

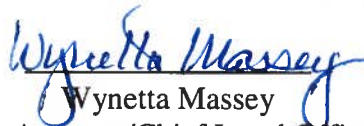
# QUARTERLY REPORT TO CITY COUNCIL

**Relating to:**  
LITIGATION AND ADMINISTRATIVE MATTERS

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**August 2016**

(Covering All Activity through August 26, 2016)



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

## DISPOSED CASES

Daniel Joseph Baca v. Colorado Springs Municipal Court Referee / Towing Impound  
El Paso County District Court Case No. 2016CV258

CLAIM: Plaintiff appeals the Municipal Courts decision and challenges the towing and impoundment of his vehicle.

STATUS: July 11, 2016 Plaintiff files Summons and Complaint. July 13, 2016 Court issues order dismissing case.

(Total \_\_ hours – White)

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

Park County District Court Case No. 2014CV30019

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

STATUS: Waiver and Complaint received March 11, 2014. March 19, 2014 Waiver and Acceptance of Service. April 9, 2014 City files Motion to Dismiss. April 28, 2014 Plaintiff files response to City’s motion to dismiss. May 5, 2014 Defendant files reply in further support of Motion to Dismiss. May 7, 2014 Court grants motion to dismiss, but allows Plaintiff to file amended complaint within 30 days. June 4, 2014 Plaintiff files amended complaint for declaratory judgment. June 18, 2014 City files motion to dismiss. July 23, 2014 Plaintiff files response to second motion to dismiss. August 12, 2014 City files reply brief in further support of Defendant’s motion to dismiss amended complaint. October 7, 2014 Court denies motion to dismiss amended complaint and orders that the parties engage in mediation. November 3, 2014 City files Answer to Amended Complaint. January 16, 2015 Court enters stipulated initial case management order and stipulated protective order. Discovery commences. November 17, 2015 Plaintiff’s counsel moves to withdraw. November 23, 2015 City responds to Motion to Withdraw. December 7, 2015 High Mountain Mining Co. files motion to quash subpoena duces tecum. December 22, 2015 City files response to motion to quash subpoena. January 7, 2016 High Mountain Mining Co. files reply to motion to quash subpoena. January 13, 2016 Court quashes subpoena. January 16, 2016 Court grants Plaintiff’s counsel’s motion to withdraw. April 29, 2016 Case will be dismissed for failure to prosecute on June 3, 2016 unless Court receives written motion and order. **June 6, 2016 Case dismissed.**

(Total 478.5 hours – Turner)

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

El Paso County District Court Case No. 2014CV33008

United States Court of Appeals Case No. 15-1334

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

STATUS: Summons and Amended Complaint served December 5, 2014. December 31, 2014 City files Notice of Filing Notice of Removal and files Notice of Removal in United States District Court. February 17, 2015 Plaintiffs file second amended complaint. March 10, 2015 City files Motion to Dismiss. March 24, 2015 City files motion to stay discovery on liability until Court's decision on motion to dismiss. April 3, 2015 Plaintiff files response to motion to dismiss. City files reply to its motion to dismiss on April 20, 2015. August 10, 2015 Court issues order granting motion to dismiss. August 11, 2015 Final Judgment issued. August 25, 2015 Defendants files Bill of Costs, which is granted by the Court on September 1, 2015. Plaintiffs file appeal to the 10<sup>th</sup> Circuit Court of Appeals. Mediation held October 9, 2015. Appellants' file brief November 20, 2015. January 27, 2016 Appellee files Answer Brief. Reply Brief filed February 16, 2016. Arguments held May 4, 2016. On May 24, 2016 the Court of Appeals enters Order and Judgment affirming the District Court's decision dismissing Plaintiff's Second Amended Complaint. **June 8, 2016 Petition for rehearing en banc. June 20, 2016 Court issues order denying Appellants' petition for rehearing. June 28, 2016 Mandate issued.**

(Total 391.8 hours – White / Gordon Vaughan and David DeMuro of Vaughan & DeMuro)

WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 2, AND WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 3, TITLE 32 METROPOLITAN DISTRICTS; AND KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. PRAIRIE VISTA, LLC, A COLORADO LIMITED LIABILITY COMPANY; ROCKY MOUNTAIN COMMUNITY LAND TRUST, A COLORADO NON-PROFIT CORPORATION; PIKES PEAK HABITAT FOR HUMANITY, INC., A COLORADO NONPROFIT CORPORATION; WILLIAM M. PECK; DARRELL H. OLIVER, SR.; KELLY ANN M. OLIVER; WILLIAM MARCHANT; MAUREEN M. MARCHANT; MARILYN J. HOWELL, AS TRUSTEE OF THE MARILYN J. HOWELL TRUST; C. ARLENE NANCE; SUSAN HANSON; THE CITY OF COLORADO SPRINGS, A COLORADO HOME RULE CITY AND MUNICIPAL CORPORATION; AND ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER OF THIS ACTION v. (THIRD PARTY PLAINTIFF) KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. THIRD PARTY DEFENDANTS RS HOLDING COMPANY, LLC, F/K/A INFINITY HOLDING COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY; H2 LAND CO, LLC, A COLORADO LIMITED LIABILITY COMPANY; PAUL HOWARD; JONATHAN HOWARD; SCOTT HENTE; AND ROBERT ORMSTON

