. Colorado classifies persons who enter real property in three different ways, as follows:

1. Trespasser - A trespasser is a person who enters or remains on the land of another without the landowner's consent. A trespasser may recover only for damages willfully or deliberately caused by the landowner.
2. Licensee - A licensee is a person who enters or remains on the land of another for the licensee's own convenience or to advance his own interests pursuant to the landowner's permission or consent. A social guest is a licensee. A licensee may recover against a landowner in two situations:
 - a. A landowner has a duty to exercise reasonable care with respect to known dangers on the land created by the landowner.
 - b. A landowner has a duty to reasonably warn a person of dangers on the property when there is a condition on the land which was not created by the landowner, which is not ordinarily present on the property of the type involved, and which the landowner actually knew of.
3. Invitee - An invitee is a person who enters or remains on the land of another to transact business in which the parties are mutually interested or, one who enters or remains on the land at the express or implied request or invitation of the landowner. A business customer is typically an invitee. A landowner owes different duties to invitees depending on what type of land is in question.
 - a. Farmland or Vacant Land - An invitee may recover against the landowner for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which the landowner actually knew.

- b. All Other Types of Land - An invitee may recover against a landowner for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually or should have known.

N. SKI SAFETY ACT

Colorado has adopted a Ski Safety Act to establish reasonable safety standards for skiers and ski areas.⁵⁴ The Act prescribes duties for ski area operators and skiers during recreational and competitive ski conditions.⁵⁵ The statute specifically states that a violation of the Act, which leads to injury and damages, is negligence.⁵⁶ The Act also states, however, that injuries occurring as a result of the inherent dangers and risks of skiing are not subject to recovery.⁵⁷ In the case of an injury subject to recovery, a civil action must be brought within two years.⁵⁸ There are also limits on the amount of damages recoverable from a liable ski area operator.⁵⁹ The duties of operators prescribed by the Act include posting specified signs for lifts and trails, use of maintenance equipment around skiers, and specific language regarding liability to be printed on lift tickets.⁶⁰ Regulations regarding skiers include a duty of skiers to know their ability and maintain control, follow instructions and heed warnings, and respond to accidents with other skiers.⁶¹

O. DRAM SHOP LIABILITY

In Colorado, no common law remedy was provided against one who furnished alcoholic beverages to a person who became inebriated and consequently injured himself or another.⁶² In 1986 the Colorado Legislature rejected the common law rule of non-liability and permitted actions against alcohol vendors and social hosts.⁶³ From that point forward, the civil liability of a state licensee who sells alcoholic beverages is strictly a creature of statute in Colorado.⁶⁴

The Dram Shop expresses the Colorado Legislature's recognition that in certain cases, it is the consumption, and not the sale of alcohol, which is the proximate cause of injury.⁶⁵ A vendor of alcoholic beverages is not liable for injury or property damage caused by the intoxication of any person except when:

[i]t is proven that the licensee willfully and knowingly sold or served any alcohol beverage to such person who was under the age of twenty-one years or who was visibly intoxicated. . . .

See Colo. Rev. Stat. 12-47-801(3). Thus, the only way a vendor of alcoholic beverages can be held liable for injuries caused by the intoxication of any person is if the vendor willfully and knowingly sold alcohol to an individual⁶⁶ who was (1) under 21 years old, or (2) visibly intoxicated at the time of the sale.

P. ECONOMIC LOSS

A party suffering only economic loss from the breach of an express or implied contractual duty may not assert a tort claim for such a breach absent an independent duty of care under the tort

law.⁶⁷ Economic loss is defined generally as damages other than physical harm to persons or property.⁶⁸

In Colorado, in order to recover for economic loss in tort, there must be physical injury to persons or property.⁶⁹ It is necessary to have actual loss or damage in order to bring forth a tort action.⁷⁰ The economic loss rule does not prevent asserting a claim to recover for physical injury to property or persons because in this situation the duty that is breached usually arises independent of the contract.⁷¹

