

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	DATE FILED: January 23, 2018 4:53 PM FILING ID: 3B2D9AA4A84E8 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	▲ COURT USE ONLY ▲
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: 2017CV30903  Ctrm.: 3C
<b>Proposed Preliminary Case Management Order</b>	

The Case Management Conference is set for January 29, 2018, 2018, at 9:30 a.m.

1. The at-issue date is: NOT YET AT ISSUE.
2. The Responsible Attorney's name, address, phone number and email address:

Name:	David M. Herrera, Atty. Reg. #12818
Address:	Herms & Herrera, LLC 3600 South College Avenue, Suite 204 Fort Collins, Colorado 80525
Phone Number:	Phone (970) 498-9999 Fax (970) 472-5365
E-Mail:	david@hhlawoffice.com

3. The lead counsel for each Party, and any party not represented by counsel, met and conferred **by telephone** concerning this Proposed Order **concerning this Proposed Order and each of the issues listed below on January 22, 2018 at 2:00 p.m.**

4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side):

(a) Plaintiff. See Plaintiff's statement attached as Attachment A.

(b) Jansa Defendants. See Jansa Defendants' statement attached as Attachment B.

(c) City of Fort Collins Defendant. See City of Fort Collins Defendant's statement attached as Attachment C.

5. The following motions have been filed and are unresolved: *City Of Fort Collins' Motion To Dismiss Plaintiff's Complaint Pursuant To C.R.C.P. 12(b)(1) and C.R.S. § 24-10-106*

6. Brief assessment of each Party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1):

(a) Plaintiff's Position:

This is a personal injury claim involving overlapping theories and causes of causation. This is a document-intensive (medical records) case. It is premature to assess whether the presumptive discovery limits set forth in C.R.C.P. 26(b)(2) are proportional to the needs of this case. Upon resolution of the outstanding motion and further discussion among counsel on remaining claims, the Plaintiff will be in a better position to state proportionality

(b) Jansa Defendants' Position:

The Jansa Defendants are unaware of the alleged document intensiveness of discovery. The Jansa Defendants have not seen the medical records referenced by Plaintiff. Therefore, the Jansa Defendants are unsure about discovery limits until disclosures are submitted.

(c) Defendant City of Fort Collins' Position:

The City agrees with Plaintiff that the proportionality factors are premature. The Court should first decide the issue of governmental immunity after a *Trinity* hearing.

7. The lead counsel for each Party have not yet met to confer concerning possible settlement. The prospects for settlement are presently uncertain. The parties are amenable to using JAG, JAMS, or other suitably qualified private mediator to assist in mediation of this dispute. The parties will submit their “Stipulated Plan Regarding Settlement” within 35 days of the case being at issue.

8. Deadlines for:

(a) Amending or supplementing pleadings (not more than 105 days (15 weeks) from at-issue date): To be determined after ruling on the City’s pending motion..

(b) Joinder of additional parties: (not more than 105 days (15 weeks) from at-issue date): To be determined after ruling on the City’s pending motion..

(c) Identifying non-parties at fault: To be determined after ruling on the City’s pending motion.

9. Dates of limited initial disclosure for purposes of *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993) Hearing: February 19, 2018.

Objections (if any) about their adequacy:

Each party reserves the right to state objections to the adequacy of the initial disclosures within 14 days of receipt.

10. If full disclosure of information under C.R.C.P. 26(a)(1) was not made because of a Party's inability to provide it, provide a brief statement of reasons for that Party's inability and the expected timing of full disclosures, and completion of discovery on damages: The Parties do not anticipate any delay in the production of full initial disclosures once the matter is at issue.

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

Plaintiff believes full C.R.C.P. 26(a)(1) disclosures should be deferred until completion of the *Trinity* hearing. The Jansa Defendants see no reason to delay full disclosure at this time.

(a) Number of depositions per Party for purposes of *Trinity* Hearing:

i) Plaintiff Proposes: one (1) of City of Fort Collins pursuant to C.R.C.P. 30(b)(6) on or before April 13, 2018.

ii) Defendant Jansa Proposes: None. Generally, the Jansa Defendants object to any discovery related to the *Trinity* Hearing that does not count against Plaintiff's total allowed discovery — depositions, interrogatories, and/or requests for production and admissions — as to the Jansa Defendants. The Jansa Defendants are not involved in the *Trinity* Hearing and the other parties should not be allowed more discovery than the Jansa Defendants when the *Trinity* Hearing is completed and Plaintiff's claims against the Jansa Defendants are at issue. To the extent any of Plaintiff's discovery requests made now of

the Jansa Defendants are counted against Plaintiff's overall discovery limit in the case against the Jansa Defendants, the Jansa Defendants have no objection to responding to requests at this time.

iii) Defendant City of Fort Collins proposes: Deposition of the Plaintiff and possibly of three (3) to four (4) others, if needed for preservation purposes if such witnesses are unavailable for the *Trinity* hearing or if the parties mutually agree to use such depositions at the *Trinity* hearing.