El Paso County District Court Case NO. 08CV4553

Colorado Court of Appeals Case No. 14CA154

Colorado Supreme Court 2016SC140

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

**STATUS:** An Eight Day Trial Commenced October 23, 2012. November 26, 2012 Court issues order stating that City of Colorado Springs must approve court-approved partial restoration plan to Ski Lane and Sopressa Road. Court issues order judgment in favor of the Neighbors (Marchant, Howell, Nance, Hanson Oliver, and Peck) and that all other parties are jointly and severally liable to the Neighbors. December 10, 2012 Neighbors file Motion to Alter or Amend Findings, Conclusions and Judgment. Trial is scheduled for Plaintiff v. Third Party Defendant for January 24, 2013. Court grants stipulation for settlement as to KF 103-CV's Third Party Claims against the Infinity Parties on January 24, 2013. February 8, 2013 Court issues an order pending post-trial motions denying full restoration, that no party obstruct Ski Lane as an access easement, that Nance's motion to impose an order to replace or pay for removed dirt on parties other than RS Construction and Infinity Land is denied, that no recovery costs be passed along, denial of damage awards be reset, Court denies attorney fees, interest will accrue at 8% and in response to WHMD's motion for clarification the Court states that WHMD is jointly liable to partially restore Ski Lane and Sopressa and is not liable for damage awards to neighbors. City has no financial obligations. Parties file proposed orders for final judgment. October 30, 2013 Third Party Defendants file motions for reconsideration of October 15, 2013 Judgment and for order Nunc Pro Tunc concerning motion for clarification re October 15, 2013 Judgment and Motion for Reconsideration re Allocation of Liability of H2 Land Co., et al.; October 31, 2013 Defendants and William Peck file bill of costs. November 14, 2013 Plaintiff/Third-Party Plaintiff files notice of submission of completed construction plans pursuant to Court's order of October 15, 2013. November 15, 2013 KF 103-CV files response in opposition to motion for reconsideration re allocation of liability. November 20, 2013 Third-Party Defendants RS Construction, Hente, and Ormston file response to bill of costs. November 22, 2013 Third Party Defendants file reply in support of their motion for reconsideration re allocation of liability. November 27, 2013 Infinity Land Corp. files joinder in Third-Party Defendants' response to bill of costs; remaining responsible parties file response and objection to bill of costs. December 3, 2013 Status conference held. December 9, 2013 Defendants Marchants, Howell, and Nancy file combined reply to Defendants' bill of costs and response objecting to the Responsible Parties' proposed interim plans for constructing the Sopresa Lane wall and intersection. December 11, 2013 Court issues orders: 1) granting Hente, Howard, and Ormston's motion seeking clarification that they are not personally liable for judgments in the case and 2) denying Third Party Defendants' motion for order nunc pro tunc concerning motion for clarification re October 15, 2013 judgment and motion for reconsideration re allocation of liability; Third Party Plaintiffs file notice of dismissal of their claims against Third Party Defendants Mulliken & Mulliken, Weiner, Berg, & Jolivet, P.C. December 13, 2013 Plaintiff/Third-Party Plaintiff KF 103-CV files reply in support of its completed construction plans. December 17, 2013 Court issues order approving the construction plans. January 29, 2013 Defendants Marchant, Howell, Nance and Oliver file notice of appeal. June 27, 2013 Appellant files opening brief. July 17, 2014 Colorado Court of Appeals issues ordering show cause as to why the appeal should not be dismissed without prejudice for lack of a final,

appealable judgment. July 31, 2014 Plaintiff / Third Party Appellee and Cross Appellants' files response to Court's show cause order. August 7, 2014 Court orders parties to respond if negligent misrepresentation claims of Neighbors against KF 103-CV have been resolved and status of KF 103-CV's and Infinity entities have filed stipulation for dismissal with prejudice; all opening brief and answer brief deadlines are vacated until clarification and resolution of these issues. August 28, 2014 Parties file response to Court's order for show cause. October 6, 2014 Court of Appeals remands issue back to trial court for a limited purpose of making additional findings. Court makes additional findings. Case went back to Court of Appeals. Opening Briefs due February 26, 2015. March 6, 2015 Parties file answer brief. Appellees Metropolitan Districts 1, 2 and 3 and H2 Land Co, et al file amended answer brief. April 10, 2015 Appellee KF 103-CV files answer brief to Infinity Group's Cross Appeal. May 1, 2015 RS Construction files reply brief. May 4, 2015 Defendant – Appellant's file reply brief. On December 17, 2015 Court of Appeals affirms judgment. Petitioners Peck, et al file Petition for Writ of Certiorari on February 25, 2016. Opposition briefs filed. Petitioners Peck, et al file reply brief. **August 1, 2016 Petition of Writ denied. August 8, 2016 Judgment affirmed and mandate issued.**  
(Total 360.3 hours – White)

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

El Paso County District Court Case No. 2015CV33229

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

STATUS: Summons and Complaint served December 16, 2015. January 6, 2016 Defendants City and City Council file Answer and Affirmative Defenses. February 16, 2016 Parties file stipulated motion for dismissal of injunctive relief claim against Robert-Scott General Contractors and claims for declaratory judgment against all defendants. Court orders dismissal of claims for relief the same day. Certified Records to be filed by March 11, 2016. April 20, 2016 Plaintiff files Opening Brief. May 24, 2016 City Defendants and Robert-Scott filed answer briefs. **June 10, 2016 Plaintiffs file Stipulation for dismissal of claims without prejudice. June 17, 2016 Court issues order for dismissal of claims without prejudice.**

(Total 85 hours - White)

Morgan, Larry v. City of Colorado Springs

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

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

STATUS: February 5, 2015 Summons and Complaint received via email with Waiver of Service. April 6, 2015 Defendant files Answer. Scheduling Conference held May 28, 2015. Discovery concluded January 4, 2016. Defendant filed a Motion for Summary Judgment March 9, 2016, Plaintiff's Response was filed April 6<sup>th</sup>, and Defendant's Reply filed April 27, 2016. Court grants City's Motion for Summary Judgment on May 23, 2016, dismisses the case and awards costs to City.

