

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	DATE FILED: October 25, 2017 2:11 PM FILING ID: D33C34D48F01E CASE NUMBER: 2017CV30903
Plaintiff: Ilse G. Westphal Defendant: Anthony John Jansa; Jansa Trucking, LLC, a Colorado Limited Liability Company; Jansa Trucking, LLC, a North Dakota Limited Liability Company; The City of Fort Collins, a Colorado municipal corporation	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
David M. Herrera HERMS & HERRERA, LLC Attorney for Plaintiff 3600 South College Avenue, Suite 204 Fort Collins, Colorado 80525 Phone (970) 498-9999 Fax (970) 472-5365 E-Mail: david@hhlawoffice.com Atty. Reg. #12818	Case Number: _____ Ctrm.: _____
COMPLAINT WITH JURY DEMAND	

COMES NOW, the Plaintiff, by and through his attorney, David M. Herrera, and states and alleges for their Complaint against the Defendants as follows:

INTRODUCTION

1. This action is brought by the Plaintiff for damages resulting from a motor vehicle/pedestrian accident involving the negligence of the Defendants resulting in injuries to the Plaintiff.
2. Jurisdiction is proper over Plaintiff and Defendants because the action in this case arise from the commission of a tortious act within in Larimer County, Colorado. C.R.S. §13-1-124.
3. Venue is proper in Larimer County and in this court pursuant to C.R.C.P. Rule 98(c).
4. On Tuesday, November 22, 2016, the Plaintiff Ilse G. Westphal was waiting for the City of Fort Collins TransFort bus at a designated bus stop shelter (the “situs”), along north side of East Harmony Road approximately 494 feet west of the intersection of Zeigler Road and East Harmony Road, Larimer County, Colorado, when the vehicle driven by Anthony John Jansa backed over her and rolled the Plaintiff under the trailer of the semi-tractor/trailer, dragging her backward and then forward under the vehicle resulting in a significant injury to her entire body

including her head, hands, legs, buttocks, and feet, as well as causing broken bones, skin tears, flaying, numerous abrasions, cuts and contusions and amputations..

5. The Plaintiff, Ilse G. Westphal, at the time of the accident resided at 321 E. Troutman Parkway, Fort Collins, CO 801525.

6. Upon information and belief, the Defendant, Anthony John Jansa, at the time of the accident resided at 340 Buffalo Range Lane, Wellington, CO, 80549.

7. Defendant Jansa is a co-owner of Jansa Trucking, LLC a Colorado Limited Liability Corporation (Hereinafter "JTCO").

8. Defendant Jansa is a co-owner of Jansa Trucking, LLC a North Dakota Limited Liability Corporation (Hereinafter "JTND").

9. Defendant Jansa was the driver of the vehicle that struck and injured the Plaintiff.

10. On information and belief, Defendant Jansa was also an employee of both JTCO and JTND.

11. The vehicle driven by Jansa was a 2007 Peterbilt diesel 3-axle tractor owned by JTND.

12. The Tractor was pulling a 43' Fontaine drop deck trailer loaded with counterweights and rigging for the crane that had been positioned at the developing construction site.

13. On information and belief, Defendant Jansa was working on behalf of JTCO on a job known as the East Harmony Duct Bank.

14. The City of Fort Collins (hereinafter "City") is a Colorado home-rule municipal corporation.

15. On information and belief, the East Harmony Duct Bank was a project managed by the Utilities department (also referred to as Light and Power) of the City where the City was constructing underground utility facilities from the Harmony Substation to Ziegler Road.

16. Phase 2 of the East Harmony Duct Bank project included the installation of 12 large underground vaults and over 125,000 feet of conduit.

17. Plaintiff first arrived at the situs on November 22, 2016 at 10:43 am.

18. At the time of her arrival at the situs, a large equipment trailer and a City Utility Department truck were pulled off of North side of Harmony Road along with a track hoe excavator off the roadway situated approximately 50-75 feet west of the intersection of Harmony Road and Zeigler Road.

