


# QUARTERLY REPORT TO CITY COUNCIL

Relating to:  
LITIGATION AND ADMINISTRATIVE MATTERS

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**May 2017**  
(Covering All Activity through May 30, 2017)

  
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City Attorney/Chief Legal Officer



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## LITIGATION SECTION

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

## DISPOSED CASES

(OC)

Mihyon Braxton and Joseph Braxton v. Mountain Metropolitan Transit and City of Colorado Springs

El Paso County District Court 16CV30842

CLAIM: Plaintiff alleges that Mountain Metropolitan Transit cause damages and injuries after a fall on the bus.

STATUS: Summons and Complaint served April 28, 2016. May 17, 2016 Answer and Jury Demand filed. Jury Trial scheduled for May 22, 2017. A motion for summary judgment was filed on October 13, 2016 by Defendants. Response to motion for summary judgment filed November 21, 2016. Defendants filed their Reply on November 30, 2016. Motion hearing held on January 18, 2017. Plaintiffs’ counsel filed notice of withdrawal and ruling on motion for summary judgment held for 90 days to allow plaintiffs to obtain new counsel and a completed report regarding video. **A status conference was held April 28, 2017 with Plaintiff’s new counsel; stipulation to dismiss without prejudice was filed at conference and granted. Case is closed.**

(Mark Kane/Kane Law Firm)

Ryan Brown and Benjamin Brown v. Colorado Springs, Colorado; David Nelson, in his individual capacity; Allison Detweiler, in her individual capacity; Steven Biscaro, in his individual capacity

United States District Court Case No. 16-cv-02540

CLAIM: Plaintiffs claim that they were targeted by CSPD due to race and bring Section 1983 claims alleging denial of equal protection, unlawful seizure, unlawful search, excessive force, First Amendment retaliation, and malicious prosecution.

STATUS: Complaint filed October 12, 2016. Waiver of Service accepted by City October 17, 2016. Joint motion to stay action for 60 days filed January 25, 2017. Case stayed until March 27, 2017. **April 14, 2017 Notice of Voluntary dismissal of party David Nelson, Allison Detweiler and Steven Biscaro. April 17, 2017 Court grants dismissal of Nelson, Detweiler and Biscarro with prejudice. April 20, 2017 Notice of dismissal of case. April 21, 2017 Court grants order dismissing case against the City of Colorado Springs with prejudice.**

(Turner)

Douglas Bruce, individually and on behalf of all registered city electors and Does I-V v. City of Colorado Springs: Sarah Johnson, City Clerk, in her official capacity, Does I-V

El Paso County District Court Case No. 17CV53

CLAIM: Plaintiff files claim seeking declaratory and injunctive relief that comments submitted in favor of election measures for the April 2017 election were filed illegally and should be void.

STATUS: Complaint for Declaratory and Injunctive Relief and Motion for Emergency Hearing filed and served February 23, 2017. Emergency hearing held with Court on February 24, 2017. Court dismissed Plaintiff's claims and closed the case.  
(Lamphere)

Maurice Cooper v. Jeremy Sheldon, in his individual and official capacities; Todd Rekar, in his individual and official capacities; Pete Carey, in his official capacity as Police Chief of the Colorado Springs Police Department

United States District Court Case Number 15-cv-00975-JLK

CLAIM: Plaintiff brings claims of excessive force against City Defendants.

STATUS: Summons and Complaint served May 4, 2016. May 25, 2016 Motion filed by Defendants Carey, Rekar, and Sheldon to dismiss the Official Capacity claims. June 29, 2016 Defendants file reply in support of their motion to dismiss. Court grants Defendant's motion to dismiss official capacity claims without prejudice in part and Grants dismissal of Chief Carey as a party. City Defendants file Answer to Amended Complaint and Jury Demand. **April 17, 2017 Plaintiff files motion to stay which is granted by the Court for 14 days. April 26, 2017 Stipulation of Dismissal with prejudice filed. April 28, 2017 Case terminated.**

Christina C. Deen v. City of Colorado Springs, d/b/a Colorado Springs Utilities, a municipal enterprise

El Paso County District Court Case No. 2016CV31561

CLAIM: Plaintiff claims City was negligent in its operation and maintenance of a public sanitation facility adjacent to the Plaintiff's property.

