


# QUARTERLY REPORT TO CITY COUNCIL

**Relating to:**  
LITIGATION AND ADMINISTRATIVE MATTERS

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**February 2016**  
(Covering All Activity through February 2016)

  
Wynetta Massey  
City Attorney/Chief Legal Officer



## TABLE OF CONTENTS

	PAGE
<b>Litigation Section</b>	
Disposed Cases	3
New Cases	6
Current Cases (listed by department)	7
<b>Administrative Section</b>	
EEOC/CCRD	
Disposed Matters	28
New Matters	30
Current Matters	30
<b>Utilities</b>	
Water Court Cases	33
<b>Workers Compensation</b>	34
<b>Hospital Collection Matters</b>	34
<b>Criminal Prosecutions Section</b>	35

## 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. *NOTE: Hours worked are cumulative and reflect combined time of attorneys and paralegals.*

## DISPOSED CASES

### City of Colorado Springs Municipal Court v. Dylan Martinez

El Paso County Court Case No. 15CV260

CLAIM: This case is a Municipal Court Case 14M31294 appeal.

STATUS: Notice of appeal filed May 26, 2015 Certification of record filed August 24, 2015. Waiting on Opening Brief. **Case Dismissed January 25, 2016.**

(Total \_\_ hours - Dale)

### City of Colorado Springs Municipal Court v. Timothy Dietz

El Paso County Court Case No. 15CV335

CLAIM: This case is a Municipal Court Case 15M12460.

STATUS: Notice of appeal filed July 24, 2015. Opening Brief filed November 11, 2015. **Answer Brief filed December 1, 2015. Conviction upheld by Order on January 20, 2016.**

(Total \_\_ hours – Rostum)

### City of Colorado Springs Municipal Court v. Robert Byrne

El Paso County Court Case No. 15CV164

CLAIM: This case is a Municipal Court Case 15M01057.

STATUS: Record certified to district court June 3, 2015. Waiting on opening brief. **City filed Motion to Dismiss appeal on December 14, 2015; order granting motion to dismiss entered December 18, 2015.**

(Total \_\_ hours – Stewart)

### Guy, Kathryn v. Nathan Jorstad

United States District Court Case No. 12-CV-01249-RM-KMT

CLAIM: Plaintiff claims unnecessary use of excessive force resulting in death.

STATUS: May 15, 2012 Waiver of service of summons and Complaint received. July 9, 2012 Defendants file motion to dismiss. August 14, 2012 Defendants file motion for protective order from discovery and to vacate scheduling order deadlines, which motion is granted; discovery is stayed until the court rules on Defendants’ motion to dismiss. November 2, 2012 Court allows Plaintiff to amend complaint; Amended complaint filed. November 16, 2012 Defendants file motion to dismiss Plaintiff’s amended complaint. January 23, 2013 Plaintiff files response to City’s motion to dismiss. February 6, 2013 Defendants file reply to their motion to dismiss. June 17, 2013 Parties file joint status report. January 27, 2014 Plaintiff filed motion for order to a finding of Section 15-11-803(7)(1). February 13, 2014 City Defendants file response to Plaintiff’s motion for order to a finding of Section 15-11-803(7)(1). April 9, 2014 Court denies Petition pursuant to 15-11-803(7)(1). April 21, 2014 Court grants Defendants Motion to

Dismiss; Plaintiff to proceed on claim against Defendant Jorstad in his individual capacity for the alleged violation of the Fourth Amendment; all other Defendants are dismissed. Scheduling conference set for June 3, 2014. May 5, 2014 Defendant Jorstad files Answer to Amended Complaint. June 3, 2014 Scheduling conference held. Court has issued schedule order and three revised scheduling orders issued at Plaintiff's request. Parties exchange settlement statement. March 31, 2015 City Defendant files motion for summary judgment and brief in support of motion for summary judgment. April 7, 2015 Settlement conference held. No settlement reached. May 8, 2015 Plaintiff files response in opposition to Defendant's motion for summary judgment. May 22, 2015 City Defendants file reply to motion for summary judgment. August 24, 2015 Plaintiff files motion to reopen briefing on Defendant's motion for summary judgment. September 8, 2015 Court denies Plaintiff's Motion to reopen briefing on Defendant's Motion for Summary Judgment. November 9, 2015 Court grants Defendant's Motion for Summary Judgment; final judgment entered in favor of Defendant and against Plaintiff.  
(Total 1008.25 hours – Turner)

Hampton, Nathaniel v. Officer Evans, Officer Nelson, Officer Cherry, Detective Goodwin, City of Colorado Springs, and Other Unknown Police Officers

United States District Court Case No. 11-cv-01415-RM-CBS

CLAIM: Plaintiff, a pro se prisoner, alleges that on July 6, 2010, officers of the Colorado Springs Police Department conducted an unreasonable strip search and deprived him of his property without due process by auctioning his truck from impound while he was in jail.

STATUS: October 19, 2011 Summons and complaint received. Defendants file successive motions to dismiss. September 26, 2012 Court orders that Plaintiff may file an amended complaint containing claims based on the alleged strip search and a procedural due process claim against the City. December 7, 2012 Plaintiff files his 4<sup>th</sup> amended prisoner complaint. January 14, 2013 Defendants file motion to dismiss Plaintiff's 4<sup>th</sup> amended prisoner complaint. February 6, 2013 Plaintiff files response to Defendants' motion to dismiss 4<sup>th</sup> amended complaint. February 20, 2013 Defendant files reply in further support of its motion to dismiss. April 16, 2013 Magistrate Judge issues recommendation that City's motion to dismiss Plaintiff's Fourth Amended Complaint be granted and to dismiss claims one, three, and five and that the case proceed on claim two against Defendant Evans for violations based on strip search and claim Four against the City based on the notice provided to Mr. Hampton prior to the sale of his truck. May 1, 2013 Plaintiff files objections to the Magistrate Judge's recommendation. May 15, 2013 Defendants file response to Plaintiff's objections to the Magistrate Judge's recommendation. May 23, 2013 Parties file joint status report to the Court. May 28, 2013 Plaintiff files reply to Defendants' response to objections to magistrate's recommendations. March 20, 2015 Court files order adopting the recommendation of the magistrate in part and rejecting the recommendation in part. Court grants the dismissal of claims one, three, five and Defendants Cherry, Nelson, Miller, and other unknown officers and dismisses punitive damages against the City. Punitive damages against Evans remain before the Court. March 20, 2015 Plaintiff signs settlement agreement. April 15, 2015 Plaintiff files motion to vacate settlement agreement. April 30, 2015 Defendants file response to motion to vacate settlement agreement. May 15, 2015 Plaintiff files reply to motion to vacate settlement agreement. May 22, 2015 Defendants file sur-reply to motion to vacate settlement agreement. June 1, 2015 Plaintiff files sur-response to sur-reply. October 14, 2015 Defendants file status report. **December 16, 2015**

**Parties file stipulation of dismissal with prejudice. December 16, 2015 Court terminates case based on stipulation of dismissal.**

(Total 511.3 hours – Turner)

IN THE MATTER OF THE APPLICATION AND REQUEST FOR WAIVER OF THE CITY OF COLORADO SPRINGS FOR AUTHORITY TO FORMALIZE A SHARED USE TRAIL AND CROSSING, INSTALL WARNING DEVICES AND IMPROVED APPROACH AT THE CROSSING OF THE MANITOU & PIKES PEAK COG RAILWAY TRACK ON THE NORTH LAKE MORAINNE CONNECTOR AT 38 @ 50' 01.6"N, 104@ 59'26.94"W IN EL PASO COUNTY, COLORADO

Public Utilities Commission of the State of Colorado Docket NO. 12A-006R

APPLICATION: The City applies to the Public Utilities Commission for authorization to formalize a shared-use trail and crossing, install warning devices and improved approach at the crossing of the Manitou & Pikes Peak COG Railway track and requesting a waiver of the Commission's rule requiring Pedestrian crossings to be Grade Separated.

STATUS: City files notice of application and petition. Commission order deems application complete, grants application, and grants petition for variance.

