

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO Court address: 201 LaPorte Avenue Suite 100 Fort Collins, Colorado 80521	DATE FILED: November 17, 2017 5:00 PM FILING ID: C0D0CACA9542A CASE NUMBER: 2017CV30903 A COURT USE ONLY Δ
PLAINTIFFS: ILSE G. WESTPHAL v. DEFENDANTS: 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.	Case No. 2017CV30903 Division: 3C
James M. Meseck, Esq. #33021 Brandon O. Hawkins, Esq. #49069 White and Steele, P.C. 600 17 th Street Suite 600N Denver, Colorado 80202 Telephone: (303) 296-2828 Fax: (303) 296-3131 e-mail jmeseck@wsteele.com bhawkins@wsteele.com Attorneys for Defendant Anthony J. Jansa	
<p style="text-align: center;">DEFENDANTS ANTHONY JOHN JANSA, JANSA TRUCKING, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND JANSA TRUCKING, LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY'S ANSWER AND JURY DEMAND</p>	

Defendants Anthony John Jansa (“Mr. Jansa”), Jansa Trucking, LLC, a Colorado Limited Liability Company, and Jansa Trucking, LLC a North Dakota Limited Liability Company (collectively the “Jansa Trucking Defendants”), by and through their attorneys of record, White & Steele, P.C. and in response to Plaintiff’s Complaint with Jury Demand (“Complaint”), state and allege as follows:

INTRODUCTION

1. With respect to the allegations contained in paragraph 1 of the Complaint, the Jansa Trucking Defendants admit that this action arises out of a motor vehicle pedestrian accident. The Jansa Trucking Defendants deny all remaining allegations including that they were negligent or are at fault.

2. The Jansa Trucking Defendants have no objection to jurisdiction or venue as alleged in paragraphs 2 and 3 in the Complaint.

3. With respect to the allegations contained in paragraph 4 of the Complaint, the Jansa Trucking Defendants admit that on Tuesday, November 22, 2016, Plaintiff Ilse G. Westphal was waiting for the City of Fort Collins TransFort bus at a bus stop along the north side of East Harmony Road, west of the intersection of Zeigler Road and East Harmony Road, in Larimer County, Colorado, when Plaintiff walked out into the roadway immediately behind the semi-tractor and trailer operated by Mr. Jansa as the vehicle began to back up to position itself for work at a construction site. The Jansa Trucking Defendants further admit that Ms. Westphal was injured as a result of her negligence, and assumed the risk of walking into the roadway to stand behind a running vehicle as it was backing. The Jansa Trucking Defendants deny all remaining allegations contained in paragraph 4 of the Complaint.

4. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 5 of the Complaint and, therefore, deny the same.

5. The Jansa Trucking Defendants admit the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, and 12 of the Complaint.

6. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 13 of the Complaint and, therefore, deny the same.

7. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 14, 15, 16, 17, and 18 of the Complaint and, therefore, deny the same.

8. With respect to the allegations contained in paragraph 19 of the Complaint, the Jansa Trucking Defendants admit that there were numerous traffic cones placed in and around Harmony Road closing portions of the lanes to traffic.

9. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 20 of the Complaint and, therefore, deny the same.

10. The Jansa Trucking Defendants admit the allegations contained in paragraph 21 of the Complaint.

11. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 22, 23, and 24 of the Complaint and, therefore, deny the same.

12. The Jansa Trucking Defendants admit the allegations contained in paragraph 25 of the Complaint.

13. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 26 of the Complaint and, therefore, deny the same.

14. With respect to the allegations contained in paragraph 27 of the Complaint, the Jansa Trucking Defendants admit that when Mr. Jansa arrived on the scene, there were other vehicles in the immediate area of the construction site. The Jansa Trucking Defendants are without sufficient information or

knowledge to admit as to the remaining allegations contained in paragraph 27 of the Complaint and, therefore, deny the same.

15. The Jansa Trucking Defendants admit the allegations contained in paragraph 28 of the Complaint.

16. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 29 and 30 of the Complaint and, therefore, deny the same.

17. The Jansa Trucking Defendants admit the allegations contained in paragraph 31 of the Complaint.

18. With respect to the allegations contained in paragraph 32 of the Complaint, the Jansa Trucking Defendants admit that Mr. Jansa stopped the semi-tractor and trailer without setting the brakes, and did not park the vehicle but began to back up to the crane all within 10 to 20 seconds of arriving at the scene. The Jansa Trucking Defendants deny the remaining allegations contained in paragraph 32 of the Complaint.

19. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 33 of the Complaint and, therefore, deny the same.

20. With respect to the allegations contained in paragraph 34 of the Complaint, the Jansa Trucking Defendants admit that the bus stop shelter has an advertising panel to the west side. The Defendants are without sufficient information to admit as to the truth of the remaining allegations contained in paragraph 34 of the Complaint and, therefore, deny the same.

21. With respect to the allegations contained in paragraph 35 of the Complaint, the Jansa Trucking Defendants admit that the Plaintiff walked into the street and stood in the roadway behind the tractor trailer after the vehicle had begun backing up. The Jansa Trucking Defendants deny the remaining allegations contained in paragraph 35 of the Complaint.

22. With respect to the allegations contained in paragraph 36 of the Complaint, the Jansa Trucking Defendants admit that Ms. Westphal came into contact with the vehicle after she walked into the roadway and stood behind the tractor trailer as it was backing; and, at no time did the tractor trailer leave the roadway or go onto the shoulder, nor was it backed up directly towards the bus stop. The Jansa Trucking Defendants deny the remaining allegations contained in paragraph 36 of the Complaint.

23. The Jansa Trucking Defendants admit the allegations contained in paragraph 37 of the Complaint.

24. With respect to the allegations contained in paragraph 38 of the Complaint, the Jansa Trucking Defendants admit that there was no back up audible device on the tractor owned by Jansa Trucking, LLC or on the trailer owned by Sterling Crane. The Jansa Trucking Defendants deny all remaining allegations contained in paragraph 38 of the Complaint.

25. With respect to the allegations contained in paragraph 39 of the Complaint, the Jansa Trucking Defendants admit that Mr. Jansa felt an object as the semi-tractor and trailer were backing up and immediately stopped before pulling forward. The Jansa Trucking Defendants are without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 39 of the Complaint and, therefore, deny the same.

26. With respect to the allegations contained in paragraph 40 of the Complaint, the Jansa Trucking Defendants admit that the Plaintiff was physically injured and transported by ambulance to a medical facility. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the remaining allegations contained in paragraph 40 of the Complaint and, therefore, deny the same.

27. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 41 and 42 of the Complaint and, therefore, deny the same.

28. With respect to the allegations contained in paragraph 43 of the Complaint, the Jansa Trucking Defendants deny that they were the direct or proximate result of the Plaintiff's alleged hospitalization. The Jansa Trucking Defendants are without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 43 of the Complaint and, therefore deny the same.

29. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 44, 45, 46, 47, 48, and 49 and, therefore, deny the same.

FIRST CAUSE OF ACTION
Negligence – Res Ipsa Loquitur

30. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 49 as if set forth fully herein.

31. The Jansa Trucking Defendants deny the allegations contained in paragraph 51 of the Complaint.

32. With respect to the allegations contained in paragraph 52 of the Complaint, the Jansa Trucking Defendants admit that the vehicle involved was a 2007 Peterbilt diesel 3-axle tractor with an attached Fontaine drop-deck trailer, which was being operated by Mr. Jansa at the time of the accident. The Jansa Trucking Defendants deny all remaining allegations contained in paragraph 52 of the Complaint.

33. The Jansa Trucking Defendants deny the allegations contained in paragraphs 53, 54, 55, and 56 of the Complaint.

SECOND CAUSE OF ACTION
Negligence Per Se

34. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 56 of the Complaint as if set forth fully herein.

35. Paragraph 58 of the Complaint appears to be a statement of what the Plaintiff believes the law to be and, as such, no response is required. To the extent a response is necessary, the Jansa Trucking Defendants admit that the duties owed by a motorist are established by Colorado's statutes, regulations, actual driving conditions, and other pertinent factors.

36. The Jansa Trucking Defendants deny the allegations contained in paragraph 59 of the Complaint.

37. With respect to the allegations contained in paragraph 60 of the Complaint, the Jansa Trucking Defendants admit that the duties owed by a motorist to the public are set forth in Colorado's statutes, regulations, actual driving conditions, and other pertinent factors. The Jansa Trucking Defendants deny all remaining allegations contained in paragraph 60 of the Complaint.

38. The Jansa Trucking Defendants deny the allegations contained in paragraphs 61, 62, 63, and 64 of the Complaint.

THIRD CAUSE OF ACTION
Negligence Per Se

39. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 64 of the Complaint as if set forth fully herein.