The economic loss rule cannot be used as a roadblock to recover on a contractual theory by translating a claim for economic loss on a contract into a claim sounding in tort.⁷² The economic loss rule disallows recovering in tort when only a contractual duty has been breached and the harm that resulted was due to failing to abide by the purpose of the contract.⁷³ "The rule prohibits parties who deal with each other at arms length through contractual arrangements from circumventing their bargained-for contractual remedies by attempting to recover purely pecuniary losses in tort."⁷⁴

The tort of negligent misrepresentation is an exception to the economic loss rule.⁷⁵ However, there are a limited number of situations that would allow a defendant to be liable under both contract and negligent theories.⁷⁶ "Professionals, such as attorneys and accountants, who communicate representations with the knowledge that the information is to be relied on by others may be subject to both tort and contract liability for economic loss if third parties rely on their negligent misrepresentations made in the course of rendering a service pursuant to a contract."⁷⁷

Q. FRAUD

The elements of a fraud claim are well established in Colorado. In order to recover on a claim of fraud a plaintiff must prove:

1. The defendant made a false representation of a past or present fact;
2. The fact was material;
3. The defendant made the representation knowing it to be false or they were aware that they did not know whether it was true or false;
4. The defendant made the representation with the intent that the plaintiff act or decide not to act in reliance on the representation;
5. The plaintiff relied on the representation;
6. The plaintiff's reliance was justified; and
7. The reliance caused damage to the plaintiff.⁷⁸

R. NEGLIGENCE MISREPRESENTATION

The Colorado Supreme Court has defined "negligent misrepresentation" according to section 552 of the Restatement (Second) of Torts (1977).⁷⁹ Section 552 of the Restatement (Second) of Torts provides, in relevant part:

1. One who, in the course of his business profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
2. Except as stated in subsection (3), the liability stated in subsection (1) is limited to loss suffered:
 - a. by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
 - b. through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.⁸⁰

The tort of negligent misrepresentation provides a remedy when money is lost due to misrepresentation in a business transaction.⁸¹ To establish a claim for negligent misrepresentation, it must be shown that the defendant supplied false information to others in a business transaction, and failed to exercise reasonable care or competence in obtaining or communicating information on which other parties justifiably relied.⁸²

S. LIMITATIONS ON NON-ECONOMIC DAMAGES

Colorado limits the amount a plaintiff may recover in various situations. In cases where the basis of the complaint is a felonious killing, there is no cap on non-economic recovery.⁸³ The legislature has enacted a statutory cap on non-economic damages. Per statute, in any given case, the total recovery for non-economic losses may not exceed \$250,000, unless the court finds justification for increasing the amount by clear and convincing evidence.⁸⁴ If the court allows higher non-economic damages, the amount may not exceed \$500,000.⁸⁵ No damages may be awarded for derivative non-economic losses, unless the court finds justification for an award by clear and convincing evidence.⁸⁶ If the court does allow derivative non-economic damages, the amount may not exceed \$250,000. These limits do not apply to compensatory damages for physical impairment or disfigurement.⁸⁷ Caps apply to each defendant rather than to the plaintiff.⁸⁸ Thus, if a plaintiff proves the liability of multiple defendants, he will be allowed to max out the caps against each defendant. Under the damages statute, the \$250,000 / \$500,000 cap is allowed to be rise to reflect inflation; thus, the current cap may be greater than the number stated in the statute.

In wrongful death actions, non-economic losses are absolutely capped at \$250,000, unless the act causing death constituted a felonious killing.⁸⁹ Subject to the cap, surviving plaintiffs are expressly allowed to recover for grief, loss of companionship, pain and suffering and emotional stress.⁹⁰ This cap on non-economic damages is applied to the plaintiff and not to the defendant, meaning that a defendant is liable on a per plaintiff basis.

T. PUNITIVE OR EXEMPLARY DAMAGES

Exemplary damages are available in Colorado pursuant to statute.⁹¹ The amount of exemplary damages shall not exceed an amount which is equal to the amount of the actual damages awarded to the injured party.⁹² The statute provides that the court may increase the award of exemplary damages to a sum not to exceed three times the amount of actual damages. The appropriateness of exemplary damages must be proved beyond a reasonable doubt, rather than by the usual civil standard of preponderance of the evidence.