(Total 37 hours – M. Smith)

LORJAC, LLC, A Colorado Limited Liability Company and JACK D. ENGLAND V. Defendants: DALE A. HOLM, ELIZABETH S. HOLM, THOMAS S. OSBORN, SUSAN L. LESLEY, RANDY E. MUELLER, MARY ANNE MUELLER aka MARY ANN MUELLER aka MARY ANN MULLER, ROBERT L. MOORE, JAN M. MOORE, JAN M. REED, JOSEPH MICHAEL HOEFLING, DIANE K. STIPLER, D'AINE GREENE, ADAN G. REYES, EVELYN JOHNSON, MILTON R. JOHNSON, GEORGE E. HARRIS, MARK RUBERSON, JENNILEE KANOE RUBERSON, MAGDALENO QUINONES, STEVEN P. FORSLUND, JAN A. FORSLUND, TIMOTHY CONRAD KOCH, PHILLIP J. SAUER, IKSOO JUNG, JULIA E. JUNG, WELLS FARGO BANK MINNESOTA NA, UNITED STATES OF AMERICA, DOUGLAS W. NASS, VICTOR A. KRELOVICH, PAT KRELOVICH, CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, OSCAR LUGO, LYDIA R. LUGO, AUGUSTO B. DEVENECIA, MELINDA J. DEVENECIA, COLORADO MOUNTAIN DEVELOPMENT, INC., HAIM ANRI HAIMOV AND KATHLEEN ANN HAIMOV, TRUSTEES OF THE HAIMOV FAMILY TRUST, U/D/T FEBRUARY 28, 2000, ROBERT P. MOURNING, HEIDI A. RAIMER, SAUL TRUJILLO 1N HIS OFFICIAL CAPACITY AS PUBLIC TRUSTEE OF PUEBLO COUNTY, COLORADO and ALL UNKNOWN PERSONS OR ENTITIES WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER OF THIS ACTION

Pueblo County District Court Case No.

CLAIM: Plaintiff seeks to quiet title of multiple Pueblo West properties and files suit to determine if the Defendants have an interest and set forth the nature of their claims.

STATUS: Summons and Complaint served November 12, 2015. January 4, 2016 City files Answer and Affirmative Responses. **January 25, 2016 Court grants order for limited disclaimer of interest and stipulation for dismissal.**

(Total 15.9 hours - White)

## NEW CASES

Dustin R. Allinger v. City of Colorado Springs

El Paso County Small Claims Court 16S27

CLAIM: Plaintiff alleges his termination was not for just cause and brings claim to return relocation reimbursement which was withheld from his paycheck.

STATUS: Notice, Claim and Summons served February 5, 2016. Answer and any Counterclaim due prior to February 26, 2016 trial date.

(Total 16.1 hours – Lessig)

Aaron Gregory Johnson aka Angel v. Lisa Ann Vizconde; Officer Calloway, CSPD; District Attorney of Division 13; Jennifer Chu, Public Defender

El Paso County District Court Case No. 2015CV562

CLAIM: Plaintiff alleges perjury, false police report, false imprisonment, and false probable cause.

STATUS: Summons and Complaint served January 21, 2016. February 10, 2016 Officer Calloway files motion to dismiss.

(Total 6.5 hours – White)

Luis Antonio Juarez Martinez, individually and as surviving parent of Luis Daniel Juarez Molina, 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

~~El Paso County District Court Case No. 2015CV33722~~

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

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 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.

(Total 67.5 hours – Lamphere)

Cheryl S. Metcalfe and Steven L. Metcalfe, a minor, through his parent and next friend Cheryl S. Metcalfe v. Reuben T. Crews, personally and in his professional capacity as an employee of the City of Colorado Springs; City of Colorado Springs; City of Colorado Springs Police Department; El Paso County and El Paso County Sheriff's Department

El Paso County District Court Case No. 2015CV33748

CLAIM: Plaintiff claims negligence due to a motor vehicle collision against Defendants.

STATUS: Summons and Complaint served December 30, 2015. January 20, 2016 City Defendants file motion to dismiss pursuant to C.R.C.P. 12(b)(1).

(Total 57.7 hours – Stewart)

Montemayor, Amaro v. City of Colorado Springs by and through its City Council, David Lethbridge, individually, and Corey Farkas, individually

United States District Court Case No. 15-cv-02619-MEH

CLAIM: Plaintiff alleges national origin discrimination, hostile work environment and forced termination among other claims.

STATUS: Summons and Complaint served December 1, 2015. **The responsive pleading is due February 22, 2016, and the scheduling conference is set for March 1, 2016. A protective order was entered February 10, 2016.**

(Total 43.1 hours – Lessig/Rose)

Barbara Koziol, Henry F. Koziol, and Maria Koziol-Petkash v. The City of Colorado Springs, Colorado, a Colorado Home Rule City, the Colorado Springs City Council, and Robert-Scott G.C., Inc.

El Paso County District Court Case No. 2015CV33229

CLAIM: Plaintiff brings declaratory judgment claim for relief and preliminary and permanent injunction upon judicial review of Rule 106 due to the alleged claim that the City adversely granted and abused its discretion by granting a variance by adjacent homeowner Robert-Scott GC, Inc. (“RS”).

STATUS: Summons and Complaint served December 16, 2015. January 6, 2016 Defendants City and City Council file Answer and Affirmative Defenses. February 16, 2016 Parties file stipulated motion for dismissal of injunctive relief claim against Robert-Scott General Contractors and claims for declaratory judgment against all defendants. Court orders dismissal of claims for relief the same day. Certified Records to be filed by March 11, 2016.

(Total 49.3 hours - White)

Leslie Weise v. Colorado Springs Utilities

El Paso County District Court Case No. 15CV545

CLAIM: Plaintiff files petition for order requiring disclosure of public records under the Colorado Open Records Act.

STATUS: Petition served December 18, 2015. January 8, 2016 Respondent files answer. January 25, 2016 Amended Petition filed. February 8, 2016 Answer to Amended Petition filed.

(Total 27.8 hours - Turner)

## CURRENT CASES

### CITY ENGINEERING

Contract Management Inc, d/b/a US Roads v. City of Colorado Springs and Pikes Peak Rural Transportation Authority.

El Paso County District Court Case No. 2013CV30652

Colorado Court of Appeals Case No. 2015CA671

CLAIM: US Roads was awarded a contract through an Invitation to Bid to perform certain road improvements to Platte Avenue in Colorado Springs (the “Project”). Plaintiff claims City Defendants breached the contract that was executed on July 29, 2011 and received unjust enrichment at the expense of US Roads.

STATUS: June 16, 2014 Defendant City of Colorado Springs files Motion for Summary Judgment. July 28, 2014 Plaintiff files response to Defendant City’s motion for summary judgment. August 8, 2014 Defendant City files reply in support of its motion for summary judgment. September 4, 2014 Notice of stipulation for dismissal of Defendant Pikes Peak Rural

Transportation Authority. A six day trial was rescheduled to begin March 30, 2015. Parties file motions *in limine*, responses and replies. February 2, 2015 Plaintiff and City Defendant's file supplemental briefing on their motion for summary judgment. Court grants City Defendant's motion for summary judgment. March 18, 2015 City files Notice and Bill of Costs and Motion for Award of Attorney's Fees. April 22, 2015 US Roads as Appellant files Notice of Appeal. April 23, 2015 Court awards Defendants Bill of Costs but denies Attorney's Fees. On April 23, 2015, Plaintiff filed a Notice of Appeal. May 18, 2015 City files supplemental designation of record. Plaintiff-Appellant files Opening Brief on September 8, 2015. October 13, 2015 Appellee City files Answer Brief. November 3, 2015 Plaintiff-Appellant files Reply Brief. **Oral argument before the Court of Appeals is scheduled for March 22, 2016.**  
(Total 1283 hours – Gendill)

## COUNCIL

(OC)

Bruce, Douglas v. City of Colorado Springs and Does I through XX

El Paso County District Court Case Number 2013CV268

CLAIM: Plaintiff alleges unlawful activity by the City regarding Council Benefits, Attorney Compensation, Violations of Issue 300, Sales Tax Vendor Retention, and Utility Turn on Charges, Customer Water Usage, Appointee Review and Appropriation of Salaries and requests proper injunctive and declaratory relief.

