

QUARTERLY REPORT  
TO CITY COUNCIL

LITIGATION AND ADMINISTRATIVE MATTERS

August 2013

Covering June through August 2013



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City Attorney/Chief Legal Officer

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## LITIGATION SECTION

In this section, the symbol “(IC)” indicates representation by insurance counsel; “(OC)” indicates representation by outside counsel on a contract basis; and “(CC)” indicates that a staff attorney is co-counsel with either outside or insurance counsel. All other litigation matters are handled completely by the City Attorney’s Office staff attorneys. *NOTE: Hours worked are cumulative and reflect combined time of attorneys and paralegals.*

### DISPOSED CASES

Alexander-Antonetty, Marena N. and Jamaal Antonetty v. CSPD – SWAT.

El Paso County District Court Case No. 13CV56

CLAIM: Plaintiff claims that CSPD and SWAT used excessive force causing injury to her while pregnant and resulted in a miscarriage and a traumatic brain injury.

STATUS: February 26, 2013 Summons and Complaint served. March 19, 2013 City files motion to dismiss. May 6, 2013 Court grants City’s motion to dismiss.

(Lamphere – Total 11 hours)

ANDERSON, NICOLL, INDIVIDUALLY AND AS THE SPECIAL ADMINISTRATOR TO THE ESTATE OF MITCHEL ANDERSON v. OFFICER B. WORSTELL (NO 2172) INDIVIDUALLY AND IN HIS CAPACITY AS A PAID PEACE OFFICERS AND AS AN EMPLOYEE AND/OR AGENT OF THE COLORADO SPRINGS POLICE DEPARTMENT AND THE CITY OF COLORADO SPRINGS; OFFICER C. CALKINS (NO. 2047), INDIVIDUALLY AND IN HIS CAPACITY AS A PAID PEACE OFFICER AND AS AN EMPLOYEE AND/OR AGENT OF THE COLORADO SPRINGS POLICE DEPARTMENT AND THE CITY OF COLORADO SPRINGS; COLORADO SPRINGS POLICE DEPARTMENT, IN ITS CAPACITY AS AN AGENT AND/OR INDEPENDENT CONTRACTS OF THE CITY OF COLORADO SPRINGS; THE CITY OF COLORADO SPRINGS, IN ITS CAPACITY AS A GOVERNMENTAL ENTITY; THE CITY OF COLORADO SPRINGS, AS THE EMPLOYERS OF OFFICERS WORSTELL AND CALKINS AND THE COLORADO SPRINGS POLICE DEPARTMENT; JOHN DOES 1-7, WHOSE NAMES AND IDENTITIES ARE UNKNOWN, INDIVIDUALLY AND IN THEIR CAPACITY AS GOVERNMENTAL OFFICERS OR EMPLOYEES; EPACE OFFICERS; AND/OR AGENTS OF THE COLORADO SPRINGS POLICE DEPARTMENT AND/OR THE CITY OF COLORADO SPRINGS; AND LISA N. PIEL, United States District Court Case No. 11CV00488-RPM; Tenth Circuit Court of Appeals Case No. 11-1327; El Paso County District Court 12CV5653. Plaintiff alleges that on February 17, 2010, the vehicle in which he was passenger was stopped by Officers Worstell and Calkins and the driver was arrested for Driving Under the Influence. Plaintiff alleges that although he was visibly intoxicated and not dressed for the cold conditions, he was told by officers to leave the scene of the driver’s arrest on foot. Plaintiff alleges that approximately one hour later while he attempted to cross Academy Boulevard in his intoxicated state, he was struck by a vehicle driven by Defendant Piel and sustained serious injuries, including the amputation of his leg. Plaintiff alleges that Officers Worstell and Calkins were responsible to take steps

reasonably necessary to ensure that Plaintiff would be able to travel safely home. Claims for relief against City Defendants include civil rights violations under the Fourteenth Amendment, failure to train or supervise, and lack of policies resulting in Constitutional violations. March 17, 2011 Summons and first amended complaint and jury demand received. April 7, 2011 Defendant Piel files answer and jury demand to first amended complaint and jury demand. April 22, 2011 City Defendants file motion to dismiss. May 13, 2011 Plaintiff files response to City's motion to dismiss. May 25, 2011 City files reply to its motion to dismiss. June 15, 2011 Plaintiff files supplement/amendment to his response to the City's motion to dismiss. June 16, 2011 Hearing held on City's motion to dismiss; Court issues order dismissing City and Colorado Springs Police Department but denies City's motion to dismiss based on qualified immunity of individual officers; sets additional evidentiary hearing for July 14, 2011 as to date notice was required to have been given under Colorado Governmental Immunity Act.; deadline to appeal denial July 18, 2011. June 27, 2011 City files answer and affirmative defenses to first amended complaint and jury demand. June 14, 2011 Evidentiary hearing held as to date notice was required to have been given under Colorado Governmental Immunity Act; City's motion to dismiss those claims on basis that notice of claim filed outside of statutory time limit denied; deadline to appeal denial August 3, 2011. July 18, 2011 City files notice of appeal as to both June 16, 2011 denial of City's motion to dismiss based on qualified immunity of individual officers and July 14, 2011 denial of dismissal under Colorado Governmental Immunity Act. Scheduling conference scheduled for August 26, 2011. August 1, 2011 City files docketing statement, transcript order form, and entries of appearance with Tenth Circuit Court of Appeals. August 2, 2011 Tenth Circuit Court of Appeals issues notice that the record on appeal is complete. Mediation conference scheduled by Court for August 18, 2011. August 5, 2011 City files motion to stay District Court case pending resolution of appeal in Tenth Circuit Court of Appeals. August 10, 2011 District Court enters order staying case pending resolution of appeal in Tenth Circuit Court of Appeals. August 16, 2011 Plaintiff files motion to compel Defendants to order and pay for hearing transcript to be included in record on appeal. August 17, 2011 City files response to Plaintiff's motion to compel Defendants to order and pay for hearing transcript. September 7, 2011 City Defendants file notice of suggestion of death on the record, advising Court of the death of Plaintiff during the pendency of this action; Tenth Circuit issues order that Plaintiff's counsel shall advise the Court by September 21, 2011 whether another party will be substituted for Plaintiff; briefing tolled pending resolution of matter. September 21, 2011 Counsel for Plaintiff files motion to substitute Nicholl Anderson, daughter of deceased Plaintiff and as personal representative of his estate, as Plaintiff; Tenth Circuit issues order granting the motion for substitution of parties and tolling of briefing is lifted. October 5, 2011 District Court issues order denying Plaintiff's motion to compel Defendants to order and pay for hearing transcript to be included in record on appeal; City files opening brief and appendix with Tenth Circuit Court of Appeals. November 11, 2011 Plaintiff files response brief and appendix with Tenth Circuit Court of Appeals. November 15, 2011 Tenth Circuit Court of Appeals issues notice of deficiency of Plaintiff's brief; corrected brief to be filed by November 25, 2011. November 29, 2011 Plaintiff files corrected answer brief. November 30, 2011 Tenth Circuit Court of Appeals issues notice of deficiency of Plaintiff's brief; corrected brief to be filed by December 9, 2011.