The Colorado General Assembly has recently allowed for exemplary damages in wrongful death actions.⁹³ If the death complained of is attended by circumstances of fraud, malice, or willful and wanton conduct, the trier of fact, in addition to the actual damages, may award reasonable exemplary damages not to exceed an amount equal to the amount of the actual damages awarded to the injured party.⁹⁴ Exemplary damages in wrongful death actions may not be included in any initial claim for relief, but the original complaint may be amended after the passage of 60 days following the exchange of initial disclosures pursuant to C.R.C.P. 26, and the establishment of prima facie proof of a triable issue.⁹⁵

U. CONSUMER FRAUD STATUTES

Colorado has an extensive Consumer Protection Act.⁹⁶ The act defines "deceptive trade practices" and establishes rules regarding enforcement of the act, reporting of consumer fraud, hearings, remedies, restraining orders, civil penalties, damages, criminal penalties, and limitations on actions.⁹⁷ The list of deceptive trade practices punishable under the statute is also extensive. The statute regulates practices in the course of a person's business, vocation, or occupation in every aspect of trade from labeling of products to marketing.⁹⁸ Tort damages are available to actual or potential consumers, successors in interest of actual consumers, or persons injured as a result of deceptive trade practices in the course of their business or occupation.⁹⁹ The standard limitation on actions involving consumer fraud is three years.¹⁰⁰ Violators of the Consumer Protection Act are liable for damages in the amount of actual damages or \$500, whichever is greater.¹⁰¹ Evidence of bad faith on the part of the violator can increase damages to three times the actual damages. Bad faith is defined as fraudulent, willful, knowing, or intentional conduct.¹⁰²

¹ Colo. Rev. Stat. § 13-80-101.

² *Id.* § 13-80-102.

³ *Id.* § 13-80-103.

⁴ *Id.* § 13-80-102.5.

⁵ *Id.* § 13-80-104.

⁶ *Id.* § 13-80-106.

⁷ See Colo. Jury Instructions (Civ. 4th), §§ 9:1, 9:4, and 9:6.

⁸ *Rodriguez v. Morgan County R.E.A., Inc.*, 878 P.2d 77, 82 (Colo. App. 1994).

⁹ *Smith v. State Compensation Ins. Fund*, 749 P.2d 462, 464 (Colo. App. 1987).

¹⁰ *In Re (Swine Flu Immunization) Products Liability Litigation v. United States of America*, 495 F. Supp. 1188, 1206 (D. Colo. 1980).

¹¹ *FDIC v. Refco Group. Ltd.*, 989 F. Supp. 1052, 1068 (D. Colo. 1997).

¹² *Walcott v. Total Petroleum, Inc.*, 964 P.2d 609, 611 (Colo. App. 1998).

¹³ *Leppke v. Segura*, 632 P.2d 1057, 1059 (Colo. App. 1981).