STATUS: August 2, 2013 Summons and Complaint served. August 23, 2013 City files its Answer. September 18, 2013 PERA files motion to intervene. October 25, 2013 PERA files motion to dismiss first cause of action. October 28, 2013 Plaintiff files motion to amend complaint and motion for default judgment against City, asserting City being represented by outside counsel illegally. November 13, 2013 City files responses to Plaintiff's motion to amend complaint and motion for default judgment. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 18, 2013 Plaintiff files reply to his motion for default judgment; Plaintiff files reply to his motion to amend complaint. December 3, 2013 Court denies Plaintiff's Motion for Default Judgment. December 18, 2013 Plaintiff files amended complaint. January 2, 2014 City files answer to Plaintiff's amended complaint. January 13, 2014 City files 1) motion to dismiss cause of action 3 and motion for summary judgment as to causes of action 4 and 8 and 2) motion to dismiss causes of action 1, 2, 5, 6, and 7. Plaintiff files response to City's Motions 1) and 2) above on February 4, 2014 and February 6, 2014, respectively. February 17, 2014 City files reply in support of motion to dismiss causes 1, 2, 5, 6, and 7 and separate reply in support of motion to dismiss causes 4 and 8. March 2, 2014 Court rules on City's motions to dismiss and motion for summary judgment: 1) the first cause of action is dismissed as to Councilmember participation in PERA, but not as to travel and meeting expenses; 2) the second cause of action is dismissed as to the City Attorney's ability to hire outside counsel, but not as to the setting of the City Attorney salaries; 3) the fifth cause of action is dismissed in its entirety; and 4) the City's motions to dismiss third cause of action and motion for summary judgment on fourth and eighth causes are denied. March 6, 2014 the parties participate in a case management conference, as a result the April trial is vacated and reset to November 2014. At the CMC, deadlines for discovery, Rule 56 motions, motions *in*



*limine*, and substantive motions are set. March 17, 2014 Plaintiff files a motion for reconsideration of the partial dismissals. April 7, 2014 PERA and the City file responses to the motion for reconsideration. April 7, 2014 the Court denies Plaintiff's motion for reconsideration. On March 18, 2014 the City takes Plaintiff's deposition. The City has received the draft transcript, but an amendment sheet has not been received yet. Written discovery is ongoing but not without issues. April 18, 2014 the parties participate in a lengthy discovery hearing. April 25, 2014 Plaintiff provides non-responsive and evasive responses to the City's first set of discovery requests. May 5, 2014 the City files a motion to compel responses to the City's first set of discovery requests. The City owes responses to Plaintiff's written discovery request by May 8, 2014; however the Court ruled that the City could recover the cost of time and copies for the discovery response. The discovery cutoff is May 30, 2014. May 23, 2014 the City provided its Response to Plaintiff's Amended First Discovery. May 29, 2014 the Court grants the City's Motion to Compel. Plaintiff files an objection to the Order granting the motion to compel and Plaintiff requests sanctions but on June 16, 2014 the Court denies Plaintiff's objection and request for sanctions. On June 17, 2014 Plaintiff files Plaintiff's Inquiry on Pre-Trial Status. On July 16, 2014 the Court files an order stating that it has reviewed Plaintiff's June 17, 2014 filing. July 1, 2014 City files motion for ruling on questions of law on Plaintiff's remaining claims in causes of action 1, 2, 3, 4, 6, and 7 pursuant to C.R.C.P. 56(h). City also files motion for sanctions. July 28, 2014 Plaintiff filed responses to motion for sanctions and motion for ruling on questions of law. August 4, 2014 City files Reply in Support of its Motions. August 8, 2014 Court issues lengthy order addressing each of the remaining claims and dismisses Plaintiff's causes of action 1, 2, 3, 4, 6 and 7. August 18, 2014 Court issues an Order directing Plaintiff to file his Motion to Certify Class by September 8, 2014. August 18, 2014 Court also issues an Order directing Plaintiff to set a case management conference to hear argument on the City's Motion for Sanctions and address Plaintiff's ability to represent a class on the 8<sup>th</sup> cause of action. August 22, 2014 the City files a Motion for Leave to File Motion for Ruling on Questions of Law Relating to Plaintiff's 8<sup>th</sup> Cause of Action Pursuant to CRCP 56(h). September 2, 2014 Plaintiff files his Motion to Certify Class. September 9, 2014 Plaintiff files a response to the City's Motion for Leave. September 16, 2014 City files Reply in Support of Motion for Leave. September 19, 2014 the Court grants the City's Motion for Leave to File Motion for Ruling on Questions of Law. September 23, 2014 City files its Hearing Brief. September 26, 2014 City files a Motion to Consider Hearing Brief as City's Response to Plaintiff's Motion to Certify Class, which Motion was granted by the Court on September 30, 2014. October 9, 2014 Court grants Motion for Sanctions and sets deadline of 21 days for the City to file a Bill of Costs related to the Discovery Sanctions. October 10, 2014 Court denies Plaintiff's Motion to Certify Class. October 14, 2014 city files Motion for Ruling Pursuant to CRCP 56(h) on Plaintiff's 8<sup>th</sup> Cause of Action. Also on October 14, 2014 the Court holds a Case Management Conference. October 24, 2014 Court grants Defendant's motion for ruling pursuant to C.R.C.P. 56(h) on Plaintiff's eighth cause of action. October 30, 2014 City files a Bill of Costs Pursuant to the Order on Motion for Sanctions. November 4, 2014 Plaintiff files an Objection to the City's Bill of Costs, a reply thereto is due on November 12, 2014. The City's Bill of Costs relating to final judgment in the case is due November 14, 2014. The trial has been vacated. December 1, 2014 The Court orders that Plaintiff is to pay bill of costs in the amount of \$7,569.61 to Defendant City of Colorado Springs. December 31, 2014 Bruce files a Notice of Appeal. January 21, 2015, the City files a Motion to Dismiss Appeal. January 22, 2015 Bruce files a Request to Stay the Money Judgment. January 30, 2015 the City files a Response to the

Request for Stay. February 2, 2015 Bruce files a response to the City's Motion to Dismiss. Court of Appeals dismissed Bruce's appeal regarding the dismissed claims, however allowed appeal to proceed regarding order for costs. Court of Appeals denies Bruce's motion to stay. March 24, 2015, the court files a Notice of Filing of Record on Appeal and Briefing Schedule which sets the Opening Brief deadline as May 5, 2015. April 30, 2015, Bruce files Motion for Extension asking for his opening brief deadline to be extended to June 22, 2015. May 1, 2015, City files a response to the Motion objecting to the extension requested and agreeing to a two week extension. May 7, 2015, Court orders opening brief is due June 22, 2015. The City's Answer Brief is due 35 days from the date Bruce files his Opening Brief. May 4, 2015, Douglas Bruce pays judgment amount plus interest to the City. May 26, 2015 City files satisfaction of judgment and Plaintiff is released from the lien acquired by the judgment rendered on December 5, 2014 against Douglas Bruce and recorded at Reception No. 214112083. **January 14, 2016 Court of Appeals files Order and affirms trial court's order granting defendant's City's request for costs.**

(Total 289.8 hours – White - Carberry / Hayes, Phillips, Hoffman, Parker, Wilson & Carberry, P.C.)

## 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

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 courts 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.  
(Total 136.6 hours – White / Rob Zavaglia at Treece Alfrey Musal, P.C.)

## FINANCIAL AND ADMINISTRATIVE SERVICES

(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.**

(Total 330.7 hours Massey – Florczak City Attorney’s Office / William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal at Sherman and Howard (Denver)

#### MEMORIAL HEALTH SYSTEM

Kathryn Romstad and Margarethe Bench, on behalf of themselves and all others similarly situated v. The City of Colorado Springs, a municipal corporation, and in its capacity as a governmental enterprise doing business as Memorial Health System

El Paso County District Court Case No. 2014CV33008

United States Court of Appeals Case No. 15-1334

CLAIM: Plaintiffs allege the City of Colorado Springs breached contract and violated the constitution for not following statutory procedure when it leased Memorial Health Systems to UCH.

STATUS: Summons and Amended Complaint served December 5, 2014. December 31, 2014 City files Notice of Filing Notice of Removal and files Notice of Removal in United States District Court. February 17, 2015 Plaintiffs file second amended complaint. March 10, 2015 City files Motion to Dismiss. March 24, 2015 City files motion to stay discovery on liability until Court’s decision on motion to dismiss. April 3, 2015 Plaintiff files response to motion to dismiss. City files reply to its motion to dismiss on April 20, 2015. August 10, 2015 Court issues order granting motion to dismiss. August 11, 2015 Final Judgment issued. August 25, 2015 Defendants files Bill of Costs, which is granted by the Court on September 1, 2015. Plaintiffs file appeal to the 10<sup>th</sup> Circuit Court of Appeals. Mediation held October 9, 2015. Appellants’ file brief November 20, 2015. **January 27, 2016 Appellee files Answer Brief. Reply Brief filed February 16, 2016.**

(Total 368.1 hours – White / Gordon Vaughan and David DeMuro of Vaughan & DeMuro)

Francis Rudnicki and Pamela Rudnicki individually, and as parents, guardians and next friends of Alexander Rudnicki, a minor child v. Peter Bianco, D.O. and the City of Colorado Springs, dba Memorial Health System

El Paso County District Court Case No. 2014CV34013

CLAIM: Plaintiff claims negligence and other claims against Dr. Bianco and Memorial Hospital and alleges that due to their negligence Plaintiff suffered damages, losses and permanent impairment.