(Total 382.2 hours – McCall)

Scan's 22, LLC and Z Investments, LLC vs. Anastasia M. Flannagan; Donald P. Smith; Minnie Smith; City of Colorado Springs, a Municipal Corporation; County of El Paso, Colorado; and All Unknown Persons who may claim an interest in the subject matter of this action

El Paso County District Court Case Number 2016CV31051

CLAIM: Plaintiffs bring action for condemnation and to quiet title relating to a 60 foot right of way near Crown Hill Mesa near property owned by Plaintiffs.

STATUS: Summons and Complaint served May 12, 2016. **Defendant El Paso County files a disclaimer. City files Answer on June 2, 2015. Stipulation for Dismissal and Limited Disclaimer of Interest was granted by Court on August 5, 2016.**

(Total 45.8 hours – Stewart)

## NEW CASES

Daniel Joseph Baca v. Colorado Springs Municipal Court Referee / Towing Impound

*See Disposed Cases*

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 served \_\_\_\_ July 11, 2016 City files answer.

(Total 19.2 hours – Stewart)

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.

(Total \_\_ hours - Stewart)

RCH Investors, LLC, a Colorado Limited Liability Company v. City of Colorado Springs, a Colorado Municipal Corporation, and Community at Springs Creek Owners Association, Inc., a Colorado Nonprofit Corporation

El Paso County District Court Case Number 16CV31795

CLAIM: Plaintiff is seeking declaratory relief relating to responsibility for construction of and repair to a landscape wall built within the Broadmoor View at Spring Creek subdivision and the City's authority to require an engineered wall.

STATUS: Summons and Complaint served June 29, 2016. August 15, 2016 Community at Springs Creek Owners Association, Inc files Answer, Counterclaims and Cross Claims.

(Total 22.6 hours – Turner)

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

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.

(Total 120.85 hours – Turner)

## CURRENT CASES

### CORA

Katharine E. Meinig, an individual v. Jamie Fabor, Chief Communications Officer – City Communications Department of the City of Colorado Springs, Colorado, Karen Paulus – Director of the Parks, Recreation and Cultural Services Department of the City of Colorado Springs, Colorado, Chris Lieber – Project Manager, Parks, Recreation and Cultural Services Department of the City of Colorado Springs, Colorado, Ronn Carlentine – Director, Real Estate Services Department of the City of Colorado Springs, Colorado, all of the foregoing in their official capacities as agents and employees of the City of Colorado Springs, Colorado, and not in their individual capacities

El Paso County District Court Case Number 16CV31188

CLAIM: Plaintiff brings a motion for issuance of an order to show cause pursuant to the Colorado Open Records Act, Section 24-72-204(5), C.R.S.

STATUS: Summons and Complaint served April 28, 2016. Hearing scheduled May 8, 2016 at 10:00 a.m. Hearing was vacated. City files answer and affirmative defenses on May 19, 2016.

(Total 50.8 hours – White)

### COUNCIL

The Lazy Lion, LLC; Studio A64, LLC; Canna Canyon, LLC; One Love Club; The Pothole, LLC; Granny's Joint, LLC; Springs Dreams, LLC; The DAB Lounge; My Club 420, Inc.; Andrew Poarch, an individual; Ambur Racek, an individual; Wanda Stark, an individual; Aaron Stone, an individual; Camille Mara, an individual; Heather Witting, an individual; Jered McCusker, an individual; Matt Gropp, an individual; Steve Pacheco, an individual; Ali Hillery, an individual; Eddie Martinez, an individual; Daniel Goodman, an individual; Anthony Robinson, an individual; Lance Vollrath, an individual v. City of Colorado Springs, Colorado

El Paso County District Court 16CV31082

United States District Court 16-cv-00932-PAB

CLAIM: Plaintiffs seek declaratory judgment and permanent injunction from the marijuana consumption club ban (“Ban”) that was passed by City Council in Ordinance 16-33 claiming that the Ban conflicts with Rights of Association, Freedom of Speech, Free Exercise of Religion, and Due Process under the First and Fourteenth Amendments to the US Constitution and Colorado Constitution.

STATUS: Complaint filed April 15, 2016. Courtesy copy of Summons and Complaint received April 15, 2016. April 26, 2016 Notice of Removal to United States District Court filed by City Defendant. Plaintiff’s amended complaint is due June 6, 2016 and answer is due July 18,



**2016. June 6, 2016 Amended Complaint filed. June 30, 2016 Unopposed Motion to Remand back to State Court. July 11, 2016 Court orders case be remanded back to the El Paso County District Court.**

(Total 215.4 hours – Turner)

## 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.**

(Total 145.4 hours – White / Rob Zavaglia at Treece Alfrey Musal, P.C.)

## FINANCIAL AND ADMINISTRATIVE SERVICES

(CC)

### In RE Banning Lewis Ranch Company, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13445

(KJC)