STATUS: Summons and Complaint sent June 1, 2016. July 11, 2016 City files answer. Four day jury trial scheduled for April 18, 2017. **February 22, 2017 Parties file stipulation for dismissal, which was granted by the Court on February 24, 2017.**  
(Stewart)

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. Discovery commences. A three week trial is scheduled to start June 12, 2017. Discovery is ongoing. Mediation scheduled for May 3, 2017. Case has been settled.

(Mullen / Retherford, Mullen & Moore)

Leslie Weise v. Colorado Springs Utilities

El Paso County District Court Case No. 15CV545

Colorado Court of Appeals 16-CA-1028

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. February 26, 2016 Utilities files Amended Answer to Amended Petition. March 24, 2016 Respondent files Motion for Summary Judgment. April 15, 2016 Plaintiff files response to Defendants' motion for summary judgment. April 28, 2016 Reply in Support of Motion for Summary Judgment. May 5, 2016 Order granting Defendant's motion for summary judgment. June 22, 2016 Notice of Appeal filed. Designation of Records filed July 19, 2016.

November 16, 2016 Court orders sealed records to be returned to Court and orders record may not be downloaded copied retained or disseminated by either party. Petitioner files motion for immediate access to certain withheld records and the parties file appropriate response and reply. Court issues order to show cause on December 6, 2016 to Petitioner why she should not be held in contempt. A citation is issued to Petitioner. An appearance for the contempt citation is set for January 6, 2017. Opening Brief extended and is due March 17, 2017. Court continues the contempt citation until February 13, 2017. January 30, 2017 Court grants parties motion for temporary stay of proceedings through February 3, 2017. February 3, 2017 Parties file stipulated motion to dismiss. February 8, 2017 Court grants parties' stipulated motion to dismiss.

(Turner)

**NEW CASES**

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

El Paso County District Court Case No. 17CV31243

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

STATUS: Summons and Complaint served May 17, 2017.

(Doherty)

Douglas Bruce, individually and on behalf of all registered city electors and Does I-V v. City of Colorado Springs: Sarah Johnson, City Clerk, in her official capacity, Does I-V

El Paso County District Court Case No. 17CV53

*(See Disposed Cases)*

(Lamphere)

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

Park County District Court Case No. 2017CV030019

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

STATUS: Summons and Complaint served April 24, 2017. City files answer May 15, 2017.

(Turner)

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

El Paso County District Court Case No. 2016CV477

CLAIM: Plaintiff alleged negligence against the Defendants

STATUS: Complaint served January 13, 2017. February 2, 2017 City files Motion to Dismiss. Plaintiff responds and City replies. Court grants motions of all defendants March 19, 2017. City files Affidavit of Attorney's Fees, which was granted by the Court on May 18, 2017. (Stewart)

Sadatur Khan, Jason Harsha, Tyler Kelley, Kelly Robinson and Bailey Carpenter v. Peter Carey in his official capacity as Chief of Police for the City of Colorado Springs and The City of Colorado Springs

El Paso County District Court Case No. 2017CV30642

United States District Court Case No. 17-cv-00634

CLAIM: Plaintiffs allege denial of due process under the 14<sup>th</sup> amendment to the U.S. Constitution under 42 U.S.C. § 1983 claiming they were deprived of a hearing before termination and their evaluation was based on an arbitrary standard.

STATUS: Summons and Complaint received March 10, 2017. Plaintiff file Motion for Temporary Restraining Order and Preliminary Injunction. March 10, 2017 Defendants file a Notice of Removal to the United States District Court. March 13, 2017 Defendants file response to Plaintiff motion for temporary restraining order and preliminary injunction. March 21, 2017 Motion hearing held for temporary restraining order and preliminary injunction where Court denied Plaintiff's motion for temporary restraining order. April 13, 2017 Defendant files an answer to the complaint.

(McCall/Lessig)

Theresa B. Lane v. Colorado Springs Utilities

El Paso County Small Claims Court Case No. 2017S302

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

STATUS: Notice, Claim and Summons to Appear for Trial served via U.S. Mail April 25, 2017.

(Stewart)

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

El Paso County District Court Case No. 2015CV38

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

STATUS: Plaintiff filed Amended Complaint February 3, 2015. March 30, 2015 City filed a motion to dismiss the case. May 21, 2015 Court grants City's motion to dismiss. Notice of Appeal files June 14, 2016.

