


# QUARTERLY REPORT TO CITY COUNCIL

**Relating to:**  
**LITIGATION AND ADMINISTRATIVE MATTERS**

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**May 2018**  
(Covering All Activity through May 30, 2018)

  
Wynetta Massey  
City Attorney/Chief Legal Officer



## TABLE OF CONTENTS

	PAGE
<b>Litigation Section</b>	
Disposed Cases	3
New Cases	9
Current Cases (listed by department)	10
<b>Administrative Section</b>	
EEOC/CCRD	
Disposed Matters	24
New Matters	24
Current Matters	24
<b>Utilities</b>	
Water Court Cases	25
<b>Workers Compensation</b>	26
<b>Criminal Prosecutions Section</b>	27

## LITIGATION SECTION

In this section, the symbol “(IC)” indicates representation by insurance counsel; “(OC)” indicates representation by outside counsel on a contract basis; and “(CC)” indicates that a staff attorney is co-counsel with either outside or insurance counsel. All other litigation matters are handled completely by the City Attorney’s Office staff attorneys. Municipal court appeals have not been included unless they involve significant issues.

### **DISPOSED CASES**

(CC)

In RE Banning Lewis Ranch Company, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13445 (KJC)  
*and*

In RE Banning Lewis Ranch Development I & II, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13446 (KJC)  
(Jointly administered).

United States District Court Case No. 15-cv-01442-REB

**CLAIM:** The Banning Lewis Ranch Co. LLC and Banning Lewis Ranch Development I & II LLC, filed Chapter 11 petitions in the U.S. Bankruptcy Court in Delaware, citing more than \$242 million in debts. The two companies own the 21,400-acre ranch that stretches from Woodmen Road to Fontaine Boulevard between Marksheffel and Meridian roads.

**STATUS:** Court approved sale of property to Ultra Resources; action moved to Colorado bankruptcy court to determine whether City land-use agreements including the BLR annexation agreement should remain in effect. On May 1, 2012, the City, Ultra and Debtor BLRC filed a joint motion to hold the adversary proceeding in abeyance until November 1, 2012, while the parties attempt to resolve the matter consensually. July 25, 2012 USBC District of Delaware Court orders the Debtor The Banning Lewis Ranch Company, LLC to sell the 72 acre parcel that was formerly the directors’ parcel to Bahr Holdings LLC. Court grants the parties request to hold the Ultra Adversary Proceeding in abeyance until April 1, 2013 and requires the parties to file another status report not later than April 1, 2013. On April 1, 2013, the City and Ultra filed a Second Joint Status Report and Motion for Further Stay of Adversary Proceeding (the “Second Joint Motion”). In the Second Joint Motion, the City and Ultra requested a further stay of all proceedings until July 1, 2013. By order entered on April 3, 2013, the Court granted the Second Joint Motion, stayed the adversary proceeding until July 1, 2013, and directed the parties to file another status report no later than July 1, 2013. On June 28, 2013, the City and Ultra filed a Third Joint Status Report and Motion for Further Stay of Adversary Proceeding (the “Third Joint Motion”). In the Third Joint Motion, the City and Ultra requested a further stay of all proceedings until November 1, 2013. By order entered on July 1, 2013, the Court granted the Third Joint Motion, stayed the adversary proceeding until November 1, 2013, and directed the parties to file another status report no later than November 1, 2013. On November 1, 2013, the City and Ultra filed the Fourth Joint Status Report and Motion For Further Stay Of Adversary Proceeding (the “Fourth Joint Motion”). In the Fourth Joint Motion, the City and Ultra requested a further stay of all proceedings until January 14, 2014. By order entered on November 4, 2013, the Court granted the Fourth Joint Motion, stayed the adversary proceeding until January 14, 2014, and directed the parties to file another status report not later than January 14, 2014. On January 14, 2014, the City and Ultra filed the Fifth Joint Status Report and Motion for Further Stay of Adversary Proceeding (the “Fifth Joint

Motion”). In the Fifth Joint Motion, the City and Ultra requested a further stay of all proceedings until March 17, 2014. By order entered on January 28, 2014, the Court granted the Fifth Joint Motion, stayed the adversary proceeding until March 17, 2014, and directed the parties to file another status report not later than March 17, 2014. On March 17, 2014, the City filed a Status Report with the Court advising the Court that the parties were unable to reach a consensual resolution and had decided to move forward in the Adversary Proceeding. On March 17, 2014, Ultra and the Debtor filed a Motion to Terminate the Stay of the Adversary Proceeding and Request for a Scheduling Conference. On March 19, 2014, the City filed its Response to the Motion to Terminate the Stay. On March 21, 2014, the Court entered its order terminating the stay of the Adversary Proceedings and (a) directed the parties to file responses to the Motion to Intervene filed by Randle W. Case on or before April 1, 2014; (b) directed Ultra and the Debtor to reply to the City’s amended counterclaims by April 17, 2014; (c) directed the parties to conduct a Rule 26(f) conference and submit an amended Rule 26(f) report by April 23, 2014; and (d) scheduled a status and scheduling conference for April 30, 2014. On April 1, 2014, Ultra and the Debtor filed their Response to the Motion to Intervene and stated their opposition to the Motion to Intervene. On April 1, 2014, the City filed its Response to the Motion to Intervene and stated its support for the Motion to Intervene. On April 3, 2014, Ultra and the Debtor filed their Motion for Partial Summary Judgment and argued that the Court should enter a declaratory judgment that the Annexation Agreement is an executory contract that can be rejected. On April 10, 2014, Mr. Case filed his Reply in Support of Motion to Intervene. On April 17, 2014, Ultra and the Debtor filed their Reply to the City’s Amended Counterclaims. On April 23, 2014, the parties filed the Amended Rule 26(f) Report. On April 30, 2014, the parties appeared for the status and scheduling conference. During the conference, the Court set a deadline of May 30, 2014, for the City to file its own motion for partial summary judgment and a motion to join necessary parties. The Court also stated that discovery would not go forward until the Court had ruled on the motions for partial summary judgment. On May 5, 2014, Mr. Case filed his Response to Ultra’s and the Debtor’s Motion for Partial Summary Judgment. On May 5, 2014, the City filed its Response to Ultra’s and the Debtor’s Motion for Partial Summary Judgment. On May 30, 2014, the City filed the City’s Motion to Require Joinder of Absent Annexors in Banning Lewis Ranch (the “Joinder Motion”) and the City’s Motion for Partial Summary Judgment (the “Summary Judgment Motion”). In the Joinder Motion, the City argued in substance that all of the annexors within Banning Lewis Ranch should be joined as parties to the litigation because Ultra seeks to adversely affect their interests. In the Summary Judgment Motion, the City argued in substance that the Court should grant summary judgment in favor of the City and declare that (a) the Annexation Agreement is not an executory contract that can be rejected pursuant to Section 365 of the Bankruptcy Code and (b) the property Ultra acquired from the Debtor remains subject to the Annexation Agreement because the sale of the property to Ultra was not free and clear of the Annexation Agreement pursuant to Section 363(f) of the Bankruptcy Code. On June 2, 2014, Ultra filed its reply brief in support of its motion for partial summary judgment and in reply to the responses filed by the City and Mr. Case to Ultra’s motion for partial summary judgment. On June 10, 2014, Nor’wood Development Group issued a press release stating that Ultra had contracted to sell the property to Nor’wood subject to completion of due diligence. On July 7, 2014, Ultra filed its response to the City’s Joinder Motion and Summary Judgment Motion. On July 30, 2014, the City filed its reply briefs in further support of the City’s Joinder Motion and Summary Judgment Motion and in reply to Ultra’s responses in opposition to those motions. On July 31, 2014, the Court set a telephonic status conference to be held on October 1, 2014, at 10:00 am. On

