


# QUARTERLY REPORT TO CITY COUNCIL

**Relating to:**  
LITIGATION AND ADMINISTRATIVE MATTERS

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**May 2019**  
(Covering All Activity through May 30, 2019)

  
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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

### The City of Colorado Springs v. Chrystal Christian

El Paso County District Court Case No. 2018CV32769

CLAIM: City files case against Defendant for negligence on entering intersection on red light, striking Officer Bauer and causing damages.

STATUS: Complaint filed November 8, 2018. Summons filed November 26, 2018. December 21, 2018 Defendant files answer. **February 25, 2019 City files notice of settlement. March 11, 2019 Parties file stipulation of dismissal with each party to pay their own costs. March 19, 2019 Court grants order of dismissal with prejudice.**

(Stewart)

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

El Paso County District Court Case No. 2017CV31927

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

STATUS: August 7, 2017 City files Petition in Condemnation along with Motion for Immediate Possession and its accompanying Brief. September 8, 2017 Notice of Immediate Possession Hearing held October 20, 2017 at 1:30 p.m. Court grants motion for immediate possession. January 12, 2018 Petitioners file response to Courts order for a proposed case management order regarding how the case should proceed. February 9, 2018 Birddog, LLC files cross-petition to intervene and Serna files answer to petition in condemnation. February 27, 2018 Walters file answer to petition in condemnation. March 27, 2018 Court grants in part Birddog’s cross-petition to intervene stating that Birddog has a right to intervene because it claims an interest, but Birddog does not have a right to participate in any proceedings prior to it intervening. April 5, 2018 Court appoints commissioners. April 19, 2018 the Voir Dire and first meeting of commissioners scheduled for July 13, 2018. April 25, 2018 Respondents file motion to withdraw and disburse funds on deposit. Petitioner files brief in partial opposition to motion to withdraw and disburse funds on deposit. July 18, 2018 Court files order regarding Commission and Case Management. July 30, 2018 Parties file joint statement on motion to withdraw and disburse funds on deposit and request Courts’ determination. December 11, 2018 Petitioner files motion for summary judgment. January 4, 2019 Court grants Petitioner’s motion for summary judgment; Respondent Serna files motion to dismiss Petitioner’s motion for summary judgment. January 18, 2019 Respondent Serna files motion to compel a final written offer. January 24, 2019 Petitioner files briefs in opposition to respondent Serna’s motion to dismiss Petitioner’s motion for summary judgment and motion to compel. February 5, 2019 Court denies motion to dismiss petitioner’s motion for summary judgment and issues judgment in City’s favor; Court denies motion to compel

a final written offer. February 6, 2019 Respondent files motion for reconsideration. **March 25, 2019 Court denies motion for reconsideration.**

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

(CC)

Fourth Estate News, LLC v. The City of Colorado Springs, and its official custodian of records

El Paso County District Court 2018CV33146

CLAIM: Plaintiff brings claim against the City for its denial of Colorado Open Records Act (CORA) requests.

STATUS: December 28, 2018 Complaint and Motion for Order to Show Cause Filed. January 17, 2019 City files motion to dismiss. January 18, 2019 City files response to motion for order to show cause. January 29, 2019 Plaintiff files response to motion to dismiss; Plaintiff also files reply in support of its motion for an order to show cause and request for forthwith hearing. February 5, 2019 City files reply in support of its motion to dismiss. February 8, 2019 Court denies City's motion to dismiss. February 12, 2019 Plaintiff files an amended complaint. **April 8, 2019 Parties file stipulation of dismissal with prejudice with each party to bear its own costs and attorney's fees. April 9, 2019 Court grants stipulation of dismissal with prejudice.**

(Turner)

Marcus Whaley v. Colorado Springs Police

El Paso County District Court Case No. 17CV423

Colorado Court of Appeals Case No. 2018CA300

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

STATUS: Summons and Complaint served October 18, 2017. November 8, 2017 Motion to dismiss filed by Defendant. Plaintiff files various responses to motion to dismiss and motion to amend complaint. January 22, 2018 City files a reply to its motion to dismiss. Additionally, it files a motion to dismiss based on lack of notice of claim. January 23, 2018 City files response to Plaintiff's motion to amend complaint. February 12, 2018 Plaintiff files Notice of Appeal. February 21, 2018 Court grants CSPD's motion to dismiss. April 30, 2018 Plaintiff files opening brief. July 2, 2018 City files answer brief. On January 24, 2019 Court affirms judgment. **March 25, 2019 Mandate issued.**

(Turner)

## NEW CASES

28 Polo LLC and Bruce Fallhowe v. Colorado Springs City Council

El Paso County District Court Case No. 2019CV30721

CLAIM: Rule 106 claim for judicial review relating to Plaintiff's application for approval of a preliminary and final plat map proposal, and for the approval of two minor nonuse zoning variances.