(Stewart)

Serco, Inc., a Virginia corporation v. Colorado Springs Utilities, an enterprise of the City of Colorado Springs; City of Colorado Springs, a home rule city and a Colorado municipal corporation

El Paso County District Court Case No. 2017CV30591

CLAIM: Plaintiff seeks declaratory judgment regarding a contract between City and Serco.

STATUS: Complaint and Summons served March 6, 2017. City files motion to dismiss on April 19, 2017. May 10, 2017 Plaintiff files response to City's motion to dismiss. Response and reply filed regarding the motion to dismiss.

(Turner)

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

El Paso County District Court Case No. 2017CV31178

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

STATUS: Complaint filed May 9, 2017.

(Lamphere)

(OC)

WildEarth Guardians v. Colorado Springs Utilities Board

United States District Court Case No. 17CV357

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

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

(Griffith)

## CURRENT CASES

### CLERK

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

El Paso County District Court 2016CV32389

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

STATUS: City files Complaint August 31, 2016. September 1, 2016 City files Temporary Restraining Order (TRO), which was denied by the Court on September 2, 2016. September 7, 2016 City files Affidavits of Service; City also files Amended TRO, which Court directed to be set for status conference on the temporary injunction. The TRO hearing was held September 9, 2016. Order Granting TRO on September 15, 2016. September 20, 2016 Defendants file opposition to Plaintiff's motion for preliminary injunction. September 28, 2016 City files reply in support of its amended motion for TRO and preliminary injunctive relief. December 30, 2016 Court files a comprehensive order granting Plaintiff's motion for preliminary injunction. Five day trial scheduled to commence July 24, 2017. **February 28, 2017 Defendants file answer to amended complaint for injunctive relief. March 3, 2017 Motion for judgment of civil contempt and to enforce preliminary injunction. March 14, 2017 Court grants order for issuance of citation for civil contempt. April 13, 2017 Affidavit of Service on Defendants filed by City of Colorado Springs. Hearing on Citation to Show Cause scheduled for June 27-28, 2017. The City filed its Motion for Summary Judgment on May 15, 2017 and awaits a ruling from the Court.**

(Doherty)

## FACILITIES

(OC)

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

El Paso County District Court Case No. 2013CV1469

Colorado Court of Appeals 2014CA228

Colorado Supreme Court 2015SC627

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

STATUS: March 20, 2013 Summons and Complaint served. April 12, 2013 Hearing regarding Motion for Preliminary Injunction concerning condition of property. April 16, 2013 Plaintiffs file Motion for a Temporary Restraining Order ("TRO"). April 18, 2013 Defendant City of Colorado Springs files Motion to Dismiss, amended. April 19, 2013 Defendant Hudspeth files Response to Motion for TRO; Defendant City files Response to Motion for TRO; Defendant Hudspeth files Motion to Stay re: CRS §13-20-803.5(9). May 7, 2013 Plaintiff files Amended Complaint. August 2, 2013 City files motion to dismiss. August 23, 2013 Plaintiffs file response to City's motion to dismiss. September 6, 2013 City files reply to its motion to dismiss. On September 25, 2013, the Court issued an order concluding that there are factual issues that are potentially relevant and ordered that a *Trinity* hearing would be necessary to resolve the issues stated in the motion. A *Trinity* hearing regarding the motion to dismiss was set for November 15, 2013, but was rescheduled to November 20, 2013. December 20, 2013 Court issues order denying City's motion to dismiss and finding that some or all of Plaintiff's damages were caused by the operation of a public building and the maintenance and operation of a gas facility, thereby waiving the City's immunity. January 8, 2014 City files Answer and Affirmative Defenses. February 4, 2014 City files notice of appeal and designation of record on appeal. March 14, 2014 Defendant City files Brief regarding Stay of Case. March 14, 2014 Defendant Hudspeth files Motion for Stay. March 14, 2014 Plaintiffs' file Brief in Partial