*and*

### In RE Banning Lewis Ranch Development I & II, LLC

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

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

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

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

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

opposition to those motions. On July 31, 2014, the Court set a telephonic status conference to be held on October 1, 2014, at 10:00 am. On August 26, 2014, the Court entered an order allowing Ultra to file sur-reply briefs in response to the City's reply brief in support of its motion for summary judgment and in support of its motion to join the other annexors as necessary parties. On December 10, 2014, Ultra and the Nor'wood entities that purchased the property within Banning Lewis Ranch owned by Ultra -- BLH No.1, LLC, BLH No. 2, LLC, and Banning Lewis Holdings, LLC (collectively, the "BLH Entities") filed a motion to substitute the BLH Entities for Ultra and stated that Ultra had assigned all of its claims, rights and interests in the adversary proceeding to the BLH Entities. On December 12, 2014, the Court granted the motion to substitute. On December 12, 2014, the Court also heard oral argument on the pending motions for summary judgment and took the matter under advisement. Court's ruling on motions is pending. On June 22, 2015, the bankruptcy court entered its Order on Pending Motions and granted summary judgment in favor of the City and denied the partial summary judgment motion filed by the BLH Entities. The bankruptcy court held that the Annexation Agreement and related agreements are not executory contracts that can be rejected and that the sale of the property was not free and clear of the Annexation Agreement and related agreements. On July 6, 2015, the BLH Entities filed their Notice of Appeal and Statement of Election (electing to have the appeal heard by the United States District Court for the District of Colorado). On July 20, 2015, the BLH Entities filed their Designation of Record and Statement of Issues. On August 3, 2015, the City filed Appellees' Designation of Additional Items to Be Included in the Record On appeal. On August 3, 2015, the parties filed the Joint Motion to Abate Appeal Pending Settlement Negotiations and requested that the appeal be held in abeyance until October 2, 2015. On August 4, 2015, the federal district court entered the Order Granting Joint Motion to Abate Appeal During Settlement Negotiations and stayed the appeal until October 2, 2015 and directed the parties to file by October 2, 2015, a joint status report apprising the court of the status of the negotiations and their view as to how the case should proceed. On September 30, 2015, the parties to the appeal filed a Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations (the "Joint Motion"). In the Joint Motion, the parties informed the Court that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until December 1, 2015. By order entered on October 20, 2015, the Court granted the Joint Motion and continued to hold the appeal in abeyance until December 1, 2015 and closed the case administratively subject to reopening for good cause. On November 23, 2015, the parties filed a Second Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until February 15, 2016 (the "Second Joint Motion"). By order entered on November 24, 2015, the Court granted the Second Joint Motion and continued to hold the appeal in abeyance until February 15, 2016, and directed the parties to file another status report on or before February 15, 2016. On February 15, 2016 the parties filed a third status report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until May 2, 2016 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.**

(Total 336.2 hours 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.**

(Total 125.4 hours – Lamphere)

#### MEMORIAL HEALTH SYSTEM

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.

(Mullen / Retherford, Mullen & Moore)

#### 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.** (Total 1636.6 hours –Lessig /McCall / Ogletree Deakins)

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

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

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

STATUS: Summons and Complaint served August 24, 2015. September 14, 2015 City Defendants file Answer and Affirmative Defenses. October 26, 2015 Defendant Rosenoff files Answer to Complaint and Affirmative Defenses. Discovery is ongoing.  
(Total 336.9 hours – White)

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

United States District Court Case No. 14-cv-01471-RPM  
Tenth Circuit Court of Appeals 16-1206

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

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

(Total 1243.1 hours – Lamphere / White)

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.**

(Total 61.2 hours – Turner)

People of the State of Colorado v. Robert Crouse

Colorado Court of Appeals Case No. 2012 CA2298

Supreme Court Case No. 2014 SC 109

STATUS: City of Colorado Springs files a motion to either be an added party or in the alternative leave to file an amicus brief. City files amicus brief along with motion. July 26, 2013 Defendant files Answer Brief. August 29, 2013 People file Reply Brief. October 24, 2013 Appellant files notice of supplemental authority. November 20, 2013 Oral argument conducted. December 2, 2013 Parties file post-argument briefs as directed by Court. December 19, 2013

Court of Appeals issues order affirming judgment of trial court that marijuana and marijuana plants should be returned to Crouse. January 31, 2014 Petition of Writ of Certiorari filed by District Attorney on the issue of whether, in a matter of first impression, the court of appeals erred in concluding that the federal Controlled Substances Act does not preempt Article XVIII, section 14(2)(e) of the Colorado Constitution, where the state directive requires law enforcement officers to distribute marijuana to medical marijuana patients in violation of the CSA's prohibition of such acts. February 20, 2014 People file Reply brief. June 15, 2015 Petitioner's Writ of Certiorari is granted and Opening Brief will be due December 10, 2015 after enlargement of time was granted by Court. December 10, 2015 City of Colorado Springs files Motion to Participate as Amicus Curiae and Amicus Brief. December 11, 2015 Petitioner files opening brief. On December 23, 2015, Court grants motion and the brief of Amicus Curiae is accepted. March 30, 2016 Respondent files Answer Brief. **Oral argument is set for October 5, 2016.**  
(Total 219.6 hours – 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

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

STATUS: Summons and Complaint served December 29, 2015. Notice of removal to Federal Court filed on January 15, 2016. January 19, 2016 Defendants file motion to dismiss. Scheduling conference scheduled for April 14, 2016. February 9, 2016 Plaintiff files response to Defendant's motion to dismiss. February 23, 2016 City Defendants file reply to its motion to dismiss.

(Total 142.9 hours – Lamphere)

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

El Paso County District Court Case No. 2015CV33748

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

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

(Total 164.6 hours – Stewart)

#### REAL ESTATE SERVICES

City of Colorado Springs, Colorado v. Delores Art; Plaza Home Mortgage, Inc.; Seneca Mortgage Servicing, LLC; Thomas S. Mowle, in his capacity as El Paso County Public Trustee; and Mark Lowderman, in his capacity as El Paso County Treasurer



El Paso County District Court Case No. 2016CV30672

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Woodmen Road Corridor Improvement Project.

STATUS: Petition in Condemnation filed March 8, 2016. April 13, 2016 Seneca files Answer to Petition in Condemnation. **July 11, 2016 Court grants motion for summary judgment and issues Rule and Order conveying property to City. August 3, 2016 City files notice of deposit of funds into court registry.**

(Total \_\_\_ hours – Turner / Blieszner – Wellborn, Sullivan Meck & Tooley, P.C.)

