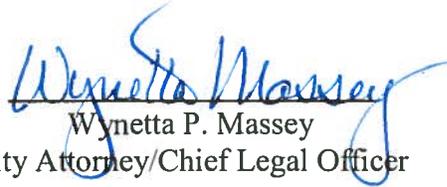


QUARTERLY REPORT  
TO CITY COUNCIL

LITIGATION AND ADMINISTRATIVE MATTERS

May 2014

Covering February through May 2014



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

## DISPOSED CASES

### Bass, Steven v. The City of Colorado Springs

El Paso County District Court Case Number 2012CV365

CLAIM: Steven Bass appeals his Municipal Court Case 11M32022 after the jury found him guilty of violating section 9.6.110 of the Colorado Springs City Code “Camping on Public Property.” Appellant Bass argues that the Anti-Camping ordinance is unconstitutional both facially and as applied and the trial court erred by preventing Bass from testifying that he was engaged in expressive activity. Appellant Bass requests a remand with instructions to reverse his conviction for violating the ordinance and to dismiss the charges against Mr. Bass.

STATUS: March 1, 2013 Appellant Steven Bass files Opening Brief. April 22, 2013 Appellee City files Answer Brief. May 13, 2013 Appellant Bass files Reply Brief. August 1, 2013 District Court affirms Bass’s Municipal Courts convictions. September 12, 2013 Bass files Petition for Writ of Certiorari to the Colorado Supreme Court. September 26, 2013 City files Opposition Brief to Petition for Writ of Certiorari. October 3, 2013 Bass files reply brief in support of petition. October 8, 2013 Notice of Electronic Certified record to the Colorado Supreme Court. **March 17, 2014 Petition of Writ of Certiorari is denied.**

(Total 104.25 hours - Turner / J. Smith)

(OC)

CHOSTNER, JEFF, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR THE TENTH JUDICIAL DISTRICT, COLORADO; THE OFFICER OF THE DISTRICT ATTORNEY FOR THE TENTH JUDICIAL DISTRICT, COLORADO, AND ROCKY MOUNTAIN ENVIRONMENTAL LABOR COALITION v. COLORADO WATER QUALITY CONTROL COMMISSION; STEVEN H. GUNDERSON, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE COLORADO WATER QUALITY CONTROL DIVISION OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; AND COLORADO SPRINGS UTILITIES, Pueblo County District Court Case No. 2011CV174. Plaintiffs are requesting declaratory/injunctive relief appealing a final determination of the Colorado Water Quality Control Division and the Water Quality Control Commission issuing a federal Clean Water Act Section 401 Water Quality Certification for the Southern Delivery System (SDS) project which proposes to pump raw water from Lake Pueblo to Colorado Springs via a series of pumping stations, pipelines, return flows, and manmade reservoirs and which Plaintiffs alleges will adversely impact water quality and/or water flow in segments of the Arkansas River, Fountain Creek, and Wild Horse Creek in Pueblo County. March 15, 2011 Summons, complaint, and waiver of service of process received. June 17, 2011 Court issued an order agreeing with State’s argument that a review of the agency action pursuant to C.R.S. 25-8-404 is a remedy that is available and a review pursuant to C.R.C.P. 106

is not the correct mechanism under these circumstances. On June 20, 2011 Court issued an order denying Utilities' motion to change venue; the Court denied the Defendants' motion to dismiss on the grounds that the issue is moot. On April 12, 2012, Judge Reyes of the Pueblo County District Court entered his decision, which had actually been drafted by counsel for the Plaintiffs, and held that the decisions of the Division and the Commission to grant the 401 Certification, had been arbitrary and capricious. The Division and Utilities appealed in May 2012, and briefing was completed on December 21, 2012. On July 18, 2013, the Court of Appeals issued its decision reversing Judge Reyes' order in all respects, thereby affirming the Commission's decision. Petitioners filed a petition for certiorari review with the Colorado Supreme Court on August 29, 2013, and both Colorado Springs and the State parties filed opposition briefs. **On April 28, 2014, the Colorado Supreme Court denied the petition for certiorari, meaning the judgment of the Court of Appeals will stand.** (D. Robbins at Hill and Robbins, PC, Denver, outside counsel for Utilities).

City of Colorado Springs, Colorado v. Marketplace East (P1) LLC, a Delaware limited liability company; RGA Reinsurance Company, a Missouri corporation; Tomas S. Mowle, El Paso County Public Trustee; and Robert C. Balink, El Paso County Treasurer El Paso County Combined Court Case No. 2014CV030000.

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: January 2, 2014 City files Petition in Condemnation, motion for immediate possession, and notice of lis pendens. **February 19, 2014 Petitioner files Notice of Dismissal without prejudice.** (Total 13.25 hours - Turner/Blieszner/Banner)

City of Colorado Springs Municipal Court v. Karl O'Brian Dent  
El Paso County District Court Case Number 13CV194

CLAIM: Appellant Dent claims the court erred in allowing the case to move to trial and there was no evidence of speeding.

STATUS: June 7, 2013 Appellant Dent files Notice of Appeal and Designation of Record. August 6, 2013 Appellee City files Motion to Dismiss. September 3, 2013 Court issues order granting City's motion to dismiss. (Total 2.75 hours - Cho)

Department of Transportation v. Chestnut Street Partners, LLC, a Colorado Limited Liability Company; Colorado Springs National Bank, a corporation organized and existing under the laws of the State of Colorado; America's Community Bank, a corporation organized and existing under the laws of the state of Missouri; City of Colorado Springs; Thomas S. Mowle, Public Trustee of El Paso County; Robert C. "Bob" Balink, Treasurer of El Paso County.

El Paso County District Court Case No. 2014CV030072

CLAIM: CDOT files this eminent domain proceeding for improvement to I-25 at Cimarron and needs to acquire interests in real property for the construction of highway improvements.

STATUS: January 8, 2014 Petition in Condemnation filed along with Summons and Proposed order for immediate possession hearing. On February 4, 2014 City files Waiver of

Service and Disclaimer of Interest and motion for dismissal. **February 26, 2014 Court grants order dismissing City of Colorado Springs.**

(Total 4.25 hours – Gendill)

Colorado Housing and Finance Authority v. Shawn Graeber; Nicole Graeber; Police Department – City of Colorado Springs; The Public Trustee for El Paso County, Colorado; and all unknown persons who claim any interest in the subject matter of this action

El Paso County District Court Case No. 13CV32071.

CLAIM: Plaintiff brings this action to quiet title concerning the real property located at 1834 Montezuma Drive and seeks a complete adjudication of the rights of all parties. Interest of City is a lien assessment, which was filed in July, 2013.

STATUS: December 18, 2013 Summons and Complaint received. December 20, 2013 County files disclaimer of interest. January 8, 2014 City files answer and affirmative defenses. January 14, 2014 Plaintiff files motion for default against Defendants Shawn and Nicole Graeber. January 29, 2014 Stipulation filed with the Court, Plaintiff and City have reached a settlement and City fully disclaims any further interest in the Property. **March 6, 2014 Court grants order for default judgment and decree quieting title.**

(Total 24.75 hours - Lamphere)

(IC)

Elliott, Mark T., as Conservator of Morgan Harper, a Minor v. Norman G. Cole, Jr., M.D., and Memorial Health System, d/b/a Memorial Hospital Corporation

El Paso County District Court Case No. 2011CV6167

CLAIM: Plaintiff alleges that in February, 1998, the mother of minor child Morgan Harper developed complications during her labor and delivery of Plaintiff Harper while under the care of Defendant Cole and employees of Memorial Health System. Plaintiff alleges that as a result of these complications and the negligent care rendered to the mother, Plaintiff Harper suffered and continues to suffer from several conditions and has required numerous surgeries and additional treatments and therapies.

STATUS: December 7, 2011 Summons and complaint received. January 13, 2012 Memorial Hospital files its Answer. Discovery has commenced. **Case resolved against Memorial for \$400,000.**

(DeLine at Retherford, Mullen, and Moore)

(OC)

FRIENDS OF THE EVERGLADES, ET AL., v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND STEPHEN L. JOHNSON, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

United States Court of Appeals for the Eleventh Circuit Case No. 08-14247-CC. This is a multidistrict case that consolidated actions filed in various federal district courts and circuit courts of appeal. Numerous Petitioners seek to vacate the United States Environmental Protection Agency's Final Water Transfers Rule, 40 CFR 122.3(i). This rule clarifies that transfers of raw water, with no intervening uses, between distinct water bodies within the United States are not regulated under the federal National Pollutant Discharge Elimination System ("NPDES"), codified as Section 402 of the Clean Water Act. As such, water transfers do not require NPDES permits. August 11, 2008, Motion for leave to intervene filed by

the City of Colorado Springs, along with nine other Western water providers (collectively the “Joint Interveners”), in support of Water Transfers Rule. September 10, 2008, Order entered by single Eleventh Circuit judge denying Joint Interveners’ Motion and multiple other motions for intervention (15 in total), granting intervention for only one party (South Florida Water Mgmt. Dist.), and requiring the Parties to show cause why proceedings in these consolidated cases should not be stayed pending disposal of a related case before the Eleventh Circuit Court of Appeals, *Friends of the Everglades, et al. v. South Florida Water Management District, et al.* Subsequent motions for reconsideration were unsuccessful and matter was stayed by the 11th Circuit pending resolution of the *Friends of Everglades, et al.* appeal. Due to the importance of this issue, the City of Colorado Springs continues to monitor this case as a non-party. After the Supreme Court denied *certiorari* in *Friends of the Everglades*, on December 13, 2010 EPA filed a motion for summary denial of petitions for review. January 3, 2011 Petitioner Miccosukee Tribe of Florida files agreed request to stay merits briefing pending disposition of the EPA’s motion for summary denial of petitions for review. January 4, 2011 Florida Wildlife Federation files motion for remand. January 30, 2011, Court approves stipulated request to stay briefing on merits pending disposition of EPA’s motion for summary denial; EPA granted until February 18, 2011 to file combined responses to pending motions. May 6, 2011, Court denies Colorado’s Motion for Reconsideration of Motion to Intervene, denies motions to remand or transfer without prejudice, denies EPA’s Motion for Summary Denial without prejudice, and orders clerk to establish a briefing schedule -- briefs to address both jurisdiction of the Court and the merits. August 14, 2011 Plaintiff file briefs. October 27, 2011 Defendant EPA and intervenors file responses. November 3, 2011 City and other western water users file amicus curiae brief in support of EPA. December 14, 2011 Petitioners file responses. February 24, 2012 Motion of City and other western water users’ motion to appear as amicus curiae granted. August 23, 2012 Notice of change of law firm was filed by Counsel Nichols. August 30, 2012 court holds oral argument in Miami. October 26, 2012 panel dismisses challenges for lack of jurisdiction. November 13, 2012 Plaintiffs in related Case Nos. 08-cv1785-civ and 08-80922-civ in Southern District of Florida dismiss challenges, and subsequently move to intervene in related Case Nos. 08civ5606 and 08civ8430 in Southern District of New York (see below). January 23, 2013, EPA moves for en banc reconsideration. March 5, 2013, Court denies EPA’s petition. June 28, 2013, EPA *et al.* file petitions for *certiorari* seeking review by U.S. Supreme Court. October 15, 2013, U.S. Supreme Court denies *certiorari*.  
(Peter D. Nichols)

KG Store 674, LLC v. Frederick R. Hastings AKA Frederic Reed Hastings, The City of Colorado Springs, a home rule city, Robert C. Balink in his Official Capacity as Treasurer of El Paso County, Colorado (“El Paso County Treasurer”), and all unknown persons who claim any interest in the subject matter of this action.

El Paso County District Court Case No. 13CV1276

CLAIM: Plaintiff seeks decree determining Defendants have no interest, estate or claim of any kind to “Subject Property” (intersection of South Nevada Ave and Mill Street to the intersection of South Nevada Avenue and Las Vegas Street) and ultimately quieting the title.

STATUS: March 5, 2013 Summons and Complaint served. April 9, 2013 City files Stipulated disclaimer of interest in real property under Rule 105(c). City is monitoring. August 12, 2013 Combined Order entered granting Plaintiff’s application for entry of default judgment,

plaintiff's motion for summary judgment and determination of question of law and entry of decree quieting title. August 29, 2013 Final order from Court grants Plaintiff's Motion for Summary Judgment and Determination of Question of Law and entry of decree quieting title. September 6, 2013 Motion filed by Plaintiff to release Lis Pendens. September 16, 2013 Court grants order to release Lis Pendens.

(Total 20.75 hours - McCall)

(IC)

Lately, Shavonna v. UCH-MHS, d/b/a Memorial Health System; City of Colorado Springs, d/b/a Memorial Hospital; City of Colorado Springs d/b/a Memorial Health System; Memorial Health System, Inc.; and Memorial Hospital Corporation

El Paso County District Court Case Number 2013CV130

CLAIM: Plaintiff claims that due to Defendant's negligence she slipped and fell in a puddle in Memorial Hospital causing injuries.

STATUS: March 15, 2013 Summons and Complaint served. Venue was recently changed from Adams County to El Paso County. Discovery has commenced and a Motion for Cost Bond is pending (Plaintiff now resides in Georgia, so her deposition will entail some additional costs).