Opposition to Stay. March 28, 2014 Second Case Management Conference in which Court grants motion to file Amended Answer; Court grants Motion to Stay; Plaintiffs to set Status Conference after receiving Mandate from COA. April 25, 2014 Defendant/Appellant City files Trinity Hearing Exhibits with Trial Court regarding Record on Appeal. May 5, 2014 Trial Court files Certificate of Mailing of Record on Appeal to COA. July 23, 2014: Def/Appellant City files Opening Brief. July 29, 2014, Def/Appellant City files Motion to Supplement Records on Appeal. August 22, 2014 Court gives notice of Filing Supplemental Record. September 26, 2014, Pl/Appellees' file Answer Brief. October 16, 2014 Def/Appellant City files Reply Brief. October 23, 2014 Pl/Appellees' Request Oral Argument. April 28, 2015 Oral argument was held. June 18, 2014 Court of Appeal reverses the district court's order denying the City's motion to dismiss and remand the case back to the district court with instructions to grant the motion. July 29, 2015 Plaintiff files a Petition for Writ of Certiorari in the Colorado Supreme Court. August 12, 2015 Opposition Brief filed. August 18, 2015 Reply Brief filed. May 31, 2016 Court grants the Petition for Writ and schedules briefs. Opening brief filed July 26, 2016. Colorado Trial Lawyers file Amicus Brief July 26, 2016 in support of Petitioners which is accepted by the Court on August 5, 2016. September 27, 2016 Colorado Municipal League files Amicus Brief in support of Respondent and accepted by the Court October 6, 2016. September 29, 2016 City files Answer Brief and the State of Colorado files Amicus Brief in support of Respondent City of Colorado Springs and was accepted October 12, 2016. Reply brief filed November 21, 2016. Oral argument held on March 9, 2017.  
(Lamphere / 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 which the Court has not yet ruled on. On May 2, 2016, the parties filed a Fourth Status Report and Joint Motion to Re-Open Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause, stated that settlement negotiations were continuing, and requested that the Court continue to hold the appeal in abeyance until August 1, 2016. The Court has not yet ruled on that request. On August 1, 2016, the parties filed a Status Report and Joint Motion to Reopen Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause, and requested, among other things, that the district court continue to hold the appeal in abeyance until November 1, 2016. On August 2, 2016, the district court entered its Order Granting Joint Motion to Abate Appeal Pending Settlement Negotiations, and ordered that the action remain stayed and all deadlines be held in abeyance until November 1, 2016, and directed the parties to file a joint status report by November 1, 2016. Joint status report and joint motion to continue filed on November 1, 2016 and granted by the Court holding case in abeyance until February 1, 2017. On January 26, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until July 1, 2017, while the parties continue settlement negotiations. The district court has not yet ruled on that request.

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

#### GOLF / PARK AND RECREATIONAL SERVICES

Northern Golf, Inc a Colorado corporation, Michael Northern, an individual v. City of Colorado Springs, a Colorado municipality

United States District Court Case Number 16-cv-01064 JLK-MEH

CLAIM: Plaintiff alleges unequal protection of law, selective enforcement, deprivation of property interest without due process of law, and retaliation for exercising first amendment rights after Plaintiff was not selected as concessionaire at Patty Jewett or Valley Hi Golf Courses owned by the City and was not hired as the Golf Course manager.

STATUS: Complaint and Summons served May 13, 2016. June 3, 2016 City files Answer to Complaint, Affirmative Defenses and Jury Demand. **March 23, 2017 City files motion for judgment on the pleadings. May 4, 2017 Magistrate Judge recommends granting City’s motion for judgment on the pleadings. May 16, 2017 Stipulation of Dismissal with prejudice is filed; and case is closed.**

(Doherty)

## PARKS

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

El Paso County District Court Case Number 16CV032101

Colorado Court of Appeals Case Number 17CA43

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

STATUS: Summons and Complaint served August 8, 2016. Motion to Join Indispensable Parties. September 19, 2016 City Defendants file Motion to Dismiss. A motion to intervene is filed by proposed intervenors Manitou and Pikes Peak Railway Company; COG Land & Development Company; PF, LLC; and Broadmoor Hotel, Inc. Parties file stipulation to join indispensable parties. October 24, 2016 Broadmoor files a motion to dismiss and joinder in the City's motion to dismiss. November 8, 2016 Save Cheyenne files response brief in opposition to the Broadmoor and City of Colorado Springs' motion to dismiss. December 15, 2016 Court grants Defendants Motions to Dismiss, dismissing all claims by Plaintiff. Save Cheyenne files Notice of Appeal on January 5, 2017. **Opening Brief due May 31, 2017.**