City of Colorado Springs, Colorado v. Gerald R. Haag; Jacqueline V. Haag; Bank of America, N.A.; Mortgage Solutions of Colorado , LLC; TBF Financial LLC; Credit Service Company, Inc.; Bonded Collection Service of Longmont, Inc. d/b/a BC Services, Inc; Thomas S. Mowle, in his capacity as El Paso County Public Trustee; and Mark Lowderman, in his capacity as El Paso County Treasurer

El Paso County District Court Case No. 2016CV30686

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Woodmen Road Corridor Improvement Project.

STATUS: Petition in Condemnation filed March 9, 2016. April 26, 2016 Petitioner files motion for summary judgment.

(Total 2.1 hours – Turner / Blieszner – Wellborn, Sullivan Meck & Tooley, P.C.)

## STREETS

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

El Paso County District Court Case No. 2015CV30940

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

STATUS: Complaint and Summons served April 21, 2015. May 15, 2015 City files Answer. June 15, 2015 City files Answer to Amended Complaint. June 25, 2015 Notice of Dismissal of H2 Properties, LLC only. August 6, 2015 Defendant Sun Plaza files Answer. Four-day jury trial scheduled to begin August 1, 2016. Discovery is ongoing. Settlement conference scheduled for June 16, 2016. Defendant City of Colorado Springs files motion to dismiss on May 18, 2016. On May 24, 2016 City files response to Sun Plaza's motion for summary judgment filed May 3, 2016. **June 10, 2016 Defendant Sun Plaza files response to City's motion to dismiss. June 15, 2016 Plaintiff files response to City's motion to dismiss. June 27, 2016 Plaintiff files multiple motions *in limine*; Sun Plaza files motion for determination of a question of law; and City files reply to its motion to dismiss. June 28, 2016 Sun Plaza's motion for summary judgment is granted in part and sets hearing for City's motion to dismiss. July 12, 2016 Court orders the July 15, 2016 hearing is vacated after a notice of settlement between the Plaintiff and the City of Colorado Springs. July 21, 2016 Parties file unopposed motion for dismissal with prejudice.**

(Total 254.9 hours – Stewart)

James Perea, as personal representative of the estate of John R. Perea, deceased v. Louis A. Reza and the City of the Colorado Springs

El Paso County District Court Case Number 2016CV31187

CLAIM: Plaintiff alleges wrongful death due to negligence of City Defendant in a motor vehicle vs bicycle collision.

STATUS: Summons and Complaint served May 3, 2016. May 24, 2016 City files Answer.

**June 1, 2016 Louis Reza files Answer to Complaint and Jury Demand. Reza is granted dismissal with prejudice by the Court on July 21, 2016.**

(Total \_\_\_hours – Stewart)

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

El Paso County Court Case No. 2015C45976

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

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

(Total 31.9 hours - White)

## TRANSIT SERVICES

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

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

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

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

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

Court of Appeal, Case Number 2013CA001711

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

STATUS: In January, 2010, ATU asserted to First Transit that First Transit is a party to the Section 13© Agreement and is required by the Agreement to apply the South Facility collective bargaining agreement to the Pikes Peak Rural Transportation Authority bus transit operation (referred to as the "North Facility") and all North Facility collective bargaining unit employees or to provide dismissal allowances, thereby burdening First Transit with potential liability. ATU filed suit against First Transit in Colorado State District Court for Denver County, Colorado on July 30, 2010. On August 19, 2010, First Transit filed a Notice of Removal in the U.S. District

Court, District of Colorado. On September 13, 2010, First Transit filed a third-party complaint against the City seeking indemnification pursuant to the parties' services agreement and alleging that the City is contractually obligated to assume sole responsibility, indemnify, and compensate First Transit for any and all costs and liability resulting from ATU's claims raised pursuant to the 13(c) Agreement. On November 1, 2010, the City filed a motion to remand to El Paso County District Court. First Transit filed its response to the City's motion to remand on November 23, 2010, and the City replied on December 7, 2010. A hearing on the City's motion to remand was held on January 7, 2011. On February 14, 2012, the Court issued an order granting the City's motion to remand, but remanding the case to the District Court for the City and County of Denver, Colorado. On February 28, 2012, the City filed a motion to dismiss for failure to state a claim for which relief can be granted, C.R.C.P. 12(b)(5) in the District Court for the City and County of Denver, Colorado. On that same date, the District Court for the City and County of Denver, Colorado *sua sponte* issued an order remanding the case to the El Paso County District Court (thereby initiating Case No. 12cv81). On March 1, 2012 ATU filed a motion to reconsider Court's order of February 28, 2012. The City reaffirmed its motion to dismiss by re-filing same in 12cv81. The city responded to ATU's motion to reconsider on March 14, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue. And, on March 19, 2012, ATU filed response to the City's motion to dismiss. On March 20, 2012, First Transit filed a response in opposition to ATU's motion to reconsider the Denver District Court's remand to El Paso County; and, on March 20, 2012 First Transit also responded in support of the City motion to dismiss. ATU replied on March 21, 2012 in support of its motion reconsider the Denver District Court's order remanding to El Paso County. The City then, on March 26, 2012, responded to ATU's motion to hold the proceedings in abeyance. On March 27, 2012 ATU replied to First Transit's response in support of City's motion to dismiss; and ATU replied to First Transit's response regarding the order concerning remand to El Paso County. On March 30, 2012, the City files replied to ATU in support of the City's motion to dismiss. On April 2, 2012, ATU replied in support of its motion to hold proceedings in abeyance. A motions hearing was held on June 21, 2012. On July 6, 2012, the El Paso County District Court (12cv81) issued an order stating it would take no action regarding the City's motion to dismiss until the a judgment was entered in 2007cv1322.

