

DISTRICT COURT, LARIMER COUNTY,
COLORADO
201 LaPorte Avenue, Suite 100
Fort Collins, CO 80521-2761
Phone: 970-498-6100

DATE FILED: May 1, 2018 4:08 PM
FILING ID: 517161ECD58C1
CASE NUMBER: 2017CV30903

Plaintiff:

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

COURT USE ONLY

Attorneys for Defendant City of Fort Collins

Peter C. Middleton, Esq., #32335
HALL & EVANS, L.L.C.
1001 17th St., Suite 300
Denver, CO 80202
303-628-3300
303-628-3368 / Fax
middletonp@hallevans.com

Case No. 2017-CV-030903

Div. 3C

John Duval, #10185
Deputy City Attorney
City of Fort Collins
300 LaPorte Avenue
Fort Collins, CO 80522-0580
970-416-2488
jduval@fcgov.com

**DEFENDANT CITY OF FORT COLLINS'S
DESIGNATION OF NON-PARTY AT FAULT**

Defendant, City of Fort Collins, by and through its counsel, pursuant to C.R.S. § 13-21-111.5, hereby submits its Designation of Non-Party at Fault as follows:

1. C.R.S. § 13-21-111.5(1) provides in pertinent part, “[i]n an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage or loss.” To this end, C.R.S. § 13-21-111.5(3)(a) provides, in pertinent part, that the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage of negligence or fault of those persons who are parties to such action.” C.R.S. § 13-21-111.5 provides that a party wishing to designate a non-party must file a notice “designating such nonparty and setting forth such nonparty’s name and last known address, or the best identification of such nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault.”

2. Plaintiff alleges in her Complaint that a Peterbilt diesel 3-axle semi-tractor driven by Anthony Jansa of Jansa Trucking, LLC backed over the Plaintiff and rolled her under the trailer of the semi-tractor/trailer, dragging her backward and then forward under the vehicle causing significant injuries. Plaintiff further alleges in her Complaint that Jansa’s semi-tractor was pulling a 43’ Fontaine drop deck trailer loaded with counterweights and rigging for a crane. Upon knowledge and information, the trailer was owned or leased by Sterling Crane, LLC and the counterweights and rigging on the trailer were owned or leased by Sterling Crane, LLC.

3. Plaintiff further alleges in her Complaint that there was no audible backup warning for the trailer. Plaintiff also alleges that Jansa's cargo obstructed his view of the rear of the trailer.

4. Based on a review of the known facts to date as well as the allegations in Plaintiff's Complaint, City of Fort Collins designates the following non-parties at fault.

(a) **Sterling Crane, LLC**, 9351 Grant Street, Suite 250, Thornton, Colorado 80229. Registered Agent: Corporation Service Company, 1900 W. Littleton Blvd., Littleton, CO 80120 ("Sterling Crane") Sterling Crane owed a duty to Plaintiff and the general public to, among other things, keep its trailer in safe and working order and to exercise reasonable care in operations. Sterling Crane breached those duties in failing to exercise reasonable care in the hiring, training, retention and supervision of those who performed work on its behalf, and in maintaining its equipment. As a proximate result of these and other breaches, Plaintiff suffered damages.

5. **Any additional individuals or entities currently known or unknown**, City of Fort Collins reserves the right to designate such persons and/or supplement its designations as facts are developed throughout discovery.

6. In addition to the aforementioned designation, City of Fort Collins hereby designates as potential non-parties at fault any present or future party to this action who might subsequently become a non-party for any reason, including but not limited to their dismissal from this suit pursuant to stipulation, summary judgment, order of the Court, bankruptcy, release, assignment, or by the settlement of any claims for relief against said party. City of Fort Collins further joins and designates any individual or entity designated by any other party to this action.

7. City of Fort Collins reserves the right to withdraw its designation of any person or entities hereby designated as non-party at fault.

8. By filing its Designation of Non-Party at Fault, City of Fort Collins does not admit that it was in any way responsible for the claims and damages alleged in Plaintiff's Complaint, or that the claimed damages, in fact, exist or were caused by any act or omissions on the part of City of Fort Collins.

WHEREFORE, City of Fort Collins, respectfully requests that this Court take into account the identity of the above identified non-party and attribute to it the percentage of fault or negligence when assessing the degree of fault, if any, found against City of Fort Collins with respect to any claim for injuries, damages and/or loss alleged by the Plaintiff.

Dated: May 1, 2018

/s/ Peter C. Middleton

Peter C. Middleton, Esq., #32335
of HALL & EVANS, L.L.C.
**ATTORNEYS FOR DEFENDANT
CITY OF FORT COLLINS**

/s/ John R. Duval

John R. Duval, Esq., #10185
Deputy City Attorney
of City of Fort Collins
**ATTORNEY FOR DEFENDANT
CITY OF FORT COLLINS**

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2018, I electronically filed and served the foregoing **DEFENDANT CITY OF FORT COLLINS'S DESIGNATION OF NON-PARTY AT FAULT** via the Colorado Courts E-Filing system upon the following:

<p>David M. Herrera, Esq. HERMS & HERRERA, L.L.C. 3600 South College Avenue, Suite 204 Fort Collins, CO 80525 david@hhlawoffice.com <i>Counsel for Plaintiff</i></p>	<p>James M. Meseck, Esq., #33021 Joseph W. Mark, #48644 White and Steele, P.C. 600 17th Street, Suite 600N Denver, CO 80202 jmeseck@wsteele.com jmark@wsteele.com <i>Counsel for Anthony J. Jansa and Jansa Trucking, LLC</i></p>
---	--

Original Signature on File

/s/Julie Eaglesham _____
Julie Eaglesham