December 10, 2011 Plaintiff files corrected answer brief. December 20, 2011 Order filed by Clerk of the Court (DEC); the appellees have experienced some difficulties in filing a response brief that is timely and rule-compliant; Court affords the appellees one additional opportunity to comply with court rules and deadlines and orders that on or before December 30, 2011, the appellees shall do the following: (1) file electronically a motion asking leave to file the response brief belatedly; (2) refile electronically the response brief that is the same as the prior brief but showing a corrected certificate of service date and file with it electronically a single pdf file that includes all the attachments that were attached to the hardcopy of the brief; (3) file in hardcopy form only an errata showing the corrected certificate of service for the refiled response brief; Appellee brief now due December 30, 2011. December 29, 2011 Appellee files response brief and appendix and motion for leave to file answer brief out of time. December 30, 2011 Court issues order granting Appellee's motion for leave to file answer brief out of time. January 3, 2012 Court orders Appellant's optional reply brief due January 17, 2012. January 17, 2012 Appellant files reply brief. Arguments held May 7, 2012. May 14, 2012 Appellee files notice of supplemental authority. August 1, 2012 10<sup>th</sup> Circuit reverses lower courts order denying City's motion to dismiss, 10<sup>th</sup> Circuit Court declines to address the officers' second claim of error concerning Anderson's state tort claims; instead, remands to district court to consider dismissal. August 13, 2012 Appellants file bill of costs. August 16, 2012 Appellee files Petition for Rehearing en banc. August 17, 2012 Court issues notice of deficiency, Appellee to file corrected petition by August 27, 2012. August 28, 2012 Mandate of USCA issued. August 29, 2012 District Court issues order dismissing state law claims without prejudice. August 31, 2012 Order filed by clerk stating that the petitions for rehearing of 8/16/12 and 8/30/12 are both stricken; Order filed by Clerk of Court granting appellants' bill of costs. December 3, 2012 Plaintiff filed Complaint in the El Paso County District Court. February 1, 2012 City was served with Summons and Complaint by Plaintiff. February 22, 2013 City Defendants file motion to dismiss. March 12, 2013 Defendant Lisa Piel files Answer and Jury Demand. March 15, 2013 Plaintiff files response to City Defendants' motion to dismiss. March 29, 2013 City Defendants file reply in further support of their motion to dismiss. April 5, 2013 Court grants City's motion to dismiss for all the reasons set forth in the motion, reply and the Court's order. April 9, 2013 Defendant Piel files designation of non-parties at fault. April 26, 2013 City files motion for award of attorney's fees. May 3, 2013 Plaintiff files motion to amend or alter judgment. May 17, 2013 Plaintiff files motion to withdraw its motion to amend or alter judgment; City withdraws motion for attorney's fees; Court grants city's motion to withdraw motion for award of attorney's fees. **August 5, 2013 Parties Piel and Anderson file stipulation to dismiss with prejudice. August 6, 2013 Order granting order of dismissal.** (Total 627.5 hours – Turner/White).

Cozens, Bryan and Kelly Parang v. Colorado Springs Utilities, City of Colorado Springs, and Unknown Driver of the Colorado Springs Utility Truck, whose name is unknown  
El Paso County District Court Case Number 2012CV5480.

CLAIM: Plaintiff alleges that an unknown driver of a Colorado Springs Utilities acted negligently causing a motor vehicle accident causing damages.

STATUS: December 3, 2012 Summons and Complaint served. December 21, 2012 City files Answer, Affirmative Defenses and Jury Demand. February 1, 2012 Amended Complaint filed and City files answer February 15, 2013. Three day jury trial scheduled for September 3, 2013. **Parties file stipulated motion for dismissal with prejudice on August 19, 2013. August 20, 2013 Court grants motion. City settled with Plaintiff Cozens for \$16,000 and Plaintiff Parang for \$14,000.**  
(Total 139.25 hours - Lamphere).

DERAY, SHERRY L., AS HEIR AND NEXT OF KIN OF JOHN R. WINKLER (DECEASED) v. CARLOS SANDOVAL; JOHN HAVENAR, et. al.

United States District Court Case No. 11-CV-2639-MSK-CBS

CLAIM: Plaintiff alleges that on October 12, 2010, during the arrest of her son on a routine warrant, Colorado Springs Police Department officers used excessive force. Plaintiff further alleges that despite her warnings to the Colorado Springs Police Department earlier in the day that her son was depressed and suicidal, officers showed deliberate indifference to the state of her son and negligently violated Colorado Springs Police Department policies by not adequately securing him in a properly equipped police vehicle. Plaintiff alleges that as a result of the policy violations by the officers, her son was able to jump from the vehicle on Interstate 25 and was killed. Plaintiff alleges that the Colorado Springs Police Department maintained a policy or custom of inadequate training and/or supervision, lack of enforcement of authorized procedures, inadequate supervision, and violations of her son's 4<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment rights.

STATUS: October 12, 2011 Summons and complaint received. November 1, 2011 City files motion to dismiss City Defendants, which the Court issued an Order granting in part and denying in part Defendant's motion to dismiss stating the Estate's Fourth Amendment violation claim is dismissed against Defendants Richard Myers, Ronald Sheppard and the City of Colorado Springs regarding the Fourth Amendment claims against them; the Eighth Amendment claim is dismissed without prejudice to amendment of the Complaint; all other claims remain pending. June 3, 2012 Plaintiff files amended complaint. June 14, 2012 City files Answer and Affirmative Defenses to Amended Complaint. On August 13, 2012 City files motion for summary judgment, which has been responded and replied to. March 19, 2013 Court files opinion and order granting in part and denying part motion for summary judgment; Defendants Sheppard, Meyer, and the City of Colorado Springs are entitled to summary judgment on all claims against them, Defendants Sandoval and Havenar are entitled to summary judgment on the substantive due process claim and Defendant Havenar is entitled to summary judgment on Ms. DeRay's excessive force claim; denied in part as to Defendant Sandoval and Havenar's in common law negligence arising out of the decision to place Mr. Winkler in front seat of the vehicle for transportation shall proceed to trial. Scheduling conference scheduled for July 18, 2013. **July 10, 2013 Consent motion for dismissal with prejudice; parties reached a settlement of their claims for \$35,000 in settlement conference on July 9, 2013. July 17, 2013 Court grants order to dismiss.**  
(Total 553.25 hours - White).

FIRST GROUP AMERICA, INC., A DELAWARE CORPORATION, AND FIRST TRANSIT, INC., A DELAWARE CORPORATION v. CITY OF COLORADO SPRINGS, A COLORADO MUNICIPAL CORPORATION AND HOME RULE CITY.

United States District Court Case No. 12-CV-01070.

CLAIM: Plaintiff brings an ERISA claim against City of Colorado Springs due to Springs Transit Company Employee's Retirement and Disability Plan ("the Plan") alleging that the City is the employer for purposes of funding the Plan, the Plan is underfunded after First Transit predecessor's involvement with the Plan in 2006-, and the City is responsible for bringing the Plan to full funding. Plaintiff alleges that the City Colorado Springs began funding the Plan again from 06 until 2010 when it stopped paying contributions. The City contends that it is not the employer and not responsible to pay any further funding contribution payments to the Plan due to no legal responsibility under ERISA.

STATUS: April 24, 2012 Complaint and Summons received. May 14, 2012 City files answer and counterclaim. June 7, 2012 First Transit's Answer and affirmative defenses to Defendant City's counterclaims. December 13, 2012 John Madden III enters his appearance on behalf of City of Colorado Springs. February 4, 2013 First Transit files motion to compel. February 25, 2013 City files opposition to First Transit's motion to compel. March 11, 2013 First Transit files reply in support of its motion to compel. April 15, 2013 Parties have filed notice of settlement. **July 8, 2013 Parties file joint stipulation of dismissal with prejudice.**

(Total 281 hours – White / Madden Law Firm)

Goldstein, Herbert L. v. The City of Colorado Springs

El Paso County District Court Case No. 10CV4740

Colorado Court of Appeals Case No. 12CA1052

CLAIM: Defendant alleges that the parties entered into a lease agreement for his commercial property located at 217 and 221 South Wahsatch in 1981. Plaintiff alleges that following the expiration of the lease on December 31, 2009, the lease was extended on a month-to-month basis until March 1, 2010, when the City turned the property over to Plaintiff. Plaintiff alleges that it was the obligation of the City to rehabilitate the property and to pay storm water fees and that it failed to do so, thereby breaching its contract.