19. In addition, several traffic cones had been placed in Harmony Road closing portions of the northernmost lane.

20. Starting at about 75 to 25 feet east of the bus stop shelter, another equipment trailer and a City utility truck were parked in the northernmost lane of Harmony Road and five traffic cones were placed around the back and side of the trailer.

21. Prior to and at the time of the incident no cones, tape, signage, or other items indicated closure of the bus stop shelter.

22. On November 22, 2016, at approximately 10:43 a.m., Ms. Westphal exited her bus and walked to her destination for an appointment.

23. Upon the completion of her appointment, Ms. Westphal returned to the situs at approximately 12:30 p.m., where she waited for her bus at the public bus stop shelter.

24. At no time before the incident was the public bus stop shelter closed.

25. There is no curb or gutter between the bus stop shelter and the roadway at the situs.

26. Between the time of her first arrival at 10:43 am and her return to the situs at approximately 12:30 p.m., the number of parked vehicles along Harmony Road had increased.

27. The vehicles included a Sterling Crane pickup truck, the track hoe excavator (loaded onto the trailer), a dump truck pulled ahead of the track hoe/trailer, a large 7-axle oversized crane had been positioned on the northernmost lane. Further to the West along Harmony road and before the bus stop, two City trucks and an equipment trailer were parked in the northernmost lane.

28. The City of Fort Collins was engaged in the process of constructing utility facilities in connection with the "East Harmony Duct Bank" project, and having marshalled labor, materials and equipment to the site, was preparing to use the crane that had been staged to place vaults as part of the construction project.

29. The City of Fort Collins was establishing a construction site that encompassed the bus stop shelter public building, public facility and its curtilage.

30. The City of Fort Collins was establishing a construction site that encompassed the Harmony Road public highway.

31. Harmony Road at the situs is a divided roadway with westbound traffic on the North side of the roadway.

32. While Plaintiff was at the bus stop, Defendant Jansa arrived in the area and pulled passed the bus stop shelter and stopped.

33. Ms. Westphal, expecting the bus to arrive at any time, could see that the lane to the East was closed and could not see around the line of vehicles that were parked along the northernmost lane of westbound Harmony Road.

34. The bus stop shelter has an advertising panel to the West side that serves as a wind break. The panel obstructs the view to the West.

35. Ms. Westphal stood up from the bus stop shelter and took a few steps toward the roadway lane that was closed to look for her bus.

36. Ms. Westphal was struck from behind as Jansa backed up toward the shelter.

37. There was no flagman or lookout for the Jansa vehicle and trailer.

38. There was no audible backup warning for the JTND vehicle and trailer.

39. While backing up, Jansa noticed an object under or behind the trailer and stopped then pulled forward.

40. Plaintiff was transported by ambulance to Medical center of the Rockies Hospital where Emergency Room Personnel first saw her. Plaintiff was treated for multiple fractures and her various other injuries. While under general anesthetic, several surgical procedures were initiated to repair the various fractures. Amputations were required. Stitches were also required in numerous locations of her body. Extensive surgery was also required to reconstruct her left heel.

41. Plaintiff has also required multiple subsequent surgeries and skin grafts as a result of the injuries.

42. As of the filing of this Complaint, Plaintiff, remains in a rehabilitation facility where she is recovering and attempting to regain her ability to walk.

43. As a direct and proximate result of the actions of the Defendant, Plaintiff was continuously hospitalized or in a rehabilitation facility since November 22, 2016.

44. Plaintiff has incurred substantial medical expenses and costs as a result of the incident well in excess of \$850,000.00 and continuing.

45. Plaintiff has suffered a loss of appendages, several skin graft surgeries, the loss of her ability to walk.

46. Plaintiff has suffered and continues to suffer considerable pain as a result of her injuries.

47. She has also suffered and continues to suffer a loss independence and her mobility has been severely limited by the injuries.