STATUS: Summons and Complaint served February 5, 2015. March 12, 2015 City files Motion to Dismiss. The Motion to Dismiss was granted in part and denied in part. City’s Answer was filed on May 7, 2015. Trial set for August 23, 2016. Discovery commences. **Depositions are underway.**

(Mullen / Retherford, Mullen & Moore)

#### MUNICIPAL COURT

City of Colorado Springs Municipal Court v. Jeremy Daily

El Paso County Court Case No. 15CV436

CLAIM: Municipal Court Case 15M18583  
STATUS: Notice of Appeal filed September 30, 2015. Certification of Record November 9, 2015. Waiting on Opening Brief.  
(Total \_\_ hours – Dale)

City of Colorado Springs Municipal Court v. Brian Benfer

El Paso County Court Case No. 15CV408  
CLAIM: Municipal Court Case 15M20485  
STATUS: Notice of Appeal filed September 4, 2015. Certification of the Record November 4, 2015. Waiting on Opening Brief.  
(Total \_\_ hours - O’Boyle)

City of Colorado Springs Municipal Court v. Charles Griffin

El Paso County Court Case No. 15CV430  
CLAIM: Municipal Court Case 15M14292  
STATUS: Notice of Appeal filed September 28, 2015. Certification of Record November 13, 2015. **No Brief was filed. Delay prevention order was issued January 29, 2016.**  
(Total \_\_ hours - O’Boyle)

City of Colorado Springs Municipal Court v. Helga Czarnecki

El Paso County Court Case No. 15CV32828  
CLAIM: Municipal Court Case 14M37177  
STATUS: Notice of Appeal filed September 28, 2015. **Record was certified on January 19, 2016, Defendant’s opening brief was filed February 3, 2016. Answer Brief filed February 24, 2016.**  
(Total \_\_ hours - Stewart)

PLANNING

WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 2, AND WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 3, TITLE 32 METROPOLITAN DISTRICTS; AND KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. PRAIRIE VISTA, LLC, A COLORADO LIMITED LIABILITY COMPANY; ROCKY MOUNTAIN COMMUNITY LAND TRUST, A COLORADO NON-PROFIT CORPORATION; PIKES PEAK HABITAT FOR HUMANITY, INC., A COLORADO NONPROFIT CORPORATION; WILLIAM M. PECK; DARRELL H. OLIVER, SR.; KELLY ANN M. OLIVER; WILLIAM MARCHANT; MAUREEN M. MARCHANT; MARILYN J. HOWELL, AS TRUSTEE OF THE MARILYN J. HOWELL TRUST; C. ARLENE NANCE; SUSAN HANSON; THE CITY OF COLORADO SPRINGS, A COLORADO HOME RULE CITY AND MUNICIPAL CORPORATION; AND ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER OF THIS ACTION v. (THIRD PARTY PLAINTIFF) KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. THIRD PARTY DEFENDANTS RS HOLDING COMPANY, LLC, F/K/A INFINITY HOLDING COMPANY, LLC, A COLORADO LIMITED LIABILITY

COMPANY; H2 LAND CO, LLC, A COLORADO LIMITED LIABILITY COMPANY; PAUL HOWARD; JONATHAN HOWARD; SCOTT HENTE; AND ROBERT ORMSTON

El Paso County District Court Case NO. 08CV4553

Colorado Court of Appeals Case No. 14CA154

**CLAIM:** This issue arose between the developers of a subdivision and property owners over the placement of a roadway. Initially, the City was added as a party to this matter as a party in interest. Later, Defendant Peck added City of Colorado Springs on a third amended counterclaim and third party complaint of Defendant William Peck. Peck's only claim against the City was an action for declaratory judgment that the City would approve any restoration plan ordered by the trial court.

**STATUS:** An Eight Day Trial Commenced October 23, 2012. November 26, 2012 Court issues order stating that City of Colorado Springs must approve court-approved partial restoration plan to Ski Lane and Sopressa Road. Court issues order judgment in favor of the Neighbors (Marchant, Howell, Nance, Hanson Oliver, and Peck) and that all other parties are jointly and severally liable to the Neighbors. December 10, 2012 Neighbors file Motion to Alter or Amend Findings, Conclusions and Judgment. Trial is scheduled for Plaintiff v. Third Party Defendant for January 24, 2013. Court grants stipulation for settlement as to KF 103-CV's Third Party Claims against the Infinity Parties on January 24, 2013. February 8, 2013 Court issues an order pending post-trial motions denying full restoration, that no party obstruct Ski Lane as an access easement, that Nance's motion to impose an order to replace or pay for removed dirt on parties other than RS Construction and Infinity Land is denied, that no recovery costs be passed along, denial of damage awards be reset, Court denies attorney fees, interest will accrue at 8% and in response to WHMD's motion for clarification the Court states that WHMD is jointly liable to partially restore Ski Lane and Sopressa and is not liable for damage awards to neighbors. City has no financial obligations. Parties file proposed orders for final judgment. October 30, 2013 Third Party Defendants file motions for reconsideration of October 15, 2013 Judgment and for order Nunc Pro Tunc concerning motion for clarification re October 15, 2013 Judgment and Motion for Reconsideration re Allocation of Liability of H2 Land Co., et al.; October 31, 2013 Defendants and William Peck file bill of costs. November 14, 2013 Plaintiff/Third-Party Plaintiff files notice of submission of completed construction plans pursuant to Court's order of October 15, 2013. November 15, 2013 KF 103-CV files response in opposition to motion for reconsideration re allocation of liability. November 20, 2013 Third-Party Defendants RS Construction, Hente, and Ormston file response to bill of costs. November 22, 2013 Third Party Defendants file reply in support of their motion for reconsideration re allocation of liability. November 27, 2013 Infinity Land Corp. files joinder in Third-Party Defendants' response to bill of costs; remaining responsible parties file response and objection to bill of costs. December 3, 2013 Status conference held. December 9, 2013 Defendants Marchants, Howell, and Nancy file combined reply to Defendants' bill of costs and response objecting to the Responsible Parties' proposed interim plans for constructing the Sopresa Lane wall and intersection. December 11, 2013 Court issues orders: 1) granting Hente, Howard, and Ormston's motion seeking clarification that they are not personally liable for judgments in the case and 2) denying Third Party Defendants' motion for order nunc pro tunc concerning motion for clarification re October 15, 2013 judgment and motion for reconsideration re allocation of liability; Third Party Plaintiffs file notice of dismissal of their claims against Third Party Defendants Mulliken & Mulliken, Weiner, Berg, & Jolivet, P.C. December 13, 2013 Plaintiff/Third-Party Plaintiff KF 103-CV files reply in support of its completed construction



plans. December 17, 2013 Court issues order approving the construction plans. January 29, 2013 Defendants Marchant, Howell, Nance and Oliver file notice of appeal. June 27, 2013 Appellant files opening brief. July 17, 2014 Colorado Court of Appeals issues ordering show cause as to why the appeal should not be dismissed without prejudice for lack of a final, appealable judgment. July 31, 2014 Plaintiff / Third Party Appellee and Cross Appellants' files response to Court's show cause order. August 7, 2014 Court orders parties to respond if negligent misrepresentation claims of Neighbors against KF 103-CV have been resolved and status of KF 103-CV's and Infinity entities have filed stipulation for dismissal with prejudice; all opening brief and answer brief deadlines are vacated until clarification and resolution of these issues. August 28, 2014 Parties file response to Court's order for show cause. October 6, 2014 Court of Appeals remands issue back to trial court for a limited purpose of making additional findings. Court makes additional findings. Case went back to Court of Appeals. Opening Briefs due February 26, 2015. March 6, 2015 Parties file answer brief. Appellees Metropolitan Districts 1, 2 and 3 and H2 Land Co, et al file amended answer brief. April 10, 2015 Appellee KF 103-CV files answer brief to Infinity Group's Cross Appeal. May 1, 2015 RS Construction files reply brief. May 4, 2015 Defendant – Appellant's file reply brief. **On December 17, 2015 Court of Appeals affirms judgment.**

(Total 360.3 hours – White)

#### POLICE

Acker, Andrea v. The City of Colorado Springs; Peter Carey, Chief of Police, Colorado Springs Police Department, in his official capacity; and Tyler Walker, Colorado Springs Police Department, individually and in his official capacity

CLAIM: Plaintiff brings claims of excessive force

STATUS: October 26, 2015 Defendants The City of Colorado Springs and Peter Carey file motion to dismiss. November 11, 2015 Plaintiff files response to City Defendants' motion to dismiss. November 12, 2015 Plaintiff files First Amended Complaint and Jury Demand. November 20, 2015 Defendant files answer to First Amended Complaint. Court grants order for partial judgment on Defendants' motion to dismiss, dismissing claims agent, City and Chief Carey.