STATUS: Court trial held November 7 through 9, 2011. Parties submit proposed findings of fact and conclusions of law as ordered by the Court. On February 2, 2012 Court issues Order awarding Plaintiff \$88,549.78 for property damage, overhead costs, and five months lost rent plus attorney's fees and costs, plus statutory pre-judgment interest from March 1, 2010 through February 2, 2012. City files motion for post-trial relief. Court files order regarding City's motion as reserved until pending oral argument. A hearing was scheduled for oral argument regarding post trial motions on July 19, 2012. April 18, 2012 Court issues order regarding post-trial relief following parties joint motion for ruling – declines to modify its February 2, 2012 order as to attorney fees and costs, reduces award to Plaintiff for property/real estate taxes from \$6,738.35 to \$3,930.47, Court awards Plaintiff prejudgment interest from November 1, 2011 until final judgment, and vacates July 19, 2012 oral argument proceeding. April 28, 2012 Court enters Judgment including damages, attorney's fees and costs in the amount of \$167,457.21.

May 22, 2012 City files Notice of Appeal with the Colorado Court of Appeals. June 4, 2012 Goldstein files Notice of Cross Appeal with Colorado Court of Appeals. October 9, 2012 City of Colorado Springs files Opening Brief. December 14, 2012 Appellee files Opening-Answer brief. January 9, 2013 Appellee re-files Opening-Answer brief pursuant to order of the Colorado Court of Appeals. February 13, 2013 Appellant City files Answer-Reply Brief. March 13, 2013 Appellee and Cross-Appellant files Cross Reply Brief of Herbert L. Goldstein. **August 1, 2013 Court of Appeal reaffirms District Courts findings and remands case back to District court for fees. August 20, 2013 Parties file Satisfaction of Judgment and City paid \$104,950.74 to Plaintiff which included attorney fees.**

(Total 965 hours - White).

GREEN ELECTRIC, INC., A COLORADO CORPORATION v. TECHNICAL RISK MANAGEMENT, LLC, A DISSOLVED COLORADO LIMITED LIABILITY COMPANY; TIMOTHY J. BATOR, INDIVIDUALLY; THE CINCINNATI INSURANCE COMPANY, AN OHIO CORPORATION; and CITY OF COLORADO SPRINGS, ACTING BY AND THROUGH COLORADO SPRINGS UTILITIES and THE CINCINNATI INSURANCE COMPANY v. JILL BATOR, INDIVIDUALLY, GRETCHEN SCHWARTZ, INDIVIDUALLY, AND JASON SCWARTZ

El Paso County District Court Case No. 2012 CV 3409

CLAIM: Plaintiff Green Electric alleges that Defendant Technical Risk Management, LLC (“TRM”) failed to pay for services performed, material and supplies for the Ray Nixon Power Plant project. Plaintiff seeks relief from TRM and other Defendants for monies owed, interest and legal fees.

STATUS: July 26, 2012 Summons and Complaint received. August 24, 2012 Defendant the City of Colorado Spring files its answer. As of December 28, 2012 case is at issue. Trial scheduled for September 23-30, 2013. **On June 4, 2013 Plaintiff filed a settlement agreement with Timothy J. Bator and subsequently on June 11, 2013 filed a motion to dismiss all claims against Defendants Technical Risk Management, Tim Bator, the Cincinnati Insurance Company and the City of Colorado Springs. June 18, 2013 Court grants motion to dismiss.**

(Total 63 hours – Turner).

Harder, Gary L. v. City of Colorado Springs, a home rule municipality and political subdivision of the State of Colorado; and Harrison School District Number 2 in the City of Colorado Springs

El Paso County District Court Case Number 2012CV5682

CLAIM: Plaintiff alleges that City and School District are causing water to flow from the School District’s property onto Plaintiff’s, causing flooding, amounting to a public taking. Plaintiff seeks compensation for the value of his property taken, declaratory relief in determining boundaries, volume extent and usage of the drainage easement, and an order restoring the Plaintiff his property as it existed prior to the extension of the easement by the Defendants and restricted future easement.

STATUS: Summons and Complaint served December 7, 2012. January 8, 2013 School District files motion to dismiss. January 10, 2013 Anne Turner enters her appearance on behalf of the City of Colorado Springs. January 25, 2013 City files

motion to dismiss based on Plaintiff's claims are barred by CGIA. January 29, 2013 Plaintiff files response to Defendant school district's motion to dismiss. February 5, 2013 School District files reply in further support of its motion to dismiss. February 8, 2013 Plaintiff files response to Defendant City of Colorado Springs' motion to dismiss. February 15, 2013 City files reply in further support of its motion to dismiss. March 5, 2013 City designates nonparty tortfeasors. May 6, 2013 Court grants City's and School District's motions to dismiss based on governmental immunity. **June 11, 2013 City files Notice of Settlement of its attorney fees and costs due to Defendants.** (Total 56.75 hours - Turner).

Lancaster, Sarah and Rick v. City of Colorado Springs

El Paso County District Court Case No. 12CV315.

CLAIM: Plaintiff alleges that due to driving her vehicle over two large pot holes located on Southbound Wahsatch between Vermijo and Costilla she has suffered permanent injury to her lower back.

STATUS: Plaintiff's Complaint and Summons was received on August 14, 2012. The City answered Plaintiffs' original complaint on September 4, 2012, denying liability and asserting various defenses. The City filed a Motion to Dismiss based on the Court's lack of subject matter jurisdiction and the City's claim of governmental immunity. Discovery has been stayed with the exception of matters pertaining to the City's notice regarding the alleged potholes. Plaintiffs' response to the City's Motion to Dismiss is due March 7, 2013, the City's reply is due March 18, 2013, and a hearing on the matter (if needed) is scheduled for April 5, 2013. March 1, 2013 Court denies motion for protective order and directive concerning discovery. March 7, 2013 Plaintiff files response to City's motion to dismiss. March 14, 2013 Defendant files reply in support of its motion to dismiss. April 19, 2013 Court issues order stating at the conclusion of the Trinity Hearing held on April 19, 2013, the motion to dismiss is granted. Defendant is awarded costs and has submitted a motion seeking recovery of attorneys' fees. Deadline for Plaintiff to Appeal is June 7, 2013. **May 28, 2013 Court grants order for attorney's fees and judgment is entered in favor of the City and against the Plaintiffs.**

(Total 237 hours – McCall)

PIKES PEAK JUSTICE & PEACE COMMISSION; STAR BAR PLAYERS; GREENPEACE, INC.; THE DENVER VOICE; JAMES BINDER; RONALD MARSHALL; LAUREL ELIZABETH CLEMENTS MOSLEY; ROGER BUTTS v. CITY OF COLORADO SPRINGS, COLORADO.

United States District Court of Colorado Case No. 12CV3095.

CLAIM: On November 27, 2012 Plaintiffs filed suit challenging the constitutionality of the City's new ordinance establishing a Downtown No-Solicitation Zone. The Plaintiffs sought a temporary restraining order and permanent injunction against enforcement of the ordinance, along with a declaratory judgment holding the ordinance unconstitutional.

STATUS: The Court denied Plaintiffs' request for temporary restraining order without hearing. A scheduling conference was held on November 30, 2012, at which time the Court set deadlines associated with the hearing on Plaintiff's motion for

preliminary injunction, including setting a December 7, 2012 deadline for the City's responsive brief. On December 13, 2012 the Court held a full-day evidentiary hearing regarding Plaintiffs' request for preliminary injunction. The parties filed supplementary briefing on December 17, 2012. On December 18, 2012, the Court issued an oral ruling granting Plaintiffs' motion for preliminary injunction. The City is enjoined from enforcing Ordinance 12-100 pending trial on the merits. The City filed its answer on December 27, 2012. February 4, 2013 City moves to clarify Court's December 18, 2012 order. February 5, 2013 Court grants City's motion for clarification. April 30, 2013 Plaintiff files Notice of Settlement. **June 4, 2013 Court closes civil case pursuant to notice of settlement and stipulation to dismiss.**

(Total 581.5 hours - Turner, McCall)

SANTISTEVAN, ROSE A. v. UNITED STATES OF AMERICA; FEDERAL BUREAU OF INVESTIGATION; CITY OF COLORADO SPRINGS POLICE DEPARTMENT; EL PASO COUNTY SHERIFF'S DEPARTMENT; POLICE COMMANDER RICH MILLWRIGHT IN HIS INDIVIDUAL CAPACITY; DETECTIVE PHIL GURNETT, IN HIS INDIVIDUAL CAPACITY; AND OTHER AGENTS AND OFFICERS OF THE FEDERAL BUREAU OF INVESTIGATION, CITY OF COLORADO SPRINGS POLICE DEPARTMENT, AND EL PASO COUNTY SHERIFF'S DEPARTMENT

United States District Court Case No. 11-CV-01649-MEH-BNB.