August 26, 2014, the Court entered an order allowing Ultra to file sur-reply briefs in response to the City's reply brief in support of its motion for summary judgment and in support of its motion to join the other annexors as necessary parties. On December 10, 2014, Ultra and the Nor'wood entities that purchased the property within Banning Lewis Ranch owned by Ultra -- BLH No.1, LLC, BLH No. 2, LLC, and Banning Lewis Holdings, LLC (collectively, the "BLH Entities") filed a motion to substitute the BLH Entities for Ultra and stated that Ultra had assigned all of its claims, rights and interests in the adversary proceeding to the BLH Entities. On December 12, 2014, the Court granted the motion to substitute. On December 12, 2014, the Court also heard oral argument on the pending motions for summary judgment and took the matter under advisement. Court's ruling on motions is pending. On June 22, 2015, the bankruptcy court entered its Order on Pending Motions and granted summary judgment in favor of the City and denied the partial summary judgment motion filed by the BLH Entities. The bankruptcy court held that the Annexation Agreement and related agreements are not executory contracts that can be rejected and that the sale of the property was not free and clear of the Annexation Agreement and related agreements. On July 6, 2015, the BLH Entities filed their Notice of Appeal and Statement of Election (electing to have the appeal heard by the United States District Court for the District of Colorado). On July 20, 2015, the BLH Entities filed their Designation of Record and Statement of Issues. On August 3, 2015, the City filed Appellees' Designation of Additional Items to Be Included in the Record On appeal. On August 3, 2015, the parties filed the Joint Motion to Abate Appeal Pending Settlement Negotiations and requested that the appeal be held in abeyance until October 2, 2015. On August 4, 2015, the federal district court entered the Order Granting Joint Motion to Abate Appeal During Settlement Negotiations and stayed the appeal until October 2, 2015 and directed the parties to file by October 2, 2015, a joint status report apprising the court of the status of the negotiations and their view as to how the case should proceed. On September 30, 2015, the parties to the appeal filed a Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations (the "Joint Motion"). In the Joint Motion, the parties informed the Court that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until December 1, 2015. By order entered on October 20, 2015, the Court granted the Joint Motion and continued to hold the appeal in abeyance until December 1, 2015 and closed the case administratively subject to reopening for good cause. On November 23, 2015, the parties filed a Second Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until February 15, 2016 (the "Second Joint Motion"). By order entered on November 24, 2015, the Court granted the Second Joint Motion and continued to hold the appeal in abeyance until February 15, 2016, and directed the parties to file another status report on or before February 15, 2016. On February 15, 2016 the parties filed a third status report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until May 2, 2016 which the Court has not yet ruled on. On May 2, 2016, the parties filed a Fourth Status Report and Joint Motion to Re-Open Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause, stated that settlement negotiations were continuing, and requested that the Court continue to hold the appeal in abeyance until August 1, 2016. The Court has not yet ruled on that request. On August 1, 2016, the parties filed a Status Report and Joint Motion to Reopen Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause,

and requested, among other things, that the district court continue to hold the appeal in abeyance until November 1, 2016. On August 2, 2016, the district court entered its Order Granting Joint Motion to Abate Appeal Pending Settlement Negotiations, and ordered that the action remain stayed and all deadlines be held in abeyance until November 1, 2016, and directed the parties to file a joint status report by November 1, 2016. Joint status report and joint motion to continue filed on November 1, 2016 and granted by the Court holding case in abeyance until February 1, 2017. On January 26, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until July 1, 2017, while the parties continue settlement negotiations. On June 27, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until October 2, 2017, while the parties continue settlement negotiations. On September 8, 2017, the district court entered an Order granting the motions and continued to hold the appeal in abeyance until November 3, 2017 and directed the parties to file a status report on or before November 3, 2017. On November 2, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until February 2, 2018, while the parties continue settlement negotiations. On November 3, 2017, the district court entered an Order granting the motion and continued to hold the appeal in abeyance until February 2, 2018 and directed the parties to file a status report on or before February 2, 2018. On February 1, 2018, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until May 1, 2018, while the parties continue settlement negotiations. On February 5, 2018, the district court entered an Order granting the motion and continued to hold the appeal in abeyance until May 1, 2018 and directed the parties to file a status report on or before May 1, 2018. **On May 2, 2018, the parties filed a stipulation of dismissal and informed the court that the parties have achieved a resolution of the matters contested in the appeal and that the resolution moots the appeal. The parties requested that the court enter an order dismissing the appeal, with each party to bear its own costs and fees. By order entered on May 15, 2018, the court dismissed the appeal, with the parties to pay their own attorney fees and costs.**

(Massey – Florczak City Attorney’s Office / William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal at Sherman and Howard (Denver))

CATSKILL MOUNTAINS CHAPTER OF TROUT UNLTD ET AL. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, United States Court of Appeals for the Second Circuit, Docket Nos. 14-1823, 14-1909, 14-1991, 14-1997, 14-2003 – appeal of decision of United States District Court, Southern District of New York, Case Nos. 08-cv-5606 and 08-cv-8430, which vacated EPA’s Water Transfers Rule to the extent it is inconsistent with the statute and in particular the phrase "navigable waters" as interpreted in Rapanos and in the Opinion, and remanded the Water Transfers Rule to the extent EPA did not provide a reasoned explanation for its interpretation.. September 9-15, 2014 Western Providers and other appellants file opening briefs. December 24, 2014 Appellees to file responsive briefs. January 6, 2015 all parties request oral argument. January 26, 2015 Appellants file reply briefs. December 1, 2015 court held oral argument in NYC. January 18, 2017, in a split decision, majority reverses district court and reinstates EPA’s Water Transfers Rule; dissent would uphold district court. September 15,

2017, members of two of the three groups of Appellees sought review by the U. S. Supreme Court. January 19, 2018, Western Providers and other Appellants file responses to Appellants' petitions for certiorari. **February 26, 2018, Supreme Court denies the petitions for writ of certiorari. EPA's Water Transfers rule remains in place. Case Closed.**  
(Gustafson)

The City of Colorado Springs v. Spectrum General Contractors, Inc. v. Spectrum General Contractors, Inc. v. Barnes Masonry, LLC

El Paso County District Court Case No. 2017CV31178

CLAIM: The City seeks relief on claims for breach of contract, express warranty, and implied warranty, due to damage caused and faulty work at the Pioneers Museum.

STATUS: Complaint filed May 9, 2017. Summons filed May 24, 2017. June 9, 2017 Defendant files answer to complaint and jury demand. June 16, 2017 Spectrum files third party complaint and jury demand adding third party defendants Barnes Masonry. August 3, 2017 Defendants and Third Party Plaintiff's designate non-parties at fault: an unknown roofing contractor and Edison Castings, Inc. September 22, 2017 Third Party Defendant files answer. October 17, 2017 Parties file motion to stay discovery. February 22, 2018 Parties file stipulation for dismissal with prejudice. February 23, 2018 Order granting stipulation for dismissal with prejudice and each party to pay its own fees and costs. The City settled with Spectrum and Barnes.  
(Lamphere)

City of Colorado Springs v. DAB Lounge, LLC; Daniel Alexander Goodman; One Love Club; Jared McCusker; Heather Witting; Canna Canyon, LLC; Camille Mara; Springs Dreams, LLC; Eddie Martinez; My Club 420, Inc.; Anthony Robinson; Joe Trevino; Club History Vape Lounge; Telesforo Barrera, Jr.; The Lazy Lion, LLC; Andrew Poarch and All Unknown Persons who claim any interest in the subject matter of this action

El Paso County District Court 2016CV32389

CLAIM: City requests injunctive relief and declaratory relief from the Court claiming certain Defendants use their establishments as a marijuana consumption club (MCC) without having obtained or applied for an MCC license, which violates City's Business Licensing Code and Zoning Code. Additionally, all Defendants use their establishments as a retail marijuana business, which also violates City Business Licensing Code and Zoning Codes.

STATUS: City files Complaint August 31, 2016. September 7, 2016 City files Amended Temporary Restraining Order (TRO). The TRO hearing occurred on September 9, 2016 and the Court entered an Order Granting TRO on September 15, 2016. After receiving briefs from the City and the Defendants, Court files a comprehensive order granting City's motion for preliminary injunction on December 30, 2016. February 28, 2017 Defendants file answer to amended complaint for injunctive relief. March 3, 2017 City files Motion for judgment of civil contempt and to enforce preliminary injunction. March 14, 2017 Court grants order for issuance of citation for civil contempt. The City and the Defendants filed motions for summary judgment on May 15, 2017 and June 5, 2017, respectively. The parties fully briefed their motions for summary judgment by June 28, 2017 and await a ruling from the Court. At the City's request, the parties attended a status conference regarding disclosures and discovery on July 23, 2017. Court ordered the Defendants to supplement their discovery and disclosures on or before June 30, 2017. August 2, 2017 City filed brief in support of discovery sanctions. Court vacates the parties' discovery conference scheduled for August 16, 2017 to allow additional time to issue its ruling on summary

judgment. September 4, 2017 Court grants Plaintiff's motion for summary judgment, denies Defendants' motion for summary judgment, grants Plaintiff's motion for judgment of civil contempt and to enforce preliminary injunction. September 18, 2017 trial is vacated. Plaintiff files attorney's fees and costs. October 19, 2017 Court grants the City its reasonable attorney fees and costs. December 6, 2017 Defendants file Notice of Appeal. January 9, 2018 Appellee City files motion to dismiss. January 29, 2018 Court partially dismisses the appeal as to any review of the September 4, 2017 order resolving the merits of Plaintiff's claims and the contempt motion. The appeal proceeds in part for review of the October 19, 2017 orders on enforcement and attorney fees and costs. Record remains due March 7, 2018. **April 25, 2018 Defendants-Appellants file motion to dismiss appeal pursuant to C.A.R. 42 each party will bear its own fees and costs. April 26, 2018 City files response to motion to dismiss and cross motion for payment of outstanding fees. May 8, 2018 Court Orders appeal dismissed. May 10, 2018 Mandate issued.** (Doherty)

Susanna Hinton v. Nene Ross, City of Colorado Springs, Franklin J. Guthals and Marily L. Guthals Trust, El Paso County Public Trustee

El Paso County District Court Case No. 16CV32238

CLAIM: Plaintiff seeks an order adjudicating the rights of the parties and for partition for real property.