STATUS: Summons and Complaint received March 26, 2019. April 16, 2019 City files answer and affirmative defenses. April 19, 2019 Plaintiffs file unopposed motion for order requiring certification of record. April 29, 2019 Court grants motion for order requiring certification of record.

(Lamphere)

Jeffery Wayne Metzler v. City of Colorado Springs, Elizabeth Reid, John Chadbourne, Craig Simpson, and Kevin Clark

United States District Court Case No. 19-cv-00878

CLAIM: Plaintiff claims damages for alleged violation of unlawful seizure and malicious prosecution due to a wrongful arrest.

STATUS: Complaint received March 25, 2019. April 18, 2019 Plaintiff files amended complaint. May 1, 2019 City files motion for protective order from discovery and to vacate scheduling conference.

(Doherty)

Mark Peters v. John Suthers, Colorado Springs Police Department, et al

El Paso County District Court Case 2019CV74

El Paso County District Court Case 2019CV113

El Paso County Court Case 2019C771

CLAIM: Plaintiff alleges the negligence of the Defendants was the cause for the wrongful death of Michelle Peters and intentional infliction of emotional distress.

STATUS: Complaint and Summons in 2019C771 served April 10, 2019. Complaint and Summons in 2019CV74 served April 17, 2019. Complaint and Summons in 2019CV113 served May 6, 2019. May 9, 2019 Court orders all cases consolidated into one 19CV74.

(Turner)

Kelvin Tivis v. City of Colorado Springs, Robert Comstock, Ronald Carter, Brian Makofske, Korey Hutchinson, and Unknown Officers

United States District Court Case No. 19CV867

CLAIM: Plaintiff alleges excessive force, unlawful entry, and unlawful seizure among other claims for relief and seeks damages.

STATUS: Summons and Complaint served April 2, 2019. April 23, 2019 City Defendants files motion to dismiss. May 10, 2019 Officer Comstock and Lieutenant Makofske file Answer. May 14, 2019 Plaintiff files response to City's motion to dismiss. May 28, 2019 Defendants file reply in support of their motion to dismiss.

(Lamphere)

Thomas Villanueva v. El Paso County; Bill Elder, Sheriff, El Paso County Sheriff's Office, in his official capacity; The Estate of Micah Flick, Deputy, El Paso County Sheriff's Office, in his individual capacity; Scott Stone, Deputy, El Paso County Sheriff's Office, in his individual capacity; Jacob Abendschan, Sergeant, El Paso County Sheriff's Office, in his official and individual capacities; John Watts, Detective, El Paso County Sheriff's Office, in his individual capacity; Tremaine White, Detective, El Paso County Sheriff's Office, in his individual capacity; Stephanie Criss, Detective, El Paso County Sheriff's Office, in her individual capacity; Michael Boggs, Detective, El Paso County Sheriff's Office, in his individual capacity; The City of Colorado Springs, Colorado, Peter Carey, Chief of Police, Colorado Springs Police Department, in his official capacity; Kevin Miyakusu, Sergeant, Colorado Springs Police Department, in his official and individual capacities; Marcus Yanez, Officer, Colorado Springs Police Department, in his individual capacity; John Reindollar, Investigator, Colorado State Patrol, in his individual capacity; and Chad Hunt, Sergeant, Colorado State Patrol, in his individual capacity,

CLAIM: Plaintiff brings § 1983 claims of state-created danger and failure to train, along with willful and wanton negligence, vicarious liability and respondeat superior claims due to February 5, 2018 incident.

STATUS: Waiver of Service returned March 10, 2019. April 29, 2019 Defendants file joint motion to dismiss. Plaintiff voluntarily dismisses counts three and four from Complaint. May 20, 2019 Plaintiff files response to joint motion to dismiss. May 29, 2019 Plaintiff files notice of filing an amended complaint and the amended complaint. Court orders amended complaint no later than May 31, 2019.

(Turner)

## CURRENT CASES

### COUNCIL

(OC)

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

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

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

STATUS: Complaint filed November 13, 2017. Summons issued November 14, 2017. Motion to dismiss filed January 29, 2018. February 20, 2018 Motion to amend complaint filed. May 4, 2018 Court grants amended complaint. May 7, 2018 Amended complaint filed. Defendants file motion to dismiss June 5, 2018. July 10, 2018 Response to motion to dismiss filed. August 7, 2018 Defendants file reply to motion to dismiss.