Trial scheduled for June 16, 2014. **Case settled for \$20,000.**

(Watts at Retherford, Mullen & Moore, LLC)

Peters, Duaine v. City of Colorado Springs

El Paso County District Court Case No. 2013CV2222

CLAIM: Plaintiff settled his claims with El Paso County for \$150,000 arising from a training accident on January 6, 2012. Plaintiff now seeks declaratory relief and a Jorgensen Hearing to determine the proper apportionment of the settlement proceeds between Plaintiff Peters, a CSPD Officer and the City.

STATUS: May 15, 2013 Plaintiff files Complaint. May 20, 2013 City files waiver of service. June 10, 2013 City files Answer and Affirmative Defense to Complaint for declaratory relief and request for Jorgensen hearing. Jorgensen Hearing scheduled for August 16, 2013. August 13, 2013 Parties file witness list; Defendant files motion to strike expert testimony. August 25, 2013 Plaintiff files motion to reopen the Jorgensen Hearing. Jorgensen Hearing held October 4, 2013. Court enters order allocating settlement and does not apply the Common Fund doctrine.

(Total 135.25 hours – Lamphere)

Powell, Melvin v. City of Colorado Springs; Risk Management Betsy Meyer

El Paso County Small Claims Court 14S269

CLAIM: Plaintiff alleges damage done to his vehicle due to road damage.

STATUS: April 14, 2014 Notice of Claim and Summons received by Risk Management. Case dismissed by Court, no notice of claim.

(Total \_\_ hours – Lamphere)

Sladek, Dennis v. City of Colorado Springs, Colorado a Colorado municipality, City of Colorado Springs City Counsel, and Stephen Bach, et al

El Paso County District Court Case No. 2013CV254;

United States District Court Case No. 2013CV02165-PAB-MEH

CLAIM: Plaintiff brings claims of process violation, equal protection violation, negligence, etc. due to Council's vote to ban legal recreational marijuana dispensaries in the city limits of Colorado Springs.

STATUS: Summons and Complaint served on July 31, 2013. August 12, 2013 Plaintiff files Amended Complaint. August 13, 2013 Defendant City of Colorado Springs files Notice of Removal to the Federal Court. September 11, 2013 City Defendants file motion to dismiss Plaintiff's Amended Complaint. October 2, 2013 City Defendants file motion for protective order from discovery and to vacate scheduling conference. October 3, 2013 Defendants Green Mountain Falls, Monument, Woodland Park, and Fountain file motion to dismiss. October 7, 2013 Court issues order granting protective order from discovery and vacating scheduling conference. October 15, 2013 El Paso County files motion to dismiss. November 18, 2013 Town of Palmer Lake files motion to dismiss. November 27, 2013 Plaintiff files response to Palmer Lake's motion for sanctions (not filed with the Court) and moves for sanctions against Palmer Lake. December 10, 2013 Plaintiff files motion to withdraw his response to Palmer Lake's motion for sanctions and his motion for sanctions. Plaintiff also files his response to motions to dismiss. December 12, 2013 Court issues order denying Plaintiff's motion to withdraw his response to Palmer Lake's motion for sanctions due to his failure to confer and failure to articulate need for motion. December 18, 2013 Plaintiff files notice of constitutional question. December 18, 2013 Plaintiff files motion to file his response to motions to dismiss (filed December 10, 2013) out of time. December 20, 2013 Court issues order denying Plaintiff's motion to file his response to the motions to dismiss out of time and strikes that response; magistrate issues recommendation that motions to dismiss be granted. January 9, 2014 Court issues order accepting the magistrate judge's recommendation and granting the City's motion to dismiss. Deadline to appeal is February 10, 2014. (Total 122.5 hours - Turner)

Sparkman, Charles v. Charles W. Johnson and the City of Colorado Springs

El Paso County District Court Case No. 2014CV30627

CLAIM: Plaintiff claims negligence, negligence per se and negligence upon respondeat superior for injuries, damages and losses stemming from a motor vehicle collision.

STATUS: March 3, 2014 City served with Summons and Complaint. March 31, 2014 Motion to Dismiss filed by Plaintiff as resolution has been reached. April 2, 2014 Court grants motion to dismiss with prejudice.

(Total 5.5 hours - White)

Stewart, Tiffany v. City of Colorado Springs, f/d/b/a Memorial Health Systems; and UCHealth, d/b/a Memorial Health Systems; University of Colorado Hospital Authority

El Paso County District Court Case No. 2013CV030710

CLAIM: Plaintiff alleges that she arrived at Memorial Hospital in July, 2011 with a migraine headache. Plaintiff alleges that two spinal taps were conducted, confirming a diagnosis of aseptic meningitis. Plaintiff alleges that a third spinal tap was ordered but not conducted and a physician intervened to conduct a fourth spinal tap. Plaintiff alleges she later lost sensation in her extremities and developed severe pain. Plaintiff alleges that despite being discharged to physical therapy and her compliance with all directives, she did not regain full use of her legs, stamina, or strength. Claims for relief include negligence and battery.

STATUS: Case filed July 30, 2013. November 7, 2013 Summons and complaint served. Scheduled for three-day jury trial on October 6, 2014. **Case dismissed with no monies paid.**

(L. Moore at Retherford, Mullen & Moore)

Sturgis, John v. Sergeant Brian Cummings, individually; Richard Hallman, individually; Detective Donald Chagnon, individually; Sergeant Craig Simpson, individually; City of Colorado Springs

United States District Court Case Number 2013CV01109

CLAIM: Plaintiff was arrested as a suspicious person in connection to a homicide. Plaintiff claims false arrest and excessive force, along with injuries to his shoulders.

STATUS: April 25, 2013 Plaintiff files civil rights complaint with request for trial by jury. May 3, 2013 Defendants file acceptance of service. June 7, 2013 City Defendants file answer to amended complaint and motion to dismiss. June 21, 2013 Plaintiff files response to City's motion to dismiss. July 2, 2013 Defendants file reply in support of their motion to dismiss. July 10, 2013 Plaintiff files supplement to its response to Defendants' motion to dismiss. November 15, 2013 Plaintiff files supplement to his response to the City's motion to dismiss. November 21, 2013 Plaintiff files motion for leave to file supplemental response to Defendants' motion to dismiss and alternative request for leave to amend complaint. November 27, 2013 Defendants file response to Plaintiff's motion for leave to file supplemental response to Defendants' motion to dismiss and alternative request for leave to amend complaint. December 2, 2013 Plaintiff files reply to his motion for leave to file supplemental response to Defendants' motion to dismiss and alternative request for leave to amend complaint. December 4, 2013 Plaintiff files motion for leave to amend 2<sup>nd</sup> amended complaint. Hearing on Plaintiff's motion for leave to amend 2<sup>nd</sup> amended complaint held January 15, 2014. December 20, 2013 City files response to Plaintiff's motion for leave to amend complaint. January 15, 2014 Court issues order granting Plaintiff's motion for leave to amend complaint and accepts Plaintiff's second amended complaint; City's motion to dismiss therefore denied as moot. January 29, 2014 Defendant City files Answer to Second Amended Complaint. **March 10, 2014 Stipulated motion to dismiss with prejudice by Plaintiff. March 11, 2014 Court grants order dismissing claims. March 17, 2014 Stipulated motion for dismissal filed. April 3, 2014 Case closed.**

(Total 597.75 hours - White)

### NEW CASES

Elijah Boe, a minor, by and through his next of friend and parent Gabriel Boe v. City of Colorado Springs, CO

El Paso County District Court Case Number 2014CV030709

CLAIM: Plaintiff claims that the City knew or should have known of an alleged dangerous condition on playground equipment, which caused injury and damages. Plaintiff claims premise liability and attractive nuisance.

STATUS: March 7, 2014 Summons and Complaint served. March 28, 2014 Defendant files Answer and Affirmative Defenses. Four day civil trial scheduled for January 26, 2015. Discovery commences.

(Total 16.5 hours – White)

Erindale Holdings, LLC, a Colorado limited liability company v. Erindale Place Townhome Association, a Colorado Non-Profit Corporation, aka Erindale Townhome Association, aka

Erindale Place Homeowners Association, aka Erindale Place Homeowners Association, Inc., the City of Colorado Springs, a Home Rule Municipality

El Paso County District Court Case No. 2013CV30946

CLAIM: Plaintiff seeks declaratory relief that each of the Erindale Lots is entitled to easement over Common Areas within the Plat and seeks rights, status and legal relations between parties and award Plaintiff attorneys' fees from the HOA.

STATUS: February 2, 2014 Summons and Amended Complaint served. February 28, 2014 City files Answer, Affirmative Defenses and Jury Demand to First Amended Complaint. Four day trial scheduled for December 2, 2014.

(Total 62.75 hours – Lamphere)

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.

(Total 26 hours – Turner)

Lee, Michael v. The City of Colorado Springs, a Colorado governmental entity; The City of Colorado Springs Police Department, a local governmental entity; Pete Carey, in his official capacity as the Chief of Colorado Springs Police Department; El Paso County, a Colorado governmental entity; Dan May, in his official capacity as the District Attorney for El Paso County, and other Unknown Members of the Colorado Springs Police Department

El Paso County District Court Case No. 2014CV30482

CLAIM: Plaintiff alleges that after execution of a search warrant officers seized and destroyed marijuana plants, causing him damages. He asserts claims for negligence, interference with business relations and violations of the Colorado Constitution.

STATUS: March 25, 2014 Summons and Amended Complaint served. April 11, 2014 Amended Complaint and Summons served. April 14, 2014 City Defendants and Defendant May file motion to dismiss.

(Total 33.75 hours – Turner)

Mazin, David v. Jeffrey True, in his official and individual capacity; Kristin Genta, in her official and individual capacity; Erin Land, in her official and individual capacity; Henry Hasler, in his individual capacity; Noel Peterson, in his individual capacity; Barbara Brohl, in her official capacity; Laura Harris, in her official capacity; and City of Colorado Springs, Colorado

United States District Court Case Number 14-cv-00654 CBS

CLAIM: Plaintiff brings unreasonable search and seizure and procedural due process claims against Defendants for destroying medical marijuana plants causing damages.

STATUS: March 18, 2014 Summons and Complaint served. April 2, 2014 Entry of Appearance filed by Anne Turner for City Defendants. Scheduling conference set for May 27, 2014 was converted to a motions hearing to hear the opposed motion for protective order filed by Defendants on April 30, 2014. April 28, 2004 City Defendants file motion to dismiss. April 29, 2014 State Defendants file motion to dismiss. April 30, 2014 Defendant Land files motion to dismiss.

(Total 12.75 hours – Turner)

ONRC ACTION v. BUREAU OF RECLAMATION (BOR), COMMISSIONER OF THE BOR; KLAMATH BASIN WATER USERS ASSN.; OREGON WATER RESOURCES CONGRESS; KLAMATH DRAINAGE DISTRICT, United States Court of Appeals for the Ninth Circuit, on appeal from United States District Court for the District of Oregon, Appeal No. 12-35831 – citizen lawsuit against BOR for water transfers through Klamath Straights without an NPDES permit. October 12, 2012, ONRC Action appeals the District of Oregon’s Order of August 14, 2012, adopting the Magistrate’s Report and Recommendation granting defendant’s motion for summary judgment and from the judgment dismissing said action. January 15, 2013, ONRC Action moves to hold appeal in abeyance pending ruling in Southern District of New York Case No. 08-cv-5606 and 08-cv-8430. After opposition to ONRC’s motion is filed by BOR, on February 4, 2013 the court grants ONRC a 180 day stay, ordering ONRC to file a status report by July 22, 2013 or proceed with the court’s briefing schedule. After ORNC files it’s status report and BOR responds non-opposing, on July 30, 2013, the court further stays the appeal until November 1, 2013. On October 31, 2013 ONRC files a subsequent motion for stay which is opposed by BOR on November 8, 2013. The court denies a further stay on November 14, 2013, and enters a briefing schedule. ONRC files it’s Opening Brief and excerpts of record on December 18, 2014; on December 26, 2013, the Hoopa Valley Tribe files an amicus curiae brief in support of ONRC; after multiple extensions of time are filed by parties and amici curiae, on January 9, 2014, amicus curiae briefs are filed jointly by the Miccosukee Tribe of Indians of Florida, Friends of the Everglades, and Florida Wildlife Federation, and by the States of New York, Delaware, Maine, Missouri, Washington, and the Province of Manitoba, Canada, in support of ONRC. After the granting of an extensions of time, answering briefs and supplement excerpts of record are filed by BOR, Intervenor-Defendant-Appellee Oregon Water Resources Congress, and Intervenor-Defendant-Appellee Klamath Basin Water Users Protective Association, on March 14, 2014. Westlands Water District and San Luis & Delta-Mendota Water Authority file an amici curiae brief in support of ONRC and appellees on March 19, 2014; and on March 21, 2014, additional amici curiae briefs in support of ONRC and Appellees are filed by: the State of California by and through The California Department of Water Resources; the States of Colorado, Nevada, Alaska, Arizona, Idaho, Kansas, Nebraska, New Mexico, North Dakota, Texas, Utah, and Wyoming (“Western States”); and Western Urban Water Coalition et al. (including the City of Colorado Springs acting by and through Colorado Springs Utilities) (“Western Providers”). ONRC files its Reply Brief on April 18, 2014; and after receiving permission from the court to file a sur-reply brief, BOR’s Sur-Reply Brief is accepted by the court on May 8, 2014.