STATUS: Summons and Complaint served August 16, 2016. September 6, 2016 City files Answer and Affirmative Defenses. October 7, 2016 City files answer and affirmative defenses to Ross's counterclaims. Four day trial scheduled to commence June 19, 2017. Parties file notice of settlement on February 27, 2017 after agreement on the payment of the Promissory Note between Hinton and Ross. Motion to dismiss filed May 15, 2017. May 20, 2017 Court grants stipulated motion to dismiss.

(Stewart)

Theresa B. Lane v. Colorado Springs Utilities

El Paso County Small Claims Court Case No. 2017S507

CLAIM: Plaintiff refiles claim of property damage from flooding and alleges Colorado Springs Utilities is responsible.

STATUS: Notice, Claim and Summons to Appear for Trial served via U.S. Mail July 14, 2017. On September 26, 2017, Parties appear for trial. CSU moves to dismiss claims. Court dismiss claims.

(Stewart)

Pinnacol Assurance v. Sam Martinez; City of Colorado Springs; and Joshua Wonders v. Joshua Wonders v. City of Colorado Springs and Nicholas Budnella

El Paso County District Court Case No. 17CV32759

CLAIM: Plaintiff claims that City Defendants were negligent in a traffic accident due to the traffic lights being serviced at the intersection of Hancock and Boychuk causing Defendant Wonders to collide with Plaintiff.

STATUS: Summons and Complaint served December 12, 2017. January 2, 2018 City files its Answer, Affirmative Defenses and Jury Demand. January 4, 2018 Joshua Wonders files a Third Party Complaint against the City of Colorado Springs and Nicholas Budnella. January 26, 2018 Third Party Defendant Budnella files cross claims and counter claims. Stipulation for dismissal of



Sam Martinez and the City of Colorado Springs with prejudice. January 29, 2018 Court grants order for stipulation for dismissal. **On March 27, 2018, The City and Mr. Budnella file a stipulation to dismiss any pending and all future claims against the City of Colorado Springs, its entities and its employees with prejudice. On the same day, the Court grants the stipulation.**  
(Stewart)

State Farm Mutual Automobile Insurance Company a/s/o Georgia Cargil v. City of Colorado Springs and Alzado Adam

El Paso County Court Case No. 2017C31759

CLAIM: Plaintiff brings about subrogation claim seeking reimbursement of the amount paid to policyholder and the policyholder's deductible due to an automobile accident.

STATUS: Summons and complaint filed under simplified procedure served February 14, 2017. March 13, 2017 Plaintiff's file a notice of dismissal with prejudice.

(Stewart)

Willie Edward Watlington II v. City of Colorado Springs; Colorado Springs Police Department; and Officer Brown

El Paso County District Court Case No. 2017CV0265

CLAIM: Plaintiff claims damages caused by officer K9.

STATUS: Summons and Complaint served June 29, 2017. July 20, 2017 City files Motion to Dismiss. August 29, 2017 Court grants City's Motion to Dismiss. Court grants motion to dismiss and denies Plaintiff's motion to set aside default judgment.

(Stewart)

## NEW CASES

Broadmoor Bluffs Neighborhood Association, a Nonprofit corporation v. City of Colorado Springs  
El Paso County District Court Case No. 18CV30768

CLAIM: Alleges the City Council acted arbitrarily and capriciously in denying Plaintiff's appeal of the Planning Commission's decision approving the development plan and final plat for The Ridge.

STATUS: Summons and Complaint for Judicial Review and Request for Stay and Designation of Record served April 12, 2018. **May 24, 2018 City files answer and affirmative defenses.**

(Stewart)

City of Colorado Springs v. Patricia Ann Hubert; Mountain View Electric Association, Inc., a Colorado corporation; The El Paso County Telephone Company, a Colorado corporation; Mark Lowderman, El Paso County Treasurer

El Paso County District Court Case No. 2018CV31092

CLAIM: City seeks condemnation of the Respondent's property for public purpose.

STATUS: Petition in Condemnation and Notice of Lis Pendens filed May 4, 2018. **May 30, 2018 Respondent El Paso County Telephone Company files answer.**

(Turner / Edward J. Bleizner of Welborn Sullivan Meck & Tooley, P.C.)

City of Colorado Springs v. MDC Colorado, LLC a/k/a Midwest Builders MDC Colorado, LLC.

El Paso County District Court Case No. 2018CV30656

CLAIM: City files case against Defendant for breach of contract and nondisclosure of material facts

STATUS: Complaint filed March 13, 2018.  
(Doherty)

Old North End Owners For Enforcement of Master Plan, Inc., a Colorado Not-for-Profit Corporation v. City of Colorado Springs, a Home Rule City, and Kathleen Krager, in her official capacity as Senior City Traffic Engineer

El Paso County District Court Case No. 2018CV30794

CLAIM: Plaintiffs request Temporary Restraining Order and Preliminary Injunction to prevent street and traffic pattern changes in the neighborhood, alleging immediate and irreparable harm.

STATUS: Summons and Complaint for Injunctive Relief served April 10, 2018. Preliminary Injunction hearing is scheduled for May 18, 2018. May 1, 2018 City Defendants file motion to dismiss and a motion to expedite briefing schedule for Defendant's motion to dismiss. May 3, 2018 Court grants motion to expedite briefing schedule. **May 8, 2018 Plaintiffs files response to motion to dismiss. May 18, 2018 Court denies Defendant City's motion to dismiss. Court also denies motion to consolidate preliminary injunction hearing and trial. May 24, 2018 Court grants preliminary injunction. Trial scheduled for July 16, 2018 at 9:00 a.m.**

(Doherty)

## CURRENT CASES

### ADA

Christopher P. Sweeney and Nikole M. Sweeney v. City of Colorado Springs, Colorado; Stetson Hills Master Home Owners Association, Inc.; and Diversified Property Management, LLC

United States District Court Case No. 18-cv-337

CLAIM: Plaintiffs make Title II ADA claims and Section 504 Rehabilitation Act of 1973 claims alleging inaccessible curb ramps, obstructed sidewalks, and inaccessible bus stops against the City. Additional Fair Housing Act claims against remaining defendants.

STATUS: Summons and Complaint served February 15, 2018. **March 8, 2018 City files answer. March 29, 2018 Plaintiff files amended complaint. April 12, 2018 City files answer to amended complaint. Final pretrial conference set for April 9, 2019.**

(Rose/Lessig)

### BOARDS & COMMISSIONS

Catherine Clemens v. City of Colorado Springs

El Paso County Small Claims Court Case No. 2017S1104

CLAIM: Plaintiff files small claim for a relocation stipend fund and prepaid vacation time that was captured by the City on the final payroll check.

STATUS: Notice, Claim and Summons filed in Small Claims Court. The City has not been served. Trial is currently set for June 20, 2018.

(Lessig)

## FACILITIES

(OC)

Smokebrush Foundation, Katherine Tudor and Donald Herbert Goede, III v. City of Colorado Springs and Hudspeth & Associates, Inc.

El Paso County District Court Case No. 2013CV1469

Colorado Court of Appeals 2014CA228

Colorado Supreme Court 2015SC627

CLAIM: Plaintiffs claim that Defendants allowed asbestos, heavy metals and other toxic substances to migrate offsite during demolition of 25 Cimino Drive in a harmful manner and seek claims for relief of strict liability, negligence, trespass, nuisance and negligence *per se*.