(b) Number of interrogatories per Party for purposes of *Trinity* Hearing:

i) Plaintiff proposes ten (10) to each Defendant to be propounded on or before February 16, 2018 with responses due March 16, 2018.

ii) Defendant Jansa Proposes: None. The Jansa Defendants maintain their general objection articulated above at 11(a)(ii).

iii) Defendant City of Fort Collins proposes: The City proposes five (5) to Plaintiff and five (5) to Jansa Defendants to be propounded on or before February 28, 2018 with responses due March 28, 2018.

(c) Number of requests for production of documents per Party for purposes of *Trinity* Hearing:

i) Plaintiff Proposes the ten (10) to each Defendant to be propounded on or before February 16, 2018 with responses due March 16, 2018.

ii) Defendant Jansa Proposes: None. The Jansa Defendants maintain their general objection articulated above at 11(a)(ii).

iii) Defendant City of Fort Collins proposes: The City proposes five (5) to Plaintiff and five (5) to Jansa Defendants to the propounded on or before February 28, 2018 with responses due March 28, 2018.

(d) Number of requests for admission per Party for purposes of *Trinity* Hearing:

i) Plaintiff proposes five (5) to each Defendant to be propounded on or before February 23, 2018 with responses due March 16, 2018.

ii) Defendant Jansa Proposes: None. The Jansa Defendants maintain their general objection articulated above at 11(a)(ii).

iii) Defendant City of Fort Collins proposes: The City proposes five (5) to Plaintiff and five (5) to Jansa Defendants to the propounded on or before February 28, 2018 with responses due March 28, 2018.

(e) Any physical or mental examination per C.R.C.P. 35: NONE until after the case is at issue.

(f) State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations on discovery: Limitations to presumptive limits, if any will be discussed after case is at issue and a revised Case Management Order is prepared.

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (II):

(a) *Plaintiff*:

(1) Statement regarding anticipated fields of expert testimony, if any: Plaintiff does not anticipate expert testimony at the *Trinity* Hearing stage of these proceedings.

(2) Statement regarding any limitations proposed on the use or number of expert witnesses: Plaintiff does not anticipate expert testimony at the *Trinity* Hearing stage of these proceedings and will more specifically address this element when the case is at issue and a revised Case Management Order is prepared.

(b) *Jansa Defendants:*

(1) Statement regarding anticipated fields of expert testimony, if any: None until after the *Trinity* Hearing phase is completed.

(2) Statement regarding any limitations proposed on the use or number of expert witnesses: No anticipated expert testimony at the *Trinity* Hearing stage.

(c) *City of Fort Collins Defendant:*

(1) Statement regarding anticipated fields of expert testimony, if any: The City has not determined whether it needs to retain or endorse expert(s) for purposes of the Trinity hearing, and will discuss at the time of the case management conference. The City reserves the right to endorse expert(s) in the fields of temporary traffic control, accident reconstruction and damages.

(2) Statement regarding any limitations proposed on the use or number of expert witnesses: The City has not determined whether it needs to retain or endorse expert(s) for purposes of the Trinity hearing, and will discuss at the time of the case management conference. The City reserves the right to endorse expert(s).

13. Proposed deadlines:

(a) Production of Expert Reports:

Plaintiff/Claimant: No expert testimony at the *Trinity* Hearing stage of these proceedings.

Jansa Defendants: No anticipated expert testimony at the *Trinity* Hearing stage.

City of Fort Collins Defendant: To be set after ruling on the City's pending motion.

- (b) Production of Rebuttal Expert Reports: Not Applicable.
- (c) Date for completion of non-expert discovery: April 13, 2018.
- (d) Date for completion of all *Trinity* limited discovery: April 13, 2018.

14. Electronically Stored Information: The Parties do not anticipate needing to discover a significant amount of electronically stored information at the *Trinity* Hearing stage. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservations and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

15. *Trinity* Hearing Setting: This matter is set for a \_\_\_\_ (\_\_\_\_) day hearing regarding issues of governmental immunity pursuant to *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993) on \_\_\_\_\_.

DATED this \_\_ day of \_\_\_\_\_, 2018.

BY THE COURT:

\_\_\_\_\_  
District Court Judge



Respectfully submitted:

By s/ David M. Herrera  
David M. Herrera, #12818  
Herms & Herrera, LLC  
3600 South College Ave., Suite 204  
Fort Collins, Colorado 80525  
Attorney for Plaintiff

By s/ Peter C. Middleton  
Peter C. Middleton, #32335  
HALL & EVANS, L.L.C.  
1001 17th St., Suite 300  
Denver, CO 80202  
Attorney for Defendant City of Fort Collins

By s/ Joseph W. Mark  
James M. Meseck, #33021  
Joseph W. Mark, #48644  
White and Steele, P.C.  
600 17th Street, Suite 600N  
Denver, Colorado 80202  
Attorney for Defendants Anthony Jansa; Jansa Trucking, LLC, a Colorado Limited Liability Company; and Jansa Trucking, LLC, a North Dakota Limited Liability Company (together, "Jansa Defendants")