**CLAIM:** Plaintiff alleges that on October 6, 2009, she was in her residence when agents for Defendant law enforcement agencies executed a search and arrest warrant at her residence for a party who had been arrested earlier in the day and was already in law enforcement custody. Plaintiff claims that during the execution of the warrant, she suffered a heart attack and subsequent emotional distress due to the trauma of the execution of the warrant. Plaintiff's claims as to the City Defendants allege that it authorized and approved policies and procedures which were violation of §1983, U.S.C., that no effort was made to independently confirm the reasonableness of the search or arrest warrants, and that their conduct showed deliberate indifference and recklessness towards Plaintiff.

**STATUS:** June 27, 2011 Summons and complaint received. After City and County both file motions to dismiss, Plaintiff files motion for leave to file amended complaint with proposed amended complaint, which is granted on September 12, 2011. Federal defendants are dismissed from the case. September 27, 2011 City files answer and affirmative defenses to amended complaint. October 13, 2011 County Defendants file motion to dismiss for failure to state a claim, which in turn caused Plaintiff to file motion for second amended complaint which was granted by the Court on January 31, 2012. February 14, 2012 City Defendants file answer to Plaintiff's second amended complaint. February 27, 2012 Court dismisses County Defendant Schaller per stipulated motion to dismiss filed February 23, 2012. March 15, 2012 County Defendants file answer to second amended complaint and jury demand. August 31, 2012 City Defendant's file motion for summary judgment; County files motion for summary judgment. Responses and replies all filed with the Court. November 29, 2012 Plaintiff files response to City and County Defendant's motion for summary judgment. December 13, 2012 City files reply to response to City's motion for summary judgment. December 14, 2012 County's reply to Plaintiff's response to County Defendant's motion for summary judgment.

March 11, 2013 trial is vacated. February 5, 2013 Court grants City Defendants motion for summary judgment and no remaining claims are pending against the City Defendants; the Court also grants dismissal of two of Plaintiff's claims against the County Defendants and keeps Claim one open for County defendants Krammer and McCormack regarding use of force. **March 5, 2103 County files Notice of Appeal. June 28, 2013 Parties file stipulation for dismissal with prejudice as to Defendants Owen McCormack and Jeffery Kramer in lower court and the 10<sup>th</sup> Circuit. July 8, 2013 Court files final judgment.** (Total 761.25 hours – Lamphere).

TRUSTEES OF THE SPRINGS TRANSIT COMPANY EMPLOYEE'S RETIREMENT AND DISABILITY PLAN v. CITY OF COLORADO SPRINGS, A COLORADO MUNICIPAL CORPORATION AND HOME RULE CITY; FIRSTGROUP AMERICA, INC., A DELAWARE CORPORATION; AND FIRST TRANSIT, INC., A DELAWARE CORPORATION, El Paso County District Court Case No. 09CV6866; United States District Court Case No. 09-cv-02842-WYD-CBS, Colorado Court of Appeals Case No. 11CA2237, Colorado Court of Appeals Case No. 11CA691. Colorado Court of Appeals Case No. 12CA1268. On September 14, 2006, the City of Colorado Springs ("City") and Laidlaw Transit Service, Inc. ("Laidlaw") entered into a Service Contract ("Contract") for the Operation of General Fund Fixed Route Services for the south transit services. Subsequently, Laidlaw assigned its interest in the Contract to First Transit, Inc. ("First Transit"). The pertinent provisions of the Contract state as follows:

#### 7.31 Pension Plan

(h) Upon termination or expiration of this Contract for any reason, City shall ensure that a subsequent Contractor will assume full and complete liability for the pension plan from Contractor so that Contractor shall not have any liability for pension plan benefits, transfer costs, termination fees or any other costs, including attorney fees, nor shall Contractor incur any expense after the termination or expiration of this Contract. City shall ensure that the subsequent contractor takes all steps necessary to become the legal sponsor of the pension plan as soon as practicable after the expiration or termination of this Contract.

(i) In the event there is no subsequent contractor to assume sponsorship of the pension plan upon termination or expiration of this Contract, City shall assume sponsorship of the pension plan.

On November 10, 2009, the City issued a notice that it would terminate the Contract effective December 31, 2009. The City did not, upon termination of the Contract, find a subsequent contractor to assume sponsorship of the Pension Plan ("Plan"), nor did the City itself assume sponsorship of the Plan. First Group, Inc. ("First Group") and First Transit then brought an anticipatory breach of contract claim against the City in the state case and an ERISA claim in the federal case. First Group and First Transit claimed that upon the City's termination of the Contract, the City failed to either find a Plan sponsor or become the Plan sponsor as the Contract required.

After over three years of litigation, the trial court issued an order finding the City was in breach of the Contract.

### **ALLEGED DAMAGES**

To date, First Group and First Transit alleged that they incurred damages of over \$10.2 million. The breakdown is as follows:

Cost to terminate Plan -- \$7.0 million  
Costs paid to Plan since Contract termination -- \$2.1 million  
Attorney fees -- \$1.0 million  
Interest

### **SAVINGS TO CITY**

Since the Contract was terminated at the end of 2009, the City has not expended funds to replace the terminated transit services. Had the City continued with the Contract, the following would have been expended:

2010 -- \$ 4.57 million  
2011 -- \$ 4.71 million  
2012 -- \$ 4.85 million  
2013 -- \$ 4.99 million  
Total -- \$19.12 million

In addition, the City was contractually responsible for paying the Plan's underfunded liability. From an actuarial standpoint, the Plan was not sufficiently funded to pay out all of its liabilities. The amount of underfunding is reported to be \$6,586,364.

Had the City continued on with the Contract, it would have paid out for services and underfunding approximately \$25.7 million over the last four years.

The parties settled the lawsuit for \$8 million.

April 15, 2013 Parties file joint notice of settlement in Appellate case. **July 8, 2013 Parties file joint stipulation to dismiss with prejudice for all cases in all jurisdictions. July 16, 2013 Court of Appeal grants order of appeal dismissal. July 29, 2013 Court of Appeals issues Mandate dismissing appeal.** (Total 1641.25 hours – White/ Madden Law Firm).

### **NEW CASES**

(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, 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.

(Hayes, Phillips, Hoffman and Carberry)

City of Colorado Springs Municipal Court v. Burton Burnache

El Paso County District Court Case Number 13CV30709

CLAIM: Appellant files appeal against Municipal ruling.

STATUS: August 6, 2013 Appellant files Notice of Appeal and Designation of Record. (Prosecution Total \_ hours)

City of Colorado Springs Municipal Court v. Karl OBrian 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. Prosecution Total \_ hours)

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.

(Total 0 hours – Gendill)

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 Cary, 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 1983 and 1988 civil rights claims stemming allegedly from Defendants' violations of Plaintiffs 5<sup>th</sup> and 14<sup>th</sup> amendment rights and seeks damages and attorney's fees due to the destruction of seized marijuana.

STATUS: June 17, 2013 Summons and Complaint served. June 25, 2013 Anne Turner files entry of appearance for City Defendants. July 8, 2013 Parties file Notice of

Removal to US District Court. July 15, 2103 City Defendants file Motion to Dismiss; County files motion to dismiss. July 31, 2013 Plaintiff files First Amended Complaint. **August 5, 2013 Court denies as moot both City Defendants and County Defendants motion to dismiss.**

(Total 32 hours – Turner)

Dennis Sladek 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.