(Eric Hall at Lewis Roca Rothgerber Christie)

### FACILITIES

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

El Paso County District Court Case No. 2013CV1469

Colorado Court of Appeals 2014CA228

Colorado Supreme Court 2015SC627

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

STATUS: March 20, 2013 Summons and Complaint served. April 12, 2013 Hearing regarding Motion for Preliminary Injunction concerning condition of property. April 16, 2013 Plaintiffs file Motion for a Temporary Restraining Order (“TRO”). April 18, 2013 Defendant City of Colorado Springs files Motion to Dismiss, amended. April 19, 2013 Defendant Hudspeth files

Response to Motion for TRO; Defendant City files Response to Motion for TRO; Defendant Hudspeth files Motion to Stay re: CRS §13-20-803.5(9). May 7, 2013 Plaintiff files Amended Complaint. August 2, 2013 City files motion to dismiss. August 23, 2013 Plaintiffs file response to City's motion to dismiss. September 6, 2013 City files reply to its motion to dismiss. On September 25, 2013, the Court issued an order concluding that there are factual issues that are potentially relevant and ordered that a *Trinity* hearing would be necessary to resolve the issues stated in the motion. A *Trinity* hearing regarding the motion to dismiss was set for November 15, 2013, but was rescheduled to November 20, 2013. December 20, 2013 Court issues order denying City's motion to dismiss and finding that some or all of Plaintiff's damages were caused by the operation of a public building and the maintenance and operation of a gas facility, thereby waiving the City's immunity. January 8, 2014 City files Answer and Affirmative Defenses. February 4, 2014 City files notice of appeal and designation of record on appeal. March 14, 2014 Defendant City files Brief regarding Stay of Case. March 14, 2014 Defendant Hudspeth files Motion for Stay. March 14, 2014 Plaintiffs' file Brief in Partial Opposition to Stay. March 28, 2014 Second Case Management Conference in which Court grants motion to file Amended Answer; Court grants Motion to Stay; Plaintiffs to set Status Conference after receiving Mandate from COA. April 25, 2014 Defendant/Appellant City files Trinity Hearing Exhibits with Trial Court regarding Record on Appeal. May 5, 2014 Trial Court files Certificate of Mailing of Record on Appeal to COA. July 23, 2014: Def/Appellant City files Opening Brief. July 29, 2014, Def/Appellant City files Motion to Supplement Records on Appeal. August 22, 2014 Court gives notice of Filing Supplemental Record. September 26, 2014, Pl/Appellees' file Answer Brief. October 16, 2014 Def/Appellant City files Reply Brief. October 23, 2014 Pl/Appellees' Request Oral Argument. April 28, 2015 Oral argument was held. June 18, 2014 Court of Appeal reverses the district court's order denying the City's motion to dismiss and remand the case back to the district court with instructions to grant the motion. July 29, 2015 Plaintiff files a Petition for Writ of Certiorari in the Colorado Supreme Court. August 12, 2015 Opposition Brief filed. August 18, 2015 Reply Brief filed. May 31, 2016 Court grants the Petition for Writ and schedules briefs. Opening brief filed July 26, 2016. Colorado Trial Lawyers file Amicus Brief July 26, 2016 in support of Petitioners which is accepted by the Court on August 5, 2016. September 27, 2016 Colorado Municipal League files Amicus Brief in support of Respondent and accepted by the Court October 6, 2016. September 29, 2016 City files Answer Brief and the State of Colorado files Amicus Brief in support of Respondent City of Colorado Springs and was accepted October 12, 2016. Reply brief filed November 21, 2016. Oral argument held on March 9, 2017. Supreme Court issues decision on February 5, 2018 holding wind claims barred by governmental immunity, but reversing Court of Appeals on alleged subsurface trespass, and remands for further proceedings. Stipulated motion to dismiss Hudspeth & Associates with prejudice and order granting on August 27, 2018. (Lamphere / Rob Zavaglia at Treece Alfrey Musal, P.C.)

## HUMAN RESOURCES

(OC)

Rueben Waterman v. City of Colorado Springs

United States District Court Case No. 2018-cv-1722

CLAIM: Plaintiff makes Age Discrimination in Employment Act claim alleging failure to hire due to age.

STATUS: Summons and Complaint served October 24, 2018. Answer filed November 14, 2018. Scheduling order signed January 2, 2019. Discovery to commence. January 24, 2019 Court issues Protective order on a joint motion filed January 22, 2019.  
(Lessig/Frederickson/Fisher Phillips)

#### MAYOR

VDARE Foundation v. City of Colorado Springs, John Suthers  
United States District Court Case No. 18-cv-03305

CLAIM: Plaintiff alleges violation of 42 U.S.C. § 1983 and First Amendment retaliation claim after Defendants issued a public statement regarding VDARE conference.

STATUS: Complaint filed December 21, 2018. Waiver of the service signed January 9, 2019. **April 17, 2019 City files motion to dismiss. May 24, 2019 Plaintiff files response to Defendants' motion to dismiss.**

(Lamphere)

#### MUNICIPAL COURT

The City of Colorado Springs, a home rule municipal corporation and home rule city vs. Colorado Springs Municipal Court [Acting as a hearing officer in the matter of an appeal of a code enforcement Notice and Order] Court Referee Til Zeller Presiding and Freddie Joe Layberger [Appellant before the Municipal Court]

El Paso County Court Case No. 2018CV32757

CLAIM: City files Rule 106(a)(4) claim alleging that Hearing Officer abused its discretion and exceeded its jurisdiction during a Notice and Order code enforcement appeal.