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

ATU filed a notice of decision on August 28, 2012, notifying the El Paso County District Court in 12cv81 that the Court had ruled in 07cv1322. October 12, 2012 the Court issues order denying City's motion to dismiss in 12cv81. The City on November 8, 2012, filed its answer and affirmative defenses to First Transit's third party complaint. The parties exchanged disclosures on December 18, 2012. Trial is scheduled for September 16, 18 and 19, 2013. The parties have responded to written discovery in advance of the May 31, 2013 discovery cut-off

date and dispositive motion deadline of June 17, 2013. May 24, 2013 Court grants stipulation to stay proceedings regarding third party claims. June 17, 2013 First Transit files motion for summary judgment. July 8, 2013 Defendant First Transit files response in opposition to Plaintiff's motion for summary judgment; Plaintiff files brief in opposition to First Transit's motion for summary judgment. July 17, 2013 Plaintiff files amended reply brief in support of its motion for summary judgment. July 24, 2013 Court grants Plaintiff's motion for summary judgment and thus agrees to proceed to arbitration; Court denies First Transit's motion for summary judgment. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b). August 29, 2013 Court grants order for final judgment pursuant to 54 (b). City's liability determination is stayed. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief. December 3, 2013 First Transit files amended opening brief. January 21, 2014 First Transit responds to Court's Show Cause Order. February 28, 2014 Court files order of dismissal as Court determines it lacks jurisdiction over appeal for lack of final appealable judgment. April 11, 2014 First transit petitions for writ of certiorari from the order of dismissal. April 25, 2014 ATU files Brief in opposition to petition for certiorari. May 2, 2014 First Transit files reply brief in support of petition for writ of certiorari. August 25, 2014 First Transit files motion to lift stay on proceedings re third party claims. August 26, 2014 Amalgamated files objection to First Transit's motion to lift stay. September 10, 2014 First Transit files consolidated reply in support of its motion to lift the stay on proceedings in the third-party claim and response to Plaintiff's ATU's motion to condition the order lifting the stay of the third-party claim. Court denied First Transit's motion to lift the stay. January 20, 2015 The Colorado Supreme Court denies First Transit's Petition for Writ of Certiorari. ATU and First Transit are in the process of completing arbitration.

(Total 543.4 hours –Gendill)

(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.**

(Total 1.4 hours – 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. Discovery commences. **Three-day jury trial scheduled to commence May 22, 2017.**

(Edmund Kennedy at Hall & Evans)

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

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

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

STATUS: Summons and Complaint served December 1, 2015. The responsive pleading is due February 22, 2016, and the scheduling conference is set for March 1, 2016. A protective order was entered February 10, 2016. Defendants filed a Partial Motion to Dismiss February 22, 2016, Plaintiff filed Response April 5, 2016, and Defendants filed a Reply on April 18, 2016. Magistrate issues recommendation granting City's motion to dismiss and giving Plaintiff no leave to amend. **July 7, 2016 Plaintiff files objection to report and recommendation of Magistrate Judge. Response filed by the City July 7, 2016. July 22, 2016 Plaintiff files motion to file amended complaint. City files its Response to Plaintiff's Motion for Leave to Amend Complaint on August 22, 2016. Discovery responses due in response to Defendants' first discovery requests on August 25, 2016, and to Plaintiff's first discovery requests on September 16, 2016.**

(Total 212.9 hours – Lessig/Rose)

#### UTILITIES

Robert Alexander in his capacity as Receiver for the Spruce Lodge and Aztec Motel v. Colorado Springs Utilities, an enterprise of the City of Colorado Springs

El Paso County District Court Case No. 2015CV30231

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

STATUS: Complaint and Waiver of Service received February 2, 2015. February 9, 2015 Plaintiff files motion to consolidate actions with 14CV30156 and amended complaint. February 12, 2015 City files waiver and acceptance of service. March 5, 2015 City files motion to dismiss. March 26, 2015 Plaintiff files response to Defendant's motion to dismiss and request for hearing. April 2, 2015 Defendant files reply to its motion to dismiss. Hearing on City's motion to dismiss set for June 11, 2015. June 30, 2015 Court issues order denying City's motion to dismiss. July 14, 2015 City files Answer and Affirmative Defenses. March 18, 2016 Plaintiff files motion for summary judgment. March 28, 2016 Defendant files motion for summary judgment. April 8, 2016 Parties file responses to motions for summary judgment. April 18, 2016 Plaintiff files reply in support of its motion for summary judgment. April 22, 2016 Defendant files reply to its motion for summary judgment. **Court denies summary judgment motions. A two-day jury trial is scheduled for January 17 and 19, 2017.**

(Total 489.8 hours – 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. 5 day jury trial scheduled for March 14, 2017. Qwest files motion for determination of question of law.**

(Total 126.9 hours – Lamphere)

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

El Paso County District Court Case No. 2014CV34137

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

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

STATUS: Summons and Complaint served November 18, 2014. December 9, 2014 City files Answer, Affirmative Defenses and Jury Demand. December 11, 2014 City files notice of Removal to United States District Court. December 19, 2014 El Paso County Court orders Removal and closes case. Settlement Conference scheduled for February 26, 2015. Discovery commences. April 21, 2016 City files Motion for Summary Judgment and Motion to Dismiss. May 27, 2016 Chiddix files brief in opposition to motion for summary judgment. **June 24, 2016 Reply to response to motion for summary judgment and motion to dismiss. August 10, 2016 Parties file Motion in Limine. August 11, 2016 Court issues order granting in part and denying in part Defendant's Motion for Summary Judgment. Trial scheduled August 22-26, 2016.**

(Total 761.9 hours – Lamphere)

(CC)

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

El Paso County Combined Court Case No. 2013CV032113.