(Total 0 hours - \_\_\_\_)

(OC)

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; awaiting disclosures.

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

Small, Tyron Duante v. District Attorney Melissa Young, Detective Jeff Huddleston, Detective Marc Chacon, and Officer Daniel Thompson

United States District Court Case No. 13-CV-001075-REB-CBS

CLAIM: Plaintiff claims that Defendants conducted an improper investigation and conspired to destroy evidence by extreme and outrageous conduct regarding sexual assault charges against Plaintiff. Plaintiff makes 4<sup>th</sup> Amendment violation claims of malicious prosecution, abuse of process, and destruction of evidence.

STATUS: April 22, 2013 Plaintiff files Complaint. An Amended Complaint was filed on May 28, 2013. June 14, 2013 CSPD served with Summons and Complaint. July 2, 2013 City Defendants file motion to dismiss. July 2, 2013 Defendant Young files motion to dismiss amended complaint; City Defendants file motion to dismiss.

(Total 37.5 hours – Gendill / McCall)

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. Responsive Pleading due September 5, 2013.

Wojdacz, Elizabeth v. Robert E. Balckburn; Michael E. Hegarty; Erik Lamphere; Kim Deline; Michael Watts; Retherford, Mullen & Moore; Lindsey Topper; Colorado Springs City Police Department; Joel Kern; W. Lambert; 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.  
(Total 0 hours - Gendill)

### CURRENT CASES

#### AIRPORT

(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. August 12, 2013 Court sets hearing on Defendant's motion for summary judgment on Spetember 9, 2013 at 2:00 p.m.**

(Total 129 hours – Lessig / Michael Sullivan - Harris, Karstaedt, Jamison & Powers, PC)

### BOARDS & COMMISSIONS

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).  
(Gendill / McCall – Total 31 hours).

### CITY CLERK

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.

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.**

(Total 875.5 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.**

(Total 84.25 hours – White).

CITY ENGINEERING

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 – 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 – Smith).

JAK Capital, LLC v. City of Colorado Springs

El Paso County Court Case No. 2011CV6161

CLAIM: Plaintiff alleges that due to the City of Colorado Springs' negligence and improper design of the railroad crossing at Las Vegas Street and South Royer Street, a motor coach on December 15, 2009, owned by JAK Capital LLC became high-centered and was struck by a locomotive.

STATUS: City files an Answer and designates nonparty tortfeasors Taylor Tours, Ronald Marchland, Jr., Nikki Clingman and John Smith II. A three day jury trial is currently scheduled to begin on April 8, 2013.

On November 19, 2012 The City filed a statutory offer of settlement. A recent motion to continue trial was granted. The case is currently set for mediation in February, 2013. March 25, 2013 City files motion to dismiss. April 5, 2013 Plaintiff files brief in opposition to Defendant's motion to dismiss. Defendant files reply to Plaintiff's brief in opposition to Defendant's motion to dismiss. April 18, 2013 Plaintiff files motion for partial summary judgment. May 9, 2013 Defendant's file response to Plaintiff's motion for partial summary judgment. **May 27, 2013 Plaintiff files reply brief in support of its motion for partial summary judgment. July 12, 2013 City files motion for protective order and to vacate trial date. July 17, 2013 Court grants Defendants Motion to Dismiss. Plaintiff's deadline to appeal is September 4, 2013. August 7, 2013 Defendants file bill of costs and motion for award of attorney's fees.**

(Total 463.5 hours – Lamphere)

John M. Ventimiglia, 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

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 judgment debtors Realty Development Services and Ridgeview Development.**

(Turner – Total 0 hours)

### COUNCIL

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.**

(Gendill / McCall – Total 90 hours)

### 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).**

(Mark Pottinger at Treece Alfrey Musal, P.C. / White – Total 35.75 hours)

### **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.**

(William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal, Sherman and Howard, Denver; City Attorney's Office Total 301.25 hours).

### **MEMORIAL HOSPITAL**

(IC)

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.**

(Total 152 hours – Turner / John Cook, Joseph Lambert, Hogan Lovells US LLP).

(OC)

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. 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. December 7, 2011 Summons and complaint received. January 13, 2012 Memorial Hospital files its Answer. Discovery has commenced. (DeLine at Retherford, Mullen, and Moore)

(OC)

Shavonna Lately 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.

(DeLine at Retherford Mullen)

Kathryn Maricevic, 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 will file its Answer in August.

(DeLine at Retherford, Mullen & Moore)

REED, REGINALD v. MEMORIAL HEALTH SYSTEM; DALE AGTHE, ASSISTANT CITY ATTORNEY FOR MEMORIAL HEALTH SYSTEM; AND EL PASO COUNTY SHERIFF'S OFFICE,

El Paso County District Court Case No. 11CV172.

Colorado Court of Appeals Case Number 12CA503.

CLAIM: Plaintiff, a pro se prisoner, filed this action seeking access to the medical records of his victim. Plaintiff alleges that these records are criminal justice records and subject to inspection under C.R.S. §24-72-303. The City denied his request for the records. In addition, a search revealed the records do not exist.

STATUS: July 21, 2011 Summons and complaint received. August 10, 2011 City filed motion to dismiss. August 11, 2011 County filed motion to dismiss or, in the alternative, motion for summary judgment. September 12, 2011 Plaintiff filed response to Defendant's motion to dismiss. October 27, 2011 Court issued order granting City's

motion to dismiss. October 28, 2011 Court issued order granting County's motion to dismiss. March 6, 2012 Plaintiff filed Notice of Appeal. Plaintiff has filed an Opening brief and failed to serve the City. On February 26, 2013 Plaintiff served the City pursuant to Court's order. April 3, 2013 Answer Brief filed by Memorial Health System and Dale R. Agathe. **May 24, 2013 Plaintiff files response to Defendant's Answer Brief (Reply Brief).**

(Total 62.25 hours – Lessig)

Nancy Ruminski v. City of Colorado Springs d/b/a Memorial Hospital; and UCH  
El Paso County District Court Case No. 2013CV1044

CLAIM: In February of 2011, Plaintiff presented to Memorial Hospital North ED for treatment of hives and tongue swelling. Due to continued symptoms, the Plaintiff returned to Memorial Hospital North the next day and was admitted for care. On February 9, 2011, the Plaintiff alleges that she received the wrong dose of medication. Due to this medication error, Plaintiff is alleging past and future physical and mental pain and suffering, loss of enjoyment of life, loss of income and economic damages, as well as physical and cognitive impairment.

STATUS: Plaintiff served her Complaint on February 6, 2013 and MHS filed its Amended Answer on April 12, 2013. Discovery has commenced.

(DeLine at Retherford, Mullen & Moore)

### **MUNICIPAL COURT**

Steven Bass 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 files Answer Brief. May 13, 2013 Appellant files Reply Brief. **August 1, 2013 District Court affirms the Municipal Courts decision. September 12, 2013 Deadline for filing Petition for Writ of Certiorari.**

(Turner / J. Smith – Total 70.25 hours)

### **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 Certiori 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 Court of Appeals 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.**

(Total 387.75 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. (THID 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 Sorpresa 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.  
(Total 304.75 hours – White).

### POLICE

#### ASHTON, BURKE and (Plaintiff-Intervenor) CITY OF COLORADO SPRINGS v. SHAWNE B. BEAVERS

El Paso County District Court Case Number 2012CV5438

CLAIM: This case stems from a motor vehicle accident on November 15, 2012 when Defendant's vehicle struck Plaintiff's vehicle while in the scope of his employment with the City.

STATUS: City files a Motion to Intervene and Complaint on January 2, 2013 for subrogation interests regarding Plaintiff's workers compensation claim.  
(Total 61.25 hours - Lamphere).

#### People of the State of Colorado v. Robert Crouse

Colorado Court of Appeals Case No. 2012 CA2298

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.**  
(Lamphere – Total 35.75 hours)

#### EDMOND, MICHAEL SEAN v. CITY OF COLORADO SPRINGS, et al.

El Paso County District Court Case No. 2007CV332.