(Peter D. Nichols)

Powell, Melvin v. City of Colorado Springs; Risk Management Betsy Meyer  
El Paso County Small Claims Court 14S269

*(See Disposed Cases)*

RHSC, LLC v. Bram Corporation, City of Colorado Springs, BC Services

El Paso County District Court Case Number 2014CV031008

CLAIM: Plaintiff obtained a judgment against the Debtor Bram Corporation in Case 11CV6350 and recorded the transcript of judgment. Defendant Bram Corp has failed to pay anything or pay off the judgment. The City of Colorado Springs may have an interest in the property due to a number of liens.

STATUS: March 27, 2014 Summons and Complaint served. April 17, 2014 City files Answer and Affirmative Defenses.

(Total 5.25 hours – Lamphere)

Sparkman, Charles v. Charles W. Johnson and the City of Colorado Springs

El Paso County District Court Case No. 2014CV30627

*(See Disposed Cases)*

Tomczyk, Teresa and City of Colorado Springs v. Richard H. Strong, Jr.

El Paso County District Court Case No. 2014CV30881

CLAIM: Plaintiff Tomczyk claims injuries and damages for a motor vehicle collision against Defendant Strong. The City moved to intervene to protect subrogation rights and for recovery of workers compensation benefits and property damage.

STATUS: April 4, 2014 City files motion to intervene and Plaintiff-Intervenor's Complaint. Defendant Strong files answer to Complaint and Jury Demand. May 13, 2014 Court grants City's motion to intervene. May 15, 2014 Defendant files answer to complaint in intervention.

(Total 45 hours – Lamphere)

United Parcel Service v. Skyway Condominium Association, Inc., and The City of Colorado Springs

El Paso County District Court Case Number 2014CV031122

CLAIM: Plaintiff is making subrogation claims against the Defendants for moneys paid out on a sidewalk slip and fall case.

STATUS: April 24, 2014 Summons and Complaint served. May 15, 2014 The City files Answer, Affirmative Defenses and Jury Demand.

(Total \_\_ hours – Turner)

Williams, Antonio Dwan v. Colorado Springs Police Department, El Paso County, and The State of Colorado

United States District Court Case No. 2014cv00987-BNB

United States Court of Appeals for the Tenth Circuit Case No. 14-1198

CLAIM: Plaintiff claims false arrest by defective arrest warrant.

STATUS: April 10, 2014 Received via mail to Chief's office. May 1, 2014 Motion to Dismiss filed by Defendant Colorado Springs Police Department. May 7, 2014 Court issues Order of Dismissal. May 19, 2014 Plaintiff files notice of appeal.

(Total \_\_ Hours - Lamphere)

Ryan Stefan v. Charles Hackmeister

El Paso County Court Case No. 14-c-0535

CLAIM: Plaintiff Stefan (firefighter) filed this claim against his direct supervisor, Lieutenant Charles Hachmeister. Stefan claims physical endangerment through a false PIP, health issues due to stress and anxiety, and harm to his career. Plaintiff asks for damages of \$15,000.

STATUS: A hearing on the City's Motion to Dismiss is scheduled for May 13, 2014.

(Total 91 hours - McCall/Smith)

## CURRENT CASES

### AIRPORT

(IC)

Hall, Lou Bertha v. Colorado Springs Airport D/B/A City of Colorado Springs

El Paso County District Court Case No. 2013CV389

CLAIM: Plaintiff claims injuries and damages for a fall on an escalator when it suddenly stopped at the Colorado Springs Airport.

STATUS: Complaint re-filed November 4, 2013. February 12, 2014 City Defendant files Motion to Dismiss for Failure to Comply with Governmental Immunity Act. **Plaintiff filed a Response to the City's Motion to Dismiss on April 11, 2014, together with a Motion to Amend Complaint to allege substantial compliance with the Colorado Governmental Immunity Act, after an agreed upon extension. Because these pleadings were clearly prepared by an out-of-state attorney, City filed a Motion to Strike these pleadings as improper ghost-written pleadings on April 17, 2014. City also files a Reply to Plaintiff's Response to Motion to Dismiss on April 17, 2014, as well as a Response to Plaintiff's Motion to Amend, arguing that the requested amendment would be futile in light of the arguments in support of dismissal. The Court also ordered the Plaintiff to file proof of proper service of process upon the City by May, 8 2014. On May 15, 2014 the Court granted Defendants' Motion to Strike Plaintiff's motion to leave to amend and granted Defendants' Motion to Dismiss.**

(T. Moore at Retherford, Mullen & Moore, LLC)

(OC)

Scott, Danielle v. The City of Colorado Springs

United States District Court Case No. 12-cv-01028

CLAIM: Plaintiff, an Accounting Supervisor at the Colorado Springs Airport, alleges that due to manufactured allegations against her in 2010, she was discriminated against multiple times due to race. She also claims she was retaliated against for engaging in protected activity. Plaintiff alleges she was denied more than one promotion, adequate training, and that there is a pattern and practice of disparate treatment of black employees. Plaintiff seeks damages.

STATUS: On June 15, 2012 City filed motion to dismiss Plaintiff's fourth claim for relief; City filed Answer and jury demand. Court granted City's motion to dismiss fourth claim for relief. Discovery has commenced. March 27, 2013 Defendants file motion for summary judgment of Plaintiff's claims. June 10, 2013 Plaintiff files Response in opposition to Defendant's motion for summary judgment. June 24, 2013 Defendants file reply to its motion

for summary judgment of Plaintiff's claims pursuant to F/R/C/P/ Rule 56 and request for oral argument. Hearing on Defendant's motion for summary judgment held September 9, 2013 at 2:00 p.m. Court stays case, including discovery pending Plaintiff's receipt and filing of EEOC's notice of right to sue and an amended complaint is filed with new charges after termination. **Plaintiff filed First Amended Complaint and Jury Demand on February 14, 2014. The court dismissed the Defendant's Motion for Summary Judgment as Moot, and Defendant filed the Answer to Amended Complaint on March 13, 2014. A status conference was held April 25<sup>th</sup>, 2014 regarding discovery, and the discovery cutoff deadline is September 15, 2014. Plaintiff Scott propounded Plaintiff's Third Written Discovery Requests, with responses due by the City on June 2, 2014.**

(Total 169.25 hours – Lessig / Richard Orona - Harris, Karstaedt, Jamison & Powers, PC)

### **CITY CLERK**

The Colorado Springs Citizens for Community Rights' Petition Committee v. City of Colorado Springs, Colorado

El Paso County District Court Case Number 13CV2082

**CLAIM:** Plaintiff files Complaint seeking declaratory and injunctive relief regarding the Colorado Springs Title Review Board's May 2, 2013 final decision concerning Proposed Charter Amendment IO 2013-001, known as "Community Bill of Rights Protection from Natural Gas & Oil Production" which sought regulation on oil and gas exploration, including fracking within the jurisdiction of the City of Colorado Springs. The Title Board rejected the Proposed Charter Amendment.

**STATUS:** May 23, 2013 Summons and Complaint served. July 8, 2013 Defendant City files Answer; City files partial Motion to Dismiss. August 5, 2013 Plaintiff files response to Defendants' partial motion to dismiss. August 12, 2013 Defendants file reply brief in support of their motion to dismiss (partial). September 4, 2013 Court files order regarding motion to dismiss denying Defendants motion to dismiss (partial). September 12, 2013 Defendant files answer to Plaintiff's Second Amended Complaint. November 8, 2014 Status conference held in which Court requests that parties submit briefs to Court regarding whether C.R.C.P. 106(a)(2) or 106(a)(4) applies. November 14, 2013 Plaintiffs file notice to the Court of their filing a proposed brief of amicus curiae in *McCarville v. City* appeal, as well as the Court of Appeal's denial of their application to participate as amicus curiae. December 6, 2013 City files supplement to Plaintiff's notice to the Court of the Court of Appeals' action in *McCarville*, including the Court of Appeals' ruling affirming the District Court's ruling in favor of the City and concluding that the City's ordinances pertaining to a citizen-initiated charter amendment do not conflict with State statute provisions (see entry detailed below). January 17, 2014 Parties file briefs regarding whether C.R.C.P. 106(a)(2) or 106(a)(4) applicable rule of procedure governing action. January 31, 2014 Plaintiff files response brief. February 7, 2014 Court files order regarding choice of law and states that Colorado Springs City Ordinance 5.1.503(A) (and (B) and the rest of Part 5 are enforceable; the Plaintiff is not entitled to relief under C.R.C.P. 106(a)(2) and Plaintiff's third claim for relief in Second Amended Complaint for Declaratory Judgment and Injunctive Relief is dismissed. Plaintiffs second and fourth claims remain; Colorado Springs to bring fourth "record" of proceedings held by the Title Board. Defendants to file certified record by March 14, 2014. **February 28, 2014 Plaintiff files Motion for Final Judgment on First and Third Claims and Motion for Stay on Plaintiff's Second and Fourth Claims for Relief and City responds on**

**March 13, 2014. March 14, 2014 City files certified record of proceedings. April 10, 2014 Plaintiff files unopposed motion to dismiss with prejudice Plaintiff's Second and Fourth Cases of Action. April 14, 2014 Court dismisses second and fourth claims with prejudice.**

(Total 304 hours – Gendill/McCall).

Fortner, Darrell and Jennifer Fortner d/b/a Diamond/Dundee Tree Service v. The City of Colorado Springs; Kathryn Young, individually and in her official capacity as City Clerk of Colorado Springs, Darrel Pearson, individually and in his official capacity as City Forrester of Colorado Springs, James A. Choate, in his individual capacity as Sergeant for El Paso County Sheriff's Office, Terry Maketa, in his individual capacity as Sheriff of El Paso County, Colorado, and James E. McGannon, individually and in his official capacity as City Forrester for the City of Colorado Springs.

United States District Court Case No. 06-CV-02148-BNB;

United States Court of Appeals for the Tenth Circuit Case No. 13-1394

CLAIM: Plaintiffs' remaining claims are that Defendant Young violated their due process rights by holding an appeal hearing before City Council without their presence or their attorney's presence after their business license had been denied. Plaintiffs further claim that Defendants McGannon and Pearson illegally arrested and prosecuted them for operating a business without a license. As to the County Defendants, Plaintiffs claim that Darrell Fortner's name was placed on a sex offender registry without just cause.

STATUS: Numerous Defendants have been dismissed from the case by the Court through motions to dismiss, summary judgment motions and hearings. City has filed motions to dismiss on the first and second amended complaints with objections to all following amended complaints. Court denied Plaintiff's motion for a fifth amended complaint. In August 2008, City filed a Motion for Summary Judgment which was denied without prejudice by the Court stating the City may resubmit motion for summary judgment stating which claims should be barred by res judicata. In March 2009 City files second motion for summary judgment. Magistrate judge makes recommendations stating the judge should: 1) grant City's motion for summary judgment as to claims against Pearson for allegedly striking Plaintiff; claims against the City for actions from May, 1994 through 1996 alleging harassment, conspiracy, unlawful arrest, suspension of Plaintiffs' tree business license, and failure to properly supervise and train; and failure to renew Plaintiff's tree service license in 1997; and denying the motion as to all other claims against the City and 2) granting County's motion for summary judgment as to due process claims and denying its motion on Plaintiff's state law tort claims. In January 2010, Court issues orders accepting magistrate's recommendation as to City's motion for summary judgment and denying magistrate's recommendation as to denial of acceptance of County's supplemental motion for summary judgment. County seeks enforced settlement agreement from Plaintiff after Plaintiff "backed out". Evidentiary hearing held on January 7, 2013. March 4, 2013 Court issues order granting County's motion to enforce settlement of \$9,900; Defendants James Choate and Terry Maketa are dismissed from this action. 5 day trial to the Court is set for June 1, 2013. March 29, 2013 Plaintiff filed motion in limine. April 5, 2013 Defendant files response to Plaintiff's motion in limine. April 10, 2013 Court denies Plaintiff's motion in limine. June 3, 2013 Trial preparation conference was held: Judge denied motion to vacate trial date, denied motion to reinstate City of Colorado Springs, motion to consider attorney fees, motion to file motion to strike defendant's exhibits, and motion to withdraw exhibits. Court enters an order of sequestration for witnesses. June 10-11, 2013 trial to Court held. August 20, 2013 Court

issues Findings of Facts, Conclusions of Law, and Order that judgment shall enter in favor of the City Defendants and against Plaintiffs Defendants are awarded costs on the filing of a bill of costs. August 21, 2013 Judgment is entered and the action is dismissed on the merits and Defendants are awarded costs. August 28, 2013 Defendants file proposed bill of costs. Costs awarded in the amount of \$1,700.46. September 23, 2013 Plaintiffs' file Notice of Appeal. All parties have entered their appearance.. October 23, 2013 Record on appeal filed. February 12, 2014 Appellant's opening brief filed. **March 18, 2014 Appellees files revised Answer Brief. May 5, 2014 Appellant Fortner files reply brief.**  
(Total 964 hours – White)

McCarville, Roger v. City Of Colorado Springs

El Paso County District Court Case No. 12CV306;

Colorado Court of Appeals Case No. 2012CA2593

CLAIM: Plaintiff alleges that the City of Colorado Springs' pre-petition process, i.e. the IRC and Title Board, are unconstitutional as applied to Charter amendment petitions. Plaintiff further alleges that the City's single subject rule is unconstitutional.