(Total 144.5 hours – Lamphere)

(OC)

Rebecca Arndt, Nicole Baldwin, Cathy Buckley, Stacey Clark, Donya Davis, Julie Garrett, Carolyn Graves, Samantha Lembergs, Jennifer Lewis, Geraldine Pring, Magdalena Santos, and Terry Thrumston v. City of Colorado Springs

United States District Court Case No. 2015-cv-00922

CLAIM: Plaintiffs allege age and sex discrimination and violations of due process after department wide physical abilities testing ("PAT") was initiated.

STATUS: Complaint and Summons served May 1, 2015. City files Answer May 22, 2015. Scheduling Conference held on July 15, 2015 and continued to August 7, 2015. Discovery has commenced. A stipulated protective order was entered August 7, 2015. On October 20, 2015 Plaintiffs filed an Amended Complaint. The City filed answer to amended complaint on November 3, 2015. A joint stipulated motion for preliminary injunction relief was filed and granted. **The City filed answer to second amended complaint on February 16, 2016, and**

**moved to dismiss an additional claim brought by Plaintiff Garrett. Discovery is ongoing.**  
(Total 1017.45 hours –Lessig / Ogletree Deakins)

Christopher Beddingfield v. Christopher Brown; and Drew Jeltos; and the City of Colorado Springs

United States District Court Case No. 15-cv-00846-MJW

CLAIM: Plaintiff makes multiple claims including allegations of violations of due process stating false imprisonment and unlawful search and seizure.

STATUS: Complaint and Summons served May 6, 2015. Scheduling Conference set June 25, 2015. Motion to reschedule filed by City Defendants. June 16, 2015 City Defendants file Motion to Dismiss. Plaintiff files response to motion to dismiss on July 31, 2015. August 14, 2015 City files reply in support of its motion to dismiss. **February 3, 2016 Magistrate Judge recommends dismissal of action.**

(Total 96.2 hours – Turner)

Grant Bloomquist v. Jeremy Sheldon, in his individual and official capacities; John Ireland, in his individual and official capacities; Nathan Johnson, in his individual and official capacities; Felix Juliano, in his individual and official capacities; Jordan Leffler, in his individual and official capacities; Rafael Chanza, in his individual and official capacities; David Rosenhoff, in his individual and official capacities; Jim Jeffcoat, in his individual and official capacities; John Garza, in his individual and official capacities

United States District Court Case No. 15-cv-01398-RPM-NYW

CLAIM: Plaintiff brings claims alleging unlawful seizure, false arrest, excessive force, and violation of First, Fourth and Fourteenth Amendment rights.

STATUS: Summons and Complaint served August 24, 2015. September 14, 2015 City Defendants file Answer and Affirmative Defenses. October 26, 2015 Defendant Rosenoff files Answer to Complaint and Affirmative Defenses. **Discovery is ongoing.**

(Total 111.5 hours – White)

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

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.**

(Total 1012.9 hours – Lamphere / White)

People of the State of Colorado v. Robert Crouse

Colorado Court of Appeals Case No. 2012 CA2298

Supreme Court Case No. 2014 SC 109

STATUS: City of Colorado Springs files a motion to either be an added party or in the alternative leave to file an amicus brief. City files amicus brief along with motion. July 26, 2013 Defendant files Answer Brief. August 29, 2013 People file Reply Brief. October 24, 2013 Appellant files notice of supplemental authority. November 20, 2013 Oral argument conducted. December 2, 2013 Parties file post-argument briefs as directed by Court. December 19, 2013 Court of Appeals issues order affirming judgment of trial court that marijuana and marijuana plants should be returned to Crouse. January 31, 2014 Petition of Writ of Certiorari filed by District Attorney on the issue of whether, in a matter of first impression, the court of appeals erred in concluding that the federal Controlled Substances Act does not preempt Article XVIII, section 14(2)(e) of the Colorado Constitution, where the state directive requires law enforcement officers to distribute marijuana to medical marijuana patients in violation of the CSA's prohibition of such acts. February 20, 2014 People file Reply brief. June 15, 2015 Petitioner's Writ of Certiorari is granted and Opening Brief will be due December 10, 2015 after enlargement of time was granted by Court. **December 10, 2015 City of Colorado Springs files Motion to Participate as Amicus Curiae and Amicus Brief. December 11, 2015 Petitioner files opening brief. On December 23, 2015, Court grants motion and the brief of Amicus Curiae is accepted.**

(Total 218.4 hours – Lamphere)

Morgan, Larry v. City of Colorado Springs

United States District Court Case No. 15-cv-00185-RPM

CLAIM: Plaintiff alleges discrimination under Title VII based on race, and retaliation for engaging in protected activity.

STATUS: February 5, 2015 Summons and Complaint received via email with Waiver of Service. April 6, 2015 Defendant files Answer. Scheduling Conference held May 28, 2015.

**Discovery concluded January 4, 2016. The dispositive motion deadline is March 9, 2016.**

(Total 243.9 hours – McCall)

## STREETS

Clara Haas v. The City of Colorado Springs, the County of El Paso, Colorado Springs World Arena and H2 Properties, LLC of Arizona, LLC

El Paso County District Court Case No. 2015CV30940

CLAIM: Plaintiff brings claim for City and other Defendants' alleged failure to maintain sidewalk causing damages.

STATUS: Complaint and Summons served April 21, 2015. May 15, 2015 City files Answer. June 15, 2015 City files Answer to Amended Complaint. June 25, 2015 Notice of Dismissal of H2 Properties, LLC only. August 6, 2015 Defendant Sun Plaza files Answer. Four-day jury trial scheduled to begin August 1, 2016. **Discovery is ongoing.**

(Total 3.7 hours – Stewart)

Progressive Specialty Insurance Company v. Paul C. Pennington; and City of Colorado Springs

El Paso County Court Case No. 2015C45976

CLAIM: Plaintiff files a subrogation claim to recover costs for Budget Rent A Car due to a road grader accident on September 26, 2013.

STATUS: Complaint and Summons served October 2, 2015. **January 11, 2016 City files motion to dismiss. January 22, 2016 Plaintiff files response to City's motion to dismiss. January 28, 2016 City files reply in support of its motion to dismiss.**

(Total 31.9 hours - White)

## 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© 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 remanding 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 Court’s order of February 28, 2012. The City reaffirmed its motion to dismiss by re-filing same in 12cv81. The city responded to ATU’s motion to reconsider on March 14, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue. And, on March 19, 2012, ATU filed response to the City’s motion to dismiss. On March 20, 2012, First Transit filed a response in opposition to ATU’s motion to reconsider the Denver District Court’s remand to El Paso County; and, on March 20, 2012 First Transit also responded in support of the City motion to dismiss. ATU replied on March 21, 2012 in support of its motion reconsider the Denver District Court’s order remanding to El Paso County. The City then, on March 26, 2012, responded to ATU’s motion to hold the proceedings in abeyance. On March 27, 2012 ATU replied to First Transit’s response in support of City’s motion to dismiss; and ATU replied to First Transit’s response regarding the order concerning remand to El Paso County. On March 30, 2012, the City files replied to ATU in support of the City’s motion to dismiss. On April 2, 2012, ATU replied in support of its motion to hold proceedings in abeyance. 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 the a judgment was entered in 2007cv1322.

2007cv1322 has been filed by ATU 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 has 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© 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 El Paso County District Court in 12cv81 that the Court had ruled in 07cv1322. October 12, 2012 the Court issues order denying City's motion to dismiss in 12cv81. The City on November 8, 2012, filed its answer and affirmative defenses to First Transit's third party complaint. The parties exchanged disclosures on December 18, 2012. Trial is scheduled for September 16, 18 and 19, 2013. The parties have responded to written discovery in advance of the May 31, 2013 discovery cut-off date and dispositive motion deadline of June 17, 2013. May 24, 2013 Court grants stipulation to stay proceedings regarding third party claims. June 17, 2013 First Transit files motion for summary judgment. July 8, 2013 Defendant First Transit files response in opposition to Plaintiff's motion for summary judgment; Plaintiff files brief in opposition to First Transit's motion for summary judgment. July 17, 2013 Plaintiff files amended reply brief in support of its motion for summary judgment. July 24, 2013 Court grants Plaintiff's motion for summary judgment and thus agrees to proceed to arbitration; Court denies First Transit's motion for summary judgment. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b). August 29, 2013 Court grants order for final judgment pursuant to 54 (b). City's liability determination is stayed. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief. December 3, 2013 First Transit files amended opening brief. 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 Amalgamated files objection to First Transit's motion to lift stay. 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 Plaintiff's ATU's motion to condition the order lifting the stay of the third-party claim. 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. **ATU and First Transit are in the process of completing arbitration.**  
(Total 543.4 hours –Gendill)

Cassandra Mahogany v. McDonald Transit Associates, Inc and The City of Colorado Springs  
El Paso County District Court Case No. 2015CV31801

CLAIM: Plaintiff claims damages after she fell on a City bus.