STATUS: March 20, 2013 Summons and Complaint served. April 12, 2013 Hearing regarding Motion for Preliminary Injunction concerning condition of property. April 16, 2013 Plaintiffs file Motion for a Temporary Restraining Order (“TRO”). April 18, 2013 Defendant City of Colorado Springs files Motion to Dismiss, amended. April 19, 2013 Defendant Hudspeth files Response to Motion for TRO; Defendant City files Response to Motion for TRO; Defendant Hudspeth files Motion to Stay re: CRS §13-20-803.5(9). May 7, 2013 Plaintiff files Amended Complaint. August 2, 2013 City files motion to dismiss. August 23, 2013 Plaintiffs file response to City’s motion to dismiss. September 6, 2013 City files reply to its motion to dismiss. On September 25, 2013, the Court issued an order concluding that there are factual issues that are potentially relevant and ordered that a *Trinity* hearing would be necessary to resolve the issues stated in the motion. A *Trinity* hearing regarding the motion to dismiss was set for November 15, 2013, but was rescheduled to November 20, 2013. December 20, 2013 Court issues order denying City’s motion to dismiss and finding that some or all of Plaintiff’s damages were caused by the operation of a public building and the maintenance and operation of a gas facility, thereby waiving the City’s immunity. January 8, 2014 City files Answer and Affirmative Defenses. February 4, 2014 City files notice of appeal and designation of record on appeal. March 14, 2014 Defendant City files Brief regarding Stay of Case. March 14, 2014 Defendant Hudspeth files Motion for Stay. March 14, 2014 Plaintiffs’ file Brief in Partial Opposition to Stay. March 28, 2014 Second Case Management Conference in which Court grants motion to file Amended Answer; Court grants Motion to Stay; Plaintiffs to set Status Conference after receiving Mandate from COA. April 25, 2014 Defendant/Appellant City files Trinity Hearing Exhibits with Trial Court regarding Record on Appeal. May 5, 2014 Trial Court files Certificate of Mailing of Record on Appeal to COA. July 23, 2014: Def/Appellant City files Opening Brief. July 29, 2014, Def/Appellant City files Motion to Supplement Records on Appeal. August 22, 2014 Court gives notice of Filing Supplemental Record. September 26, 2014, Pl/Appellees’ file Answer Brief. October 16, 2014 Def/Appellant City files Reply Brief. October 23, 2014 Pl/Appellees’ Request Oral Argument. April 28, 2015 Oral argument was held. June 18, 2014 Court of Appeal reverses the district court’s order denying the City’s motion to dismiss and remand the case back to the district court with instructions to grant the motion. July 29, 2015 Plaintiff files a Petition for Writ of Certiorari in the Colorado Supreme Court. August 12, 2015 Opposition Brief filed. August 18, 2015 Reply Brief filed. May 31, 2016 Court grants the Petition for Writ and schedules briefs. Opening brief filed July 26, 2016. Colorado Trial Lawyers file Amicus Brief July 26, 2016 in support of Petitioners which is accepted by the Court on August 5, 2016. September 27, 2016 Colorado Municipal League files Amicus Brief in support of Respondent and accepted by the Court October 6, 2016.

September 29, 2016 City files Answer Brief and the State of Colorado files Amicus Brief in support of Respondent City of Colorado Springs and was accepted October 12, 2016. Reply brief filed November 21, 2016. Oral argument held on March 9, 2017. Supreme Court issues decision on February 5, 2018 holding wind claims barred by governmental immunity, but reversing Court of Appeals on alleged subsurface trespass, and remands for further proceedings. (Lamphere / Rob Zavaglia at Treece Alfrey Musal, P.C.)

## FINANCIAL AND ADMINISTRATIVE SERVICES

### PARKS

Save Cheyenne, a Colorado non-profit corporation v. City of Colorado Springs; City Council of the City of Colorado Springs; John W. Suthers, solely in his official capacity as the Mayor of City of Colorado Springs; and Ronn Carlentine or his successor, solely in their official capacity as Real Estate Services Manager of the City of Colorado Springs

El Paso County District Court Case Number 16CV032101

Colorado Court of Appeals Case Number 17CA43

**Colorado Supreme Court Case Number 18SC199**

CLAIM: Plaintiff alleges that Defendants violated dedication of park use, City Charter, state statute, Colorado Constitution, and zoning code and seek declaratory and injunctive relief.

STATUS: Summons and Complaint served August 8, 2016. Motion to Join Indispensable Parties. September 19, 2016 City Defendants file Motion to Dismiss. A motion to intervene is filed by proposed intervenors Manitou and Pikes Peak Railway Company; COG Land & Development Company; PF, LLC; and Broadmoor Hotel, Inc. Parties file stipulation to join indispensable parties. October 24, 2016 Broadmoor files a motion to dismiss and joinder in the City's motion to dismiss. November 8, 2016 Save Cheyenne files response brief in opposition to the Broadmoor and City of Colorado Springs' motion to dismiss. December 15, 2016 Court grants Defendants Motions to Dismiss, dismissing all claims by Plaintiff. Save Cheyenne files Notice of Appeal on January 5, 2017. Opening Brief filed May 31, 2017. Answer briefs filed July 31, 2017. July 31, 2017 Defendants-Appellees file joint motion to dismiss based on mootness. Additionally, Colorado Municipal League files motion for leave to file Amicus Brief and the Amicus Brief in support of Defendants / Appellees. Appellant files response and supplemental response in opposition to Appellee's motion to dismiss based on mootness. August 31, 2017 Appellant files Reply Brief. September 5, 2017 Appellant files request for Oral Argument. September 8, 2017 Appellees file joint reply in support of their motion to dismiss based on mootness. Oral Argument held January 9, 2018 at 9:30 a.m. February 8, 2018 Court of Appeals affirms district court order dismissing all claims. **March 22, 2018 Save Cheyenne files Petition for Writ of Certiorari. April 5, 2018 Respondents file joint brief in opposition to Petition for Certiorari. April 12, 2018 Reply brief in support of Petition for Certiorari filed.**

(Turner / Massey)

## PLANNING AND DEVELOPMENT

Dr. James D. Albert, an individual; and Bette Anne Albert, an individual v. City of Colorado Springs, a Colorado home rule municipality; Colorado Springs City Council, a governmental body

within the City of Colorado Springs; The Newport Co., a Colorado corporation; Richard C. Delesk, an individual; and Patricia D. Ingels-Delesk, an individual

El Paso County District Court Case No. 17CV31802

CLAIM: Plaintiffs file a C.R.C.P. 106(a)(4) complaint for judicial review of the Council decision affirming Planning Commission's conditional approval of preliminary and final plats for a 4.7 acre tract referred to as Archer Park Development. Plaintiffs claim City Council exceeded its jurisdiction and abused its discretion.

STATUS: Summons and Complaint received August 1, 2017. City files Answer to Complaint August 22, 2017. September 26, 2017 Court grants Plaintiffs' motion to certify the administrative record. January 12, 2018 Plaintiffs file a status report to the Court. January 16, 2018 City files status report to the Court. January 23, 2018 City files certified record of proceedings and recordings. January 29, 2018 Plaintiff files motion to amend administrative record and extension to file Opening Brief. **March 2, 2018 Court denies motion to amend administrative record. April 13, 2018 Plaintiffs file opening brief. May 18, 2018 City files answer brief.**

(Turner)

## POLICE

RONALD DWAYNE BROWN v. THE CITY OF COLORADO SPRINGS; PETER CAREY, Chief of Police, Colorado Springs Police Department, in his official capacity; VINCE NISKI, Deputy Chief of Police, Colorado Springs Police Department, individually and in his official capacity; ARTHUR "SKIP" ARMS, Commander, Colorado Springs Police Department, individually and in his official capacity; LT. SALVATORE FIORILLO III, Unit Commander, Tactical Enforcement Unit (Swat Team), Colorado Springs Police Department, individually and in his official capacity; SGT. RUSSELL (First Name Unknown), Colorado Springs Police Department, individually and in his official capacity; ; SGT. RONALD SHEPPARD, Colorado Springs Police Department, individually; ; SGT. CHRIS ARSENEAU, Colorado Springs Police Department, individually; ; OFFICER DAN CARTER, Colorado Springs Police Department, individually; OFFICER WILLIAM P. BETTS, Colorado Springs Police Department, individually; OFFICER ROBIN McPIKE, Colorado Springs Police Department, individually; OFFICER SHAWN MAHON, Colorado Springs Police Department, individually; OFFICER VANOONYEN (First Name Unknown), Colorado Springs Police Department, individually and in his official capacity;

United States District Court Case No. 14-cv-01471-RPM

Tenth Circuit Court of Appeals 16-1206

CLAIM: Plaintiff makes multiple claims for relief including violation of 4<sup>th</sup> amendment for excessive force, failure to train or supervise, along with Section 1983 claims and common law claims of negligence, among others.