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- ¹⁴ *Ayala v. United States*, 846 F. Supp. 1431, 1441 (D. Colo. 1993).
- ¹⁵ *Id.*
- ¹⁶ *Northington v. Marin*, 102 F.3d 1564, 1569 (10th Cir. 1996).
- ¹⁷ *Ayala* at 1441, *supra*.
- ¹⁸ *White v. Caterpillar, Inc.*, 867 P.2d 100, 109 (Colo. App. 1993).
- ¹⁹ *Chartier v. Winslow Crane Serv. Co.*, 350 P.2d 1044, 1050 (Colo. 1960).
- ²⁰ *Ekberg v. Greene*, 588 P.2d 375, 496 (Colo. 1978).
- ²¹ *Dugan v. Kuner-Empson Co.*, 369 P.2d 82, 84 (Colo. 1962).
- ²² *Moore v. Standard Paint & Glass Co.*, 358 P.2d 33, 36 (Colo. 1960).
- ²³ Colo. Rev. Stat. § 13-21-111.
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Trigg v. City and County of Denver*, 784 F.2d 1058, 1060 (10th Cir. 1986).
- ²⁷ *Kaplan v. C Lazy U Ranch*, 615 F. Supp. 234, 236 (D. Colo. 1984).
- ²⁸ *Bilawsky v. Faseehudin*, 916 P.2d 586, 589 (Colo. App. 1995).
- ²⁹ *Id.*
- ³⁰ *E.I. Du Pont De Nemours & Co. v. Cudd*, 176 F.2d 855, 858 (10th Cir. 1949).
- ³¹ *Id.*
- ³² *Ravin v. Gambrell*, 788 P.2d 817, 822 (Colo. 1990), distinguished on other grounds by *Wilson v. O'Reilly*, 867 P.2d 92 (Colo. App. 1993).
- ³³ *Id.*
- ³⁴ *Id.*
- ³⁵ See *Canape v. Peterson*, 897 P.2d 762, 763 (Colo. 1995).
- ³⁶ *Id.*
- ³⁷ *Lyons v. Nasby*, 770 P.2d 1250, 1257 (Colo. 1989).
- ³⁸ Colo. Rev. Stat. §§ 13-21-201 and 13-21-202.
- ³⁹ *Id.* § 13-21-201.
- ⁴⁰ *Id.* § 13-80-102(1)(d); see also § 13-21-201(a) and (b).
- ⁴¹ *Id.* § 13-21-102.5(3)(a).
- ⁴² *Id.* § 13-21-203(1).
- ⁴³ Colorado Jury Instruction, 10:3.
- ⁴⁴ Colo. Rev. Stat. § 13-21-111.5; see also *Brochner v. Western Ins. Co.*, 724 P.2d 1293, 1299 (Colo.1986).
- ⁴⁵ *Id.*
- ⁴⁶ *Brochner v. Western Ins. Co.*, 724 P.2d 1293, 1299 (Colo. 1986).
- ⁴⁷ *Shirely O'quinn and Fidelity & Casualty Co. v. Wedco Technology, Inc.*, 746 F. Supp. 38, 39 (D. Colo. 1990), *aff'd* 955 F.2d 49 (10th Cir. 1992).
- ⁴⁸ *Id.*; *Barton v. Adams Rental, Inc., d/b/a Adams Rental and Sales*, 938 P.2d 532, 535 (Colo.1997); see also *Miller v. Byrne*, 916 P.2d 566, 578 (Colo. App. 1995).
- ⁴⁹ Colo. Rev. Stat. § 8-41-401 *et seq.*
- ⁵⁰ *Id.* § 8-41-401.
- ⁵¹ *Finlay v. Storage Technology Corp.*, 764 P.2d 62 (Colo. 1988).
- ⁵² Colo. Rev. Stat. § 13-21-115.
- ⁵³ *Vigil v. Franklin*, 103 P.3d 322 (Colo. 2004).
- ⁵⁴ Colo. Rev. Stat. § 33-44-102.
- ⁵⁵ *Id.* § 33-44-102, *et seq.*
- ⁵⁶ *Id.* § 33-44-104.
- ⁵⁷ *Id.* § 33-44-112.
- ⁵⁸ *Id.* § 33-44-111.
- ⁵⁹ *Id.* § 33-44-113.
- ⁶⁰ *Id.* §§ 33-44-106, 33-44-107, and 33-44-108.
- ⁶¹ *Id.* §§ 33-44-105 and 33-44-109.
- ⁶² See *Sigman v. Sea Food Ltd.*, 817 P.2d 527, 529 (Colo. 1991), distinguished by *Rowell v. Clifford*, 976 P.2d 363 (Colo.App. 1998).
- ⁶³ Colo. Rev. Stat. § 12-47-128.5 (1991 Rep. Vol. V).
- ⁶⁴ See *Charlton v. Kimata*, 815 P.2d 946, 949 (Colo. 1991).