40. The allegations contained in paragraph 66 of the Complaint appear to be a statement of what the Plaintiff believes the law to be and, as such, no response is required. To the extent a response is necessary, the Jansa Trucking Defendants admit that the duties owed by a motorist to the public are set forth in Colorado's statutes, regulations, actual driving conditions, and other pertinent factors.

41. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 67 of the Complaint and, therefore, deny the same.

42. The Jansa Trucking Defendants deny the allegations contained in paragraph 68 of the Complaint.

43. With respect to the allegations contained in paragraph 69 of the Complaint, the Jansa Trucking Defendants admit that the duties owed by a motorist to the public are set forth in Colorado's statutes, regulations, actual driving conditions, and other pertinent factors. The Jansa Trucking Defendants are without sufficient information or knowledge to admit or deny the truth of the remaining allegations contained in paragraph 69 of the Complaint and, therefore, deny the same.

44. The Jansa Trucking Defendants deny the allegations contained in paragraphs 70, 71, 72, and 73 of the Complaint.

FOURTH CAUSE OF ACTION
Negligence

45. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 73 of the Complaint as if set forth fully herein.

46. With respect to the allegations contained in paragraph 75 of the Complaint, the Jansa Trucking Defendants admit that Mr. Jansa could not see directly behind the trailer where the Plaintiff stood in the roadway. The Jansa Trucking Defendants deny all remaining allegations contained in paragraph 75 of the Complaint.

47. The Jansa Trucking Defendants deny the allegations contained in paragraph 76 of the Complaint.

48. With respect to the allegations contained in paragraph 77 of the Complaint, the Jansa Trucking Defendants admit that a motorist's duties to the public are set forth in Colorado statutes, regulations,

case law, actual driving conditions, and other pertinent circumstances. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the remaining allegations contained in paragraph 77 of the Complaint and, therefore, deny the same.

49. The Jansa Trucking Defendants deny the allegations contained in paragraphs 78, 79, 80, 81, and 82 of the Complaint.

FIFTH CAUSE OF ACTION

Negligence

50. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 82 of the Complaint as if set forth fully herein.

51. With respect to the allegations contained in paragraph 84 of the Complaint, the Jansa Trucking Defendants admit that Mr. Jansa could not see directly behind the trailer where the Plaintiff was standing in the roadway. The Jansa Trucking Defendants deny the remaining allegations contained in paragraph 84 of the Complaint.

52. The Jansa Trucking Defendants deny the allegations contained in paragraph 85 of the Complaint.

53. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraph 86 of the Complaint and, therefore, deny the same.

54. The Jansa Trucking Defendants deny the allegations contained in paragraphs 87, 88, 89, 90, and 91 of the Complaint.

SIXTH CLAIM FOR RELIEF

Respondent Superior

55. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 91 of the Complaint as if set forth fully herein.

56. The Jansa Trucking Defendants admit the allegations contained in paragraph 93 and 94 of the Complaint.

57. The Jansa Trucking Defendants are without sufficient information or knowledge to admit as to the truth of the allegations contained in paragraphs 95, 96, and 97 of the Complaint and, therefore, deny the same.

58. The Jansa Trucking Defendants deny the allegations contained in paragraph 98 of the Complaint.

SEVENTH CLAIM FOR RELIEF

Negligence – City of Fort Collins

59. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 98 of the Complaint as if set forth fully herein.

60. The allegations contained in paragraphs 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, and 117 of the Complaint are not directed at the Jansa Trucking Defendants and, therefore, no response is required. To the extent a response is necessary, the Jansa Trucking Defendants are without sufficient information or knowledge to admit or deny the truth of the allegations contained in paragraphs 100 through 117 and, therefore, deny the same.

EIGHTH CLAIM FOR RELIEF
Negligence – City of Fort Collins

61. The Jansa Trucking Defendants incorporate their previous responses to paragraphs 1 through 117 of the Complaint as if set forth fully herein.

62. The allegations contained in paragraphs 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, and 138 of the Complaint are not directed at the Jansa Trucking Defendants and, therefore, no response is required. To the extent a response is necessary, the Jansa Trucking Defendants are without sufficient information or knowledge to admit or deny the truth of the allegations contained in paragraphs 119 through 138 and, therefore, deny the same.

All allegations not specifically admitted to herein are hereby denied.