STATUS: Summons and Complaint served June 23, 2015. Defendants file Answer to Plaintiff's complaint. Three-day jury trial scheduled to commence July 18, 2016.

(Edmund Kennedy at Hall & Evans)

## UTILITIES

Robert Alexander in his capacity as Receiver for the Spruce Lodge and Aztec Motel v. Colorado Springs Utilities, an enterprise of the City of Colorado Springs  
El Paso County District Court Case No. 2015CV30231

CLAIM: The Plaintiff, who became the Receiver for Spruce and Aztec, paid \$20,000 under protest of past due payments incurred by previous owner and controller Dogged Industries, LLC. Plaintiff requests refund of monies paid and owed to Colorado Springs Utilities in lieu of a Clarifying Order by the Court in case number 2014CV30156.

STATUS: Complaint and Waiver of Service received February 2, 2015. February 9, 2015 Plaintiff files motion to consolidate actions with 14CV30156 and amended complaint. February 12, 2015 City files waiver and acceptance of service. March 5, 2015 City files motion to dismiss. March 26, 2015 Plaintiff files response to Defendant's motion to dismiss and request for hearing. April 2, 2015 Defendant files reply to its motion to dismiss. Hearing on City's motion to dismiss set for June 11, 2015. June 30, 2015 Court issues order denying City's motion to dismiss. July 14, 2015 City files Answer and Affirmative Defenses. One day jury trial scheduled for June 6, 2016.

(Total 206.2 hours – Stewart)

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

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. **Four day trial scheduled to commence August 22, 2016.**

(Total 446.3 hours – Lamphere)

(CC)

City of Colorado Springs, Colorado v. Lorson, LLC, a Colorado Limited Liability Company, as nominee for Murray Fountain, LLC, a Colorado Limited Liability Company. And as nominee for Lorson Conservation Investment 2, LLLP, a Colorado limited liability limited partnership; Widefield Water and Sanitation District, a quasi-municipal corporation of the State of Colorado; and Robert C. Balink, El Paso County Treasurer

El Paso County Combined Court Case No. 2013CV032113.

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Southern Delivery System. The City requests that the Court determine the compensation to be paid Respondents for the interests in the subject property and that the City have judgment condemning the property upon compensation by the City to the Respondents.

STATUS: December 6, 2013 City files Petition in Condemnation. December 9, 2013 City files motion for immediate possession. December 10, 2013 City files Notice of Commencement of Action – Lis Pendens. December 31, 2013 Defendant Balink files disclaimer of interest. February 4, 2014 Order for Immediate Possession granted. Status report due July 16, 2014. September 11, 2014 Parties propose commissioners. October 9, 2014 Court appoints commissioners. January 26, 2015 Respondents file Motion for determinations of law. February 13, 2015 Petitioner files response to Motion for determinations of law. February 23, 2015 Reply

to response to motion for determination so flaw. February 26, 2015 Court files order on Lorson's Motion for determinations of law that finds the City of Colorado Springs does have authority to condemn and is exempt from C.R.S. 38-1-122(1.5) in this case. 5-Day Trial to Commissioners set to begin April 19, 2016. September 9, 2015 Parties file unopposed motion for Court approval of waiver of just compensation and settlement agreement between Petitioner and Widefield Water and Sanitation District. **December 23, 2015 Petitioner files motion *in limine*. January 12, 2016 Petitioner files motion to amend Petition in Condemnation to include Respondent Love in Action; Respondent files response to motion *in limine*. January 25, 2016 Petitioner files reply in support of motion *in limine*. January 29, 2016 Court denies motion *in limine*.**

(Total 123.1 hours – Turner/Blieszner/Banner)

City and County of Denver; and City of Colorado Springs by and through its enterprise, Colorado Springs Utilities v. Solid and Hazardous Waste Commission

Denver District Court Case No. 2014CV34158

CLAIM: Plaintiffs' claim that Defendants exceeded the scope of its authority and that action is arbitrary and capricious and contrary to constitutional right relating to regulations of disposal of solid waste.

STATUS: Plaintiffs files Complaint October 31, 2014. November 14, 2014 Answer received for Colorado Solid and Hazardous Waste Commission. November 17, 2014 Plaintiff's file First Amended Complaint for Judicial Review of Agency Action. On January 1, 2005, Plaintiffs filed their administrative record for appeal. Defendant filed certificate of record on March 13, 2015. Plaintiff files Opening brief on April 10, 2015. Defendant files its Answer brief on May 8, 2015. Plaintiffs have until May 22, 2015 to file their Reply brief. Oral arguments will be scheduled. Hearing held June 26, 2015. By Order of Court on October 9, 2015, the Judge ruled against the Plaintiffs stating they have not met their burden of establishing that the Commission acted in an unconstitutional manner, exceeded its statutory authority or otherwise acted in a manner contrary to statutory requirements in promulgating Section 5.5. Plaintiffs' requested that the Court find Section 5.5 unlawful and set it aside and that was denied.

(Total 58.5 hours – Griffith)

(CC)

CITY OF COLORADO SPRINGS, CO v. BANNING LEWIS HOLDINGS, LLC and ROBERT C. BALINK, El Paso County Treasurer.

El Paso County District Court Case No. 2013CV743

CLAIM: The City filed this action in order to acquire land in fee simple and a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Southern Delivery System. The City requests that the Court determine the compensation to be paid Respondents for the interests in the subject property and that the City have judgment condemning the property upon compensation by the City to the Respondents.

STATUS: January 23, 2013 Petition in Condemnation and Motion for Immediate Possession. January 24, 2013 Notice of Lis Pendens recorded with the El Paso County Clerk & Recorder. March 8, 2013 Ultra Resources files response in opposition to motion for immediate possession. March 13, 2013 Petitioner files brief in support of motion for immediate possession. March 19-20, 2013 Immediate possession hearing held. March 20, 2013 Court grants order for immediate possession. August 28, 2013 Motion for leave to file amended petition. September



23, 2013 Court grants leave to file amended petition. Status Conference held October 28, 2013; Order issued granting second motion for immediate possession. December 9, 2013 Parties file partial joint nomination of commissioners, nominating two commissioners (Steve Pelican and Edwards Shields, and request for additional time to complete nomination). December 13, 2013 Parties file joint nomination of final commissioner (Kirk Samelson). December 16, 2013 Court issues order granting the nomination of the commissioners. Four day trial to commission set for February 9, 2015. Mediation scheduled for August 28, 2014. November 21, 2014 Petitioner's file motion for leave to file second amended petition. December 5, 2014 Court grants order to continue trial. February 24, 2015 Respondents Banning Lewis Holdings file motion to compel discovery responses. Court denies motion to compel. March 17, 2015 City files response to motion to compel. March 24, 2015 Respondents file reply to motion to compel. May 7, 2015 Court denies Respondents' motion to compel. May 29, 2015 Respondents BLR files motion for clarification on order denying motion to compel. July 22, 2015 Court denies motion for clarification. **December 18, 2015 Parties file Motions in Limine. January 15, 2016 Parties file responses to Motions in Limine. January 29, 2016 Parties file replies to Motions in Limine. February 17, 2016 Court denies the Petitioner's Motion in Limine and granted in part Respondent's Motion in Limine.**

(Total 171.45 hours – Turner / Blieszner)

Cusack, Mark E. v. Daniela Francis Cusack a/k/a Daniela F. Cusack; The City of Colorado Springs, a municipal corporation; and all unknown persons who may claim any interest in the subject matter of this action

El Paso County District Court Case No. 2013CV32158.

CLAIM: Plaintiff seeks declaratory judgment in this matter and a determination of adverse possession, alleging that he is entitled to a decree vesting title in the subject property to him. Plaintiff also seeks as declaratory judgment that a Warranty Deed conveying an interest in the property to the City in 1973 was for an easement only and not for a fee interest, as claimed by the City.