STATUS: Complaint for Judicial Review filed November 7, 2018. Summons and Waiver and Acceptance of Service filed November 13, 2018. **March 5, 2019 Court grants stipulation with amendments, approving parties' agreement.**

(Curran/Rostum)

#### PLANNING AND DEVELOPMENT

Dr. James D. Albert, an individual; and Bette Anne Albert, an individual v. City of Colorado Springs, a Colorado home rule municipality; Colorado Springs City Council, a governmental body within the City of Colorado Springs; The Newport Co., a Colorado corporation; Richard C. Delesk, an individual; and Patricia D. Ingels-Delesk, an individual

El Paso County District Court Case No. 17CV31802

Colorado Court of Appeals 2018CA1619

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

STATUS: Summons and Complaint received August 1, 2017. City files Answer to Complaint August 22, 2017. September 26, 2017 Court grants Plaintiffs' motion to certify the administrative record. January 12, 2018 Plaintiffs file a status report to the Court. January 16, 2018 City files status report to the Court. January 23, 2018 City files certified record of proceedings and



recordings. January 29, 2018 Plaintiff files motion to amend administrative record and extension to file Opening Brief. March 2, 2018 Court denies motion to amend administrative record. April 13, 2018 Plaintiffs file opening brief. May 18, 2018 City files answer brief. June 8, 2018 Plaintiff files reply brief. July 26, 2018 Court files findings of fact, conclusions of law and order and affirms City Council decision. August 28, 2018 Plaintiff Appellant files Notice of Appeal. January 23, 2019 Appellants file Amended Opening Brief. February 27, 2019 City files Answer Brief. **March 20, 2019 Appellant files Reply Brief.**  
(Turner)

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

Colorado Court of Appeals 20018CA2113

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

STATUS: Summons and Complaint for Judicial Review and Request for Stay and Designation of Record served April 12, 2018. May 24, 2018 City files answer and affirmative defenses. June 8, 2018 Court grants Commonwealth Development's motion to intervene. On July 20, 2018, Plaintiff filed a motion to supplement the record. Defendants file a joint response in opposition on August 10, 2018. On July 26, 2018, Plaintiff filed a motion to extend its deadline to file its opening brief. Defendants opposed the motion and filed responses on July 27, 2018. August 29, 2018 Plaintiff / Appellant files opening brief. September 19, 2018 Defendants file joint answer brief. September 26, 2018 Plaintiff's file reply to City's answer. On October 3, 2018 The Court ruled on 106 and affirmed the City Council's decision to uphold The Ridge. Broadmoor Bluffs files Notice of Appeal on November 6, 2018. November 26, 2018 Broadmoor Bluffs files amended notice of appeal. January 16, 2019 Notice of filing record on appeal. **March 27, 2019 Appellant Broadmoor Bluff files Opening Brief. April 22, 2019 Appellant files Amended Opening Brief.**  
(Stewart)

#### POLICE

Candace Aguilera v. City of Colorado Springs, CO; Danielle McClarin; Angie Neives; Roger Vargason; Brett Lacey; and Robert Mitchell

United States District Court Case No. 18-CV-02125

CLAIM: Plaintiff claims Defendants violated their First Amendment and Fourth Amendment rights in regards to the GreenFaithMinistry establishment.

STATUS: Complaint served August 24, 2018. September 24, 2018 Plaintiff files amended complaint. City Defendants file motion to dismiss on October 2, 2018. Response to motion to dismiss filed October 23, 2018. Reply to its motion to dismiss filed. November 2018 Motion to Amend/Correct/Modify complaint filed and subsequent response and reply filed. **March 11, 2019 Court strikes Plaintiff's response to Defendants' motions to dismiss and orders Plaintiff to file compliant responses. March 23, 2019 Plaintiff files amended responses to motions to dismiss. April 8, 2019 City Defendants file reply in further support of their motion to dismiss.**  
(Turner)

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

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

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

STATUS: Summons served August 30, 2017. September 20, 2017 Motion to dismiss filed by Defendant Granillo. April 24, 2018 Court grants in part and denies in part City's motion to dismiss. May 1, 2018 City files motion objecting to order granting in part and denying in part City's motion to dismiss. On May 7, 2018, the Court denies Plaintiff's motion. May 8, 2018 City files answer to complaint. Settlement Conference held May 21, 2018. July 30, 2018 Plaintiff files motion to compel response to interrogatory question, which was denied on July 31<sup>st</sup> by the Court. **March 15, 2019 City Defendant files motion for summary judgment. April 5, 2019 Plaintiff files opposition to Defendant's motion for summary judgment. April 19, 2019 City files reply to response to its motion for summary judgment.**