(Turner)

## POLICE

(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 cutoff is June 10, 2016. June 10, 2016 Plaintiffs file motion for sanctions against Defendant City and City responds on July 5, 2016 and replied by plaintiffs on July 19, 2016. July 15, 2016 City files motion for partial summary judgment. A motion to strike City's motion for partial summary judgment was filed by Plaintiffs on July 19, 2016. Court denies City's motion for partial summary judgment July 27, 2016 and subsequent Motion for Reconsideration on August 5, 2016. Pretrial conference scheduled September 21, 2016. Trial bifurcated on October 31, 2016. Bench trial on disparate impact and testimony of experts October 31-November 4, 2016. Bench trial will

continued to December 12-13, 2016. Briefing on disparate impact completed January 24, 2017. Plaintiffs filed a Motion for Trial Setting on February 6, 2017. **Oral argument held on May 22, 2017.**

(Lessig /McCall / Ogletree Deakins)

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

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

Tenth Circuit Court of Appeals 16-1206

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

STATUS: June 3, 2014 Complaint and Summons served. August 5, 2014 City Defendants' file waiver of service of Summons. August 26, 2014 Plaintiff files Amended Complaint and terminates claims against numerous parties. October 6, 2014 The City of Colorado Springs, Chief Peter Carey, Deputy Chief Vince Niski, Lieutenant Salvatore Fiorillo file partial motion to dismiss amended complaint. October 6, 2014 Sergeant Ronald Sheppard, Sergeant Chris Arseneau, Officer Dan Carter, Officer William P. Betts, Officer Robin McPike, Officer Shawn Mahon, and Officer Marcus Van Oonyen file Answer and Affirmative Defenses and Jury Demand to Amended Complaint. October 27, 2014 Plaintiff responds to City's motion to dismiss. October 28, 2014 Court denies partial motion to dismiss amended complaint. November 12, 2014 Defendants file answer to first amended complaint. November 17, 2014 Plaintiff voluntarily dismisses Defendant Arthur “Skip” Arms. January 6, 2014 Court issues scheduling order. On December 18, 2015 Defendants file Motion for Summary Judgment. Plaintiff files motion for partial summary judgment for first claim for relief - excessive force. January 8, 2016 Defendant files response to Plaintiff's motion for partial summary judgment. January 22, 2016 Plaintiff files reply to its motion for partial summary judgment and files response to Defendants' motion for summary judgment. Hearing scheduled for Summary Judgment Motions for April 4, 2016 at 2:00 p.m. April 19, 2016 Court enters order denying both plaintiff and defendants summary judgment. City Defendants file Notice of Appeal. June 2, 2016 Plaintiff files Notice of Cross Appeal. Mediated conference held June 28, 2016. June 30, 2016 Court grants order for notice of dismissal of cross appeal. August 9, 2016 City Petitioners

file Opening brief. Appellee brief filed October 12, 2016. Response Brief filed October 27, 2016. December 5, 2016 Appellants file reply brief.  
(Lamphere)

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

El Paso County District Court Case No. 2016CV477

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

STATUS: Summons and Complaint served January 13, 2017. February 2, 2017 City files motion to dismiss. **Plaintiff files response to motions to dismiss. March 19, 2017 Court grants City's motion to dismiss under Rule 12(b)(5) and orders that City is entitled to attorney fees and costs. April 3, 2017 City files affidavit of attorney's fees.**

(Stewart)

David Johnson, II v. Erik Gulbrandson, individually, and in his official capacity, City of Colorado Springs

El Paso County District Court Case No. 16CV\_\_\_\_

CLAIM: Plaintiff, who was riding his bicycle, alleges negligence and claims damages after he was involved in an accident with Defendant Gulbrandson, a CSPD officer. December 6, 2016 City files answer and affirmative defenses. Three day jury trial schedule to commence on October 16, 2017.

(Stewart)

Ramona Kirven, Individually (Parent) and as Representative to "The Estate of Reanna Kirven" v. Memorial Hospital, Penrose Hospital, AMR Ambulance, Colorado Springs Police Department

El Paso County District Court Case No. 16CV447

CLAIM: Plaintiff alleges CSPD along with other Defendants were negligent and claims wrongful death and other damages.