STATUS: December 18, 2013 Summons and Complaint received. January 8, 2014 City files answer and counterclaim, asking the Court to deny Plaintiff's claims, declare that the City owns the tract of land that is the subject matter of this matter, that no other person has an enforceable interest in the subject property, and enter judgment to the subject property in favor of the City. The City seeks a declaration that, via the Warranty Deed, the City received fee simple title to the subject property for the purpose of maintaining water transmission lines and incidental uses, including maintaining roads. January 20, 2014 Plaintiff files reply to City's counterclaim and notice of lis pendens recorded December 10, 2013. February 3, 2014 Plaintiff files reply to Defendant Daniela Cusack's counterclaim. Defendant Daniela Cusack filed answer and counterclaim against Plaintiff Mark Cusack. Discovery commences. Five day jury trial scheduled for May 11, 2015. Mediation is scheduled for August 29, 2014. Parties have reached a tentative agreement. Settlement documents are not final at this time as Co-defendant Daniella Cusack is out-of-the country until about July 2016, with limited access to email and telephone. **Daniella Cusack disputes certain settlement terms. The parties' mediation agreement calls for arbitration in the event of a dispute arising under the parties' settlement agreement. The parties attended a Court ordered status conference on January 27, 2016, where arbitration was ordered to be completed by May 31, 2016. The parties are working to resolve the disputes prior to arbitration.**

(Total 352.85 hours – Gendill)

Gumaer Placer, LLC, a Colorado limited liability company v. City of Colorado Springs, a Colorado municipality

Park County District Court Case No. 2014CV30019

CLAIM: Plaintiff brings a declaratory judgment action based upon a right of way agreement of 1955 for the City's alleged refusal to move a raw water underground pipeline to allow for future mining operations in Alma, CO.

STATUS: Waiver and Complaint received March 11, 2014. March 19, 2014 Waiver and Acceptance of Service. April 9, 2014 City files Motion to Dismiss. April 28, 2014 Plaintiff files response to City's motion to dismiss. May 5, 2014 Defendant files reply in further support of Motion to Dismiss. May 7, 2014 Court grants motion to dismiss, but allows Plaintiff to file amended complaint within 30 days. June 4, 2014 Plaintiff files amended complaint for declaratory judgment. June 18, 2014 City files motion to dismiss. July 23, 2014 Plaintiff files response to second motion to dismiss. August 12, 2014 City files reply brief in further support of Defendant's motion to dismiss amended complaint. October 7, 2014 Court denies motion to dismiss amended complaint and orders that the parties engage in mediation. November 3, 2014 City files Answer to Amended Complaint. January 16, 2015 Court enters stipulated initial case management order and stipulated protective order. Discovery commences. **November 17, 2015 Plaintiff's counsel moves to withdraw. November 23, 2015 City responds to Motion to Withdraw. December 7, 2015 High Mountain Mining Co. files motion to quash subpoena duces tecum. December 22, 2015 City files response to motion to quash subpoena. January 7, 2016 High Mountain Mining Co. files reply to motion to quash subpoena. January 13, 2016 Court quashes subpoena. January 16, 2016 Court grants Plaintiff's counsel's motion to withdraw.**

(Total 475.6 hours – Turner)

(OC)

NEW YORK STATE ET AL. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND STEPHEN L. JOHNSON, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, United States District Court, Southern District of New York, Case Nos. 08-cv-5606 and 08-cv-8430 – challenges to EPA's Water Transfers Rule filed in US District Court at the same time as challenges were filed in multiple courts of appeal (see above). November 14, 2012, after Eleventh Circuit Court of Appeals rules it does not have jurisdiction over the challenges to the Rule, Judge extends stay to December 17, 2012 without prejudice to intervention and sets briefing schedule. December 6, 2012, Western Urban Water Coalition *et al.* (including the City of Colorado Springs acting by and through Colorado Springs Utilities) "Western Providers"), files pre-motion letter requesting conference on intervention as defendants. Colorado/New Mexico *et al.*, Friends of the Everglades, Miccosukee Tribe, South Florida Water Management District file similar letters on intervention by end of December. December 27 Judge extends stay and sets pre-motion conference. January 30, 2013, Judge holds pre-motion conference on intervention in White Plains, New York; intervention granted to all by consent at conclusion of conference. Per Judge's briefing schedule: Motion(s) to dismiss by EPA and Defendant-Intervenor South Florida Water Management District, and Plaintiffs' motions for summary judgment filed March 22, 2013; EPA and Defendant-Intervenors responses and cross-motions for

summary judgment filed June 7, 2013; Plaintiff's responses/replies filed July 7, 2013; EPA and Defendant-Intervenors replies filed August 2, 2013. December 19, 2013 oral argument on cross motions for summary judgment scheduled held in White Plains, NY. March 28, 2014 Judge grants Plaintiffs' and Intervenor- Plaintiffs' Motions for Summary Judgment, denies Defendants' and Intervenor- Defendants' Motions and Cross-motions for Summary Judgment, vacates the 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 remands the Water Transfers Rule to the extent EPA did not provide a reasoned explanation for its interpretation. May 30, 2014, Western Providers, Western States, EPA and other inventor-defendants file notices of appeal. 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.

(Peter D. Nichols)

ONRC ACTION v. BUREAU OF RECLAMATION (BOR), COMMISSIONER OF THE BOR; KLAMATH BASIN WATER USERS ASSN.; OREGON WATER RESOURCES CONGRESS; KLAMATH DRAINAGE DISTRICT

United States Court of Appeals for the Ninth Circuit, on appeal from United States District Court for the District of Oregon, Appeal No. 12-35831

CLAIM: Citizen lawsuit against Reclamation for water transfers through Klamath Straights without an NPDES permit.

STATUS: October 12, 2012, ONRC Action appeals the District of Oregon's Order of August 14, 2012, adopting the Magistrate's Report and Recommendation granting defendant's motion for summary judgment and dismissing ONRC's lawsuit. May 8, 2014, briefing on appeal complete. Amicus curiae briefs filed by the Hoopa Valley Tribe the Miccosukee Tribe of Indians of Florida, Friends of the Everglades, and Florida Wildlife Federation, and by the States of New York et al. ("Eastern States") in support of ONRC. Western Urban Water Coalition, National Water Resources Association et al. (including the City of Colorado Springs acting by and through Colorado Springs Utilities) ("Western Providers"), the States of Colorado/New Mexico et al. ("Western States"), the State of California by and through The California Department of Water Resources, and Westlands Water District and San Luis & Delta-Mendota Water Authority file amicus curiae briefs in support of Reclamation. November 21, 2014, oral argument held in Portland, Oregon. August 21, 2015, the panel applied the Supreme Court's pre-Rule *Miccosukee* test – whether waters are “meaningfully distinct” – and held that Reclamation was not required to obtain an NPDES permit. November, 2015, the 9<sup>th</sup> Circuit denied the plaintiffs motion for rehearing or rehearing *en banc*. **November 23, 2015 Mandate Issued. February 22, 2016, last day for ONRC to petition Supreme Court for certiorari.**

(Peter D. Nichols)

Ronald Parson and City of Colorado Springs, a municipal corporation v. Chiddix Brothers, Inc. and Saint Aubyn Homes, LLC.

El Paso County District Court Case No. 2015CV31247

CLAIM: City intervenes in current litigation to recover workers compensation benefits due to Defendants actions.

STATUS: June 5, 2015 City files motion to intervene and Plaintiff-Intervenor Complaint and Jury Demand. June 8, 2015 Plaintiff files response of no objection to Plaintiff-Intervenor's Motion. June 22, 2015 Court grants motion to intervene; Chiddix files answer to City's Complaint. July 1, 2015 Plaintiff-Intervenor files amended complaint and jury demand. July 9, 2015 Defendant Saint Aubyn Homes, LLC's Answer to Plaintiff Parson's First Amended Complaint. Jury Trial scheduled for September 19, 2016. November 11, 2015 Defendant Saint Aubyn Homes, LLC files cross claims.  
(Total 81.4 hours – Lamphere)

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

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.**

(Total 42 hours – Turner)

**ADMINISTRATIVE SECTION**

**DISPOSED MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00306.

Claimant brings a continuing action claim of discrimination based on retaliation and sex on October 31, 2014. Position Statement / RFI filed January 22, 2015. September 2, 2015 Notice of Dismissal and Right to Sue Letter issued. Deadline to file suit is December 14, 2015. Case settled. **This Charge is related to Charge No. 541-2013-02323, and both settled for a total of \$180,000.**

(Total 174 hours – Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02323. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on her gender, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. September 2, 2015 Notice of Dismissal and Right to Sue Letter issued. Deadline to file suit is December 14, 2015. Case settled. **This Charge is related to Charge No. 541-2013-02323, and both settled for a total of \$180,000.**

(Total 117 hours – Lessig).