STATUS: June 3, 2014 Complaint and Summons served. August 5, 2014 City Defendants' file waiver of service of Summons. August 26, 2014 Plaintiff files Amended Complaint and terminates claims against numerous parties. October 6, 2014 The City of Colorado Springs, Chief Peter Carey, Deputy Chief Vince Niski, Lieutenant Salvatore Fiorillo file partial motion to dismiss amended complaint. October 6, 2014 Sergeant Ronald Sheppard, Sergeant Chris Arseneau, Officer Dan Carter, Officer Willaim P. Betts, Officer Robin McPike, Officer Shawn Mahon, and Officer Marcus Van Oonyen file Answer and Affirmative Defenses and Jury Demand to Amended Complaint. October 27, 2014 Plaintiff responds to City's motion to dismiss. October 28, 2014

Court denies partial motion to dismiss amended complaint. November 12, 2014 Defendants file answer to first amended complaint. November 17, 2014 Plaintiff voluntarily dismisses Defendant Arthur "Skip" Arms. January 6, 2014 Court issues scheduling order. On December 18, 2015 Defendants file Motion for Summary Judgment. Plaintiff files motion for partial summary judgment for first claim for relief - excessive force. January 8, 2016 Defendant files response to Plaintiff's motion for partial summary judgment. January 22, 2016 Plaintiff files reply to its motion for partial summary judgment and files response to Defendants' motion for summary judgment. Hearing scheduled for Summary Judgment Motions for April 4, 2016 at 2:00 p.m. April 19, 2016 Court enters order denying both plaintiff and defendants summary judgment. City Defendants file Notice of Appeal. June 2, 2016 Plaintiff files Notice of Cross Appeal. Mediated conference held June 28, 2016. June 30, 2016 Court grants order for notice of dismissal of cross appeal. August 9, 2016 City Petitioners file Opening brief. Appellee brief filed October 12, 2016. Response Brief filed October 27, 2016. December 5, 2016 Appellants file reply brief. October 10, 2017 10<sup>th</sup> Circuit reverses District Court's ruling denying motion for summary judgment based on qualified immunity and remands case back to the District Court for further proceedings on municipal liability claim. November 1, 2017 Mandate issued and Judgment is entered by U.S. District Court dismissing Defendants Chief Peter Carey; Deputy Chief Vince Niski; Lt. Salvatore Fiorillo, III; Sgt. Ronald Sheppard Sgt. Chris Arseneau; Officer Dan Carter; Officer William P. Betts; Officer Robin McPike; Officer Shawn Mahon; and Officer Marcus Van Oonyen from this civil action. Conference scheduled for November 7, 2017 at U.S. District Court. **May 23, 2018 Parties file Notice of Settlement. Jury trial vacated for July 9, 2018.**

(Lamphere)

Isaac Gurule v. John Doe, Chief of Police of the Colorado Springs Police Department, individual capacity; Brent Ambuehl, Officer, individual capacity; Michael Finn, Officer, individual capacity; Canine Unity Supervisor Brian Cummings, individual capacity; Southern Colorado Safe Streets Task Force Supervisor Jason Ledbetter, individual capacity; City of Colorado Springs, individual capacity

United States District Court Case Number 17-cv-00826

CLAIM: Plaintiff claims Defendants violated his 4<sup>th</sup> Amendment right by using excessive force when executing a warrant.

STATUS: Summons and Complaint served November 21, 2017. December 12, 2017 Defendant Finn files motion to dismiss. February 6, 2018 Defendant Ambuehl files motion to dismiss. **March 16, 2018 Magistrate recommends motion to dismiss filed by Defendant Ambuehl be granted in part and denied in part and that the motion to dismiss by Defendant Finn be granted. Court issues order to show cause by April 2, 2018 to Plaintiff for lack of prosecution. March 30, 2018 Objection filed by Defendant Ambuehl. On April 4, 2018, the Magistrate Judge recommends dismissal of all claims without prejudice for failure to prosecute.**

(Stewart)

Anthony Lolin Jiminez, Sr. v. Fourth Judicial District Attorney's Office and/or El Paso County and/or City of Colorado Springs and/or Teller County or City of Cripple Creek and/or Other (Administrative capacities)

El Paso County District Court Case No. 2016CV477

Colorado Court of Appeals 2017CA971

CLAIM: Plaintiff files a complaint for negligence among other claims and economic and non-economic injuries for the alleged failure of Defendants to disclose information related to a financial file.

STATUS: Summons and Complaint served January 13, 2017. February 2, 2017 City files motion to dismiss. Plaintiff files response to motions to dismiss. March 19, 2017 Court grants City's motion to dismiss and all other motions to dismiss by defendants and orders that City is entitled to attorney fees and costs. April 3, 2017 City files affidavit of attorney's fees, which was granted by the Court on May 18, 2017. On June 1, 2017, Plaintiff filed a notice of appeal with the Colorado Court Of Appeals. Electronic Record certified. **February 23, 2018 Opening brief filed. April 18, 2018 Appellees file joint answer brief. Reply brief due June 27, 2018.**  
(Stewart)

Luis Antonio Juarez Martinez, individually and as surviving parent of D.J.M., deceased v. Justin Carricato, individually and in his capacity as an officer with the City of Colorado Springs Police Department; The City of Colorado Springs, Colorado; John and Jane Does 1-10; ABC corporations, companies and entities A-J

United States District Court No. 16-cv-00098-KLM

Remanded back to El Paso County District Court 15CV33722

Colorado Court of Appeals 17CA97

CLAIM: Plaintiff claims violation of Colorado Child Protection Act, negligence, Section 1983 claims, among others against Justin Carricato and the City of Colorado Springs.

STATUS: Summons and Complaint served December 29, 2015. Notice of removal to Federal Court was filed on January 15, 2016. January 19, 2016 Defendants file motion to dismiss. Scheduling conference scheduled for April 14, 2016. February 9, 2016 Plaintiff files response to Defendant's motion to dismiss. February 23, 2016 City Defendants file reply to its motion to dismiss. August 30, 2016 Court grants in part Defendants' Motion to Dismiss and Remands case back to El Paso County District Court. October 12, 2016 City Defendants file motion to dismiss. November 2, 2016 Plaintiff files response to Defendants' motion to dismiss. November 9, 2016 City files reply to response to motion to dismiss. December 8, 2016 Court issues Order regarding motion to dismiss and dismissing several claims brought against the Defendants, but denies others from dismissal. December 22, 2016 City Defendants file answer, affirmative defenses and jury demand. January 19, 2017 Plaintiff files Notice of Appeal. May 19, 2017 Appellants file Opening Brief. Answer brief filed July 5, 2017. Per Court Order opening brief and answer brief to be refiled removing minor identification. Answer Brief refiled July 20, 2017, amended Notice of Appeal and Amended Opening Brief refiled July 26, 2017. Reply brief filed August 16, 2017. Appellee files partial motion to strike Appellants Reply Brief and motion to file Sur-Reply. On September 22, 2017 the Court denied the motion to file a sur-reply and deferred the motion striking the reply brief to the division considering the merits of the appeal. Oral Argument scheduled for December 12, 2017. January 11, 2018 Colorado Court of Appeals issues opinion that the CGIA bars the claim against the City for alleged violation of the Child Protection Act because the claim lies or could lie in tort. Additionally, the claim against the City for vicarious liability must be dismissed because public entities do not waive immunity for an employee's willful and wanton conduct. The claims against Carricato must be remanded for a *Trinity* hearing to allow the district court to determine whether the officer's conduct was willful and wanton. **March 13, 2018 Court of Appeals issues mandate.**

(Lamphere)

Arick Justin Rinaldo, The Estate Of Kaitlin Cara Kendall Rinaldo, Et Al., v. Dr. Bryan M. Mahan, University Of Colorado Health Care, Memorial Hospital Security Guards, Robin Chitham, Jeremy Her Assistant, The Colorado Springs Police Officers, Persons On Memorial Hospital Committee, Kristen Hoffecker, Linda Rogain, Dr. Keenan, Penrose And St. Francis Hospitals, Centura, Pikes Peak Palative And Hospice Care, The Agents And Employees, et al.

El Paso County District Court Case No. 2015CV38

Colorado Court of Appeals 2016CA943

Supreme Court Case No. 2018SC17

CLAIM: Plaintiff alleges Breach of Contract, Deprivation of Rights, Due Process, and Wrongful Death among other claims.

STATUS: Plaintiff filed Amended Complaint February 3, 2015. March 30, 2015 City filed a motion to dismiss the case. May 21, 2015 Court grants City's motion to dismiss. Notice of Appeal filed June 14, 2016. January 24, 2017 Appellant files Opening Brief and an Amended Opening Brief on February 21, 2017. City files Answer Brief on April 7, 2017. May 24, 2017 Appellant files Reply Brief. November 30, 2017 Court of Appeal files opinion affirming judgment and remands case back to district court to determine reasonable fees. January 12, 2018 Petitioner Rinaldo files petition for writ of certiorari. January 26 and 29, 2018 Opposition briefs filed by Defendants. **May 21, 2018 Court denies petition for Writ of Certiori.**

(Stewart)

Rodolfo Rivera, Jr. v. Officer John Granillo / CSPD 3876

United States District Court Case No. 17-cv-01667

CLAIM: Plaintiff claims Defendant violated his 4<sup>th</sup> and 14<sup>th</sup> Amendment rights alleging false accusations, excessive force and no probable cause for arrest.