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 and U.S. Currency to be seized. 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 severe emotional distress. Plaintiff also requests return of his property seized during aforementioned search warrant, compensatory damages, punitive damages, and declaratory relief.

STATUS: Case has been ongoing with Plaintiff and the Courts, due to service issues, dismissals and appeals brought before the Colorado Court of Appeal. 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. April 2, 2012 Affidavit of Service filed by the Process Server for the Clerk of Court stating that they served Summons, Notice of Appeal and the Colorado Court of Appeals' Mandate on Defendant William Burrue March 27, 2012. April 18, 2012 Court orders Defendants Terry Maketa, Sheriff of El Paso County and Brett Speiers to be added as party litigants.

(Total 11.75 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 Myers, Cox and City 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. . February 20, 2013 Defendant files reply in further support of its motion to dismiss. April 16, 2013 Magistrate Judge makes 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 Defendant's response to objections to magistrate's recommendations.**

(Total 364.5 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 makes 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 Defendant's response to objections to magistrate's recommendations.**

(Total 323.75 hours – Turner).

JONES, KEVIN FRANCIS v. MARCUS LEHMKUHL, CITY OF COLORADO SPRINGS, COLORADO, R.A. YOHN, AL HARMON, 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 make a recommendation regarding Defendants Motion to Dismiss. April 26, 2013 Magistrate makes recommendation on Defendant's Motion to Dismiss. **June 18, 2013 Plaintiff makes objections to magistrates recommendations. June 26, 2013 Defendants file motion to strike objections. July 1, 2013 Court grants Defendants order 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.**  
(Total 182 hours – Turner).

LANE, STEPHEN v. DETECTIVE R.A. YOHN AND COLORADO SPRINGS POLICE DEPARTMENT

United States District Court Case No. 12-cv2183-MSK-MEH.

CLAIM: Plaintiff claims that he was misidentified as a criminal suspect, leading to his false arrest in violation of his Fourth Amendment rights.

STATUS: September 17, 2012 Summons and Complaint served. October 9, 2012 Defendants file unopposed motion for protective order from discovery and to vacate scheduling conference. October 15, 2012 Court issues order staying all proceedings until January 4, 2013. October 29, 2012 Plaintiff files motion for leave to file amended complaint, which was granted on October 31, 2012. November 14, 2012 Defendants file motion to dismiss Plaintiff's amended complaint. November 26, 2012 Plaintiff files response to Defendant's motion to dismiss. December 21, 2012 Defendants file reply in further support of their motion to dismiss Plaintiff's amended complaint. January 4, 2013 Court extends stay of discovery to January 31, 2013 and sets status conference for February 5, 2013 at 9:45 a.m. February 5, 2013 Magistrate Judge files recommendation that Defendants motion to dismiss be granted. Objection and responses were filed in response to Magistrate Judge's recommendations. (Total 110.25 hours – Turner)

LORD, FRANK v. COLORADO SPRINGS POLICE OFFICERS JASON HALL AND RICHARD HAYES, AND UNKNOWN COLORADO SPRINGS POLICE OFFICERS

United States District Court Case No. 10-CV-02695-KLM.

United States Court of Appeal for the Tenth Circuit Case No. 12-1331.

CLAIM: Plaintiff alleges that on July 26, 2010, he pulled his vehicle over in Colorado Springs when he observed an emergency vehicle in the area with its lights and sirens activated. Plaintiff alleges that after the emergency vehicle pulled in behind him high intensity white lights were directed at his vehicle. Plaintiff then he left his vehicle and walked toward voices he heard yelling at him. Plaintiff alleges that someone then grabbed his arm and threw him face first into the pavement, causing him to lose consciousness. Causes of action include unlawful arrest, excessive force, assault and battery.

STATUS: November 10, 2010 Summons and complaint received. November 30, 2010 City files answer and affirmative defenses. June 8, 2011 Settlement conference held; no settlement reached. June 10, 2011 City files motion for civil gag order, which was denied by the Court on June 28, 2011. Plaintiff filed motion to amend complaint but Court denied based on recommendation of the magistrate. September 1, 2011 City files motion for summary judgment. November 3, 2011 Plaintiff files response to City's motion for summary judgment. November 17, 2011 City files reply to Plaintiff's response to City's motion for summary judgment. Five-day jury trial was scheduled for August 20, 2012. July 31, 2012 Court issues order granting City's motion for summary judgment, vacating trial for August 20, 2012 and dismissing case. August 2, 2012 Court enters final judgment for Defendants and against Plaintiff; Defendants shall be awarded costs. August 7, 2012 City files stipulated motion for costs. August 27, 2012 Plaintiff

files Notice of Appeal. November 13, 2012 Appellant files his opening brief. December 13, 2012 Appellees file Answer Brief. January 2, 2013, Appellant files Reply Brief. Oral argument in the Tenth Circuit Court of Appeals argued on March 6, 2013. April 2, 2013 10<sup>th</sup> Circuit files Order and Judgment affirming the district court's Fourth Amendment claims and remand case back to district court with instructions to vacate its judgment and re-enter judgment dismissing the state-law claim without prejudice. April 24, 2013 Mandate issued. **July 1, 2013 Lord as Petitioner files Petition for Writ of Certiorari.** (Total 637 hours – White).

PETERS, DUAINE – SUBROGATION MATTER

Work Compensation Case No. 12-015882.

CLAIM: Duaine Peters, a Colorado Springs Police Officer, was involved in motorcycle escort training and was involved in an accident. The City is requesting subrogation from the County.

(Total 47 hours – Lamphere).

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.**

(Lamphere – Total 6.75 hours)

Sorensen, James v. City of Colorado Springs, a home rule city; Peter Carey\*, Larry C. Morgan\*, Lance Lazoff\*, Tim Stankey\*, Katie Buckley\*, Roger Vargason\*, Bob Peltz\*, Joe Brown\*, Clay Sunada\*, John / Jane Doe(s) 1-10\* \*Both individual and official capacity

El Paso County District Court Case No. 2013CV1767

CLAIM: Plaintiff brings section 1983 claims regarding arrest on July 21, 2012 in Acacia Park for openly carrying a weapon.

STATUS: Waivers of Summons and Complaint sent April 8, 2013. April 15, 2013 Plaintiff files unopposed motion to dismiss Katie Buckley and to amend caption. April 29, 2013 City Defendants file Answer and Jury Demand. A 10-day Jury Trial is scheduled to begin August 4, 2014.

(Lamphere – Total 86.5 hours)

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 claim false arrest and excessive force along with Section 1983 claims along with re-injury to his shoulder.

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 files reply in support of their motion to dismiss. July 10, 2013 Plaintiff files supplement to its response to Defendant's motion to dismiss.**

(White – Total 60 hours)

THORNTON v. CHARLES CALLOWAY, INDIVIDUALLY AND IN HIS CAPACITY AS AN OFFICER WITH THE COLORADO SPRINGS POLICE DEPARTMENT; THE COLORADO SPRINGS POLICE DEPARTMENT; AND THE CITY OF COLORADO SPRINGS, COLORADO

El Paso County District Court Case Number 12CV4760.

CLAIM: Plaintiff claims that Officer Calloway applied handcuffs too tight and acted negligently. Plaintiff claims that because of this negligence he suffered injuries, damages and violation of his Constitutional rights.

STATUS: October 9, 2012 Summons and complaint served. October 29, 2012 the City and CSPD file motion to dismiss. November 29, 2012 Court issues order denying the motion to dismiss. December 13, 2012 Defendants file answer and affirmative defenses. Discovery commences.

(Total 50.5 hours – White).

ULLMAN, SUSAN FRANCES and GRAYSON KENNEDY ULLMAN v. SERGEANT LOFGREN, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; OFFICER D. BUCKSATH, IN HIS INDIVIDUAL CAPACITY; OFFICER D. WILBERDING, IN HIS INDIVIDUAL CAPACITY; OFFICER R. HAYES, IN HIS INDIVIDUAL CAPACITY; OFFICER C. DRYMAN, IN HIS INDIVIDUAL CAPACITY; THE CITY OF COLORADO SPRINGS, COLORADO, A MUNICIPALITY; AND ANITA LUBE.