STATUS: Complaint and Summons received August 3, 2012. August 14, 2012 Plaintiff files notice to set hearing. On October 19, 2012 City files motion for summary judgment, which was granted on November 16, 2012. On December 24, 2012 Appellant files notice of appeal in Colorado Court of Appeals. January 15, 2013 Designation of Record filed. January 18, 2013 Appellee files additional designation of record. May 10, 2013 Appellant files his Opening Brief. June 4, 2013 A Motion for leave to participate as Amicus Curiae in Support of Appellant McCarville is filed by Colorado Springs Citizens for Community Rights. A Brief of Amicus Curiae is also filed. June 13, 2013 Appellee files Answer brief. July 1, 2013 Appellant McCarville files his reply brief. July 3, 2013 Court denies brief of Colorado Springs Citizens for Community Rights. December 5, 2013 Court of Appeals issues opinion, affirming judgment for the City and determining that the City's ordinances pertaining to a citizen-initiated ordinance do not conflict with State statute provisions. December 30, 2013 Appellant files petition for certiorari to the Colorado Supreme Court. January 9, 2014 City files opposition brief to petition for writ of certiorari. February 13, 2014 Appellant files Supplement/Update to Notice of Appeal / Petition for Writ of Certiorari. **March 1, 2014 Appellant file motion to file supplement / update to notice of appeal / Petition for Writ of Certiorari and Court grants the supplement for filing on March 25, 2014.**

(Total 101 hours – White)

**CITY ENGINEERING**

Clark, Debra v. Joanne Colby, Sharon Blake and the City of Colorado Springs

El Paso County District Court Case No. 2013CV31610

CLAIM: Plaintiff claims that Defendants knew or should have known that the sidewalk at 2720 Wood Avenue created a dangerous condition. Plaintiff was walking her dog and tripped over the raised sidewalk causing damages.

STATUS: October 23, 2013 Summons and Complaint served. November 13, 2013 City files answer to Plaintiff's complaint. 4-Day Jury Trial scheduled to begin December 15, 2014. Discovery commences.

(Total 67.75 hours – Gendill)

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

El Paso County District Court Case No. 2013CV30652

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

STATUS: July 26, 2013 Summons and Complaint served. August 16, 2013 Defendants City of Colorado Springs and Pikes Peak Rural Transportation Authority files stipulated motion for a two week enlargement of time to file a responsive pleading to Plaintiff's Complaint. August 29, 2013 City Defendants files Answer with Jury Demand. September 24, 2013 Defendant PPRTA files answer to first claim for relief and motion to dismiss Plaintiff's second and third claims for relief pursuant to C.R.C.P. 12(b)(5). October 15, 2013 Plaintiff files response to Defendant PPRTA's motion to dismiss. November 1, 2013 PPRTA files its reply to its motion to dismiss. November 5, 2013 Court denies PPRTA's motion to dismiss and directs the parties to set a case management conference. November 19, 2013 PPRTA files amended answer and affirmative defenses. Trial set for September 12 through September 26, 2014. Discovery commences.

(Total 442.5 hours – Gendill)

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

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

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

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

(Total 37 hours – M. Smith)

IN THE MATTER OF THE APPLICATION OF THE CITY OF COLORADO SPRINGS FOR AUTHORITY TO MODIFY AN EXISTING OVERPASS STRUCTURE AT RAILROAD MP 0606.51 (COLORADO SPRINGS BRANCH), USDOT CROSSING #594834V, NEVADA AVENUE IN EL PASO COUNTY, COLORADO

Public Utilities Commission of the State of Colorado Docket NO. 10A-359R

APPLICATION: The City applies to the Public Utilities Commission for authorization for modification and rehabilitation to an existing overpass on Nevada Avenue.

STATUS: May 26, 2010 City files notice of application and petition. July 27, 2010 Commission order deems application complete and grants application. Marc Smith files entry of appearance and submission of construction and maintenance agreement between the City of Colorado Springs and Union Pacific Railroad.

(Total 15 hours – M. Smith)

Tavis, Betty Sue v. The City of Colorado Springs

El Paso County District Court 2013CV30871

CLAIM: Plaintiff alleges that the City failed to maintain a sidewalk at 601 South Weber Street which caused Plaintiff to trip and fall.

STATUS: August 15, 2013 Summons and Complaint served. September 5, 2013 City files Answer and Affirmative Defenses. November 6, 2013 City files designation of non-parties.

**Mediation scheduled for June 13, 2014.**

(Total 89.5 hours – White)

## COUNCIL

(OC)

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

El Paso County District Court Case Number 2013CV268

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

STATUS: August 2, 2013 Summons and Complaint served. August 23, 2013 City files its Answer. September 18, 2013 PERA files motion to intervene. October 25, 2013 PERA files motion to dismiss first cause of action. October 28, 2013 Plaintiff files motion to amend complaint and motion for default judgment against City, asserting City being represented by outside counsel illegally. November 13, 2013 City files responses to Plaintiff's motion to amend complaint and motion for default judgment. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 18, 2013 Plaintiff files reply to his motion for default judgment; Plaintiff files reply to his motion to amend complaint. December 3, 2013 Court denies Plaintiff's Motion for Default Judgment. December 18, 2013 Plaintiff files amended complaint. January 2, 2014 City files answer to Plaintiff's amended complaint. January 13, 2014 City files 1) motion to dismiss cause of action 3 and motion for summary judgment as to causes of action 4 and 8 and 2) motion to dismiss causes of action 1, 2, 5, 6, and 7. Plaintiff files response to City's Motions 1) and 2) above on February 4, 2014 and February 6, 2014, respectively. February 17, 2014 City files reply in support of motion to dismiss causes 1, 2, 5, 6, and 7 and separate reply in support of motion to dismiss causes 4 and 8.

**March 2, 2014 Court rules on City's motions to dismiss and motion for summary judgment: 1) the first cause of action is dismissed as to Councilmember participation in PERA, but not as to travel and meeting expenses; 2) the second cause of action is dismissed as to the City Attorney's ability to hire outside counsel, but not as to the setting of the City Attorney salaries; 3) the fifth cause of action is dismissed in its entirety; and 4) the City's motions to dismiss third cause of action and motion for summary judgment on fourth and eighth causes are denied. March 6, 2014 the parties participate in a case management conference, as a result the April trial is vacated and reset to November 2014. At the CMC, deadlines for discovery, Rule 56 motions, motions in limine, and substantive motions are set. March 17, 2014 Plaintiff files a motion for reconsideration of the partial dismissals.**

**April 7, 2014 PERA and the City file responses to the motion for reconsideration. April 7, 2014 the Court denies Plaintiff's motion for reconsideration. On March 18, 2014 the City takes Plaintiff's deposition. The City has received the draft transcript, but an amendment sheet has not been received yet. Written discovery is ongoing but not without issues. April 18, 2014 the parties participate in a lengthy discovery hearing. April 25, 2014 Plaintiff provides non-responsive and evasive responses to the City's first set of discovery requests. May 5, 2014 the City files a motion to compel responses to the City's first set of discovery requests. The City owes responses to Plaintiff's written discovery request by May 8, 2014; however the Court ruled that the City could recover the cost of time and copies for the discovery response. The discovery cutoff is May 30, 2014. Trial currently scheduled for November 3, 5-7, & 10, 2014.**

(Total 100.5 hours - Hayes, Phillips, Hoffman and Carberry / White)

MLP Receiverships, LLC, as Receiver; Probuild Company LLC; and PNC Bank, NA v. The City of Colorado Springs, a Colorado home rule city and municipal corporation; and City Council of the City of Colorado Springs in their official capacity.

El Paso County District Court Case Number 2013CV1973

CLAIM: MLP Receiverships file a Request for Judicial Review under Rule 106(a)(4) and complaint claiming 14<sup>th</sup> amendment due process, estoppels and taking for City's stopping of permit construction of Dublin Townhomes and refusal to approve amended application.

STATUS: April 23, 2013 Complaint filed with motion to certify the record. May 13, 2013 Plaintiff files Amended Complaint. May 17, 2013 City files waiver and acceptance of service; Plaintiff files motion to consolidate or in the alternative motion to transfer rule 106 action to Division 19 with PNC Bank, et al. v. Heritage Homes, et al. El Paso County Case Number 2012CV3256. June 7, 2013 City files Answer to First Amended Complaint and response in opposition to motion to certify the record and response to motion to consolidate and a partial motion to dismiss. June 13, 2013 MLP Receivership files replies to City responses regarding motion to certify record and motion to consolidate. June 19, 2013 Defendant City files motion for leave to file sur-reply re: motion to certify the record for C.R.C.P. 106(a)(4). June 20, 2013 City files joint motion to bifurcate and for partial stay. June 27, 2013 Court grants order which stipulates transferring Rule 106 action to Division 19. August 14, 2013 Court grants order to bifurcate and for partial stay; Court orders Defendants shall prepare, certify and file docs within 60 days for certification of the record. September 12, 2013 Defendants file certified record of proceedings. October 24, 2013 Plaintiff files opening brief and request for oral argument. November 27, 2013 City files answer brief. December 23, 2013 Plaintiff files reply brief. Oral Argument is set for February 25, 2014. **March 27, 2014 Court files C.R.C.P. Rule 106(a)(4) Review stating that City Council abused their discretion in the appeal and the issue is remanded back to Colorado Springs City Council for rehearing. April 11, 2014 Court orders that the remaining claims in the case shall be stayed pending resolution of the C.R.C.P. 106(a)(4) issues on remand to the Colorado Springs City Council.**

(Total 253.5 hours - Gendill / McCall)

## **FACILITIES**

(OC)

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

El Paso County District Court Case No. 2013CV1469

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

STATUS: March 20, 2013 Summons and Complaint served. April 12, 2013 Hearing regarding Motion for Preliminary Injunction concerning condition of property. April 16, 2013 Plaintiffs file Motion for a Temporary Restraining Order (“TRO”). April 18, 2013 Defendant City of Colorado Springs files Motion to Dismiss, amended. April 19, 2013 Defendant Hudspeth files Response to Motion for TRO; Defendant City files Response to Motion for TRO; Defendant Hudspeth files Motion to Stay re: CRS §13-20-803.5(9). May 7, 2013 Plaintiff files Amended Complaint. August 2, 2013 City files motion to dismiss. August 23, 2013 Plaintiffs file response to City’s motion to dismiss. September 6, 2013 City files reply to its motion to dismiss. On September 25, 2013, the Court issued an order concluding that there are factual issues that are potentially relevant and ordered that a *Trinity* hearing would be necessary to resolve the issues stated in the motion. A *Trinity* hearing regarding the motion to dismiss was set for November 15, 2013, but was rescheduled to November 20, 2013. December 20, 2013 Court issues order denying City’s motion to dismiss and finding that some or all of Plaintiff’s damages were caused by the operation of a public building and the maintenance and operation of a gas facility, thereby waiving the City’s immunity. January 8, 2014 City files Answer and Affirmative Defenses. February 4, 2014 City files notice of appeal and designation of record on appeal. **March 14, 2014 Defendant City files Brief regarding Stay of Case. March 14, 2014 Defendant Hudspeth files Motion for Stay. March 14, 2014 Plaintiffs’ file Brief in Partial Opposition to Stay. March 28, 2014 Second Case Management Conference in which Court grants motion to file Amended Answer; Court grants Motion to Stay; Plaintiffs to set Status Conference after receiving Mandate from COA. April 25, 2014 Defendant/Appellant City files Trinity Hearing Exhibits with Trial Court regarding Record on Appeal. May 5, 2014 Defendant/Appellant City’s Opening Brief due June 23, 2014.**

(Total 79 hours – Rob Zavaglia at Treece Alfrey Musal, P.C. / White)

**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).

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.**

(Total 313.5 hours Massey - Florczak City Attorney's Office / William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal, Sherman and Howard, Denver;).

### **MEMORIAL HOSPITAL**

(OC)

City of Colorado Springs, a Colorado Home Rule City and Municipal Corporation v. Public Employees' Retirement Association of Colorado, a Body Corporate and Instrumentality of the State of Colorado v. Memorial Health System

Denver County District Court Case No. 2012CV5714

**CLAIM:** Parties dispute the applicability of the Termination Provisions of the Public Employees' Retirement Association Act, C.R.S. §§ 24-51-101 et seq. (the "Act") to the lease of Memorial Hospital. The City of Colorado Springs ("City") claims the Termination Provisions do not apply to the transaction and, accordingly, that it does not owe Public Employees' Retirement Association ("PERA") any amounts under the Act. City seeks declaratory judgment.