STATUS: CSPD Summons and Complaint served November 28, 2016. City files Motion to Dismiss December 19, 2016. January 20, 2017 Court grants City's motion to dismiss.

(Lamphere)

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

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

Remanded back to El Paso County District Court 15CV33722

Colorado Court of Appeals 17CA97

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

STATUS: Summons and Complaint served December 29, 2015. Notice of removal to Federal Court was filed on January 15, 2016. January 19, 2016 Defendants file motion to

dismiss. Scheduling conference scheduled for April 14, 2016. February 9, 2016 Plaintiff files response to Defendant's motion to dismiss. February 23, 2016 City Defendants file reply to its motion to dismiss. August 30, 2016 Court grants in part Defendants' Motion to Dismiss and Remands case back to El Paso County District Court. October 12, 2016 City Defendants file motion to dismiss. November 2, 2016 Plaintiff files response to Defendants' motion to dismiss. November 9, 2016 City files reply to response to motion to dismiss. December 8, 2016 Court issues Order regarding motion to dismiss and dismissing several claims brought against the Defendants, but denies others from dismissal. December 22, 2016 City Defendants file answer, affirmative defenses and jury demand. January 19, 2017 Plaintiff files Notice of Appeal. **May 19, 2017 Appellants file Opening Brief.**  
(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

Colorado Court of Appeals Case No. 2016CA1200

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). February 29, 2016 Plaintiff files response to Defendants motion to dismiss. March 7, 2016 Defendants file reply to their motion to dismiss. July 20, 2016 Court denied Defendants' motion to dismiss. July 21, 2016 City files notice of interlocutory appeal regarding Courts denial of sovereign immunity. El Paso County Defendants file Notice of Appeal. November 15, 2016 County Defendants file Opening Brief. November 16, 2016 City Defendants file opening brief. January 6, 2017 Reply brief filed by the City and the County. **Oral Argument scheduled for May 23, 2017. March 20, 2017 Court grants Order of dismissal with prejudice. Stipulation for dismissal with prejudice filed. Mandate issued April 14, 2017.**

(Stewart)

Steve Rodriguez v. John Suthers, Police Officer Sunada, Judge Christopher Acker, Nathaniel Marsh, David Migneault and party of interest Alysa Brown

El Paso County District Court 2016CV328

CLAIM: Plaintiff brings claims of negligence that alleges failure to correct errors made by other state officials, unlawful seizure and detainment after Plaintiff was charged with 6 traffic counts, including DUI.

STATUS: Complaint and Summons served September 14, 2016. October 4, 2016 City Defendants file Motion to Dismiss. October 21, 2016 Plaintiff files response to City Defendants' motion to dismiss. October 28, 2016 Reply filed by City in support of their motion to dismiss. November 18, 2016 Defendant Migneault files partial motion to dismiss and partial answer. January 6, 2017 Court orders dismissal of all claims against City defendants.

(Stewart)

REAL ESTATE SERVICES



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

El Paso County District Court Case No. 16CV32238

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

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

(Stewart)

## TRANSIT SERVICES

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

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

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

Case remanded to Denver District Court Case No. 2010CV6127;

Case changed venue to El Paso County Court Case No. 2012CV81

Court of Appeal, Case Number 2013CA001711

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

STATUS: In January, 2010, ATU asserted to First Transit that First Transit is a party to the Section 13(c) Agreement and is required by the Agreement to apply the South Facility collective bargaining agreement to the Pikes Peak Rural Transportation Authority bus transit operation (referred to as the "North Facility") and all North Facility collective bargaining unit employees or to provide dismissal allowances, thereby burdening First Transit with potential liability. ATU filed suit against First Transit in Colorado State District Court for Denver County, Colorado on July 30, 2010. On August 19, 2010, First Transit filed a Notice of Removal in the U.S. District Court, District of Colorado. On September 13, 2010, First Transit filed a third-party complaint against the City seeking indemnification pursuant to the parties' services agreement and alleging that the City is contractually obligated to assume sole responsibility, indemnify, and compensate First Transit for any and all costs and liability resulting from ATU's claims raised pursuant to the 13(c) Agreement. On November 1, 2010, the City filed a motion to remand to El Paso County District Court. First Transit filed its response to the City's motion to remand on November 23, 2010, and the City replied on December 7, 2010. A hearing on the City's motion to remand was

held on January 7, 2011. On February 14, 2012, the Court issued an order granting the City's motion to remand, but 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. **April 26, 2017 First Transit files motion to amend its third party complaint to assert subrogation claim and to lift stay on proceedings re third party complaint. First Transit files its amended third party complaint against third party Defendant City of Colorado Springs. May 18, 2017 City files response brief to First Transit's motion to amend its third party complaint. (Doherty)**