El Paso County District Court Case No. 12CV1748.

CLAIM: Plaintiffs claim Defendants violated their 4<sup>th</sup> amendment Constitutional rights during a “SWAT raid” to execute an arrest warrant at the Plaintiff’s home.

STATUS: May 24, 2012 Summons and Complaint received. June 15, 2012 the City files motion to dismiss; Officers file Answer and Affirmative Defenses to Amended Complaint. Plaintiff files amended complaint for damages – jury trial demanded. July 11, 2012 Court issues order granting City’s motion to dismiss, which was reversed due to Plaintiff’s motion for reconsideration. August 7, 2012 Defendants file answer and affirmative defenses to amended complaint dated July 6, 2012. August 29, 2012 Defendant Anita Lube files motion to dismiss. September 27, 2012 Court issues order granting Anita Lube’s motion to dismiss. October 2, 2012 Plaintiff files motion to amend complaint, which was granted on October 31, 2012. December 10, 2012 City Defendants’ file answer and affirmative defenses to second amended complaint. **Trial set for 4 days beginning December 13, 2013.**

(Total 107.75 hours –White).

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.

Total 329.25 hours – Lamphere).

### REAL ESTATE

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.  
(McCall – Total 19.75 hours).

### **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 26 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.

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.**  
(Total 442.5 hours – McCall / White).

## 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. Plaintiff alleges that the Plaintiff 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 Plaintiff's water rights for a period in excess of twenty years has diminished and/or terminated a portion of Plaintiff's water rights by reducing their historic consumptive use quantification and that this diminishment constitutes a breach of the 1909 agreement. The Plaintiff seeks 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. June 24, 2011 Summons and complaint

received. July 21, 2011 City files answer and notice to elect exclusion from C.R.C.P. 16.1. Discovery commences. In June 2012 the 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 counterclaim breach of contract claim against the Plaintiff's for their failure to pay for water service within the time required by the 1990 Agreement. The Plaintiffs failed to answer the counterclaim and in November 2012 the City filed a request for clerk's entry of default and motion for default judgment. After the court entered a clerk's entry of default, the Plaintiffs moved to set aside the default and to be permitted to answer. The court granted the Plaintiffs request, and allowed the Plaintiffs to answer the City's counterclaim. In June 2012 the City filed a motion for determination of question of law asking the court to rule that the decree in Case No. 91CW44, which changed to Plaintiffs' water rights to the City's Cascade Creek intake, did not change those water rights for use within the City, and to further rule that the amount of water the Plaintiffs are entitled to divert under their water rights is limited to the lawful historical use of those water rights for municipal and irrigation use within the Cascade water system. In January 13, 2013, the court granted the City's motion. The effect of this order is to substantially eliminate any damages claimed by the Plaintiffs for the City's alleged failure to divert and record the diversions of the Plaintiffs' water rights and for diminution of the historical use of those water rights. In June of 2012 the City also filed a motion for partial summary judgment on the Plaintiffs' claim that they could assign their contractual right to receive water to any place in that the City's water system could deliver water and the water so delivered could be fully consumed by first use or successive use. The Court granted the City's motion and ruled that if the contract was assignable, then under the contract the City could only be required deliver water to the Cascade interconnection at Mother's rest, that the only place where the water could be used was in the Cascade Water System, the use of water is limited to municipal use native Fountain Creek water, and that the Plaintiffs have not right to seek to change the type of use of the City's water rights and have no right to recapture, reuse or successively use that water. In December 2012 the Plaintiffs filed a motion for partial summary judgment that the City was in default under the contract for its alleged failure to keep accurate records and accounts of water service and to correct within a reasonable time errors in billing. In January 2013 the City filed a Motion for Summary Judgment for a determination that the Plaintiffs were in default of the contract for their failure to pay for treated water service. The court has not ruled on these motions. In February 2013 the Plaintiffs hired additional legal counsel and due to the schedule of the new counsel the April 2013 trial 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 discussions proceed. The Plaintiffs filed a motion to vacate trial to allow settlement negotiations to proceed. On May 1, 2013, the Court agreed to vacate the scheduled trial to allow the parties time to complete settlement negotiations. **The parties discussed settlement on a number of occasions, but the parties were unable to reach a settlement. Trial is now scheduled for February 11-14, 2014.** (William Paddock at Carlson, Hammond, and Paddock).

CITY OF COLORADO SPRINGS, COLORADO v. LWD, LLC, A COLORADO LIMITED LIABILITY COMPANY; FIRST-CITIZENS BANK AND TRUST COMPANY, A NORTH CAROLINA CORPORATION; COLORADO CAPITAL BANK, A COLORADO CORPORATION; THOMAS S. MOWLE, EL PAST COUNTY PUBLIC TRUSTEE, ROBERT C. BALINK, EL PASO COUNTY TREASURER. El Paso County District Court Case No. 2012 CV3742. 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. August 1, 2012 Summons issued to LWD, LLC. August 7, 2012 Certificate of Service filed. August 10, 2012 Certificate of Service filed. August 15, 2012 Certificate of Service filed. August 21, 2012 Parties file stipulation for immediate possession. August 23, 2012 Court grants order for immediate possession. August 28, 2012 Notice of joinder in stipulation for immediate possession, claim of First Citizens Bank and Trust Company in proceeds deposited in the Court registry by Petitioner and objection to the disbursement of proceeds without notice and right to be heard. August 30, 2012 Respondents Balink and Mowle file disclaimer. **July 8, 2013 Parties file consents to entry of Rule and Order along with Rule and Order. July 17, 2013 Court files order granting rule and order.** (Total 5.75 Hours – Turner / Blieszner of Welborn, Sullivan, Meck & Tooley, P.C.)

(OC)

City of Colorado Springs, Colorado v. Norris Properties, LLC, a Colorado limited liability company; BJ Ranches, LLC, n/k/a T-Cross Properties, LLC, a Colorado limited liability company; Robert C. Norris; Thomas S. Mowle, El Paso County Public Trustee, Robert C. Balink, El Paso County Treasurer

El Paso County District Court Case No. 2013CV1748

CLAIM: City of Colorado Springs brings action to acquire certain property for public use.

STATUS: April 5, 2013 Petition for Condemnation filed. May 7, 2013 Respondent-Landowner's Answer to Petition in Condemnation filed. May 15, 2013 Motion for immediate possession is filed. May 17, 2013 Answer filed by Robert C. Balink, El Paso County Treasurer. **May 28, 2013 City files bench brief regarding immediate possession; City files brief re attorney client privilege. June 13, 2013 Respondent files motion to continue immediate possession hearing and request for immediate disposition; motion for a sanction. June 19, 2013 Petitioner files response to forthwith motion to continue immediate possession hearing and request for immediate disposition; Petitioner files response to respondent's motion for a sanction. June 20, 2013 Court denies the motion to continue immediate possession hearing. June 21, 2013 Respondent files reply in support of motion for a sanction. June 27, 2013 Court denies motion for sanction and denies motion to continue. July 12, 2013 Parties file consents to entry of rule and order. July 17, 2013 Court files order granting Rule and Order.**

(Edward J. Blieszner at Welborn Sullivan Meck & Tooley, P.C. / Anne Turner – Total 193 hours)

(OC)

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

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 20, 2013 Court grants order for immediate possession.

(Total 16.75 hours – Turner / OC 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. 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. 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. (Total 8.75 hours - Turner/Blieszner/Banner).

(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.** (Peter D. Nichols).

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.**  
(Peter D. Nichols).