**STATUS:** On September 13, 2012 City files Complaint. PERA files answer to complaint and brings counterclaim / third-party complaint against Memorial Hospital. Court grants joint stipulation for entry of escrow agreement. March 6, 2013 Parties file joint motion for entry of stipulated protective order, which was granted on March 9, 2013. April 11, 2013 Plaintiff City files motion to enforce agreement. May 2, 2013 PERA files opposition to City of Colorado Springs' motion to enforce agreement. May 9, 2013 City files reply in further support of motion to enforce agreement. May 10, 2013 PERA files motion for summary judgment. June 4, 2013 Court issues order denying Plaintiff's motion to enforce agreement. June 14, 2013 Plaintiff City and Third Party Defendant Memorial Health System file cross motion for summary judgment on all claims. June 28, 2013 PERA files reply in support of Summary Judgment Motion; PERA also files opposition to City of Colorado Springs and Memorial Health System's Summary Judgment Cross-Motion on all claims. July 12, 2013 Plaintiff City and Third Party Defendant Memorial Health System file reply in support of cross motion for summary judgment on all claims. July 24, 2013 Court denies both the Defendant and the Plaintiff's motion for summary judgment. July 25, 2013 Court denies motion for bifurcation of trial. July 27, 2013 Court issues order granting stipulated amended protective order. Aug 7, 2013 Court grants continuance of trial to 3 weeks beginning March 10, 2014. August 13, 2013 Parties file joint motion to hold for fourteen days further rulings and briefings. August 28, 2013 PERA files reply in support of its motion to quash subpoena on non-party Cavanaugh MacDonald Consulting ("CavMac"). September 17, 2013 the Parties file a joint motion for the appointment of the Ret. Hon. Harlan Bockman to serve as appointed judge for the remainder of the case at the trial court

level. September 18, 2013 The Honorable Michael L. Bender appoints the Ret. Hon. Harlan R. Bockman as an appointed judge. October 18, 2013 City files Brief in further support of PERA's obligation to disclose info considered by CavMac. October 18, 2013 City and Memorial file renewed motion for summary judgment on all claims; PERA also files motion for summary judgment as to application of the termination provisions; PERA files Motion for Determination that Memorial Must Exhaust Its Administrative Remedies as to the PERA Board's Calculation of Its Withdrawal Liability. October 28, 2013 City and Memorial file responses in opposition to both PERA's motion for determination that Memorial must exhaust administrative remedies and PERA's summary judgment motion as to the application of the termination provisions; PERA files its opposition to the City and Memorial's renewed motion for summary judgment and its reply in support of its summary judgment motion as to the application of termination provisions. November 11, 2013 Court issues order denying PERA's motion for determination that Memorial must exhaust administrative remedies. December 11, 2013 PERA files notice of issuance of staff determination letter and issues staff determination letter to Third-Party Defendant Memorial Health System and Plaintiff City of Colorado Springs that as of September 30, 2012, Memorial's withdrawal liability from PERA was \$190,024,935, plus accruing interest. February 3, 2014 Parties submit proposed orders on cross-motions for summary judgment. February 11, 2014 Judge denies City and MHS's motion for summary judgment and grants PERA's motion for summary judgment. **February 24, 2014 Plaintiff City and Memorial Hospital file motion to certify Court's summary judgment order for interlocutory appeal. March 17, 2014 PERA files its response to City and Memorial's motion to certify Court's summary judgment for interlocutory appeal. March 18, 2014 PERA files petition for rule to show cause under C.A.R. 21. March 24, 2014 City and MHS file reply in support of their motion to certify Court's summary judgment order for interlocutory appeal. April 1, 2014 PERA files Petition as to Exhaustion of Administrative Remedies. April 22, 2014 City files opposition to PERA's motion to certify ruling on exhaustion of administrative remedies. April 28, 2014 Plaintiff City and Third Party Memorial Health System file motion for summary judgment on PERA's equitable claims. April 29, 2014 PERA files reply in support of C.A.R. 4.2 Petition as to Exhaustion of Administrative Remedies. May 19, 2014 PERA files response to City and Memorial's motion for summary judgment.**

(Total 187.5 hours – Turner / John Cook, Joseph Lambert, Hogan Lovells US LLP)

Crow, Jimmie R., M.D. v. Memorial Health System, Terry L. Huskins, Jeff Johnson, Dr. Patrick Faricy, M.D., and Michael A. Scialdone

United States District Court Case No. 13-cv-02842-RBJ

CLAIM: Plaintiff alleges that following an injury that required a leave of absence, he was denied the opportunity to return to work, he was wrongfully terminated, he was denied reasonable accommodation under the Americans with Disabilities Act, he was treated differently than similarly situated females, and he was paid less than females. Claims for relief include a violation of the Americans with Disability Act, due process violations under the Fourteenth Amendment, discrimination on the basis of sex under Title VII, age discrimination, and breach of contract.

STATUS: Case filed October 17, 2013. The City filed the Individual Defendants' Motion to Dismiss and it's Answer to the Amended Complaint on January 6, 2014. **May 5, 2014 Court grants Defendant's Huskins, Johnson's, Faricy's and Scialdone's ("Individual**

**Defendants’’) Motion to Dismiss. The court has granted a temporary stay of proceedings for settlement discussions.**

(Total 30.5 hours - Lessig/Ray Deeny – Sherman & Howard)

(IC)

Lucas, George v. Memorial Health System, Inc., the City of Colorado Springs and the State of Colorado

El Paso County District Court Case No. 2013CV30275

CLAIM: Plaintiff claims injuries, pain and suffering due to a trip and fall over raised gutter on Memorial’s premises.

STATUS: June 27, 2013 Summons and Complaint served. Answer filed July 16, 2013.

Trial set for May 5, 2014 was vacated and not re-set yet.

(Total 1.5 hours - Watts at Retherford, Mullen & Moore, LLC)

(IC)

Maricevic, Kathryn, Zebulon Kittle, and Isabella Maricevic-Kittle v. Hammond, MHS, Board of Regents U of Co, UCH

El Paso County District Court Case No. 2012CV5443

CLAIM: Plaintiffs allege that in November 2010, a delayed delivery at Memorial Hospital (North) caused a brain injury to the infant. Plaintiffs allege that prior to delivery, fetal monitoring strips demonstrated that the infant was in distress and therefore the infant should have been delivered promptly. Plaintiffs allege that, as a result of the delayed delivery of the infant, the infant [Plaintiff Isabella] has suffered a brain injury and has sustained permanent brain damage, developmental delays, and permanent neurological impairment.

STATUS: July 18, 2013 Summons and Complaint served. Memorial filed its Answer on August 19, 2013. Discovery has commenced. Twenty day jury trial scheduled for October 27, 2014.

(DeLine at Retherford, Mullen & Moore, LLC)

## **MUNICIPAL COURT**

### **PARKS, RECREATION, AND CULTURAL SERVICES**

Daniel , Marilyn v. Defendant City of Colorado Springs

El Paso County District Ct. No. 2011CV2157;

Colorado Court of Appeals Case No. 2011CA1772;

Supreme Court Case No. 2012SC908

CLAIM: Plaintiff alleges that on October 7, 2009 she fell breaking her hip / femur as a result of catching her foot in hole at Valley Hi Golf Course parking lot. Claims are for premises liability and negligence.

STATUS: City filed a motion to dismiss based upon statutory immunity. Motion was denied by District Court and has been appealed to Court of Appeals. Case fully briefed and argued. Court of Appeals issued an opinion and notice remanding case back to District Court with directions to dismiss Plaintiff’s complaint against the City.

Plaintiff filed Petition for Writ of Certiorari on December 3, 2012. City filed opposition brief to Petition for Writ of Certiorari on December 18, 2012. December 21, 2012 Court grants amicus brief filed by Colorado Trial Lawyers. January 7, 2012 Petitioner Marilyn Daniel files reply in support of Petition for Certiorari. April 29, 2013 The Petition for Writ of Certiorari is granted regarding whether a public golf course parking lot is a “public facility in any park or recreation area.” Petitioner’s Opening Brief is due June 11, 2013. June 4, 2013 Petitioner files Opening Brief; also a Motion for leave to file and Amicus Brief and the Amicus Brief is filed by the Colorado Trial Lawyers Association. June 21, 2013 Supreme Court accepted Colorado Trail Lawyers Amicus Brief. July 30, 2013 Respondent City files Answer Brief; Motion of Colorado Springs Municipal League for leave to participate as Amicus Curiae and to file Amicus Brief; filed along with Amicus Brief. August 19, 2013 Petitioner Marilyn Daniel files her Reply Brief. Oral Argument held October 29, 2013 at 10:30 a.m. **May 19, 2014 Supreme Court reverses judgment en banc finding the parking lot a “public facility” and remands to the trial court for further fact finding.**

(Total 470.5 hours – Lamphere)

## PLANNING

WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 2, AND WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 3, TITLE 32 METROPOLITAN DISTRICTS; AND KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. PRAIRIE VISTA, LLC, A COLORADO LIMITED LIABILITY COMPANY; ROCKY MOUNTAIN COMMUNITY LAND TRUST, A COLORADO NON-PROFIT CORPORATION; PIKES PEAK HABITAT FOR HUMANITY, INC., A COLORADO NONPROFIT CORPORATION; O 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

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.  
(Total 339.5 hours – White)

## POLICE

Lisa Cintron and City of Colorado Springs v. Megan DiMarco

El Paso County District Court Case No. 2013CV30890

CLAIM: Plaintiff Cintron filed Complaint on August 13, 2013 as a result of the tortuous conduct of Defendant. The City seeks to intervene in an effort to recover subrogation rights equal to workers' compensation benefits paid to the Plaintiff.

STATUS: City files Motion to Intervene and Plaintiff-Intervenor's Complaint on January 31, 2014. February 19, 2014 Court grants order for motion to intervene. **March 7, 2014 Defendant files Offer of Settlement. March 12, 2014 Defendant files Answer to City's Complaint.**

**Plaintiff motion to amend complaint and amended complaint is granted and deemed filed May 1, 2014. May 9, 2014 Defendant files Amended Answer.**  
(Total 88.25 hours – Lamphere)

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.**  
(Total 83.5 hours - Lamphere)

Crouse, Robert C. v. The City of Colorado Springs, a Colorado governmental entity; the City of Colorado Springs Police Department, a local government entity; Peter Carey, in his official capacity as the Chief of the Colorado Springs Police Department; El Paso County, a Colorado governmental entity, Dan May, in his official capacity as the District Attorney for El Paso County, and Nick Bayne in his official and individual capacity and other unknown member of the Colorado Springs Police Department, in their official and individual capacities  
El Paso County District Court Case No. 2013CV2055;  
Removed to United States District Court Case No. 2013CV1786-WYD-KMT

CLAIM: Plaintiff brings constitutional claims stemming from Defendants' alleged destruction of seized medical marijuana.

STATUS: June 17, 2013 Summons and Complaint served. July 8, 2013 Defendants file Notice of Removal to US District Court. July 15, 2013 City Defendants file Motion to Dismiss; County Defendants file motion to dismiss. July 31, 2013 Plaintiff files First Amended Complaint omitting federal claims. August 5, 2013 Court denies as moot both City Defendants' and County Defendants' motions to dismiss. August 14, 2013 Defendants file joint motion to dismiss Plaintiff's First Amended Complaint; Plaintiff files motion to remand to State Court. September 4, 2013 Plaintiff files response to Defendants' joint motion to dismiss. September 25, 2013 Court grants a stipulated motion to vacate scheduling conference and associated deadlines. November 5, 2013 Court issues order remanding case to State Court as no federal claims asserted in amended complaint; Defendants' motion to dismiss denied as moot. January 28, 2014 Status conference held. February 7, 2014 County Defendants file motion to dismiss Plaintiff's First Amended Complaint. February 10, 2014 City Defendants file motion to dismiss Plaintiff's First Amended Complaint. **April 7, 2014 Plaintiff files Response to City Defendants' and County Defendants' motion to dismiss pursuant to CRCP 12(b)(1) and 12(b)(5). April 11, 2014 County files reply to their motion to dismiss and City**

**defendants file motion for extension. City files reply on April 28, 2014.** (Total 128 hours – Turner)

Edmond, Michael Sean v. City of Colorado Springs, et al.

El Paso County District Court Case No. 2007CV332

**Colorado Court of Appeals Case No. 2013CA002298**

CLAIM: Plaintiff alleges that false statements were made by Defendant William Burrell for the search warrant issued by the Court on November 17, 1999, which caused Plaintiff's property to be seized and subsequently destroyed. Plaintiff claims violation of his 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendment rights and state law claims. Plaintiff also requests compensatory damages, punitive damages, and declaratory relief.

STATUS: Case remanded back to El Paso County District on March 15, 2012 with instruction to serve the parties. March 27, 2012 Summons, Notice of Appeal, and Mandate served on other parties. April 18, 2012 Court orders Defendants Terry Maketa, Sheriff of El Paso County and Brett Speiers to be added as party litigants. October 9, 2013 Complaint and Summons served on City only (not Defendant officers). October 22, 2013 City files motion to dismiss. October 30, 2013 Plaintiff files motion for leave to file amended complaint. November 15, 2013 Court issues order denying Plaintiff's motion for leave to file amended complaint. November 22, 2013 Plaintiff files motion to file response out of time and response to City's motion to dismiss. December 6, 2013 City files reply to its motion to dismiss; Court issues order granting the City's motion to dismiss. December 18, 2013 Plaintiff files Notice of Appeal and designation of record and motion to waive appeal bond fees. December 19, 2013 Court denies Plaintiff's motion to waive appeal bond fees. December 24, 2013 City files motion for award of attorney fees. January 13, 2014 Plaintiff files request for hearing and objection to City's motion for award of attorney fees. January 14, 2014 Court grants City's motion for award of attorney fees. January 16, 2014 Court denies Plaintiff's request for a hearing on attorney fees as moot. February 4, 2014 Plaintiff files motion for stay pending appeal which judge denied on February 11, 2014. **April 1, 2014 Plaintiff files Motion for Stay pending Appeal. April 8, 2014 Erik Lamphere files entry of appearance. Court denies Plaintiff-Appellant's motion to stay.**

(Total 175 hours – Lamphere)

Guy, Kathryn v. Nathan Jorstad, Richard Myers, Steve Cox, and City of Colorado Springs

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

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

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

**to Dismiss; Plaintiff to proceed on claim against Defendant Jorstad in his individual capacity for the alleged violation of the Fourth Amendment; all other Defendants are dismissed. Scheduling conference set for June 3, 2014. May 5, 2014 Defendant Jorstad files Answer to Amended Complaint.**

(Total 378.5 hours – Turner)

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

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

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

STATUS: October 19, 2011 Summons and complaint received. Defendants file successive motions to dismiss. September 26, 2012 Court orders that Plaintiff may file an amended complaint containing claims based on the alleged strip search and a procedural due process claim against the City. December 7, 2012 Plaintiff files his 4<sup>th</sup> amended prisoner complaint. January 14, 2013 Defendants file motion to dismiss Plaintiff's 4<sup>th</sup> amended prisoner complaint. February 6, 2013 Plaintiff files response to Defendant's motion to dismiss 4<sup>th</sup> amended complaint. February 20, 2013 Defendant files reply in further support of its motion to dismiss. April 16, 2013 Magistrate Judge issues recommendation that City's motion to dismiss Plaintiff's Fourth Amended Complaint be granted and to dismiss claims one, three, and five and that the case proceed on claim two against Defendant Evans for violations based on strip search and claim Four against the City based on the notice provided to Mr. Hampton prior to the sale of his truck. May 1, 2013 Plaintiff files objections to the Magistrate Judge's recommendation. May 15, 2013 Defendants file response to Plaintiff's objections to the Magistrate Judge's recommendation. May 23, 2013 Parties file joint status report to the Court. May 28, 2013 Plaintiff files reply to Defendants response to objections to magistrate's recommendations.