(Stewart)

Willie Watlington v. Tim Browne

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

United States Court of Appeals 10<sup>th</sup> Circuit Case No. 19-1057

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

STATUS: Summons and Complaint served February 15, 2018. March 8, 2018 Defendant files Motion to Dismiss. April 19, 2018 Plaintiff files response to motion to dismiss. May 3, 2018 Defendant files reply to its motion to dismiss. This matter is currently set for trial on March 4, 2019. October 1, 2018 Report and recommendation by magistrate judge states Defendant's motion to dismiss should be granted and claims dismissed. Objection to report and recommendations filed by Plaintiff on October 15, 2018. November 13, 2018 Plaintiff files reply to response to report and recommendations. January 15, 2019 Court adopts recommendation of magistrate and grants motion to dismiss. Final Judgment entered in favor of Defendant and against Plaintiff. February 13, 2019 Plaintiff files Notice of Appeal. **April 22, 2019 Appellant's file opening brief.**

(Stewart)

Sean Welch v. Michael Happ and City of Colorado Springs

El Paso County District Court Case No. 2018CV031547

CLAIM: Plaintiff claims Defendant Happ, who was employed by the City of Colorado Springs, was negligent causing traffic accident.

STATUS: Summons and Complaint served July 12, 2018. August 2, 2018 Defendants file answer to complaint and serve offer of settlement to Plaintiff. January 11, 2019 Plaintiff files offer of settlement to defendants. Four-day jury trial scheduled to commence November 19, 2019. **May 3, 2019 City files motion for citation for contempt of court related to medical provider of Plaintiff. Discovery dispute conference held May 14, 2019. Show cause hearing set June 20, 2019.**

(Turner)

Sigmund J. Wilson v. Brent J. Jacobsen

El Paso County District Court Case No. 2019CV30201

CLAIM: Plaintiff claims damages and losses as a result of a motor vehicle collision.

STATUS: Summons and Complaint served January 29, 2019. **March 4, 2019 City Defendants file Answer. March 19, 2019 Court grants motion to amend complaint. City files**

**motion to vacate Trinity hearing set for May 3, 2019, which was granted by the Court April 27, 2019.**

(Stewart)

#### PUBLIC WORKS

City of Colorado Springs, Colorado v. Robert T. Wilcox; Diane Y. Wilcox; U.S. Bank National Association, a National Banking Association d/b/a Colorado National Bank; Thomas S. Mowle, El Paso County Public Trustee; Mark Lowderman, El Paso County Treasurer

El Paso County District Court Case No. 2018CV32216

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

STATUS: Petition in Condemnation and Notice of Lis Pendens filed September 7, 2018. September 10, 2018 Petitioner files brief in support of motion for immediate possession. October 3, 2018 Respondents file answer to petition in condemnation. October 22, 2018 Court grants order for immediate possession. **May 14, 2019 Court orders parties to participate in settlement conference on or before August 16, 2019.**

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

#### REAL ESTATE SERVICES

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

Park County District Court Case No. 2017CV030019

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

STATUS: Summons and Complaint served April 24, 2017. City files answer May 15, 2017. December 11, 2017 Plaintiff files motion to compel defendant Gumaer Placer for written discovery responses. January 17, 2018 Plaintiff files motion for summary judgment on Defendant Gumaer's affirmative defenses and files motion for determination of a question of law. Mediation held January 29, 2018. February 7, 2018 City files response to Plaintiff's motion for determination of a question of law. February 19, 2018 Plaintiff files reply to its motion for determination of a question of law. February 28, 2018 Defendant files response to Plaintiff's motion for summary judgment on affirmative defenses and motion for determination of question of law. March 21, 2018 Court denies motion for summary judgment on affirmative defenses and motion for determination of question of law. July 18, 2018 Defendant City is substituted as the Plaintiff in this case and Dadz is dismissed. February 6, 2019 City files motion to enforce settlement agreement. February 27, 2019 Defendant files response to City's motion to enforce settlement agreement. **March 6, 2019 Plaintiff files reply in support of its motion to enforce settlement agreement. March 7, 2019 Court orders moving party to contact clerk of court to schedule one day evidentiary hearing on motion to enforce MOU. March 25, 2019 One-day hearing regarding motion to enforce settlement agreement set on July 2, 2019.**

(Turner)

#### TRANSIT SERVICES

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

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

United States District Court Case No. 10-cv-02002-RPM-MEH;  
Case remanded to Denver District Court Case No. 2010CV6127;  
Case changed venue to El Paso County Court Case No. 2012CV81  
Court of Appeal, Case Number 2013CA001711