STATUS: Summons served August 30, 2017. September 20, 2017 Motion to dismiss filed by Defendant Granillo. **April 24, 2018 Court grants in part and denies in part City's motion to dismiss. May 1, 2018 City files motion objecting to order granting in part and denying in part City's motion to dismiss. On May 7, 2018, the Court denies Plaintiff's motion. May 8, 2018 City files answer to complaint. Settlement Conference held May 21, 2018.**

(Stewart)

Willie Watlington v. Tim Browne

United States District Court Case No. 17-cv-02972

CLAIM: Plaintiff brings § 1983 claims alleging wrongful stop and excessive force.

STATUS: Summons and Complaint served February 15, 2018. **March 8, 2018 Defendant files Motion to Dismiss. April 19, 2018 Plaintiff files response to motion to dismiss. May 3, 2018 Defendant files reply to its motion to dismiss. This matter is currently set for trial on March 4, 2019.**

(Stewart)

Marcus Whaley v. Colorado Springs Police

El Paso County District Court Case No. 17CV423

**Colorado Court of Appeals Case No. 2018CA300**



CLAIM: Plaintiff claims damage and injury due to police cruiser colliding with vehicle after being pursued in a police chase.

STATUS: Summons and Complaint served October 18, 2017. November 8, 2017 Motion to dismiss filed by Defendant. Plaintiff files various responses to motion to dismiss and motion to amend complaint. January 22, 2018 City files a reply to its motion to dismiss. Additionally, it files a motion to dismiss based on lack of notice of claim. January 23, 2018 City files response to Plaintiff's motion to amend complaint. February 12, 2018 Plaintiff files Notice of Appeal. February 21, 2018 Court grants CSPD's motion to dismiss. **April 30, 2018 Plaintiff files opening brief.**

(Turner)

#### REAL ESTATE SERVICES

Dadz, LLC, a Colorado limited liability company v. Gumaer Placer, LLC, a Colorado limited liability company; and the City of Colorado Springs, Colorado, a municipal corporation

Park County District Court Case No. 2017CV030019

CLAIM: Plaintiff seeks an action for partition of property in Park County by sale.

STATUS: Summons and Complaint served April 24, 2017. City files answer May 15, 2017. December 11, 2017 Plaintiff files motion to compel defendant Gumaer Placer for written discovery responses. January 17, 2018 Plaintiff files motion for summary judgment on Defendant Gumaer's affirmative defenses and files motion for determination of a question of law. Mediation held January 29, 2018. February 7, 2018 City files response to Plaintiff's motion for determination of a question of law. February 19, 2018 Plaintiff files reply to its motion for determination of a question of law. **February 28, 2018 Defendant files response to Plaintiff's motion for summary judgment on affirmative defenses and motion for determination of question of law. March 21, 2018 Court denies motion for summary judgment on affirmative defenses and motion for determination of question of law.**

(Turner)

Susanna Hinton v. Nene Ross, City of Colorado Springs, Franklin J. Guthals and Marily L. Guthals Trust, El Paso County Public Trustee

El Paso County District Court Case No. 16CV32238

CLAIM: Plaintiff seeks an order adjudicating the rights of the parties and for partition for real property.

STATUS: Summons and Complaint served August 16, 2016. September 6, 2016 City files Answer and Affirmative Defenses. October 7, 2016 City files answer and affirmative defenses to Ross's counterclaims. Four day trial scheduled to commence June 19, 2017. Parties file notice of settlement on February 27, 2017. Motion to dismiss filed May 15, 2017. May 20, 2017 Court grants stipulated motion to dismiss.

(Stewart)

#### TRANSIT SERVICES

Amalgamated Transit Union, Local 19 v. First Transit, Inc., v. City of Colorado Springs

El Paso County Court Case No. 2007CV1322, appealed to the Colorado Court of Appeals, Case No. 09CA2343;

United States District Court Case No. 10-cv-02002-RPM-MEH;

Case remanded to Denver District Court Case No. 2010CV6127;  
Case changed venue to El Paso County Court Case No. 2012CV81  
Court of Appeal, Case Number 2013CA001711

**CLAIM:** Defendant and Third-Party Plaintiff First Transit filed this third-party complaint against the City to enforce the City's alleged contractual obligation to indemnify First Transit for any liability and costs arising from the claim of Plaintiff Amalgamated Transit Union (ATU) Local 19. In 1981, the City, ATU, and the contract operators for the City's transit operations entered into a Section 13(c) Agreement. In 2006, Laidlaw Transit was awarded the contract to operate the City's general fund transit operations, commonly called the "South Facility." In 2007, the assets of Laidlaw were purchased and merged into First Transit, which assumed Laidlaw's contract with the City. In November, 2009, the City notified First Transit of the termination of the South Services Contract due to funding shortfalls and First Transit was ordered to plan the cessation of the South Facility operation accordingly. First Transit then ceased operating the South Facility and terminated all South Facility employees.

**STATUS:** In January, 2010, ATU asserted to First Transit that First Transit is a party to the Section 13(c) Agreement and is required by the Agreement to apply the South Facility collective bargaining agreement to the Pikes Peak Rural Transportation Authority bus transit operation (referred to as the "North Facility") and all North Facility collective bargaining unit employees or to provide dismissal allowances, thereby burdening First Transit with potential liability. ATU filed suit against First Transit in Colorado State District Court for Denver County, Colorado on July 30, 2010. On August 19, 2010, First Transit filed a Notice of Removal in the U.S. District Court, District of Colorado. On September 13, 2010, First Transit filed a third-party complaint against the City seeking indemnification pursuant to the parties' services agreement and alleging that the City is contractually obligated to assume sole responsibility, indemnify, and compensate First Transit for any and all costs and liability resulting from ATU's claims raised pursuant to the 13(c) Agreement. On November 1, 2010, the City filed a motion to remand to El Paso County District Court. First Transit filed its response to the City's motion to remand on November 23, 2010, and the City replied on December 7, 2010. A hearing on the City's motion to remand was held on January 7, 2011. On February 14, 2012, the Court issued an order granting the City's motion to remand, but remanded the case to the District Court for the City and County of Denver, Colorado. On February 28, 2012, the City filed a motion to dismiss for failure to state a claim for which relief can be granted, C.R.C.P. 12(b)(5) in the District Court for the City and County of Denver, Colorado. On that same date, the District Court for the City and County of Denver, Colorado *sua sponte* issued an order remanding the case to the El Paso County District Court (thereby initiating Case No. 12cv81). On March 1, 2012 ATU filed a motion to reconsider the Court's order of February 28, 2012, to which the City responded in opposition on March 14, 2012, First Transit responded in opposition on March 20, 2012, and ATU replied in support on March 21, 2012 and March 27, 2012. The City re-filed its motion to dismiss in case 12cv81, to which ATU filed a response on March 19, 2012, First Transit filed a response in support on March 20, 2012, and the City replied on March 30, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue, to which the City responded in opposition on March 26, 2012 and ATU replied in support. A motions hearing was held on June 21, 2012. On July 6, 2012, the El Paso County District Court (12cv81) issued an order stating it would take no action regarding the City's motion to dismiss until a judgment was entered in 2007cv1322.

ATU filed 2007cv1322 against the City in El Paso County District Court regarding enforcement of the 13(c) agreement against the City and its contractors. In that case, the El Paso County District Court entered an order on August 25, 2009 entitled Partial Grant and Denial of City's Motion for Summary Judgment, finding the binding interest arbitration provisions of paragraph 15 of the 13(c) agreement in violation of Colorado law and unconstitutional. ATU appealed that ruling to the Colorado Court of Appeals (09CA2343). On October 21, 2010, the Court of Appeals announced an unpublished opinion affirming the judgment and remanding the case with directions. A trial on remand was held June 11, 2012. On July 24, 2012, the Court in 07cv1322 entered an order finding that the 13(c) agreement was not perpetual and void as a matter of law. 07cv1322 is now closed.