(Total 333.5 hours – Turner)

Haskett, Phillip David v. Gary Woodrow Flanders, Colorado Springs Police Department Officer Dominick Luna, both personally and in his official capacity, and the Colorado Springs Police Department, a Department of the City of Colorado Springs, Colorado

United States District Court Case No. 13-CV-03392-RBJ-KLM

CLAIM: Plaintiff, who was involved in a civil matter with Defendant Flanders, claims that Officer Luna was negligent in his arrest of Plaintiff following a physical altercation with Mr. Flanders. Claims against City Defendants include malicious prosecution, respondeat superior, and RICO violations.

STATUS: January 9, 2013 Summons and Complaint received. January 29, 2014 City Defendants file motion to dismiss. **March 4, 2014 Judge enters order striking Plaintiff's First Amended Complaint as Motion must be entered first. March 11, 2014 Plaintiff files motion for leave to file Amended Complaint. March 17, 2014 Plaintiff files first amended complaint after Court grants order on Plaintiff's motion for leave. Defendant Flanders files joinder in City Defendants motion to dismiss. All Defendants file Motions to Dismiss and have been responded and replied.**

(Total 143 hours – Lamphere)

Jones, Kevin Francis v. Marcus Lehmkuhl, City of Colorado Springs, Colorado, R.A. Yohn, Al Harmond, Bret Poole, and One to Ten Unknown Defendants to be Identified Through Discovery and Trial, Sued Individually and in their Official Capacities

United States District Court Case No. 11-CV02384-WYD-CBS

CLAIM: Plaintiff alleges that the police lacked probable cause to search his house for drugs because of omissions and false statements by Defendant Lehmkuhl in his probable cause affidavits. Plaintiff claims searches conducted pursuant to the warrants violated his First, Fourth, Fifth, Sixth and Fourteenth Amendment rights.

STATUS: September 12, 2011 Complaint filed with the U.S. District Court. January 6, 2012 Plaintiff files (second) amended complaint. January 18, 2012 Court orders dismissal of the following Defendants originally named in the lawsuit: Richard Myers, Lionel Rivera, the Colorado Springs Police Department, El Paso County, Colorado, and the El Paso County Sheriff's Department. January 30, 2012 Summons and Complaint received. March 22, 2012 Defendants file motion to dismiss. May 29, 2012 Plaintiff files response to Defendants' motion to dismiss. June 12, 2012 Defendants file reply to motion to dismiss. July 30, 2012 Plaintiff files motion for leave to file third amended complaint. August 13, 2012 Defendants file response to Plaintiff's motion for leave. Motions hearing took place January 31, 2013 at 1:30 p.m.; Magistrate recommends that the Court deny Plaintiff's motion for leave to file Third Amended Prisoner Complaint and will issue a written recommendation regarding Defendants Motion to Dismiss. April 26, 2013 Magistrate issues recommendation on Defendant's Motion to Dismiss that certain claims be dismissed with prejudice and certain claims and defendants be dismissed without prejudice. June 18, 2013 Plaintiff files objections to magistrate's recommendations. June 26, 2013 Defendants file motion to strike objections. July 1, 2013 Court grants Defendants' motion and strikes Plaintiff's objections. July 9, 2013 Plaintiff files motion for reconsideration of order striking objections. July 26, 2013 Defendants file response to motion for reconsideration. September 27, 2013 Court affirms and adopts recommendations of U.S. Magistrate Judge. City's motion to dismiss is denied in part and granted in part, dismissing without prejudice with leave to re-file in a Third Amended Complaint claims against Defendants Yohn, Harmon and Poole and certain of claims one, four, seven, eight and ten. The remaining claims are dismissed with prejudice. Plaintiff may re-file only those claims dismissed without prejudice in a Third Amended Complaint by October 25, 2013. October 23, 2013 Plaintiff files third amended complaint. November 13, 2013 City files motion to dismiss Plaintiff's third amended complaint. **December 12, 2013 Plaintiff files response to City's motion to dismiss Plaintiff's third amended complaint. December 20, 2013 Court issues order denying Plaintiff's previously-filed objections to magistrate's recommendation and motion to strike. December 23, 2013 City files reply to its motion to dismiss Plaintiff's third amended complaint.**

(Total 237.5 hours – Turner)

Romens, Alan J. v. City of Colorado Springs

United States District Court Case No. 13-cv-01441-RM-KLM

CLAIM: Plaintiff brings 1983 action claiming violation of Equal Protection Clause of the Fourteenth Amendment to the United States Constitution stating that sworn marshal positions pay significantly more than his position as a civilian marshal position and require the same duties.

STATUS: September 3, 2013 Summons and Complaint received via mail with Waiver of Service. September 6, 2013 Waiver of Service signed by Christie McCall. September 9, 2013 City files unopposed motion to vacate and reschedule scheduling conference. September 10, 2013 Court grants motion to vacate and resets scheduling conference for November 18, 2013. November 4, 2013 City files motion to dismiss. November 25, 2013 Plaintiff files response to City's motion to dismiss. November 26, 2013 City files unopposed motion for protective order and to vacate scheduling order deadlines. December 3, 2013 Court issues order granting City's unopposed motion for protective order and to vacate scheduling order deadlines, staying all discovery. December 9, 2013 City files reply to its motion to dismiss.  
(Total 178 hours - McCall)

Stoa, Kris and the City of Colorado Springs v. Susan Barnes

El Paso County District Court Case No. 2013 CV30742

CLAIM: Stoa and the City of Colorado Springs initiated suit against Barnes after Stoa, who was in the course of his employment, was injured during an automobile collision caused by Barnes.

STATUS: September 9, 2013 City enters its appearance. September 20, 2013 Defendant Barnes files answer to Complaint and Jury Demand. Discovery commences.  
(Total 95 hours - Lamphere)

Wojdacz, Elizabeth v. Officer John Ireland, Patrick Miller, and Penrose-St. Francis Healthcare

United States District Court Case No. 12-cv-01483

CLAIM: Plaintiff alleges that the Colorado Springs Police Department and Defendants Grady, Officer Ireland failed to investigate multiple situations and file charges.

STATUS: June 26, 2012 Received copy of Complaint and Civil Cover Sheet. August 2, 2012 Plaintiff files amended complaint. City files motion to dismiss amended complaint or quash service, which is pending before the Court. Defendant Miller files Answer to amended complaint and jury demand; Defendant Penrose St. Francis files answer to amended complaint; Gary Norman files answer to Plaintiff's amended complaint. November 30, 2012 Defendant Penrose submits an amended motion to dismiss and for judgment on the pleadings. January 3, 2013 Recommendations of the United States magistrate judge entered regarding the City's motion to dismiss: All claims except the 4<sup>th</sup> amended against Officer Ireland should be dismissed. January 29, 2013 Defendant Penrose files reply to its motion to dismiss and for judgment on the pleadings. February 22, 2013 City files reply to Plaintiff's objections to magistrate's recommendations. On February 25, 2012, Court overrules objections and adopts the recommendation of the US Magistrate Judge. The City's motion to dismiss is granted in part and denied in part. Plaintiff's claims under Colorado Organized Crime Control Act, First Amendment, and Fourteenth Amendment against defendants Colorado Springs Police Department, Commander Brian Grady, and Officer John Ireland are dismissed without prejudice. Further Fourth Amendment against Colorado Springs Police Department and Commander Brian Grady are dismissed without prejudice. March 4, 2013 Magistrate Judge makes recommendation to grant both Penrose St Francis and Patrick Miller's motion to dismiss. March 11, 2013 Defendant Ireland files Answer to Amended Complaint. April 4, 2013 Court issues order overruling objections and adopting magistrate's recommendation dismissing Defendant's Miller and Penrose St Francis and judgment is entered in favor of Miller and Penrose dropping them as parties to this case. April 26, 2013 Defendant Hudson files response to default judgment and

motion to dismiss all counts against Defendant Cliff Hudson which is denied without prejudice and stricken by the Court on April 30, 2013. August 30, 2013 Officer John Ireland files motion for summary judgment. September 23, 2013 Plaintiff files response to Officer Ireland's motion for summary judgment. October 17, 2013 Magistrate judge files his recommendation that Officer Ireland's motion for summary judgment be denied. October 31, 2013 City files objection to recommendation to magistrate judge. November 12, 2013 Plaintiff files opposed motion for trial setting and opposed motion for status conference. December 3, 2013 Court issues orders denying both Plaintiff's motion for trial setting and motion for status conference. December 13, 2013 Court issues order sustaining the City's objection and rejecting the magistrate judge's recommendation, thereby granting Officer Ireland's motion for summary judgment and dismissing Officer Ireland with prejudice as Defendant. **March 18, 2014 Defendant Hudson files answer to amended complaint which was stricken by the Court April 1, 2014. March 27, 2014 Court orders dismissal of all claims against Defendant Duncan. Four day trial set to commence May 5, 2014. May 15, 2014 A final judgment was issued and entered in favor of remaining defendants.**

Total 449.25 hours – Lamphere)

Wojdacz, Elizabeth v. Robert E. Blackburn; Michael E. Hegarty; Erik Lamphere; Kim DeLine; Michael Watts; Retherford, Mullen & Moore; Lindsey Topper; Colorado Springs City Police Department; Joel Kern; W. Lambert; Lt. Scott Whittington; Medina General Hospital; Akron Children's Hospital Medical Center of Akron; Ashland County Department of Human Services; and City of Colorado Springs

United States District Court Case No. 13-CV-01738-MSK

CLAIM: Plaintiff claims that Defendants violated Constitutional rights during the first case of a previous lawsuit filed with the United States District Court Case No. 12-CV-01483.

STATUS: July 17, 2013 Plaintiff served Summons and Complaint to Attorney Erik Lamphere. August 1, 2013 Lindsey Topper files Answer to Complaint. August 6, 2013 City Defendants file motion to dismiss. August 14, 2013 Plaintiff files motion to consolidate this case with her other pending action (detailed above). August 26, 2013 Plaintiff files amended complaint. September 3, 2013 Court issues order denying Plaintiff's motion to consolidate cases. September 9, 2013 City Defendants file motion to dismiss Plaintiff's amended complaint. September 12, 2013 Defendants Blackburn and Hegarty file motion to dismiss amended complaint. September 16, 2013 Defendant Topper files answer to amended complaint. October 4, 2013 Defendant Ashland files motion to dismiss. October 7, 2013 Defendants DeLine and Watts file motion to dismiss. October 9, 2013 Akron Children's Hospital files motion to dismiss. October 21, 2013 Plaintiff files responses to Defendants City and Judges Blackburn and Hegarty's motion to dismiss. October 24, 2013 Defendant Topper files motion to dismiss. October 31, 2013 Defendant Medina General Hospital files motion to dismiss. November 1, 2013 City Defendants and Judges Blackburn and Hegarty file their replies to their motions to dismiss. November 13, 2012 Plaintiff files response to Topper's motion to dismiss. November 21, 2013 Plaintiff files response to Medina's motion to dismiss. November 27, 2013 Plaintiff files responses to Retherford Defendants' (DeLine, Watts, and law firm of Retherford, Mullen, and Moore) Ashland's, and Akron's motions to dismiss. December 5, 2013 Medina files reply to its motion to dismiss. December 10, 2013 Defendant Ashland files reply to its motion to dismiss. December 12, 2013 Retherford Defendants file reply to their motion to dismiss. December 13,

2013 Defendant Topper and Defendant Akron file replies to their motions to dismiss. December 17, 2013 Defendant Medina files joinder to Akron's reply to motion to dismiss.  
(Total 195 hours - Gendill)

### REAL ESTATE

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. Case will be at issue March 26, 2014; Disclosures due May 12, 2014. **Five day jury trial scheduled for April 27, 2015.**

(Total 44.25 hours - Gendill)

### REGIONAL BUILDING DEPARTMENT

Probuild Company LLC and BMC West Corporation v. Heritage Homes, INC. d/b/a Today's Homes, INC. a/k/a Today's Homes; Spring Creek Construction, LLC a/d/b/a Springs Creek Construction, LLC; RBC Bank (USA) f/k/a RBC Centura Bank; American Builders Capital (US) INC.; Valiant Trust Company; Integrity Construction LLC; PTL Concrete INC.; Horizon Drywall INC.; Chiddix Brothers, INC.; D.H. Pace Company, INC. d/b/a Ankmar Door; Home Builders Services, INC.; Steel-T Heating, INC.; C&T Plumbing, LLC; Environmental Materials LLC d/b/a Environmental Stoneworks; Creative Touch Interiors, INC.; Positive Electric, LLC; METCO Landscape, INC.; City of Colorado Springs; Safety Rails of Colorado INC.; Builder Services Group, INC. d/b/a Allied Insulation Division 176; The Sherwin-Williams Company; Advanced Ready Mix INC.; Barton Materials, LLC d/b/a Barton Supply; Split Rail Fence CO; Continental Woodworks, Inc.; Sidney C. Shipp; Public Trustee of El Paso County

El Paso County District Court Case Number 2012CV4089

CLAIM: Plaintiffs filed a mechanic's lien foreclosure based on their furnishing of materials, supplies, and goods for use in or on fourteen properties owned by Heritage Homes, for which they allege payment has not been received. Plaintiffs also allege breach of contract,

breach of implied contract, open account, and unjust enrichment. The remaining Defendants, including the City, may have interests in the real properties against which the Plaintiffs seek to foreclose their lien. The City's interest has been identified as extending only to a claim that the properties at issue do not comply with City Code, and this interest has been asserted in the case.