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01844.

Claimant brings charge of alleged gender and age discrimination filed on July 2, 2015. Position Statement/RFI due August 3, 2015. Received Dismissal and Notice of Right to Sue. **No lawsuit filed.**

(Total 29 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-01161. *See EEOC Charge No. 541-2014-00190*. Charging Party alleges discrimination and retaliation on the basis of gender in violation of the Equal Pay Act and Title VII. Position Statement/RFI filed July 28, 2014. Dismissal and Notice of Rights issued by the EEOC February 4, 2015. The deadline to file lawsuit under Title VII is May 5, 2015; under the EPA is August 26, 2015. **No lawsuit filed.**

(Total 145.35 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00190. Charging Party filed Notice of Discrimination on November 6, 2013, and filed the perfected charge December 2, 2013, alleging discrimination under Title VII and violations of the Equal Pay Act. Position Statement/RFI filed January 17, 2014. Dismissal and Notice of Rights issued by the EEOC February 4, 2015. The deadline to file lawsuit under Title VII is May 5, 2015; under the EPA is August 26, 2015. **No lawsuit filed.**

(Total 162 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02295. September 17, 2013 Charging Party alleges Title VII discrimination on the basis of race and color. Position statements and request for information filed. July 31, 2015 Notice of Dismissal and Right to Sue Letter issued. Deadline to file suit is November 23, 2015. **No lawsuit filed.**

(Total 133 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00026. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on his national origin, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. December 3, 2014 Charging Party files amended charge of discrimination. Position Statement / RFI in response to Amended Charge filed January 30, 2015. September 2, 2015 Notice of Dismissal and Right to Sue Letter issued. Deadline to file suit is December 14, 2015. **Lawsuit filed December 1, 2105.**

(Total 170.1 hours – McCall / Lessig).

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01141. Claimant brings charge of alleged gender and age discrimination filed on March 16, 2015. Position Statement/RFI filed June 26, 2015. Received Dismissal and Notice of Right to Sue, deadline to file a lawsuit/ Title VII claims is January 6, 2015. This Charge is related to the Arndt et al. lawsuit.

(Total 18.3 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01165. Claimant brings charge of alleged gender and age discrimination filed on March 19, 2015. Position Statement/RFI filed June 26, 2015. Received Dismissal and Notice of Right to Sue,

deadline to file a lawsuit/ Title VII claims is January 6, 2015. This Charge is related to the Arndt et al. lawsuit.

(Total 5.3 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01282.

Claimant brings charge of alleged discrimination based on the ADA and Title VII filed on March 31, 2015. Position statement / RFI filed June 22, 2015. Waiting for response from EEOC.

**Charging party withdrew the EEOC charge; matter closed.**

(Total 53.5 hours – Lessig / McCall)

## NEW MATTERS

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.

(Total 20.9

hours – Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-00769.

Claimant brings charge of alleged gender and age discrimination filed on January 8,

2016. Position Statement and RFI due February 24, 2016.

(Total \_\_hours – Lessig/McCall)

## CURRENT MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-00103.

Claimant brings a Title VII charge of discrimination based on sex on October 26, 2015.

**Perfected charge received November 30, 2015. Position Statement and RFI filed January 6, 2015; pending EEOC decision.**

(Total 45.4 hours - Lessig/McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number E20160153.

Claimant brings a CADA charge of discrimination based on age, perceived disability, and in retaliation for engaging in protected activity on August 20, 2015. The City engaged in mediation which was not successful. **Position Statement and RFI filed November 24, 2015;**

**pending EEOC decision.**

(Total 108.4 hours - Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number E20150646.

Claimant brings civil rights charge of alleged discrimination based on race filed on June 9, 2015. Position Statement/RFI due August 7, 2015. **Dismissal and Right to Sue Notice issued;**

**deadline to file lawsuit May 5, 2016.**

(Total 49.8 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01278.

Claimant brings charge of alleged discrimination based on the ADA and Title VII filed on April 6, 2015. Perfected charge filed July 2, 2015. Position Statements due September 2, 2015. Mediation scheduled for December 9, 2015. **Matter settled through mediation for \$28,000 December 9, 2016; matter closed.**  
(Total 99 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01430.  
Claimant brings charge of alleged gender and age discrimination filed on April 21, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01056.  
Claimant brings charge of alleged gender and age discrimination filed on March 2, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 19 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01060.  
Claimant brings charge of alleged gender and age discrimination filed on March 3, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01115.  
Claimant brings charge of alleged gender and age discrimination filed on March 10, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01123.  
Claimant brings charge of alleged gender and age discrimination filed on March 13, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18.9 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01180.  
Claimant brings charge of alleged gender and age discrimination filed on March 19, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01124.  
Claimant brings charge of alleged gender and age discrimination filed on March 17, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18.5 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01143.  
Claimant brings charge of alleged gender and age discrimination filed on March 16, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01138.

Claimant brings charge of alleged gender and age discrimination filed on March 17, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18.3 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01132.

Claimant brings charge of alleged gender and age discrimination filed on March 17, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number E20150415.

Claimant brings charge of alleged ADA discrimination filed on March 16, 2015. Position Statement/RFI filed May 15, 2015. **Waiting for response from CCRD; jurisdictional time extended to June 3, 2016.**

(Total 15.3 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00120.

Claimant brings charge of alleged age discrimination and ADA discrimination on December 10, 2014. Position Statement/RFI filed February 6, 2015. Waiting for response from EEOC.

(Total 102.4 hours – McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00766.

January 28, 2015 Claimant brings charge of discrimination based on Title VII. Perfected Charge filed February 17, 2015. Position Statement and RFI Responses filed April 22, 2015. **Dismissal and Right to Sue Notice issued, deadline to file a lawsuit under Title VII is April 18, 2016, deadline for lawsuit under the EPA is December 14, 2016.**

(Total 52.35 hours – McCall)



**UTILITIES: Water Court Cases**

**Total Active Application Cases:      9 (3 Diligence cases)**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
05CW96	Leased Water Exchange
06CW120	ROY Exchange Application
13CW9	Arkansas River Exchange (Diligence)
13CW3077	Green Mountain Reservoir
15CW3001	Chilcott Ditch Company
15CW3002	Fountain Mutual Irrigation Company
15CW3008	Bear Creek Intake
15CW3019	Blue River (Diligence)
15CW3050	Twin Lakes (Diligence)

**Application Cases Before Water Referee:      5**  
**Application Cases Before Water Judge:      4**

**Total Objector Cases:                      34**

**Stipulated                                      12**  
**Active    22**

**Active Before Water Referee:      13**  
**Active Before Water Judge:      9**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
98CW173	Lake County Board of County Commissioners
05CW107(B)	City of Lamar
06CW8	Southeastern Colorado Water Conservancy District
07CW127	Colorado Water Protective & Development Association
07CW128	Colorado Water Protective & Development Association
10CW4	Lower Arkansas Valley Water
11CW77	Lower Arkansas Valley Water & Larkspur, Inc.
12CW94	Catlin Augmentation
12CW176	Climax Molybdenum Company

## **WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

### **Active cases:**

Municipal – 45  
Utilities – 16  
Memorial - 1

### **Subrogation cases handled by outside counsel:**

Municipal – 0  
Utilities – 0

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

Municipal – 0  
Utilities – 1

## **HOSPITAL COLLECTION MATTERS**

### **34 filed in November 2015**

Credit Service Company – 7  
BC Services – 27

### **29 filed in December 2015**

BC Services – 29

### **32 filed in January 2016**

BC Services – 32

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<u>NOVEMBER</u>	<u>DECEMBER</u>	<u>JANUARY</u>
Cases Docketed for Trial by Court	209	172	256
Cases tried:	98	94	105
Cases handled without trial:	111	78	151
Cases Docketed for Trial by Jury:	6	14	33
Cases tried:	1	0	1
Cases handled without trial:	5	14	32
Cases Handled on Deferred Docket:	264	218	243
Cases Handled at Pretrial:	488	406	604
Cases Handled at Arraignments:	976	663	425
Mailed Dispositions:	46	30	18
Deferred Sentences at Arraignment:	0	0	0
Criminal Arraignments Screened:	546	485	480
Jail Docket:	459	353	393
Liquor Hearings:	1	1	0
NPOI:	182	88	88
Good Driver Letters Mailed:	368	69	737
 TOTAL MATTERS:	 3,232	 2,386	 2,811