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

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

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

ATU filed a notice of decision on August 28, 2012, notifying the 12cv81 Court that the 07cv1322 Court had entered judgment. October 12, 2012 the Court issued an order denying City's motion to dismiss case 12cv81. On November 8, 2012, the City filed its answer and affirmative defenses to First Transit's third party complaint. May 24, 2013 the Court granted the City and First Transit's stipulation, staying the third party complaint until the claims between ATU and First Transit are resolved. June 17, 2013 ATU and First Transit file separate motions for summary judgment. July 8, 2013 ATU and First Transit file responses in opposition to the opposing party's motions for summary judgment. July 22, 2013 First Transit files reply in support of its motion for summary judgment and ATU files its amended reply in support on July 17, 2013. On July 24, 2013, the Court grants ATU's motion for summary judgment and denies First Transit's motion for summary judgment, requiring ATU and First Transit to proceed to arbitration. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b) which the Court granted on August 29, 2013. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief and filed an amended opening brief on December 3, 2013. January 21, 2014 First Transit responds to Court's Show Cause Order. February 28, 2014 Court files order of dismissal as Court determines it lacks jurisdiction over appeal for lack of final appealable judgment. April 11, 2014 First Transit petitions for writ of *certiorari* from the order of dismissal. April 25, 2014 ATU files brief in opposition to petition for *certiorari*. May 2, 2014 First Transit files reply brief in support of petition for writ of *certiorari*. August 25, 2014 First Transit files motion to lift stay on proceedings re third party claims. August 26, 2014 ATU files objection to First Transit's motion to lift stay and the City filed its response in opposition on September 3, 2014. September 10, 2014 First Transit files consolidated reply in support of its motion to lift the stay on proceedings in the third-party claim and response to ATU's motion to condition the order lifting the stay of the third-party claim. October 27, 2014 Court denied First Transit's motion to lift the stay. January 20, 2015 The Colorado Supreme Court denies First Transit's Petition for Writ of *Certiorari*. April 26, 2017 First Transit files motion to amend its third party complaint to assert subrogation claim and to lift stay on proceedings re third party complaint, to which the City responds in opposition on May 17, 2017, and First Transit replies in support on May 26, 2017. June 20, 2017 The Court denies the motion to lift the stay and denies the motion to amend the third party complaint. July 5, 2017 First Transit files a motion to reconsider the Court's order re lift the stay and amend complaint. July 12, 2017 ATU joins First Transit in the motion to reconsider. City files response brief in opposition on July 26, 2017 and First Transit files reply on August 2, 2017. August 7, 2017 Court denies First Transit's motion to reconsider. ATU and First Transit were ordered to proceed to arbitration without further delay. December 20, 2018 Joint motion to dismiss action as to Plaintiff's claims against First Transit, Inc. First Transit files Notice of Settlement, unopposed motion to lift stay as to third party

complaint and opposed motion to amend its third party complaint to assert subrogation claim. December 20, 2018 Court files order granting motion to dismiss. January 11, 2019 City files response brief in opposition to First Transit's motion to amend its third party complaint; City files motion for judgment on the pleadings; City files response brief to motion to dismiss action as to Plaintiff; and City files response brief to motion to lift stay as to the third party complaint. January 17, 2019 First Transit files reply in support of its motion to amend third party complaint. January 31, 2019 First Transit files response to City's motion for judgment on the pleadings. February 8, 2019 City files reply brief in support of motion for judgment on the pleadings. February 14, 2019 City files response brief in Opposition to ATU's Motion to Join First Transit's Motion to Lift Stay and Amend Third-Party Complaint to Adopt Subrogation Claim. February 19, 2019 Court grants dismissal between ATU and First Transit. February 22, 2019 Court grants motion to lift stay and grants First Transit's motion to amend its third party complaint. February 25, 2019 Court denies City's motion for judgment on the pleadings. **March 8, 2019 City Defendants files answer and defenses.**

(Doherty)

#### UTILITIES

Joseph P. Abbate and Echo M. Abbate a.k.a Echo M. Hurdorn v. Colorado Springs Utilities, a subsidiary of City of Colorado Springs; City of Colorado Springs, a municipal corporation; and Capital Real Estate – Bellaire Ranch, LLC

El Paso County District Court Case No. 18CV31881

#### **Colorado Court of Appeals 19CA545**

CLAIM: Plaintiff's claims damages for CSU's alleged negligence for failing to exercise care in maintain and repairing sewer lines causing flooding in Plaintiff's home.

