



## **Colo. Panel Seems Poised To Remand Atty Fee Issue**

By [Daniel Ducassi](#) · [Listen to article](#)

Law360 (October 19, 2022, 9:47 PM EDT) -- A Colorado Court of Appeals panel appeared inclined to tell a trial court to take another shot at explaining why it awarded attorney fees in a sinkhole dispute, with the coal mining company that was awarded the fees conceding during oral argument Wednesday that the lower court's findings were "rather sparse."

The trial court awarded nearly \$125,000 in attorney fees and costs to Snowcap Coal Company Inc. after a pair of property owners unsuccessfully challenged the company's plans to deal with sinkholes caused by mining operations. The property owners had objected to Snowcap's plan to repair a single sinkhole, arguing that it was inadequate because there were multiple sinkholes that needed to be fixed and offering an alternative plan.

They first took their case to the Colorado Mined Land Reclamation Board, which ultimately sided with Snowcap, approving the company's project. On appeal, 21st Judicial District Chief Judge Brian J. Flynn affirmed the board's decision and awarded the attorney fees and costs to Snowcap not just for the appeal, but for the MLRB action as well.

The case revolves around a matter of first impression: what lawmakers meant when they wrote in the Colorado Surface Coal Mining Reclamation Act that the courts may award attorney fees as they deem "just and proper."

The property owners argued at the appellate court Wednesday that in awarding attorney fees, the trial court essentially interpreted the "just and proper" standard in the law to mean "necessarily incurred." But such a broad interpretation punishes plaintiffs and "chills the right to judicial review," said Kendra N. Beckwith of [Lewis Roca Rothgerber Christie LLP](#), the property owners' attorney.

Beckwith argued that the "just and proper" standard should instead reflect the standard adopted by the MLRB for most situations, reserving fee awards for cases filed in bad faith or intended to

harass.

For its part, Snowcap argued that the law gives broad latitude to the courts to interpret the standard. But Beckwith said the idea of such a broad standard gives her "heart palpitations" as it would make it difficult to determine when she should bring a case to a district court for judicial review.

What exactly the trial court meant in its two-page order was up for debate, and the order's brevity drew questions from the panel.

Judge Timothy J. Schutz pressed Snowcap's attorney, John P. Justus of [Hoskin Farina & Kampf PC](#), on whether the trial court had an obligation to explain what "just and proper" means in its order.

Justus said the trial judge should review the evidence and spell out the facts that would make it a "just and proper" determination to award fees and costs, but added that "the court can articulate further its findings as to why it finds the 'just and proper' standard satisfied. I think that the findings of the court are rather sparse."

Judge Schutz also pressed Justus on the trial court's analysis, or lack thereof, of the reasonableness of the awarding of attorney fees and costs. Judge Schutz suggested that the trial court had an obligation to explain what factors led it to determine that the amount awarded in fees and costs was reasonable.

Justus said that the court was indeed required to make specific findings and said that an order remanding the case to the trial court to elaborate on its reasonableness findings "may further that purpose."

That prompted Judge Matthew D. Grove to respond to Justus that if the panel were to remand the case, it might be helpful to give the trial court guidance on the meaning of "just and proper" and asked him what exactly his position is on the definition.

Justus reiterated his argument that the law gives broad discretion to the courts to decide, although he also said that a "good guidepost" for the standard would be awarding fees in cases that are substantially groundless, vexatious or potentially frivolous.

Counsel for the parties did not immediately respond Wednesday to requests for comment.

The property owners are represented by Kendra N. Beckwith of Lewis Roca Rothgerber Christie LLP.

Snowcap is represented by John P. Justus, Michael J. Russell and John T. Pryzgoda of Hoskin Farina & Kampf PC.

The case is Fontanari, R v. Snowcap Coal, case number 2021CA983, in Division IV of the Colorado Court of Appeals.

--Editing by Jill Coffey.