48. Plaintiff has suffered and continues to suffer an exacerbation of conditions that pre-existed her traumatic injuries.

49. As a result of her injuries, a conservator was appointed to protect Plaintiff, resulting in Plaintiff incurring costs and fees as damages.

FIRST CAUSE OF ACTION
NEGLIGENCE - RES IPSA LOQUITUR

50. Plaintiff incorporate by reference the allegations contained in paragraphs 1 through 48 as though fully set forth herein.

51. The Defendant Jansa's negligence includes but is not limited to his failure to properly keep his vehicle on the roadway resulting in the driving over and dragging the Plaintiff causing serious bodily injury.

52. The management and control of the vehicle which produced the injury was, under the circumstances to which the doctrine of Res Ipsa Loquitur applies, exclusively vested in defendant. The 2007 Peterbilt diesel 3-axle tractor and attached Fontaine drop deck trailer which caused the injury was under the exclusive management and control of the defendant Jansa.

53. When Defendant Jansa backed up, he created a dangerous and hazardous condition on a public highway.

54. Plaintiff is not in a position to show the particular circumstances which caused the offending instrumentality to operate to her injury, while defendant Jansa, being more favorably situated, possesses the superior knowledge or means of information as to the cause of the accident.

55. As a direct and proximate cause of Defendant's negligence, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

56. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant Jansa in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

SECOND CAUSE OF ACTION
NEGLIGENCE PER SE

57. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 56 above, as if set forth here in full.

58. Colorado Revised Statute §42-4-1211 places the following limitations on backing a vehicle:

(1)(a) The driver of a vehicle, whether on public property or private property which is used by the general public for parking purposes, shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

59. Defendant Jansa backed the vehicle and trailer on the roadway of a controlled-access highway into Plaintiff while she was standing on the shoulder of the road.

60. Defendant Jansa, as the driver of the backing vehicle and trailer had a statutory duty of care to determine whether he could back his vehicle safely.

61. Defendant Jansa violated that statutory duty when he ran over Plaintiff.

62. Defendant Jansa's violation of that statutory duty was the proximate cause of Plaintiff's injuries.

63. As a direct and proximate cause of Defendant's as a result of Defendant Jansa's violation of his statutory duty, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

64. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant Jansa in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

THIRD CAUSE OF ACTION NEGLIGENCE PER SE

65. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 64 above, as if set forth here in full.

66. Colorado Revised Statute §42-4-1211 places the following limitations on backing a vehicle:

(1)(a) The driver of a vehicle, whether on public property or private property which is used by the general public for parking purposes, shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

67. Harmony Road in Fort Collins Colorado is a “Controlled-access highway” as such term is defined in C.R.S. §42-1-102(18).

68. Defendant Jansa backed the vehicle and trailer on the roadway of a controlled-access highway into Plaintiff while she was standing on the shoulder of the road.

69. Defendant Jansa, as the driver of the backing vehicle and trailer had a statutory duty to not back up his vehicle on a controlled-access highway.

70. Defendant Jansa violated that statutory duty when he ran over Plaintiff.

71. Defendant Jansa’s violation of that statutory duty was the proximate cause of Plaintiff’s injuries.

72. As a direct and proximate cause of Defendant Jansa’s violation of his statutory duties, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

73. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant Jansa in an amount to be determined at trial for Plaintiff’s injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney’s fees, and for such other relief as this court deems proper.

FOURTH CAUSE OF ACTION
NEGLIGENCE

74. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 73 above, as if set forth here in full.

75. Defendant Jansa’s cargo obstructed his view of the rear of the trailer.

76. Defendant Jansa failed to post an observer to signal it was safe to back up the vehicle.

77. Defendant Jansa had a duty to maintain a proper lookout to see what that driver could and should have seen in the exercise of reasonable care

78. Defendant Jansa failed to maintain a proper lookout and he backed the vehicle and trailer into Plaintiff while she was standing on the shoulder of the road.

