

CDOT Prevails in T-Rex Accident Case

News

Oct 10, 2003

DENVER - Wheeler Trigg O'Donnell ("WTO"), a Denver-based law firm with a national trial practice, successfully represented the State of Colorado Department of Transportation ("CDOT") in a case involving the rollover of a Chevy Astro Van in a construction zone which resulted in the traumatic amputation of the right front passenger's arm. The issue presented, which was one of first impression, was whether the State is immune from suit for construction zone accidents under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* ("CGIA"). The issue was important to the State because Colorado has been in the midst of massive roadway construction projects at a time when road construction deaths have risen 70% nationwide (see Note: below), and the CGIA does not provide any clear guidance.

In *Rosemary Kaske v. State of Colorado Department of Transportation et al.* (Denver District Court, Case # 01 CV 5829), Plaintiff contended that the construction zone which used a soft shoulder composed of asphalt millings was unreasonably dangerous and caused Plaintiff's van to roll over when the driver drove off the roadway onto the shoulder, and then tried to regain the roadway at highway speed. After conducting a three-day evidentiary hearing, Judge Hyatt of the Denver District Court dismissed Plaintiff's claims on jurisdictional grounds. Judge Hyatt found that: (1) the CGIA

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does not waive immunity for the State's roadway design choices; (2) the use of an asphalt millings shoulder was a "design" choice -- (the CGIA does not insulate the State from liability for its "construction" choices); (3) the CGIA provides immunity to the State from liability for failure to warn claims based upon the State's decision not to barricade the soft shoulder or warn of its existence; and (4) Plaintiff had not even proved that her injuries were caused by any roadway defect or failure to warn.

Habib Nasrullah, a Director with WTO and the lead attorney who represented CDOT along with Heather Shull, also of WTO, said, "Judge Hyatt's opinion provides the State with some powerful precedent to preclude suit in construction zone accidents based on the State's design, barricading and marking of the roadway, potentially saving the State millions of dollars in litigation costs." Plaintiff is not appealing Judge Hyatt's ruling.

Note: As reported in *USA TODAY*, October 9, 2003, page 1, from the following sources: American Road & Transportation Builders Association, National Highway Traffic Safety Administration and National Work Zone Safety Information Clearinghouse.