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

STATUS: December 6, 2013 City files Petition in Condemnation. December 9, 2013 City files motion for immediate possession. December 10, 2013 City files Notice of Commencement of Action – Lis Pendens. December 31, 2013 Defendant Balink files disclaimer of interest. February 4, 2014 Order for Immediate Possession granted. Status report due July 16, 2014. September 11, 2014 Parties propose commissioners. October 9, 2014 Court appoints commissioners. January 26, 2015 Respondents file Motion for determinations of law. February 13, 2015 Petitioner files response to Motion for determinations of law. February 23, 2015 Reply to response to motion for determination so flaw. February 26, 2015 Court files order on Lorson's Motion for determinations of law that finds the City of Colorado Springs does have authority to condemn and is exempt from C.R.S. 38-1-122(1.5) in this case. 5-Day Trial to Commissioners set to begin April 19, 2016. September 9, 2015 Parties file unopposed motion for Court approval of waiver of just compensation and settlement agreement between Petitioner and Widefield Water and Sanitation District. December 23, 2015 Petitioner files motion *in limine*. January 12, 2016 Petitioner files motion to amend Petition in Condemnation to include

Respondent Love in Action; Respondent files response to motion *in limine*. January 25, 2016 Petitioner files reply in support of motion *in limine*. January 29, 2016 Court denies motion *in limine*. April 7, 2016 Petitioner files motion to amend petition and request for forthwith determination. April 13, 2016 Order granting Petitioner's motion to amend petition. April 19-22, 2016 Trial to Commission. April 25, 2016 Certificate of Ascertainment and Assessment and Report of Commissioners filed. May 5, 2016 Respondent's Bill of Costs filed. May 25, 2016 Petitioner files response in partial opposition to Bill of Costs. **June 8, 2016 Court issues order awarding limited bill of costs.**

(Total 176.7 hours – Turner/Skogg – Lowe Fell & Skogg)

(CC)

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

El Paso County District Court Case No. 2013CV743

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

STATUS: January 23, 2013 Petition in Condemnation and Motion for Immediate Possession. January 24, 2013 Notice of Lis Pendens recorded with the El Paso County Clerk & Recorder. March 8, 2013 Ultra Resources files response in opposition to motion for immediate possession. March 13, 2013 Petitioner files brief in support of motion for immediate possession. March 19-20, 2013 Immediate possession hearing held. March 20, 2013 Court grants order for immediate possession. August 28, 2013 Motion for leave to file amended petition. September 23, 2013 Court grants leave to file amended petition. Status Conference held October 28, 2013; Order issued granting second motion for immediate possession. December 9, 2013 Parties file partial joint nomination of commissioners, nominating two commissioners (Steve Pelican and Edwards Shields, and request for additional time to complete nomination). December 13, 2013 Parties file joint nomination of final commissioner (Kirk Samelson). December 16, 2013 Court issues order granting the nomination of the commissioners. Four day trial to commission set for February 9, 2015. Mediation scheduled for August 28, 2014. November 21, 2014 Petitioner's file motion for leave to file second amended petition. December 5, 2014 Court grants order to continue trial. February 24, 2015 Respondents Banning Lewis Holdings file motion to compel discovery responses. Court denies motion to compel. March 17, 2015 City files response to motion to compel. March 24, 2015 Respondents file reply to motion to compel. May 7, 2015 Court denies Respondents' motion to compel. May 29, 2015 Respondents BLR files motion for clarification on order denying motion to compel. July 22, 2015 Court denies motion for clarification. December 18, 2015 Parties file Motions *in Limine*. January 15, 2016 Parties file responses to Motions *in Limine*. January 29, 2016 Parties file replies to Motions *in Limine*. February 17, 2016 Court denies the Petitioner's Motion *in Limine* and granted in part Respondent's Motion *in Limine*. March 2, 2016 Respondents file motion to reconsider the Court's February 17, 2016 and May 7, 2015 Orders. April 6, 2016 Court files further detail on Order based on Motions to Reconsider. May 9, 2016 Parties file Trial Briefs. May 23, 2016 Trial begins. **June 23, 2016 Stipulated Final Rule and Order. July 28, 2016 Respondent files bill of costs and motion for attorney fees.**

(Total 219.95 hours – Turner / Dougherty – Lewis Roca Rothgerber)

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

El Paso County District Court Case No. 2013CV32158.

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

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

(Total 430.35 hours – Gendill)

(OC)

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



and sets pre-motion conference. January 30, 2013, Judge holds pre-motion conference on intervention in White Plains, New York; intervention granted to all by consent at conclusion of conference. Per Judge's briefing schedule: Motion(s) to dismiss by EPA and Defendant-Intervenor South Florida Water Management District, and Plaintiffs' motions for summary judgment filed March 22, 2013; EPA and Defendant-Intervenors responses and cross-motions for summary judgment filed June 7, 2013; Plaintiff's responses/replies filed July 7, 2013; EPA and Defendant-Intervenors replies filed August 2, 2013. December 19, 2013 oral argument on cross motions for summary judgment scheduled held in White Plains, NY. March 28, 2014 Judge grants Plaintiffs' and Intervenor- Plaintiffs' Motions for Summary Judgment, denies Defendants' and Intervenor- Defendants' Motions and Cross-motions for Summary Judgment, vacates the Water Transfers Rule to the extent it is inconsistent with the statute and in particular the phrase "navigable waters" as interpreted in Rapanos and in the Opinion, and remands the Water Transfers Rule to the extent EPA did not provide a reasoned explanation for its interpretation. May 30, 2014, Western Providers, Western States, EPA and other inventor-defendants file notices of appeal. September 9-15, 2014 Western Providers and other appellants file opening briefs. December 24, 2014 Appellees to file responsive briefs. January 6, 2015 all parties request oral argument. January 26, 2015 Appellants file reply briefs. December 1, 2015 court held oral argument in NYC.