Jenn K Adams v. Colorado Springs Transit Management, Inc., McDonald Transit Associates, Inc., The City of Colorado Springs, Colorado and John Doe Mountain Metro Bus Driver  
El Paso County District Court 2016CV32937

CLAIM: Plaintiff allege the Defendants were negligent claiming injury and damages when a fall in Plaintiff's wheelchair occurred while exiting the bus.

STATUS: Summons and Complaint served November 3, 2016. Answer and jury demand filed on November 16, 2016. Plaintiff filed a motion to amend her complaint on January 26, 2017. An answer to the amended complaint was filed on February 9, 2017. A 4-day jury trial scheduled to begin July 17, 2017. **Discovery commences.**  
(Mark Kane / Kane Law Firm)

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 May 22, 2017. Court ordered mediation was conducted with no success. Discovery ongoing.  
(Edmund Kennedy at Hall & Evans)

## UTILITIES

State Farm Mutual Automobile Insurance Company a/s/o Georgia Cargil v. City of Colorado Springs and Alzado Adam  
El Paso County Court Case No. 2017C31759

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

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

Yolanda Avila v. Qwest Corporation d/b/a Century Link; Qwest Services Corporation; and the City of Colorado Springs

El Paso County District Court Case No. 2016CV30878

CLAIM: Plaintiff claims injuries and damages against the City for premises liability alleging that it failed to ensure safety of the sidewalk due to the removal of a utility vault cover by a Qwest employee or other unauthorized person.

STATUS: Complaint and Summons served March 31, 2016. Answer filed by the City April 21, 2016. July 26, 2016 City files opposed motion to dismiss. Qwest files motion for determination of question of law. Court orders City and Qwest to conduct discovery and grants limited discovery. December 5, 2016 Plaintiff files amended response to Qwest Corporations' motion for determination of question of law pursuant to CRCP 56(h). December 6, 2016 Plaintiff files response to Defendant City's motion to dismiss. December 20, 2016 City files reply to its motion to dismiss. Court responds to determination of question of law stating that the Plaintiff was an invitee under the Premises Liability Act. Five day jury trial set to commence October 17, 2017. **February 15, 2017 Court denies City's motion to dismiss and denies Trinity hearing. Status Conference held on April 26, 2017.**

(Lamphere)

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

El Paso County District Court Case No. 2014CV34137

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

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

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

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

Court orders that the appeal is abated until the district court's decision on the pending motion to award prejudgment interest. Mediation conference held October 28, 2016. October 14, 2016 replies to Motion for Attorney's Fees and Prejudgment Interest filed. November 7, 2016 Court orders Plaintiff's motion for attorney fees and award of prejudgment interest granted. The Defendant's motion for stay of execution is denied. December 15, 2016 Plaintiff files Writ of Garnishment on all accounts held in the name or on behalf of Colorado Springs Utilities and/or City of Colorado Springs. Defendants file unopposed motion to set supersedeas bond and stay of execution of final judgment upon filing and approval of bond, which was granted December 16, 2016. December 16, 2016 Defendants file Supersedeas Bond. **Appellants file brief March 6, 2017. May 10, 2017 Appellee files response brief. Appellant's reply brief due June 14, 2017.**

(Lamphere)

(OC)

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

El Paso County District Court Case No. 2016CV33378

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

STATUS: Complaint filed December 16, 2016. Summons served on January 18, 2017. **On April 14, 2017, Defendants filed their Answer with jury demand, a partial motion to dismiss and a motion for extension of time to designate nonparties at fault.**

(Beckett/ David Frommell of Sherman & Howard, LLC)

Industrial Constructors / Managers, Inc., a Colorado corporation v. Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a home rule city and municipal corporation

El Paso County District Court Case No. 2016CV33076

CLAIM: Plaintiff claims breach of contract and requests declaratory judgment.