STATUS: December 6, 2012 Summons and Complaint was filed with the City. December 27, 2012 City files answer to Plaintiff's complaint. April 3, 2013 Court grants Plaintiff unopposed and stipulated motion to transfer mechanic's lien action to Division 19 and stay mechanic's lien foreclosure action.

(Total 28.5 hours – Gendill / McCall)

### **TRANSIT SERVICES**

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

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

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

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

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

Court of Appeal, Case Number 2013CA001711

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

STATUS: In January, 2010, ATU asserted to First Transit that First Transit is a party to the Section 13(c) Agreement and is required by the Agreement to apply the South Facility collective bargaining agreement to the Pikes Peak Rural Transportation Authority bus transit operation (referred to as the "North Facility") and all North Facility collective bargaining unit employees or to provide dismissal allowances, thereby burdening First Transit with potential liability. ATU filed suit against First Transit in Colorado State District Court for Denver County, Colorado on July 30, 2010. On August 19, 2010, First Transit filed a Notice of Removal in the U.S. District Court, District of Colorado. On September 13, 2010, First Transit filed a third-party complaint against the City seeking indemnification pursuant to the parties' services agreement and alleging that the City is contractually obligated to assume sole responsibility, indemnify, and compensate First Transit for any and all costs and liability resulting from ATU's claims raised pursuant to the 13(c) Agreement. On November 1, 2010, the City filed a motion to remand to El Paso County District Court. First Transit filed its response to the City's motion to remand on November 23, 2010, and the City replied on December 7, 2010. A hearing on the City's motion to remand was held on January 7, 2011. On February 14, 2012, the Court issued an order granting the City's motion to remand, but remanding the case to the District Court for the City and County of Denver, Colorado. On February 28, 2012, the City filed a motion to dismiss for failure to state a

claim for which relief can be granted, C.R.C.P. 12(b)(5) in the District Court for the City and County of Denver, Colorado. On that same date, the District Court for the City and County of Denver, Colorado *sua sponte* issued an order remanding the case to the El Paso County District Court (thereby initiating Case No. 12cv81). On March 1, 2012 ATU filed a motion to reconsider Court's order of February 28, 2012. The City reaffirmed its motion to dismiss by re-filing same in 12cv81. The city responded to ATU's motion to reconsider on March 14, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue. And, on March 19, 2012, ATU filed response to the City's motion to dismiss. On March 20, 2012, First Transit filed a response in opposition to ATU's motion to reconsider the Denver District Court's remand to El Paso County; and, on March 20, 2012 First Transit also responded in support of the City motion to dismiss. ATU replied on March 21, 2012 in support of its motion reconsider the Denver District Court's order remanding to El Paso County. The City then, on March 26, 2012, responded to ATU's motion to hold the proceedings in abeyance. On March 27, 2012 ATU replied to First Transit's response in support of City's motion to dismiss; and ATU replied to First Transit's response regarding the order concerning remand to El Paso County. On March 30, 2012, the City files replied to ATU in support of the City's motion to dismiss. On April 2, 2012, ATU replied in support of its motion to hold proceedings in abeyance. A motions hearing was held on June 21, 2012. On July 6, 2012, the El Paso County District Court (12cv81) issued an order stating it would take no action regarding the City's motion to dismiss until the a judgment was entered in 2007cv1322.

2007cv1322 has been filed by ATU against the City in El Paso County District Court regarding enforcement of the 13(c) agreement against the City and its contractors. In that case, the El Paso County District Court has entered an order on August 25, 2009 entitled Partial Grant and Denial of City's Motion for Summary Judgment, finding the binding interest arbitration provisions of paragraph 15 of the 13(c) agreement in violation of Colorado law and unconstitutional. ATU appealed that ruling to the Colorado Court of Appeals (09CA2343). On October 21, 2010, the Court of Appeals announced an unpublished opinion affirming the judgment and remanding the case with directions. A trial on remand was held June 11, 2012. On July 24, 2012, the Court in 07cv1322 entered an order finding that the 13(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 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.**

(Total 468.25 hours – McCall / Gendill)

(OC)

Mohamad, Nancy C. v. McDonald Transit Associates, Inc. and the City of Colorado Springs

El Pas County District Court Case No. 13CV30621

CLAIM: Plaintiff alleges that due to negligence, unlawfulness and carelessness of a bus driver, Plaintiff fell causing injuries and damages.

STATUS: Complaint filed July 24, 2013. August 30, 2013 Defendant McDonald files answer. October 7, 2013 City files answer. **Discovery ongoing. Four-day trial set to begin Monday, July 28, 2014 and finishing on July 31, 2014.**

(Total – 3 hours / E. Kennedy at Hall & Evans, LLC)

## UTILITIES

(OC)

CASCADE PUBLIC SERVICE COMPANY, INC., A COLORADO CORPORATION, AND CASCADE METROPOLITAN DISTRICT NO. 1, A COLORADO SPECIAL DISTRICT AND MUNICIPAL CORPORATION

Pueblo County District Court Water Division No. 2 Case No. 2011CW42

CLAIM: Plaintiffs, Cascade Public Service Company and Cascade Metropolitan District No. 1 allege that the Plaintiffs and the City entered into an agreement as to water rights in 1990. Plaintiffs allege that the City, by its failure to divert, use, and account for use of Plaintiffs' water rights for a period in excess of 20 years has diminished and/or terminated a portion of Plaintiffs' water rights by reducing their historic consumptive use quantification and that this diminishment constitutes a breach of the 1990 agreement. Plaintiffs were granted leave to amend their complaint to add a new claim for relief that the City had breached the 1990 Agreement by its alleged failure to keep accurate records and accounts of water service and to correct within a reasonable time errors in billing. Plaintiffs seek declaratory judgment by the Court that the City did breach the 1990 Agreement with the result that the Bypass Flow Obligation is in full force and effect.

STATUS: June 24, 2011 - summons and complaint received. July 21, 2011 - City files its answer. In June 2012, Plaintiffs were granted leave to amend their complaint to add a new claim for relief that the City had breached the 1990 Agreement by its alleged failure to keep accurate records and accounts of water service and to correct within a reasonable time errors in billing. The City filed its answer to the amended complaint on July 11, 2012 and asserted a breach of contract counterclaim against the Plaintiffs for their failure to pay for water service within the time required by the 1990 Agreement. Trial was originally scheduled for April 2013. In February 2013, Plaintiffs hired additional legal counsel and due to the schedule of the new counsel, the April 2013 trial date was vacated and reset for August 13-16, 2013. The parties

subsequently entered into settlement discussions and in late April, agreed to hold in abeyance all further trial preparation while settlement negotiations proceeded. Plaintiffs filed a motion to vacate the trial to allow settlement negotiations to proceed. The parties discussed settlement on a number of occasions, but they were unable to reach a settlement. Trial was then scheduled for February 11-14, 2014. In November 2012, Cascade Public Service Company gave a deed in lieu of foreclosure to Realty Management Group, LLC (RMG) conveying the Harmes Ditch Water Rights that are the subject of the 1990 Agreement. On October 31, 2013, RMG moved to intervene in the case as a Plaintiff on the grounds that it owns the Harmes Ditch Water rights. The City consented to intervention on the grounds that RMG now owned the water rights and the court granted the motion to intervene. Plaintiffs filed a motion to continue trial on the grounds that one of Plaintiffs' key witnesses was under criminal investigation for embezzlement from the Cascade Metropolitan District and was not available for deposition or trial until after the criminal charges were resolved. The City opposed the motion due to prejudice to the City arising from delay and continued non-payment for water services by the Plaintiffs. The City and Plaintiffs thereafter entered into an agreement to continue the trial pursuant to which the Cascade Metropolitan District will add a monthly fee to its current water bills and use the money from the added fee to pay off its past-due balance. In addition, Plaintiffs agreed to pay in full each monthly bill plus all accrued interest. If Plaintiffs fail to adhere to this agreement, then trial could be reset without regard to the status of Plaintiffs' unavailable witness. The parties are required to file status reports with the court on the availability of the currently unavailable witness in June 2014 and every 91 days thereafter. Trial will be rescheduled as soon as the unavailable witness can testify. There are several other motions pending before the court seeking rulings on various matters that are currently being briefed by the parties. **The parties have met on several occasions to discuss settlement and those discussions are continuing.** (William Paddock at Carlson, Hammond & Paddock)

City of Colorado Springs, Colorado v. Group XIX Land and Cattle Co., a California limited partnership; Mountain View Electric Association, Inc., a Colorado corporation; Sprint Communications Company, K.P., a Delaware limited partnership; Qwest Communications Company, LLC, a Delaware limited liability company; Level 3 Communications, LLC, a Delaware limited liability company; Wiltel Communications LLC, a Delaware limited liability company; Robert C. Balink, El Paso County Treasurer, El Paso County Combined Court Case No. 2013CV032136.

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of a permanent easement 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 9, 2013 City files Petition in Condemnation. December 10, 2013 City files motion for immediate possession and Notice of Commencement of Action – Lis Pendens. December 13, 2013 Defendant Balink files disclaimer of interest. December 27, 2013 Mountain View Electric files disclaimer of interest. December 30, 2013 Qwest files answer to petition in condemnation. January 2, 2014 City files brief in support of motion for immediate possession. January 13, 2014 Group XIX files its answer to the petition in condemnation and its initial list of witnesses and exhibits for immediate possession hearing. January 15, 2014 City files its list of witnesses and exhibits. January 29, 2014 Joint Stipulation filed concerning Level 3 Fiber Optic Facilities. January 30-31, 2014 Immediate possession hearing held. February 4,

2014 Order for Immediate Possession. **March 11, 2014 Court grants a stipulated motion allowing City's acquisition of Qwest easement interests according to the City's petition and releases Qwest from lawsuit. Settlement conference scheduled for May 22, 2014.** (Total 103.5 hours - Turner/Blieszner/Banner)

(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.** (Total 40 hours - Turner/Blieszner/Banner)

(CC)

CITY OF COLORADO SPRINGS, CO v. ULTRA RESOURCES, INC, a Wyoming Corporation 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.

(Total 39.25 hours – Turner / Blieszner)

(CC)

CITY OF COLORADO SPRINGS, COLORADO v. WALKER RANCHES, LLLP, A COLORADO LIMITED LIABILITY LIMITED PARTNERSHIP; AND DEL OLIVAS, PUEBLO COUNTY TREASURER, Pueblo County Combined Court Case No. 2011CV313.

**CLAIM:** The City filed this action in order to acquire a certain right-of-way in the form of a permanent easement and a temporary construction easement 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:** May 11, 2011 City files Petition in Condemnation. May 26, 2011 Pueblo County Treasurer files answer to petition in condemnation and notice of claim for prorated property taxes for the current taxable year on property. May 31, 2011 Walker Ranches files answer to petition in condemnation and jury demand and response to motion for immediate possession. October 11, 2011 Parties file stipulation for immediate possession. October 11, 2011 Court issues order granting immediate possession; City to deposit \$76,046.00 into court registry; Cattle Relocation Agreement previously entered into between the City and Walker Ranches incorporated into this agreement; Walker Ranches will have 90 days from date of deposit of funds into court registry to obtain appraisal at City's expense. October 18, 2011 City files notice of deposit of funds in court registry. November 29, 2011 Walker Ranches files motion for forthwith disbursement of funds on deposit in the District Court Registry. November 30, 2011 Court issues order granting motion for forthwith disbursement of funds on deposit in the District Court Registry. December 9, 2011 Defendant Olivas files disclaimer of interest. February 8, 2012 Petitioner files unopposed motion for leave to file amended petition. February 9, 2012 Court grants Petitioner's motion for leave to file amended petition. June 4, 2012 Court issues Pre-Trial Order outlining deadlines prior to trial. Four-day jury trial rescheduled from May 14, 2013 to February 18, 2014. October 10, 2013 Parties file Proposed Stipulated Modified Case Management Order. October 21, 2013 Court grants Parties' Stipulated Amended Modified Case Management Order. October 24, 2013 Order granting Petitioner's motion for leave to file second amended petition in condemnation. October 30, 2013 Parties file stipulation for immediate possession. Discovery has commenced. November 4, 2013 Order granting immediate possession. November 18, 2013 City files motion to reschedule trial and enlarge time to file rebuttal expert reports. November 21, 2013 Respondent files motion for forthwith disbursement of additional funds on deposit in the District Court Registry and response to the City's motion to reschedule the trial and enlarge time to file rebuttal expert reports. November 27, 2013 City files reply to its motion to reschedule trial and enlarge time to file rebuttal expert reports. December 10, 2013 Court issues order granting City's motion to reschedule trial and enlarge time to file rebuttal expert reports. December 16, 2013 Court issues order granting motion for forthwith disbursement of additional funds on deposit in the District Court registry. **April 16, 2014 Petitioner files motion to compel disclosure of respondent's financial information relating to ranching operations. Hearing scheduled for June 18, 2014.** Trial scheduled for November 4, 2014. (Total 77.5 hours - Turner/Blieszner/Banner)

IN THE MATTER OF THE APPLICATION AND REQUEST OF THE CITY OF COLORADO SPRINGS FOR AUTHORITY TO ESTABLISH A NEW PUBLIC CROSSING AND IMPROVED APPROACH AT THE CROSSING OF THE EXISTING TRACKS LOCATED

NEAR THE INTERSECTION OF LOREN LANE AND INTERSTATE 25, IN EL PASO COUNTY, COLORADO

Public Utilities Commission of the State of Colorado Docket No. 13A-1104R

APPLICATION: The City applies to the Public Utilities Commission for authorization to establish a new public railway crossing and improve approach at the intersection of Loren Lane and railroad tracks.