ATU filed a notice of decision on August 28, 2012, notifying the 12cv81 Court that the 07cv1322 Court had entered judgment. October 12, 2012 the Court issued an order denying City's motion to dismiss case 12cv81. On November 8, 2012, the City filed its answer and affirmative defenses to First Transit's third party complaint. May 24, 2013 the Court granted the City and First Transit's stipulation, staying the third party complaint until the claims between ATU and First Transit are resolved. June 17, 2013 ATU and First Transit file separate motions for summary judgment. July 8, 2013 ATU and First Transit file responses in opposition to the opposing party's motions for summary judgment. July 22, 2013 First Transit files reply in support of its motion for summary judgment and ATU files its amended reply in support on July 17, 2013. On July 24, 2013, the Court grants ATU's motion for summary judgment and denies First Transit's motion for summary judgment, requiring ATU and First Transit to proceed to arbitration. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b) which the Court granted on August 29, 2013. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief and filed an amended opening brief on December 3, 2013. January 21, 2014 First Transit responds to Court's Show Cause Order. February 28, 2014 Court files order of dismissal as Court determines it lacks jurisdiction over appeal for lack of final appealable judgment. April 11, 2014 First Transit petitions for writ of *certiorari* from the order of dismissal. April 25, 2014 ATU files brief in opposition to petition for *certiorari*. May 2, 2014 First Transit files reply brief in support of petition for writ of *certiorari*. August 25, 2014 First Transit files motion to lift stay on proceedings re third party claims. August 26, 2014 ATU files objection to First Transit's motion to lift stay and the City filed its response in opposition on September 3, 2014. September 10, 2014 First Transit files consolidated reply in support of its motion to lift the stay on proceedings in the third-party claim and response to ATU's motion to condition the order lifting the stay of the third-party claim. October 27, 2014 Court denied First Transit's motion to lift the stay. January 20, 2015 The Colorado Supreme Court denies First Transit's Petition for Writ of *Certiorari*. April 26, 2017 First Transit files motion to amend its third party complaint to assert subrogation claim and to lift stay on proceedings re third party complaint, to which the City responds in opposition on May 17, 2017, and First Transit replies in support on May 26, 2017. June 20, 2017 The Court denies the motion to lift the stay and denies the motion to amend the third party complaint. July 5, 2017 First Transit files a motion to reconsider the Court's order re lift the stay and amend complaint. July 12, 2017 ATU joins First Transit in the motion to reconsider. City files response brief in opposition on July 26, 2017 and First Transit files reply on August 2, 2017. August 7, 2017 Court denies First Transit's motion to reconsider. ATU and First Transit were ordered to proceed to arbitration without further delay. (Doherty)

## UTILITIES

### Eugenia Blume v. City of Colorado Springs, and Colorado Springs Utilities

El Paso County District Court Case No. 17CV31243

Colorado Court of Appeals 2017CA2103

CLAIM: Plaintiff alleges Colorado Springs Utilities negligently caused flooding and claims damage to property.

STATUS: Summons and Complaint served May 17, 2017. June 7, 2017 City files motion to dismiss, to which the Plaintiff files response in opposition on June 28, 2017 and the City replies on July 6, 2017. August 1, 2017 Court issues order regarding motion to dismiss, requiring the parties to schedule a Trinity hearing to determine the Court's jurisdiction. Trinity Hearing held on November 1, 2017 to determine jurisdictional issue and statutory compliance based on the City's motion to dismiss. On November 3, 2017, the Court entered an order denying the motion to dismiss for statutory compliance and allowing an amended complaint to cure the defect of the additional claimant. November 10, 2017 Plaintiff files amended complaint and jury demand. November 17, 2017 Notice of Appeal filed by the City. February 13, 2018 Electronic record certified to the Colorado Court of Appeals. **March 29, 2018 Appellant files Opening Brief. May 4, 2018 Appellant files request for Oral Argument.**

(Doherty)

### Chiddix Excavating, Inc., a Colorado Corporation v. Colorado Springs Utilities a subsidiary of City of Colorado Springs; and City of Colorado Springs, a Municipal Corporation

El Paso County District Court Case No. 2014CV34137

United States District Court Case No. 14-cv-0335

United States Court of Appeals Tenth Circuit Case No. 16-1394

CLAIM: Plaintiff, an excavating company, claims after City wrongfully revoked Chiddix's license and violated Plaintiff's due process rights, took property without just compensation, deprived Plaintiff of private property among other claims.

STATUS: Summons and Complaint served November 18, 2014. December 9, 2014 City files Answer, Affirmative Defenses and Jury Demand. December 11, 2014 City files notice of Removal to United States District Court. December 19, 2014 El Paso County Court orders Removal and closes case. Settlement Conference scheduled for February 26, 2015. Discovery commences. April 21, 2016 City files Motion for Summary Judgment and Motion to Dismiss. May 27, 2016 Chiddix files brief in opposition to motion for summary judgment. June 24, 2016 Reply to response to motion for summary judgment and motion to dismiss. August 10, 2016 Parties file Motion in Limine. August 11, 2016 Court issues order granting in part and denying in part Defendant's Motion for Summary Judgment. Trial scheduled August 22-26, 2016. Verdict found in favor of the plaintiff. Final judgment issued. September 9, 2016 Plaintiff files Bill of Costs and Motion for Attorney's fees. September 19, 2016 Defendants file a motion to stay execution of final judgment and waiver of appeal bond. Plaintiff's file a motion for prejudgment interest which is responded and replied to. September 26, 2016 Defendants file Notice of Appeal. October 11, 2016 Final Judgment awarded to plaintiff. October 12, 2016 10<sup>th</sup> Circuit Court orders that the appeal is abated until the district court's decision on the pending motion to award prejudgment interest. Mediation conference held October 28, 2016. October 14, 2016 replies to Motion for Attorney's Fees and Prejudgment Interest filed. November 7, 2016 Court orders Plaintiff's motion for attorney fees and award of prejudgment interest granted. The Defendant's motion for stay of execution is denied.

December 15, 2016 Plaintiff files Writ of Garnishment on all accounts held in the name or on behalf of Colorado Springs Utilities and/or City of Colorado Springs. Defendants file unopposed motion to set supersedeas bond and stay of execution of final judgment upon filing and approval of bond, which was granted December 16, 2016. December 16, 2016 Defendants file Supersedeas Bond. Appellants file brief March 6, 2017. May 10, 2017 Appellee files response brief. Appellant's reply brief filed June 14, 2017. Oral arguments to be held November 15, 2017. (Lamphere)

City of Colorado Springs, Colorado v. Francisco Serna; Howard Jennings Walters, III; Lidia H. Walters; Thomas S. Mowle, El Paso County Public Trustee; Mark Lowderman, El Paso County Treasurer

El Paso County District Court Case No. 2017CV31927

CLAIM: City seeks condemnation of the Respondent's property for public purpose.

STATUS: August 7, 2017 City files Petition in Condemnation along with Motion for Immediate Possession and its accompanying Brief. September 8, 2017 Notice of Immediate Possession Hearing held October 20, 2017 at 1:30 p.m. Court grants motion for immediate possession. January 12, 2018 Petitioners file response to Courts order for a proposed case management order regarding how the case should proceed. February 9, 2018 Birddog, LLC files cross-petition to intervene and Serna files answer to petition in condemnation. **February 27, 2018 Walters file answer to petition in condemnation. March 27, 2018 Court grants in part Birddog's cross-petition to intervene stating that Birddog has a right to intervene because it claims an interest, but Birddog does not have a right to participate in any proceedings prior to it intervening. April 5, 2018 Court appoints commissioners. April 19, 2018 the Voir Dire and first meeting of commissioners scheduled for July 13, 2018. April 25, 2018 Respondents file motion to withdraw and disburse funds on deposit. Petitioner files brief in partial opposition to motion to withdraw and disburse funds on deposit.**

(Turner/ Edward J. Bleiszner / Welborn Sullivan Meck & Tooley, P.C.)

(OC)

City of Colorado Springs, Colorado and City of Aurora, Colorado v. URS Corporation and AECOM Technical Services, Inc.

El Paso County District Court Case No. 2016CV33378

CLAIM: Cities of Colorado Springs and Aurora claim negligence and breach of contract by Defendant in the delivery of is design and engineering services as part of the Homestake Dam AC Liner Rehabilitation project.

STATUS: Complaint filed December 16, 2016. Summons served on January 18, 2017. On April 14, 2017, Defendants filed their Answer with jury demand, a partial motion to dismiss and a motion for extension of time to designate nonparties at fault. On June 16 and 17, 2017, Plaintiffs filed their responses in opposition to URS' partial motion to dismiss and AECOM's motion to dismiss. On June 27, 2017, the parties filed a joint stipulation to substitute AECOM Technical Services, Inc. for AECOM that necessitated the filing of an Amended Complaint on June 28, 2017. On July 12 and 26, 2017, respectively, Defendants URS and AECOM Technical Services filed their Answers with jury demands. Subsequently, the parties stipulated to an "at issue" date of September 1, 2017. A pretrial readiness conference will be held on September 5, 2018, with a 15 day jury trial to begin on October 2, 2018. **Depositions of fact witnesses were concluded in April, 2018. Expert reports are due from Plaintiffs on May 14, 2018; Defendants to file their**

**expert reports on or before July 14, 2018. Expert depositions will be scheduled in July and August 2018. Discovery cut off is now set for August 14, 2018. Trial preparation will begin at the close of discovery.**

(Beckett/ Bret Gunnell of Beltzer, Bangert & Gunnell, LLP)

(OC)

United States of America and The State of Colorado v. City of Colorado Springs, Colorado  
United States District Court 16-cv-02745

CLAIM: Plaintiffs allege that the City violated the Clean Water Act and Colorado Water Quality Control Act by failing to comply with the MS4 permit issued by the State under Section 402(b).