STATUS: Summons and Complaint served July 27, 2018. August 21, 2018 City defendants file motion to dismiss. September 11, 2018 Plaintiff files response and objection to City Defendants' motion to dismiss. September 18, 2018 Defendants file reply brief in support of motion to dismiss. October 15, 2018 Court granted City's motion to dismiss in part and denied the motion in part. Plaintiff's first claim for relief will proceed. October 29, 2018 City files answer and defenses to complaint. Five-day jury trial scheduled to commence October 7, 2019. February 22, 2019 City files motion to stay discovery and files motion to dismiss. **February 28, 2019 Plaintiff files response and objection to City's motion to dismiss; Plaintiff files motion for attorney's fees and costs. March 4, 2019 Defendant Capital Real Estate files motion opposing motion to stay and files cross motion to compel; Plaintiff files joinder in Capital Real Estate's response. March 7, 2019 City files reply in support of motion to dismiss. March 11, 2019 Capital Real Estate files motion to compel; City files reply in support of its motion to stay discovery. March 12, 2019 Plaintiff files motion for leave to file sur-reply to City's reply in support of its motion to dismiss. March 15, 2019 Defendant Capital Real Estate files response to City's second motion to dismiss. March 21, 2019 City files response brief in opposition of Plaintiff's motion for attorney's fees and costs. March 25, 2019 City files motion to strike response of Defendant Capital Real Estate opposition to Defendant's second motion to dismiss. Court files order denying City's second motion to dismiss; Court files order requiring City to file discovery responses and grants Capital Real Estate and Plaintiff's motion for attorney's fees. March 26, 2019 City files Notice of Appeal and motion to stay orders pending appeal. April 3, 2019 Defendant Capital Real Estate files response in opposition to City's second motion to stay. April 11, 2019 Plaintiff files joinder in Capital**

**Real Estate's response to City's second motion to stay; City files reply in support of motion to stay orders pending appeal. April 15, 2019 City files motion to reconsider, or in the alternative relief from order re: plaintiff's motion for attorney's fees; Capital Real Estate files motion for attorney fees, costs and expenses. April 16, 2019 City files response in opposition to Plaintiff's motion for attorney's fees. April 18, 2019 Court grants City's motion to stay pending appeal; trial set for October 7, 2019 is vacated.**

(Doherty)

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

El Paso County District Court Case No. 17CV31243

Colorado Court of Appeals 2017CA2103

Colorado Supreme Court 2018SC903

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

STATUS: Summons and Complaint served May 17, 2017. June 7, 2017 City files motion to dismiss, to which the Plaintiff files response in opposition on June 28, 2017 and the City replies on July 6, 2017. August 1, 2017 Court issues order regarding motion to dismiss, requiring the parties to schedule a Trinity hearing to determine the Court's jurisdiction. Trinity Hearing held on November 1, 2017 to determine jurisdictional issue and statutory compliance based on the City's motion to dismiss. On November 3, 2017, the Court entered an order denying the motion to dismiss for statutory compliance and allowing an amended complaint to cure the defect of the additional claimant. November 10, 2017 Plaintiff files amended complaint and jury demand. November 17, 2017 Notice of Appeal filed by the City. February 13, 2018 Electronic record certified to the Colorado Court of Appeals. March 29, 2018 Appellant files Opening Brief. May 4, 2018 Appellant files request for Oral Argument. June 1, 2018 Appellee files answer brief. June 25, 2018 Appellant files reply brief. Oral Argument scheduled for October 30, 2018. November 8, 2018 Opinion issued affirming district court's order denying City's motion to dismiss. December 21, 2018 City files Petition of Writ of Certiorari. January 3, 2019 Respondents file advisory notice that they will not file a brief in opposition although Petition of Writ is opposed.

(Doherty)

Denis Prevost v. Kevin Carter

El Paso County District Court Case No. 2018CV32180

El Paso County District Court Case No. 2019CV030058

CLAIM: Plaintiff claims damages due to motor vehicle accident involving Defendant Carter.

STATUS: Approximately October 16, 2018 City received Summons and Complaint. October 29, 2018 Motion to dismiss filed by the City. November 19, 2018 Plaintiff files response to motion to dismiss. November 26, 2018 City files reply in support of motion to dismiss. December 13, 2019 Court grants with amendments the Defendant's motion to dismiss. New lawsuit filed by Plaintiff January 9, 2019. **Four-day jury trial scheduled to commence February 24, 2020.**

(Doherty)

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

El Paso County District Court Case No. 2018CV31092

CLAIM: City seeks condemnation of the Respondent's property for public purpose.  
STATUS: Petition in Condemnation and Notice of Lis Pendens filed May 4, 2018. May 30, 2018 Respondent El Paso County Telephone Company files answer. June 7, 2018 Respondent files motion to dismiss. June 28, 2018 Petitioner files brief in opposition to motion to dismiss. July 5, 2018 Respondent files combined reply in support of motion to dismiss petition in condemnation; request hearing; and motion for leave to conduct discovery. July 16, 2018 Petitioner files brief in opposition to motion for discovery and hearing. July 23, 2018 Respondent files reply in support of request for hearing and motion for leave to conduct discovery. August 30, 2018 Court denies Respondent's motion to dismiss. September 12, 2018 Respondent files answer to petition in condemnation. October 3, 2018 Petitioners file motion for summary judgment. October 22, 2018 Hubert files Rule 56(f) Motion to extend deadline to respond to motion for summary judgment. October 26, 2018 Court grants Hubert's motion to extend deadline to response to motion for summary judgment pursuant to Rule 56(f). **April 8, 2019 Respondent Hubert files combined response to Petitioner's motion for partial summary judgement and cross-motion for summary judgment. April 18, 2019 Petitioner files reply in support of motion for partial summary judgment. May 2, 2019 Respondents reply to Petitioner's response in opposition to respondents cross motion for summary judgment.**  
(Turner / Edward J. Bleizner of Welborn Sullivan Meck & Tooley, P.C.)