(Peter D. Nichols)

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

El Paso County District Court Case No. 2015CV31247

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

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

(Total 218.3 hours – Lamphere)

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.**

(Total 197.7 hours - Turner)

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

El Paso County Court Case No. 15C1061

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

STATUS: Complaint and Summons served September 4, 2015. September 23, 2015 Defendants file motion to dismiss. October 13, 2015 Plaintiff files response to Defendants motion to dismiss. October 20, 2015 City Defendants files reply in support of its motion to dismiss. December 1, 2015 Court issues order denying motion to dismiss. December 15, 2015 City files Answer under simplified procedure.

(Total 42.5 hours – Turner)

**ADMINISTRATIVE SECTION**

**DISPOSED MATTERS**

**NEW MATTERS**

**CURRENT MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-01461.

Claimant brings charge of alleged gender and age discrimination dated April 8, 2016. Perfected charge filed April 26, 2016. **Dismissal and Right to Sue Notice issued April 27, 2016. The 90 deadline to file a lawsuit is August 1, 2016.**

(Total 10.4 hours – Lessig, 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.

(Total 20.9 hours – Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2016-00766.

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.

(Total 35.7 hours – 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.

(Total 45.4 hours - Lessig/McCall)

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

Claimant brings a CADA charge of discrimination based on age, perceived disability, and in retaliation for engaging in protected activity on August 20, 2015. The City engaged in mediation which was not successful. Position Statement and RFI filed November 24, 2015; pending EEOC decision. **Determination/Dismissal and Right to Sue Notice issued August 11, 2016. If no appeal of the determination is filed with the CCRD, the 90 day deadline to file a lawsuit is November 9, 2016.**

(Total 126 hours – Lessig/Rose)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01430.

Claimant brings charge of alleged gender and age discrimination filed on April 21, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01056.

Claimant brings charge of alleged gender and age discrimination filed on March 2, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 19 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01060.

Claimant brings charge of alleged gender and age discrimination filed on March 3, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01115.

Claimant brings charge of alleged gender and age discrimination filed on March 10, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 20.6 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01123.

Claimant brings charge of alleged gender and age discrimination filed on March 13, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18.9 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01180.

Claimant brings charge of alleged gender and age discrimination filed on March 19, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.

(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01124.

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

(Total 18.5 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01143.

Claimant brings charge of alleged gender and age discrimination filed on March 16, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01138.  
Claimant brings charge of alleged gender and age discrimination filed on March 17, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 19.4 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-01132.  
Claimant brings charge of alleged gender and age discrimination filed on March 17, 2015. Position Statement/RFI filed June 26, 2015. Waiting for response from EEOC.  
(Total 18 hours – Lessig / McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00120.  
Claimant brings charge of alleged age discrimination and ADA discrimination on December 10, 2014. Position Statement/RFI filed February 6, 2015. Waiting for response from EEOC.  
(Total 102.8 hours – McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00766.  
January 28, 2015 Claimant brings charge of discrimination based on Title VII. Perfected Charge filed February 17, 2015. Position Statement and RFI Responses filed April 22, 2015. Dismissal and Right to Sue Notice issued, deadline to file a lawsuit under Title VII is April 18, 2016, deadline for lawsuit under the EPA is December 14, 2016. No lawsuit filed under Title VII; waiting for EPA deadline of December 14, 2016.  
(Total 52.35 hours – McCall)

**UTILITIES: Water Court Cases**

**Total Active Application Cases:        7 (4 Diligence cases)**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
13CW3077	Green Mountain Reservoir
15CW3001	Chilcott Ditch Company
15CW3002	Fountain Mutual Irrigation Company
15CW3019	Blue River (Diligence)
15CW3050	Twin Lakes (Diligence)
16CW3011	Twin Lakes (Diligence)
16CW3022	Homestake Partners (Diligence)

**Application Cases Before Water Referee:        6**  
**Application Cases Before Water Judge:         1**

**Total Objector Cases:                        24**

**Stipulated    7**  
**Active    17**

**Active Before Water Referee:                    13**  
**Active Before Water Judge:                      4**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
10CW4	Arkansas Valley Water
11CW77	Lower Arkansas Valley Water & Larkspur, Inc.
12CW94	Catlin Augmentation
12CW176	Climax Molybdenum Company

## **WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

### **Active cases:**

Municipal – 62  
Utilities – 23  
Memorial - 2

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

Municipal – 0  
Utilities – 0

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

Municipal – 0  
Utilities – 1

## **HOSPITAL COLLECTION MATTERS**

### *filed in May 2016*

BC Services – 7  
CSC - 4

### *filed in June 2016*

BC Services – 3  
CSC - 14

### *filed in July 2016*

BC Services – 0  
CSC - 21

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<u>MAY</u>	<u>JUNE</u>	<u>JULY</u>
Cases Docketed for Trial by Court	266	226	195
Cases tried:	144	116	115
Cases handled without trial:	122	110	80
Cases Docketed for Trial by Jury:	23	19	28
Cases tried:	0	1	2
Cases handled without trial:	23	18	26
Cases Handled on Deferred Docket:	257	252	328
Cases Handled at Pretrial:	527	604	536
Cases Handled at Arraignments:	1035	826	661
Mailed Dispositions:	29	33	32
Deferred Sentences at Arraignment:	0	0	0
Criminal Arraignments Screened:	179	0	544
Jail Docket:	418	498	444
Liquor Hearings:	3	0	2
NPOI:	118	83	149
Good Driver Letters Mailed:	514	568	471
TOTAL MATTERS:	3005	2774	3016