STATUS: October 21, 2013 City files notice of application and petition. October 29, 2013 PUC issues a 30-day notice to interested parties to file Notice of Intervention. November 26, 2013 BNSF Railway Company files entry of appearance and notice of intervention. December 11, 2013 Public Utilities Commission issues decision deeming application complete and granting application, subject to completion of a construction and maintenance agreement between Utilities and BNSF Railway Company.

(Total \_\_ hours – Burgess).

Janet Johnston and Mary Clay (Johnston-Clay) v. The City of Colorado Springs

United States District Court Case No. 13-cv-03472

CLAIM: Plaintiffs Janet Johnston (prior Sales and Load Forecasting Supervisor), and Mary Clay (current Analyst Lead) in the Energy Services Department of Colorado Springs Utilities, allege discrimination based on age and gender, retaliation for engaging in protected activity, and hostile work environment. Janet Johnston also alleges discrimination due to disability, and Mary Clay alleges discrimination due to race. Plaintiffs allege that they were denied promotions, subjected to demotions, and that CSU has a pattern and practice of promoting male employees under age 40 in management positions. Plaintiffs seek damages.

STATUS: **Plaintiffs filed an Amended Complaint on March 18, 2014, and a Second Amended Complaint on March 21, 2014. The City filed a Partial Motion to Dismiss on April 4, 2014; Plaintiffs filed their response April 24, 2014; and the City filed its reply on May 8, 2014. The City filed Motions to Stay Discovery Pending the Motion to Dismiss and for Separate Trials; Plaintiffs filed responses to each motion on April 28, 2014, and the City filed its replies on May 9, 2014.**

(Total 417.25 hours - Lessig/McCall/Smith)

(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 Deadline for appeal.**

(Peter D. Nichols)

### **OTHER MATTERS**

Colorado East Bank and Trust v. Academy Bank, N.A. and Thomas S. Mowle, as Public Trustee of El Paso County, Colorado/JRJ Land, LLC, a Colorado limited liability company; Morley Companies Family Development, LLLP, a Colorado limited liability partnership; and James Morley, an individual v. Academy Bank, N.A., a nationally chartered bank; Allen Brown, an individual; Brown Financial, LLC, a Colorado limited liability company; Security Title Guaranty Co., a Colorado corporation

El Paso County District Court Case No. 10CV1731

BACKGROUND: Plaintiff obtained judgment against Defendants on May 17, 2011 for \$2,222,413.29.

STATUS: October 3, 2013 City served with writs of garnishment for JRJ Land, Morley Companies Family Development, James Morley, and 2MS Land, LLC. October 15, 2013 City files answers to writs of garnishment against JRJ Land, Morley Companies, James Morley, and 2MS Land.

(Total 58.75 hours – Turner)

Ventimiglia, John M., individually, and Silver Cloud, LLC, a Colorado limited liability company v. Raymond F. O'Sullivan, individually, Carmel O'Sullivan, individually, Ridgeview Development, LLC, a Colorado limited liability company, Realty Development Services, Limited Liability Company, Delinquent February 1, 2009, a Colorado limited liability company, d/b/a Realty Development Services

El Paso County District Court Case Number 2010CV5015

Colorado Court of Appeals Case No. 2013CA

BACKGROUND: Plaintiff obtained judgment against Defendants on May 17, 2011 for \$2,595,552.69.

STATUS: April 9, 2013 City served with writs of garnishment for Ridgeview Development, LLC and Realty Development Services, LLC. April 30, 2013 City files answers to writs. May 13, 2013 City files amended answer to writ for Ridgeview Development, LLC. June 5, 2013 Plaintiff files motions for release of funds of judgment debtors Realty Development Services and Ridgeview Development. June 26, 2013 Ridgeview Development

files motion to vacate the previously entered default judgment against Defendants, arguing that service was improper. July 12, 2013 Plaintiffs file response to Ridgeview's motion to vacate the default judgment. July 29, 2013 Ridgeview files its reply to its motion to vacate default judgment. August 30, 2013 Hearing held on motion to vacate default judgment and motions for release of funds; Court denies the motion to vacate judgment and grants motions for release of garnished funds as they relate to Ridgeview Development and Reality Development Services. October 21, 2013 Ridgeview files notice of appeal.  
(Total 78 hours – Turner)

## ADMINISTRATIVE SECTION

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION/ COLORADO CIVIL RIGHTS DIVISION

#### DISPOSED MATTERS

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 846-2011-75171. Charging Party alleges discrimination on the basis of age and sex and retaliation for engaging in a protected activity. August 18, 2011 Charge filed. Position statement due September 26, 2011; extension granted to October 26, 2011. October 26, 2011 City filed position statement. October 24, 2013 the EEOC issued a Right to Sue Notice to Claimant that they may commence in a civil action as 180 days have elapsed and Claimant specifically requested this notification. Charging Party filed a lawsuit December 23, 2013. (Total 51.25 hours – Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-00470. *See EEOC Charge No. 846-2011-75171*. Charging Party alleges discrimination on the basis of Title VII, ADA, age, gender and retaliation. Position statement filed February 6, 2013. October 24, 2013 EEOC issues Notice to Claimant they may commence in a civil action as 180 days have elapsed and Claimant specifically requested this notification. Charging Party filed lawsuit December 23, 2013. (Total 78.0 hours – Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-00510. December 12, 2012 Charging Party alleges discrimination on the basis of Title VII, retaliation. Position Statement and Request for Information filed July 26, 2013. of Title VII, ADA, age, gender and retaliation. November 21, 2013 EEOC issues Notice to Claimant they may commence in a civil action as 180 days have elapsed and Claimant specifically requested this notification; **Amended Complaint filed February 14, 2014**. (Total 10.75 hours - Orona /Harris, Karstaedt, Jamison & Powers, P.C.)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2011-01916. Charging Party alleges discrimination on the basis of race and age and retaliation for engaging in a protected activity. August 9, 2011 Charge filed. Position statement originally due September 13, 2011; extension granted to October 13, 2011; additional extension granted to October 27, 2011. October 26, 2011 City filed position statement. September 25, 2013 EEOC

issues determination that it is unable to conclude that the information establishes violation of the statutes. Charging Party filed a lawsuit December 23, 2013. (Total 53 hours – Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02190. Charging Party retaliation based on race, color and prior Charge of Discrimination. Position Statement and request for information filed November 22, 2013. A final position statement with position statement was filed on February 6, 2014. **The Notice of Right to Sue was issued by the EEOC January 16, 2014. Amended Complaint filed February 14, 2014.**

(Total 36.25 hours – Lessig/Harris Karstaedt Jameson and Powers)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00522. Charging Party filed Notice of Discrimination. December 30, 2013, alleging discrimination under the ADEA. No perfected charge was filed, the EEOC dismissed the charge on January 30, 2014 (Total 0 hours – T. Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01644. Charging Party files third Notice of Charge of Discrimination on Title VII and Age Discrimination on July 1, 2013. Position Statements filed August 15, 2013 after extension. **The EEOC issued the Notice of Right to Sue letter February 19, 2014.** (Total 17.50 hours – Lessig)

#### NEW MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number E20140514. Charge of alleged discrimination is filed April 17, 2014. Request for Information is due May 23, 2014. (Total \_\_ hours – McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-01062. Charging Party alleges discrimination on the basis of the Americans with Disabilities Act. Waiting for perfected charge. (Total \_\_ hours – )

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-01161. *See EEOC Charge No. 541-2014-00190.* Charging Party alleges discrimination on the basis of the Equal Pay Act. Waiting for perfected charge. (Total \_\_ hours – J. Smith)

#### CURRENT MATTERS

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00190. Charging Party filed Notice of Discrimination on November 6, 2013, and filed the perfected charge December 2, 2013, alleging discrimination under Title VII and violations of the Equal Pay Act. Position Statement/RFI filed January 17, 2104. Waiting for decision from EEOC. (Total 162 hours – J. Smith)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00410. Charging Party filed Notice of Discrimination December 4, 2013, alleging discrimination under the Americans with Disabilities Act. **Position statement filed April 4, 2014. Waiting for decision from EEOC.**

(Total 0 hours – Smith)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01528. Charging Party files Notice of Discrimination based on Title VII and Age on May 29, 2013. Position Statements and Request for Information responses filed July 25, 2013. Waiting for decision from EEOC.

(Total 129.25 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01723. Charging Party files second Notice of Discrimination based on ADA discrimination. Position Statements filed August 16, 2013. Waiting for decision from EEOC. (Total 211.5 hours – Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01504. Notice of Charge of ADA Discrimination is filed May 22, 2013. May 29, 2013 Charging Party alleges discrimination based on disability and retaliation. Position Statements filed August 16, 2013. Waiting for decision from EEOC. (Total 103.25 hours - Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02295. September 17, 2013 Charging Party alleges Title VII discrimination on the basis of race and color. Position statements and request for information filed. Waiting for decision from EEOC.

(Total 132.75 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02323. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on her gender, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. Waiting for decision from EEOC. (Total 55.5 hours – Lessig).

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00026. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on his national origin, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. Waiting for decision from EEOC. (Total 95.25 hours – Lessig).

EMPLOYEE v. CITY OF COLORADO SPRINGS, CCRD Charge No. E20140163 – Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on race, and retaliation. The City’s Position Statement and RFI Response

extended to December 20, 2013. Position Statement and Response to Request for Information filed December 20, 2013. Waiting for decision from EEOC. (Total 87.5 hours – McCall).

**Total Active Application Cases: 10 (2 Diligence cases)**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
04CW132	Denver Basin Groundwater Return Flow Exchange
05CW096	Leased Water Exchange
06CW120	ROY Exchange Application
07CW120	Quail Lake Storage
07CW121	Fountain Creek Recovery Exchange
07CW122	Pueblo Reservoir and Williams Creek Reservoir
12CW031	Upper Williams Creek Reservoir
13CW3077	Green Mountain Reservoir
13CW009	Arkansas River Exchange (Diligence)
13CW020	Local System Exchange (Diligence)

**Application Cases Before Water Referee: 3**

**Application Cases Before Water Judge: 7**

**Total Objector Cases: 73**

**Active 41**  
**Stipulated 32**

**Active Before Water Referee: 61**

**Active Before Water Judge: 12**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
88CW23(B)	Triview Metropolitan District
03CW104	Upper Arkansas Water Conservancy District
04CW096	Upper Arkansas Water Conservancy District
05CW91	PC Water, LLC
05CW107-B	City of Lamar
07CW127	Colorado Water Protective & Development Association
07CW128	Colorado Water Protective & Development Association
10CW004	Lower Arkansas Valley Water
11CW013	City of La Junta
11CW077	Lower Arkansas Valley Water & Larkspur, Inc.
12CW124	Climax Molybdenum Company
12CW176	Climax Molybdenum Company

**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

**Active cases:**

Municipal – 38  
Utilities – 10  
Memorial - 3

**Subrogation cases** handled by outside counsel:

Municipal – 0  
Utilities – 0

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

Municipal – 4  
Utilities – 2

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<u>FEBRUARY</u>	<u>MARCH</u>	<u>APRIL</u>
Cases Docketed for Trial by Court	179	239	284
Cases tried:	61	129	146
Cases handled without trial:	118	110	138
Cases Docketed for Trial by Jury:	15	18	4
Cases tried:	0	0	0
Cases handled without trial:	15	16	3
Cases Handled on Deferred Docket:	145	127	152
Cases Handled at Pretrial:	456	475	590
Cases Handled at Arraignments:	853	1149	1113
Mailed Dispositions:	22	36	42
Deferred Sentences at Arraignment:	31	40	26
Criminal Arraignments Screened:	299	700	622
Jail Docket:	194	289	296
Liquor Hearings:	3	5	6
NPOI:	165	261	123
Good Driver Letters Mailed:	464	795	1060
<b>TOTAL MATTERS:</b>	<b>2818</b>	<b>3873</b>	<b>4195</b>