STATUS: Complaint filed November 9, 2016. Motions to intervene filed by Pueblo County and Lower Arkansas Valley Water Conservancy District were granted by Court on February 17, 2017. Trial has been segmented by the Court for an initial liability trial addressing three exemplar sites. The first segment of trial expected by Spring or Summer of 2018. **April 13, 2018 Trial brief filed by Defendants. Pretrial conference scheduled for May 31, 2018.**

(Alan J. Gilbert / Bryan Cave, LLP)

(OC)

Leslie Weise v. Colorado Springs, Colorado, a municipality; Andres Pico, in his official and individual capacity; Bill Murray, in his official and individual capacity; Amy Trinidad, in her individual capacity; Wynetta Massey, in her official and individual capacity; Tom Strand, in his official and individual capacity; Helen Collins, in her official and individual capacity; Keith King, in his official and individual capacity; Jill Gaebler, in her official and individual capacity; Larry Bagley, in his official and individual capacity; Don Knight, in his official and individual capacity; Merv Bennett, in his official and individual capacity

United States District Court Case No. 17-cv-02696

CLAIM: Plaintiff claims First Amendment violation of free speech and retaliation; defamation *per se*, *per quod*, and by implication; and intentional infliction of emotional distress.

STATUS: Complaint filed November 13, 2017. Summons issued November 14, 2017. Motion to dismiss filed January 29, 2018. **February 20, 2018 Motion to amend complaint filed. May 4, 2018 Court grants amended complaint. May 7, 2018 Amended complaint filed. Defendants to file response to amended complaint on or before June 1, 2018.**

(Eric Hall at Lewis Roca Rothgerber Christie)

(OC)

WildEarth Guardians v. Colorado Springs Utilities, Colorado Springs Utilities Board and the City of Colorado Springs

United States District Court Case No. 17CV357

CLAIM: Plaintiff claims violations of the Clean Air Act by failing to continuously monitor the opacity of the Martin Drake Power Plant

STATUS: Complaint filed on February 9, 2017. Waiver of service filed on February 21, 2017. Defendant filed its initial Rule 26 disclosures on April 21 and the Plaintiff filed on April 26, 2017. A signed Scheduling Order outlining all deadlines in the case was filed on April 27, 2017 by the US Magistrate Judge. The next pretrial conference was set for December 11, 2017.

On September 26, 2017, Defendants filed their Motion for Summary Judgment and the Plaintiff filed its Motion for Partial Summary Judgment. The ruling on these motions is pending, along with the response and reply to the summary judgment motions. Discovery cutoff was December 1, 2017. On January 8, 2018, the Court denied Defendants' Motion for Summary Judgment as well as denying Plaintiff's Motion for Partial Summary Judgment. **On March 15, 2018, the parties filed a Notice of Settlement, notifying the Court that they had reached a settlement in principle. The final settlement documents were approved by City Council on April 10, 2018. On April 17, 2018, the parties signed a Settlement Agreement, and at the same time filed a Notice of Lodging of Consent Decree, at which time a 45 day review and comment period began. After this period expires, and the parties have reviewed any comments received from either the Attorney General or the Environmental Protection Agency Administrator, they will move the Court to enter the Consent Decree, constituting a final judgment between the parties.**

(Deminski/ Colin Deihl of Polsinelli, PC)

Zook, David H. and Dale Street Bistro Café, LLC v. Colorado Springs Utilities and City of Colorado Springs

El Paso County Court Case No. 15C1061

El Paso District Court Case No. 17CV0422

Colorado Supreme Court Case No. 18SC256

CLAIM: Plaintiff brings claim for alleged damage due to a CSU main sewer backup.

STATUS: Complaint and Summons served September 4, 2015. September 23, 2015 Defendants file motion to dismiss. October 13, 2015 Plaintiff files response to Defendants motion to dismiss. October 20, 2015 City Defendants files reply in support of its motion to dismiss. December 1, 2015 Court issues order denying motion to dismiss. December 15, 2015 City files Answer under simplified procedure. Mediation scheduled March 21, 2017. Trial scheduled for August 14, 2017. August 7, 2017 Defendants file Trial Brief. August 11, 2017 Case reassigned to Div. H. August 14, 2017 trial vacated and reset for November 7, 2017. Judgment and Order granted August 21, 2017. September 11, 2017 Plaintiff files motion to amend judgment. September 13, 2017 City Defendants file response to motion to amend judgment. September 18, 2017 Plaintiff files motion to change judge. September 20, 2017 Plaintiff files reply re motion to amend judgment. September 25, 2017 Court denies motion to amend judgment and denies motion to change judge. October 2, 2017 Plaintiff files notice of appeal. January 16, 2018 Appellant files Opening Brief. February 6, 2018 Defendants-Appellees Answer Brief. February 21, 2018 Plaintiff-Appellant files reply brief. **February 27, 2018 Court dismisses appeal. Petition for Writ of Certiorari filed April 10, 2018. April 27, 2018 Respondents file opposition brief to Petition for Writ of Certiorari. May 4, 2018 Petitioner files reply brief.**

(Turner)

**ADMINISTRATIVE SECTION**

**DISPOSED MATTERS**

**NEW MATTERS**

**CURRENT MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number CCRD FE2018497405  
August 31, 2017 Claimant brings charge of alleged discrimination under sexual orientation, sex and retaliation. City's response due October 5, 2017. Extension granted. City's Position Statement and responses to RFI filed October 20, 2017. Pending CCRD decision.  
(McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2018-00156  
Claimant brings charge of alleged discrimination under Title VII of the Civil Rights Act. Awaiting perfected charge. January 22, 2018 City receives dismissal and notice of rights. Deadline to file lawsuit in 90 days approximately April 27, 2018.  
(McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2018-00248  
November 3, 2017 Claimant brings charge of alleged discrimination under Title VII of the Civil Rights Act and age discrimination. City's Position Statement and responses to RFI filed December 22, 2017. Pending EEOC decision.  
(McCall)

(OC)

APPLICANT V. CITY OF COLORADO SPRINGS, Charge Number CCRD FE2018417180  
October 28, 2107 Claimant brings charge of alleged age discrimination. Response to Charge filed. Pending CCRD decision.  
(Frederickson/Fisher Phillips)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-00417.  
Claimant brings charge of alleged gender and age discrimination dated November 20, 2015. Position Statement and RFI due December 28, 2015. Pending EEOC decision.  
(Lessig)



**UTILITIES: Water Court Cases**

**Total Active Application Cases:**                      **8 (4 Diligence cases)**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
15CW3019	Blue River (Diligence)
15CW3050	Twin Lakes (Diligence)
16CW3056	FMIC / Chilcott Augmentation Plan
17CW3064	Homestake Partners (Diligence)
18CW3041	Homestake / Blue River (Diligence)

**Application Cases Before Water Referee:                      5**  
**Application Cases Before Water Judge:                      3**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
13CW3077	Green Mountain Reservoir
15CW3001	Chilcott Ditch Company Change Case
15CW3002	Fountain Mutual Irrigation Company Change Case

**Total Objector Cases:**                                      **26**

**Stipulated:    6**  
**Active:    20**

**Active Before Water Referee:                                      11**  
**Active Before Water Judge:    9**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
10CW4	Lower Arkansas Valley Water
11CW77	Lower Arkansas Valley Water & Larkspur, Inc.
12CW176	Climax Molybdenum Company
13CW3109	City of Glenwood Springs
15CW3016	United States of America c/o USAFA
15CW3068	City of Fountain
16CW3076	Southeastern Colorado Water Conservancy District
16CW3103	Board of Water Works of Pueblo, Colorado
17CW3050	Board of Water Works of Pueblo, Colorado

**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

**Active cases:**

Municipal – 77

Utilities – 27

Memorial - 1

**Subrogation cases handled by outside counsel:**

Municipal – 0

Utilities – 0

**Subrogation cases handled by City Attorney's Office:**

Municipal – 3

Utilities – 0

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<u>FEBRUARY</u>	<u>MARCH</u>	<u>APRIL</u>
Cases Docketed for Trial by Court	127	163	162
Cases tried:	80	81	95
Cases handled without trial:	47	82	67
Cases Docketed for Trial by Jury:	30	32	29
Cases tried:	5	3	2
Cases handled without trial:	25	29	27
Cases Handled on Deferred Docket:	164	209	163
Cases Handled at Pretrial:	398	535	471
Cases Handled at Arraignments:	863	868	868
Mailed Dispositions:	21	27	26
Criminal Arraignments Screened:	663	711	863
Jail Docket:	285	401	459
Administrative Hearings:	1	1	3
NPOI:	132	128	110
Good Driver Letters Mailed:	437	601	422
Good Driver Letters Accepted:	262	421	260
 TOTAL MATTERS:	 2814	 3368	 3304