79. Defendant Jansa violated that duty when he ran over Plaintiff.

80. Defendant Jansa's violation of the duty to maintain a proper lookout was the proximate cause of Plaintiff's injuries.

81. As a direct and proximate cause of Defendant Jansa's violation of his duty to maintain a proper lookout, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

82. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant Jansa in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

FIFTH CAUSE OF ACTION NEGLIGENCE

83. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 82 above, as if set forth here in full.

84. Defendant Jansa's cargo obstructed his view of the rear of the trailer.

85. Defendant JTND failed have its vehicle equipped with an adequate audible warning device at the operator's station and in an operable condition.

86. Defendant JTND had a duty under 29 CFR §1926.601(b)(4)(i) to have an operable reverse signal alarm audible above the surrounding noise level at a construction site.

87. Defendant JTND failed to provide the reverse signal alarm and he backed the vehicle and trailer into Plaintiff while she was standing on the shoulder of the road.

88. Defendant JTND violated that duty when he ran over Plaintiff.

89. Defendant JTND's violation of the duty to maintain a proper lookout was the proximate cause of Plaintiff's injuries.

90. As a direct and proximate cause of Defendant JTND's violation of his duty to maintain a proper lookout, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

91. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant JTND in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering,

mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

SIXTH CLAIM FOR RELIEF
RESPONDEAT SUPERIOR

92. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 87 above, as if set forth here in full.

93. On information and belief, Defendant Jansa, in addition to being a co-owner of JTND, was also its employee.

94. On information and belief, Defendant Jansa, in addition to being a co-owner of JTCO, was also its employee.

95. On information and belief, JTCO and JTND jointly supplied Jansa as labor the Peterbilt tractor and the Fontaine drop deck trailer equipment to prosecute the work at the East Harmony Duct bank project.

96. Defendants JTCO and JTND as the co-employer of Defendant Jansa, controlled or had the right to control the actions of their employee.

97. Defendants JTCO and JTND as the co-employer of Defendant Jansa are liable for torts committed by their joint employee or agent while acting within the scope of employment.

98. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendants JTCO and JTND in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

SEVENTH CLAIM FOR RELIEF
NEGLIGENCE – CITY OF FORT COLLINS

99. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 98 above, as if set forth here in full.

100. The City of Fort Collins has adopted the 2015 International Building Code ("2015 IBC"). Fort Collins Municipal Code §5-26(a).

101. The 2015 IBC defines a building as “any structure used or intended supporting or sheltering any use or occupancy.” 2015 IBC §202.

102. The City of Fort Collins operates a bus transportation system commonly known as Transfort, a division within the City’s Transportation Department.

103. The City also operates a utilities department.

104. The Utilities department undertook a construction project known as Phase 2 of the East Harmony Duct Bank.

105. The Construction of the Phase 2 of the East Harmony Duct Bank included the placement of large 2 large underground vaults.

106. The placement of the vaults required the use of a crane contracted for with Sterling Crane.

107. Sterling Crane’s equipment requires the use of counterweights and rigging.

108. The counterweights and rigging were being delivered to the construction site by Defendant Jansa on November 22, 2016.

109. The City of Fort Collins was assembling the construction site, marshalling labor, material and equipment, in the street, the shoulder and the right-of way between the street and the sidewalk on the North side of Harmony Road all around the bus shelter where Plaintiff was sitting waiting for her bus.

110. The bus shelter is a public building.

111. The City never closed the bus shelter.

112. The City never informed Plaintiff that the bus service was not available to her at the situs.

113. The City’s operation of the bus shelter while assembling the construction site, marshalling labor, material and equipment, in the street, the shoulder and the right-of way between the street and the sidewalk on the North side of Harmony Road all around the bus shelter where Plaintiff was sitting waiting for her bus, rendered the bus shelter, a public building, to be in a dangerous condition constituting an unreasonable health and safety risk.