(OC)

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

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

STATUS: Complaint filed November 9, 2016. Motions to intervene filed by Pueblo County and Lower Arkansas Valley Water Conservancy District were granted by Court on February 17, 2017. Trial has been segmented by the Court for an initial liability trial addressing three exemplar sites. The first segment of trial expected by Spring or Summer of 2018. April 13, 2018 Trial brief filed by Defendants. Pretrial conference scheduled for May 31, 2018. Trial held September 5, 2018. November 9, 2018 Court issues Findings, Conclusions and Order for Judgment concluding that the City violated NPDES at three locations. December 11, 2018 Court grants stay of litigation until March 8, 2019 and on February 4, 2019 extends the stay for potential settlement negotiations until April 12, 2019.

(Alan J. Gilbert / Bryan Cave, LLP)



## ADMINISTRATIVE SECTION

### DISPOSED MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2018-00248  
November 3, 2017 Claimant brings charge of alleged discrimination under Title VII of the Civil Rights Act and age discrimination. City's Position Statement and responses to RFI filed December 22, 2017. EEOC dismissal received November 8, 2018. 90 Day deadline to file lawsuit is approximately February 8, 2019.  
(McCall)

### NEW MATTERS

VIRGINIA PAUL V. CITY OF COLORADO SPRINGS, Charge Number CCRD CP2019792015  
April 17, 2019 Claimant brings charge of disability under the Colorado Anti-Discrimination Act. Response to Request for Information and Position Statement due May 13, 2019.  
(Rose)

### CURRENT MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2018-00949  
July 18, 2018 Claimant brings charge of alleged discrimination under Title VII of the Civil Rights Act. Position Statement deadline due August 28, 2018. Pending EEOC decision.  
(McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2018-00248  
November 3, 2017 Claimant brings charge of alleged discrimination under Title VII of the Civil Rights Act and age discrimination. City's Position Statement and responses to RFI filed December 22, 2017. EEOC dismissal received November 8, 2018. 90 Day deadline to file lawsuit is approximately February 8, 2019.  
(McCall)

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. **EEOC dismissal received March 13, 2019. 90 Day deadline to file lawsuit is approximately June 19, 2019. (McCall)**

**UTILITIES: Water Court Cases**

**Total Active Application Cases:            6 (4 Diligence cases)**

**Application Cases Before Water Referee:            4**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
15CW3019	Blue River (Diligence)
15CW3050	Twin Lakes (Diligence)
18CW3041	Homestake / Blue River (Diligence)
19CW3026	Local System Exchange (Diligence)

**Application Cases Before Water Judge:            2**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
13CW3077	Green Mountain Reservoir
16CW3056	FMIC / Chilcott Augmentation Plan

**Total Objector Cases:            17**

**Stipulated:            7**  
**Active:            10**

**Active Before Water Referee:            6**

**Active Before Water Judge:            4**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
12CW176	Climax Molybdenum Company
13CW3109	City of Glenwood Springs
15CW3016	United States of America c/o USAFA
16CW3103	Board of Water Works of Pueblo, Colorado

**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

**Active cases:**

Municipal – 76  
 Utilities – 12  
 Memorial - 1

**Subrogation cases handled by outside counsel:**

Municipal – 0  
 Utilities – 0

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

Municipal – 0  
 Utilities – 0

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>
Cases Docketed for Trial by Court	153	143	221
Cases tried:	105	88	134
Cases handled without trial:	48	55	87
Cases Docketed for Trial by Jury:	35	35	13
Cases tried:	0	0	2
Cases handled without trial:	35	35	11
Cases Handled on Deferred Docket:	141	276	187
Cases Handled at Pretrial:	454	416	558
Cases Handled Instant Pre-Trial:	993	920	1062
Mailed Dispositions:	27	29	26
Criminal Arraignments Screened:	958	895	1107
Jail Docket:	496	537	743
Administrative Hearings:	2	0	5
NPOI:	159	161	148
Good Driver Letters Mailed:	952	1092	1132
Good Driver Letters Accepted:	662	786	691
 TOTAL MATTERS:	 3921	 4037	 4613