DEFENSES

1. Plaintiff's Complaint fails to state a claim or cause of action on which relief may be granted.
2. Any claim or award is barred or reduced due to a failure to mitigate damages.
3. Plaintiff's damages, if any, are barred or proportionately reduced by any negligence, negligence *per se*, fault, or liability attributable to the Plaintiff, including but not limited to the following:
 - a. That Plaintiff violated C.R.S. § 42-4-803(1) (2017), which requires that: "Every pedestrian crossing a roadway at any point other than a marked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." See *Dennis v. Johnson*, 317 P.2d 890 (Colo. 1957).
 - b. That Plaintiff violated Section 802 (3) of the City of Fort Collins Traffic Code (Ord. 120, 2015 § 3), which requires that: "No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a moving vehicle that is so close as to constitute an immediate hazard."
 - c. That Plaintiff violated Section 802 (4) of the City of Fort Collins Traffic Code (Ord. 120, 2015 § 3), which requires that: "No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk or except where such angle crossing is authorized."
 - d. That Plaintiff violated Section 803 (4) of the City of Fort Collins Traffic Code (Ord. 016, 2003 § 1), which requires that: "Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway."

- e. That according to CJI-Civ. 11:9 (CLE ed. 2017), Defendant Anthony Jansa had a “right to believe that others will obey applicable laws and regulations, unless there are reasonable grounds to believe otherwise,” and the foregoing provisions are but some of the applicable laws and regulations that may have applied under the circumstances.
- f. That according to CJI-Civ. 11:3 (CLE ed. 2017), Plaintiff was under a duty as a pedestrian to “exercise reasonable care considering the existing conditions,” and that Plaintiff’s failure to do so constituted a violation of the foregoing provisions that are but some of the applicable laws and regulations that may have applied under the circumstances.

4. Plaintiff’s damages, if any, were not proximately caused by the actions or inactions of the Jansa Trucking Defendants.

5. Plaintiff’s alleged injuries and damages, if any, result from injuries incurred before or after the accident complained of, and recovery, therefore, shall be precluded or diminished as required by law.

6. Plaintiff’s damages, if any, are the sole or proximate result of the negligence of some third-person or party for whom the Jansa Trucking Defendants were not responsible, and over whom the Jansa Trucking Defendants had no control, nor right of control.

7. Plaintiff’s claims are barred, limited, or proportionately reduced pursuant to C.R.S. § 13-21-102.5, 111, 111.5, 111.6 and 111.7.

8. Plaintiff assumed the risk of their injuries and damages.

9. The danger of which Plaintiff complains was open and obvious.

10. Plaintiff had knowledge of the alleged dangerous condition prior to encountering it.

11. Plaintiff chose to occupy or enter the area in which she encountered the alleged dangerous condition.

12. Plaintiff voluntarily encountered the alleged dangerous condition.

13. Plaintiff’s alleged damages were proximately caused by the unforeseeable, independent, intervening and/or superseding event(s) beyond the control of the Jansa Trucking Defendants, and unrelated to any act or omission of the Jansa Trucking Defendants.

14. The Jansa Trucking Defendants conducted themselves in a commercially reasonable manner in compliance with all laws.

15. The Jansa Trucking Defendants reserve the right to amend this Answer to include additional affirmative defenses, or voluntarily withdraw affirmative defenses, as discovery so reveals.

16. The Jansa Trucking Defendants incorporates any applicable defense as identified in the pleadings of any other Defendants.

WHEREFORE, Defendants Anthony J. Jansa; Jansa Trucking, LLC, a Colorado Limited Liability Company; and Jansa Trucking, LLC, a North Dakota Limited Liability Company, respectfully request that the Court enter judgement in their favor, award their costs, expert fees, attorney's fees, and such other and further relief as the Court may deem just and proper. The Jansa Trucking Defendants demand that the matters herein be tried to a jury of six persons.

DEFENDANTS DEMAND A TRIAL BY JURY.

Respectfully submitted this 17th day of November, 2017.

WHITE AND STEELE, P.C.

Original signature on file at the offices of White and Steele, P.C. per C.R.C.P. Rule 121 § 1-26(7)

s/ James M. Meseck _____

James M. Meseck

Brandon O. Hawkins

Attorneys for Defendants Anthony J. Jansa

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17 November 2017, a true and correct copy of the foregoing **ENTRY OF APPEARANCE** was filed and served via Colorado Courts E-Filing correctly addressed to the following:

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Attorney for Defendant City of Fort Collins

Original signature on file at the offices of White and Steele, P.C. per C.R.C.P. Rule §121 1-26(7)

s/ Savvi Neuffer _____

For White and Steele, P.C.