114. The City as a public entity provides a public building for public use, it owes a nondelegable duty to protect Plaintiff, an invitee, from an unreasonable risk to her health and safety due to a negligent act or omission in constructing or maintaining the public building.

115. The City breached that duty.

116. As a direct and proximate cause of Defendant City's violation of its duty to protect the Plaintiff from an unreasonable risk to her health and safety due to a negligent act or omission in constructing or maintaining the public building, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.

117. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant City in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

EIGHTH CLAIM FOR RELIEF
NEGLIGENCE – CITY OF FORT COLLINS

118. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 117 above, as if set forth here in full.

119. The City of Fort Collins operates a bus transportation system commonly known as Transfort, a division within the City's Transportation Department.

120. The City also operates a utilities department.

121. The Utilities department undertook a construction project known as Phase 2 of the East Harmony Duct Bank.

122. The Construction of the Phase 2 of the East Harmony Duct Bank included the placement of large 2 large underground vaults.

123. The placement of the vaults required the use of a crane contracted for with Sterling Crane.

124. Sterling Crane's equipment requires the use of counterweights and rigging.

125. The counterweights and rigging were being delivered to the construction site by Defendant Jansa on November 22, 2016.

126. The City of Fort Collins was assembling the construction site, marshalling labor, material and equipment, in the street, the shoulder and the right-of way between the street and the sidewalk on the North side of Harmony Road all around the bus shelter where Plaintiff was sitting waiting for her bus.

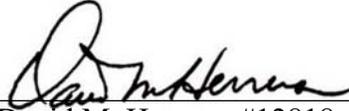
127. The bus shelter is a public building.
128. The City never closed the bus shelter.
129. The City never informed Plaintiff that the bus service was not available to her at the situs.
130. The City's operation of the bus shelter while, rendered the bus shelter, a public building, to be in a dangerous condition constituting an unreasonable health and safety risk.
131. The City establishment and assembling of the construction site, marshalling labor, material and equipment, in the street, the shoulder and the right-of way between the street and the sidewalk on the North side of Harmony Road all around the bus shelter where Plaintiff was waiting for her bus changed the physical condition of the roadway to a construction area.
132. Establishing a construction site on the roadway and around Plaintiff involved narrowing the roadway and interfered with the movement of vehicular and pedestrian traffic.
133. Establishing a construction site on the roadway, staging equipment, material and labor on the roadway and around Plaintiff constituted an unreasonable risk to the health or safety of the public.
134. The City, as the on-site manager of the construction project, knew of the conditions it was creating or in the exercise of reasonable care should have been known of the dangerous conditions.
135. The City had a duty to maintain the roadway free from dangerous conditions that physically interfered with the movement of traffic, including pedestrian traffic, in connection with the physical condition or use of the roadway
136. The City breached that duty.
137. As a direct and proximate cause of Defendant City's violation of its duty to protect the Plaintiff from an unreasonable risk to her health and safety due to a negligent act or omission in constructing or maintaining the public building, the Plaintiff has sustained, and will sustain in the future, physical injury, pain and suffering, permanent disability, mental anguish, loss of enjoyment of life, and medical expenses.
138. WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant City in an amount to be determined at trial for Plaintiff's injuries, losses and damages, including personal injuries, temporary disability, permanent disability, pain, suffering, mental anguish, loss of enjoyment of life, past and future medical expenses, costs of this action, costs of the Conservatorship, expert witness fees, if any, prejudgment interest from the date of accrual of this action, attorney's fees, and for such other relief as this court deems proper.

JURY DEMAND

Plaintiff demands this matter be tried before a jury of six persons.

Respectfully submitted this 25th day of October, 2017.

Herms & Herrera, LLC

A handwritten signature in black ink, appearing to read "David M. Herrera", written over a horizontal line.

David M. Herrera, #12818