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- ⁶⁵ Colo. Rev. Stat. § 12-47-801(1).
- ⁶⁶ The Dram Shop Act prohibits a plaintiff from bringing an action in relation to his own intoxication. *See* Colo. Rev. Stat. § 12-47-801(3)(c).
- ⁶⁷ *Town of Alma v. Shanks*, 10 P.3d 1256, 1264 (Colo. 2000); *Grynberg v. Agri Tech, Inc.*, 10 P.3d 1267, 1269 (Colo. 2000). Footnote 4 in *Grynberg* lists insurance brokers and architects as examples of persons who have an independent duty of care under tort law.
- ⁶⁸ *Id.*
- ⁶⁹ *Jardel Enters., Inc. v. Triconsultants, Inc.*, 770 P.2d 1301, 1304 (Colo. App. 1988).
- ⁷⁰ *Perlmutter v. U.S. Gypsum Co.*, 4 F.3d 864, 868 (10th Cir. 1993) (citing *Bayly, Martin & Fay, Inc. v. Pete's Satire, Inc.*, 739 P.2d 239, 242 (Colo. 1987)).
- ⁷¹ *Commer. Union Ins. Co. v. Roxborough Village Joint Venture*, 944 F. Supp. 827, 831 (1996) (citing *Jardel*, 770 P.2d at 1304).
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Id.* (citing *Jardel*, 770 P.2d at 1304 (to hold otherwise permits the non-breaching party to avoid the contractual limitation of remedy); *see Colorado Nat'l Bank v. Adventura Assocs., L.P.*, 757 F. Supp. 1167, 1172-73 (D. Colo. 1991) (permitting parties to recover economic losses under a tort theory "would frustrate" the ability of contracting parties to allocate the risk of loss and, therefore, "would undermine" certainty in commercial practices).
- ⁷⁵ *Colorado Nat'l Bank of Denver* at 1172.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.* at 1172-1173 (citing *Jardel*, 770 P.2d at 1304-05).
- ⁷⁸ *See Concord Realty Co. v. Continental Funding Corp.*, 776 P.2d 1114, 1117-18 (Colo. 1989), *Southeastern Colorado Water Conservancy Dist. V. Cache Creek MiningTrust*, 854 P.2d 167 (Colo. 1993), & Colorado Jury Instruction, 19:1.
- ⁷⁹ *See Keller v. A.O. Smith Harvestore Prods.*, 819 P.2d 69, 71 n.2 (Colo. 1991).
- ⁸⁰ Quoted in *Mehaffy, Rider, Windoholz & Wilson, v. Central Bank of Denver*, 892 P.2d 230 (Colo. 1995).
- ⁸¹ *See Western Cities Broadcasting, Inc. v. Schueller*, 849 P.2d 44, 49 (Colo. 1993).
- ⁸² *See Burman v. Richmond Homes Ltd.*, 821 P.2d 913, 919 (Colo. App. 1991).
- ⁸³ Colo. Rev. Stat. § 13-21-102.5.
- ⁸⁴ *Id.* § 13-21-102.5(3)(a).
- ⁸⁵ *Id.*
- ⁸⁶ *Id.* § 13-21-102.5(3)(b).
- ⁸⁷ *Id.* § 13-21-102.5(5).
- ⁸⁸ *General Elec. Co. v. Neimet*, 866 P.2d 1361 (Colo. 1994).
- ⁸⁹ Colo. Rev. Stat. § 13-21-203.
- ⁹⁰ *Id.*
- ⁹¹ *Id.* § 13-21-102.
- ⁹² *Id.* § 13-21-102(1).
- ⁹³ *Id.* § 13-21-203(3)(a).
- ⁹⁴ *Id.*
- ⁹⁵ *Id.* § 13-21-203(3)(c)(I).
- ⁹⁶ *Id.* §§ 6-1-101, *et seq.*
- ⁹⁷ *Id.*
- ⁹⁸ *Id.* § 6-1-105.
- ⁹⁹ *Id.* § 6-1-113(1).
- ¹⁰⁰ *Id.* § 6-1-115.
- ¹⁰¹ *Id.* § 6-1-113(2).
- ¹⁰² *Id.* § 6-1-113(2.3)