Regional Transportation District, a political subdivision of the State of Colorado v. Ward Road Storage, LLC a Colorado Limited Liability Company; Wheat Ridge 52 Investment Associates, a Nevada General Partnership; Tim Kaufmann, Jefferson County Treasurer  
Jefferson County District Court Case Number 2012CV4392  
CLAIM: Plaintiff brings action as an eminent domain proceeding to condemn and acquire title to certain real property, improvements, fixtures and appurtenances.  
STATUS: November 30, 2012 Notice of Commencement of Action – Lis Pendens filed.  
(Total 11 hours – Turner / Ed Blieszner of Welborn Sullival Meck & Tooley PC).

(OC)  
THEBAUT, BILL 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. The deadline for the Petitioners to file a petition for certiorari review by the Colorado Supreme Court is August 29, 2013.** (D. Robbins and J. Hunt at Hill and Robbins, PC, Denver, outside counsel for Utilities).

### ADMINISTRATIVE SECTION

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

#### DISPOSED MATTERS

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2011-01568. Complainant alleges age discrimination. Copy of charge from EEOC gives no other details as to the nature of Complainant's allegations or claims. June 23, 2011 Charges filed. No action required by EEOC at this time. July 27, 2011 Complainant files additional documentation with EEOC detailing allegations of retaliation after reporting illegal activity on City time and equipment and alleging discrimination on the basis of race, sex, and age. Position statement due September 9, 2011. September 9, 2011 Position statement filed. April 19, 2013 EEOC dismisses charge of employment discrimination as it is unable to conclude that the information obtained establishes violations of the statutes. Deadline to file lawsuit is July 22, 2013. (Total 64.75 hours - Lessig).

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-00449. December 11, 2012 Charging Party files Notice of Discrimination. Dismissal issued 2/26/2013, Deadline to file lawsuit May 28, 2013. (Total .5 hours - Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 846-2013-16071. February 15, 2013 Charging Party files Notice of Discrimination. Pending perfected charge. EEOC issues Notice of Right to Sue March 7, 2013; Deadline to file lawsuit June 5, 2013. (Total 18.5 hours – Lessig / McKinney)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC 846-2013-20766. Charging Party files Notice of Discrimination. EEOC issues Notice of Right to Sue March 22, 2013. Deadline to file lawsuit June 20, 2013. (Total 6.5 hours –Lessig / McKinney)

EMPLOYEE v. CITY OF COLORADO SPRINGS, CCRD Charge No. E20120446. Charging Party alleges discrimination based on sex and/or age in violation of the Colorado Anti-Discrimination Act (CADA). June 29, 2012 Charges filed. Position Statements filed October 5, 2012. December 11, 2012 CCRD issues determination of No Probable Cause. EEOC issues dismissal and notice of rights and adopts the findings of the CCRD. Deadline to file lawsuit is now July 5, 2013(Total 97.5 hours – Jeffrey).

### **NEW MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC 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. (Total 10 hours – McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC 541-2013-01644. Charging Party files third Notice of Charge of Discrimination on Title VII and Age Discrimination on July 1, 2013. Position Statements due August 16, 2013 after extension. (Total 0 hours – Lessig)

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 due August 16, 2013. (Total 0 hours – Lessig)

### **CURRENT MATTERS**

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 due August 16, 2013 after extension.** (Total 103.25 hours - McKinney / 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. **Waiting for decision from EEOC.** (Total 78 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.** (Total 10.75 hours - Orna /Harris, Karstaedt, Jamison & Powers, P.C.)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-00171. Charging Party alleges discrimination on the basis of Title VII, ADA and ADEA. December 27, 2012 Charges filed. January 9, 2012 Charges received. Position statement filed March 1, 2013. **July 16, 2013 CCRD issues Notice to Claimant he may commence in a civil action as 180 days have elapsed and Claimant specifically requested this notification.** (Total 219 hours – McKinney).

EMPLOYEE V. CITY OF COLORADO SPRINGS, CCRD Charge No. E20130375. Charging Party alleges discrimination based on sex, gender, and orientation. September 12, 2012 Claimant filed charges. Position statement due November 17, 2012. **May 16, 2013 Determination by CCRD of no sufficient evidence to support Charging Party's claim of discrimination by the Respondent; No Probable Case is issued (mailed 7/2/13). Deadline to file lawsuit September 30, 2013.** (Total 104.5 hours – Jeffrey).

MEMORIAL HEALTH SYSTEM, OCR 08-79513. Complainant alleges discrimination by failing to accommodate a disability (deafness) when sign language interpreters were not provided in a reasonable amount of time. Discrimination charge received April 4, 2008. Position statement filed May 1, 2008. Supplemental position statement filed June 20, 2008. Second supplemental position statement filed August 25, 2008. May 22, 2009 Third supplemental position statement filed. Defendant has also produced and continues to produce additional information at the request of DOJ counsel relating to this matter. October 17, 2011 City receives request for additional information; additional information due October 26, 2011; extension to respond granted. November 9, 2011 City submits additional information requested. October 10, 2012 US Department of Health and Human Service (HHS) and the Office for Civil Rights (OCR) completed its investigation of the disability discrimination complaint filed and a Voluntary Resolution Agreement was executed by MHS and OCR/HHS. (Total 405.5 hours – Turner)

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. Waiting for decision from EEOC. (Total 51.25 hours – Lessig).

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. Waiting for decision from EEOC. (Total 53 hours – Lessig).

**UTILITIES ADMINISTRATIVE/REGULATORY MATTERS**

WATER CASES (OC)

**Active Application Cases 9 (2 are Diligence cases)**

| <b>Number</b> | <b>Case Name</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/Williams Creek Reservoir to Local Storage |
| 12CW31        | Upper Williams Creek                                       |
| 13CW009       | Arkansas River Exchange (Diligence)                        |
| 13CW020       | Local System Exchange (Diligence)                          |

**Objector Cases 80**

**BEFORE WATER REFEREE 67**

|            |    |
|------------|----|
| Active     | 53 |
| Stipulated | 27 |

**BEFORE WATER JUDGE 13**

| <b>Number</b> | <b>Case Name</b>  |
|---------------|---|
| 04CW096       | Upper Arkansas Valley   |
| 06CW115       | Round Mountain  |
| 10CW004       | Lower Arkansas Valley Water   |
| 10CW043       | Summit County Board of County Commissioners                         |
| 10CW063       | Florence  |
| 10CW098       | City of Victor & Cripple Creek                                      |
| 10CW099       | City of Fountain  |
| 10CW298       | Grand County Board of Commissioners                                 |
| 11CW013       | City of La Junta  |
| 11CW077       | Lower Arkansas Valley Water Conservancy District and Larkspur, Inc. |
| 12CW001       | Woodmoor Water and Sanitation District                              |
| 12CW051       | Doyle, et al.   |
| 12CW176       | Climax  |

**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

Active cases:

Municipal – 25  
Utilities – 7  
Memorial - 14

**Subrogation cases** handled by outside counsel:

Municipal – 0  
Utilities – 0

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

Municipal – 2  
Utilities – 0

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

|                                    | <u>MAY</u>  | <u>JUNE</u> | <u>JULY</u> |
|------------------------------------|-------------|-------------|-------------|
| Cases Docketed for Trial by Court  | 196         | 183         | 203         |
| Cases tried:                       | 63          | 66          | 73          |
| Cases handled without trial:       | 133         | 117         | 130         |
| Cases Docketed for Trial by Jury:  | 27          | 10          | 14          |
| Cases tried:                       | 1           | 0           | 1           |
| Cases handled without trial:       | 26          | 10          | 13          |
| Cases Handled on Deferred Docket:  | 243         | 174         | 176         |
| Cases Handled at Pretrial:         | 493         | 394         | 491         |
| Cases Handled at Arraignments:     | 832         | 850         | 826         |
| Mailed Dispositions:               | 30          | 23          | 30          |
| Deferred Sentences at Arraignment: | 31          | 27          | 28          |
| Criminal Arraignments Screened:    | 310         | 366         | 430         |
| Jail Docket:                       | 173         | 228         | 274         |
| Liquor Hearings:                   | 2           | 4           | 5           |
| <b>TOTAL MATTERS:</b>              | <b>2337</b> | <b>2259</b> | <b>2477</b> |