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| DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100 | | DATE FILED: February 1, 2018 8:07 AM 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 | |
| PRELIMINARY CASE MANAGEMENT ORDER | | |

An initial case management conference was conducted before the Court on January 29, 2018, at 9:30 a.m. David Herrera, Esq. appeared on behalf of Plaintiff, Ilse G. Westphal. Peter Middleton, Esq. and John R. Duval, Esq. appeared on behalf of Defendant City of Fort Collins. James Messeck, Esq. and Joseph Mark, Esq. appeared on behalf of Defendants Anthony John Jansa and Jansa Trucking, LLC.

1. The at-issue date is: Pursuant to C.R.C.P. Rule 16 the Court determines that the case is at issue as of January 29, 2018.

2. The Responsible Attorney's name, address, phone number and email address:

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| Name: | David M. Herrera, Atty. Reg. #12818 |
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| Address: | Herms & Herrera, LLC 3600 South College Avenue, Suite 204 Fort Collins, Colorado 80525 |
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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: May 14, 2018.

(b) Joinder of additional parties: May 14, 2018.

(c) Identifying non-parties at fault: May 1, 2018

9. Dates of limited initial disclosure for purposes of *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993) Hearing: The Court hereby orders the parties to make their initial disclosures under C.R.C.P. Rule 26(a)(1) not later than 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):

(a) Discovery with regard to claims and defenses asserted by Plaintiff against the City of Fort Collins, specifically limited to the issues to be addressed in a hearing conducted by the Court pursuant to *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993):

i. The Court will allow the Plaintiff to conduct a C.R.C.P. Rule 30(b)(6) deposition with regard to the City of Fort Collins, plus two additional depositions plus depositions of any expert endorsed with regard to *Trinity* issues.

- ii. The City of Fort Collins will be allowed to take the deposition of Plaintiff plus two additional depositions, in addition to the depositions of any endorsed experts.
- iii. The parties are allowed to submit ten (10) interrogatories for response by the other party.
- iv. The parties are allowed to submit seven (7) requests for production of documents for response by the other party.
- v. The parties are allowed to submit ten (10) requests for admission for response by the other party.

(b) With regard to discovery related to Plaintiffs' claims against the Jansa Defendants, the Court approves the presumptive discovery limits under C.R.C.P. Rule 26(b)(2)(A)-(E).

(c) Any physical or mental examination per C.R.C.P. 35: NONE until after the Trinity hearing has been conducted.

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.

13. Proposed deadlines:

(a) Production of Expert Reports:

Plaintiff/Claimant: For purposes of the *Trinity* Hearing only: April 16, 2018.

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

City of Fort Collins Defendant: For purposes of the *Trinity* Hearing only: April 16, 2018

(b) Date for completion of all *Trinity* limited discovery: April 23, 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 one (1) day hearing regarding issues of governmental immunity pursuant to *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993) on May 7, 2018 at 8:30 a.m.

16. Upon completion of the Trinity Hearing and ruling by the Court with regard to the defense of governmental immunity, the Court will convene a further case management conference setting in order to set a trial date and to set further expert and discovery deadlines.

DATED this 1st day of February, 2018.

BY THE COURT:



District Court Judge

Respectfully submitted:

By s/ David M. Herrera

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By s/ Peter C. Middleton

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Attachment C to Proposed Preliminary Case Management Order

The City of Fort Collins is a governmental entity entitled to immunity pursuant to C.R.S. 24-10-106 (“CGIA”) and interpreting case law, the City has not waived immunity, and therefore should be dismissed. Beyond that, the City denies negligence or wrongdoing. The City had no actual or constructive knowledge of a dangerous condition and did not fail to take reasonable precautions to guard against a dangerous condition, if any. The City maintains that this accident was caused by the negligence or fault of parties not within its control or its right to control. Specifically, Plaintiff was contributory negligent, which may eliminate or proportionately reduce her recovery. Defendant Jansa may also be comparatively negligent, which would eliminate or proportionately reduce the liability of the City, if any. From a damages perspective, it appears that Plaintiff’s injuries are relatively significant. However, the City is not in possession of medical records or medical bills at the time of this filing. The City will need to engage in further analysis, investigation and discovery of damages to determine the extent, severity and permanency of her condition and injuries, particularly if she alleges a brain injury. Nonetheless, any recovery against the City, assuming there is one, would be statutorily capped by the CGIA.

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Attachment B to Proposed Preliminary Case Management Order

In reference to section 4(b) of the Proposed Preliminary Case Management Order, Anthony J. Jansa; Jansa Trucking, LLC, a Colorado Limited Liability Company; and Jansa Trucking, LLC, a North Dakota Limited Liability Company (collectively “Jansa Defendants”) submit the following brief description of the case and identification of the issues to be tried:

This case involves a tragic accident that occurred because Plaintiff walked, without giving any warning, into the roadway and stood immediately behind the semi-trailer in a blind spot at the moment the truck began to back up. Plaintiff turned her back to the truck and focused her attention away from the truck. The Plaintiff’s alleged injuries were actually and proximately caused by Plaintiff’s disregard for traffic conditions, statutes, and regulations as listed in the Jansa Defendants’ Answer. The Jansa Defendants did not breach any duty owed to Plaintiff. Plaintiff’s injuries were proximately caused by her own negligent act of standing in the road in the path of traffic. Plaintiff’s comparative fault and her own negligence *per se* bars Plaintiff’s recovery.

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Attachment A to Proposed Preliminary Case Management Order

November 22, 2016, Ilse G. Westphal, then 85 years old, was waiting for her bus at a bus stop/shelter owned and operated by the City of Fort Collins. The bus stop/shelter was along Harmony Road west of Zeigler Road. While waiting for her bus to arrive, the City of Fort Collins was engaged in the staging and establishment of a construction site along Harmony Road and around the City bus shelter. The construction project was Phase 2 of the East Harmony Duct Bank project and included the installation of 12 large underground vaults. In order to set the vaults, a large construction crane was staged along Harmony Road. In addition, several other vehicles were being parked along the northern-most lane of harmony Road to the east of the bus shelter.

As the construction site was being established, a semi-tractor and low tractor driven by Anthony John Jansa, a subcontractor and employee of Jansa Trucking, LLC, backed over Plaintiff and rolled her under the trailer of the semi-tractor/trailer, dragging her backward and then forward under the vehicle resulting in a significant bodily injury.

Plaintiff states the following causes of action to be determined by a jury asserting that the City of Fort Collins and the Jansa Defendants were the joint cause of the damages to Ms. Westphal:

- Negligence - Res Ipsa Loquitur (Defendant Anthony John Jansa)
- Negligence Per Se - (Defendant Anthony John Jansa)
- Negligence (Defendant Anthony John Jansa)
- Negligence (Defendant Jansa Trucking, LLC – North Dakota)

- Respondeat Superior (Defendant Jansa Trucking, LLC – North Dakota; Defendant Jansa Trucking Colorado)
- 2 Counts of Negligence (City Of Fort Collins).

Attachment to Order - 2017CV30903