STATUS: Summons and Complaint served November 16, 2016. City files Answer December 14, 2016 and files motion for partial dismissal. Plaintiff files a motion for leave to amend the Complaint and to deny without prejudice or stay Defendant's motion for partial dismissal on January 18, 2017. Case management conference has been scheduled for March 1, 2017. Defendant filed a response to the motion for leave to amend the Complaint and to deny without prejudice or stay motion for partial dismissal on February 8, 2017. **Defendant filed its Answer with jury demand to the Amended Complaint on March 7, 2017. Defendants filed a motion for partial summary judgment on March 13, 2017. Discovery commences. The Court set another case management conference for May 19, 2017.**

(Burgess / Klein of Sherman & Howard, LLC)

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. November 11, 2015 Defendant Saint Aubyn Homes, LLC files cross claims. A 5 day Jury Trial is scheduled to commence on May 1, 2017. Settlement Conference scheduled for February 23, 2017. January 30, 2017 Defendant's file joint motion for partial summary judgment re Plaintiff Parson's negligence claim and Defendant Saint Aubyn Homes files motion for determination of question of law regarding Plaintiff's classification and Chiddix files joinder on January 31, 2017. **February 21, 2017 Plaintiff and Plaintiff-Intervenor, the City, file responses to Defendants' motion for determination of question of law regarding Plaintiff's classification. Plaintiff files response to Defendant Saint Aubyn's motion for summary judgment. April 4, 2017 Plaintiff and Plaintiff Intervenor file notice of settlement, which was granted April 5, 2017. May 11, 2017 Order of Dismissal of Prejudice granted by Court.** (Lamphere)

(OC)

United States of America and The State of Colorado v. City of Colorado Springs, Colorado

United States District Court 16-cv-02745

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

STATUS: Complaint filed November 9, 2016. Motions to intervene filed by Pueblo County and Lower Arkansas Valley Water Conservancy District were granted by Court on February 17, 2017.

(Alan J. Gilbert / Riley Carlock & Applewhite)

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. **Mediation scheduled March 21, 2017. Trial being rescheduled.**

(Turner)

## ADMINISTRATIVE SECTION

### DISPOSED MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-00768.

Claimant brings charge of alleged gender and age discrimination filed on January 8, 2016. Position Statement and RFI due February 24, 2016. Pending EEOC decision. Right to sue notice issued April 20, 2016. Existing litigation.

(Lessig/McCall)

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. EEOC issues Determination finding cause on October 21, 2016. The City is engaging in the conciliation process with the EEOC and Charging Party.

**Matter settled for \$23,850.**

(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.

(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.

(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.

(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.

(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.

(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.  
(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.  
(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.  
(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.  
(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.  
(Lessig / McCall)

## NEW MATTERS

## CURRENT MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number FE2017333471.  
Claimant brings charge of alleged sex, race and age discrimination and retaliation dated February 8, 2017. City's Position Statement and Responses to the Request for Information due March 13, 2017. **Extension granted; Position Statement and responses to RFI due April 12, 2017. Position Statement and responses to RFI filed April 12, 2017. Supplemental Position Statement and responses to RFI filed May 2, 2017. Pending CCRD decision.**  
(Rose)

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





**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

**Active cases:**

Municipal – 51

Utilities – 18

Memorial - 1

**Subrogation cases handled by outside counsel:**

Municipal – 0

Utilities – 0

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

Municipal – 0

Utilities – 1

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<u>FEBRUARY</u>	<u>MARCH</u>	<u>APRIL</u>
Cases Docketed for Trial by Court	145	149	154
Cases tried:	84	71	81
Cases handled without trial:	61	78	73
Cases Docketed for Trial by Jury:	26	28	14
Cases tried:	3	1	1
Cases handled without trial:	23	27	13
Cases Handled on Deferred Docket:	234	244	285
Cases Handled at Pretrial:	421	501	404
Cases Handled at Arraignments:	514	619	446
Mailed Dispositions:	16	13	14
Deferred Sentences at Arraignment:	0	0	0
Criminal Arraignments Screened:	0	0	785
Jail Docket:	395	352	372
Liquor Hearings:	0	0	0
NPOI:	83	90	68
Good Driver Letters Mailed:		278	315
 TOTAL MATTERS:	 2005	 2064	 2294