

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

DATE FILED: August 20, 2018 12:09 PM  
FILING ID: 5879FF294C79F  
CASE NUMBER: 2017CV30903

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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

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**▲ COURT USE ONLY ▲**

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*Attorneys for Defendant City of Fort Collins*

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Case No. 2017-CV-030903

Div. 3C

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**MOTION FOR ATTORNEY'S FEES AND COSTS  
FROM CITY OF FORT COLLINS**

Defendant, City of Fort Collins, by and through its attorneys, Peter C. Middleton and Kendra L. Kutko of Hall & Evans, L.L.C. and John Duval, Deputy City Attorney, City of Fort Collins, submits the following Motion for Attorney's Fees and Costs pursuant to C.R.C.P. 54(d), C.R.S. § 13-17-201, and C.R.C.P. 121, Section 1-22, and the Court's July 12, 2018 oral ruling and August 7, 2018 order.

**CERTIFICATE OF CONFERRAL:** In accordance with C.R.C.P. 121 § 1-15(8), the undersigned counsel certifies, that prior to filing this Motion, she conferred with counsel for Plaintiff regarding this Motion. Counsel for Plaintiff indicated Plaintiff does not oppose the reasonableness of the attorney rates in this Motion. Counsel for Plaintiff declined to take a position on the attorney's fees and costs sought in this Motion, specifying he will take a position following the filing of the Motion once he sees the specific itemization of attorney's fees and costs.

1. On October 25, 2017, Plaintiff filed a Complaint against Anthony Jansa, Jansa Trucking, LLC, (collectively "Jansa Defendants"), and the City of Fort Collins asserting eight claims for relief stemming from an accident occurring when Jansa backed into Plaintiff on Harmony Road. Plaintiff's First through Sixth claims are against Jansa Defendants. Plaintiff's Seventh and Eighth claims asserted negligence against the City of Fort Collins.

2. On November 30, 2017, the City filed a motion to dismiss the entirety of Plaintiff's claims against the City pursuant to C.R.C.P. 12(b)(1) on the basis that Plaintiff's claims were tort claims subject to governmental immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* ("CGIA"), and that further, Plaintiff's claims did fall within a "waiver" under the CGIA.

3. On December 18, 2017, Plaintiff filed a Response brief in opposition and requested a hearing pursuant to *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo. 1993). Plaintiff also requested discovery be allowed prior to the *Trinity* hearing.

4. On January 5, 2018, the City filed its Reply brief in support of its motion.

5. On January 10, 2018, the Court ruled that Plaintiff was entitled to undertake some discovery and was entitled to an evidentiary hearing to determine whether Plaintiff's claims against the City were barred under the CGIA.

6. Plaintiff served, and the City answered, written discovery, which included interrogatories, requests for production of documents and requests for admission.

7. Plaintiff also served notices of depositions pursuant to C.R.C.P. 30(b)(1) and 30(b)(6), ultimately taking the depositions of the following City representatives:

May 7, 2018: Travis Walker, Electric Field Services Manager (Utilities, Light and Power)

May 7, 2018: Steve Varnell, Traffic Control Crew Chief (Traffic Control)

May 7, 2018: Chad Willschau, Crew Chief (Utilities, Light and Power)

May 18, 2018: Joseph Olson, City Traffic Engineer (Traffic Operations)

8. The City took the deposition of Plaintiff, Ilse Westphal, on May 18, 2018.

9. The *Trinity* evidentiary hearing was held on June 25, 2018 and lasted from 10:00 a.m. to approximately 5:00 p.m. Both Plaintiff and the City called witnesses and submitted exhibits. The Court took the matter under advisement.

10. On July 12, 2018, the Court issued its oral ruling from the bench, granted the City's motion, and requested counsel for the City to prepare a proposed Order consistent with its ruling. On August 7, 2018, the Court entered that Order and granted the City's motion to dismiss pursuant to C.R.C.P. 12(b)(1) on the basis of governmental immunity.

11. The City now requests its entitled attorney's fees and costs be awarded to it. *See* C.R.S. § 13-17-201 ("In all actions brought as a result of . . . an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action").

12. The City seeks a total award of costs and fees in its favor and against Plaintiff of \$45,927.22. This breaks down as follows:

Attorney's Fees	\$43,188.00
Costs / Expenses	\$2,739.72
<b>TOTAL:</b>	<b>\$45,927.72</b>

13. An affidavit in support of the above-mentioned attorney's fees and costs is attached as Exhibit A. The billing statement reflecting attorney time spent on this matter, which have been redacted to block out portions reflecting attorney/ client communications, is attached as Exhibit B. The billing statement reflecting costs spent on this matter is attached as Exhibit C.

WHEREFORE, City of Fort Collins respectfully requests that these attorney's fees and costs be assessed in favor of City of Fort Collins and against Plaintiff in the amount of \$43,188.00 in attorney's fees and \$2,739.72 in costs, for a total of \$45,927.72 in fees and costs, and all other relief this Court deems just and proper.

DATED this 20th day of August, 2018.

*/s/ Kendra L. Kutko*

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Peter C. Middleton, Esq., #32335  
Kendra L. Kutko, Esq., #51633  
of HALL & EVANS, L.L.C.  
**ATTORNEYS FOR DEFENDANT  
CITY OF FORT COLLINS**

*/s/ John R. Duval*

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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 20th day of August, 2018, I electronically filed and served the foregoing **MOTION FOR ATTORNEY’S FEES AND COSTS FROM CITY OF FORT COLLINS** via the Colorado Courts E-Filing system upon the following:

<p>David M. Herrera, Esq., #12818 HERMS &amp; HERRERA, L.L.C. 3600 South College Avenue, Suite 204 Fort Collins, CO 80525 <a href="mailto:david@hhlawoffice.com">david@hhlawoffice.com</a> <i>Counsel for Plaintiff</i></p>	<p>James M. Meseck, Esq., #33021 Joseph W. Mark, #48644 White and Steele, P.C. 600 17<sup>th</sup> Street, Suite 600N Denver, CO 80202 <a href="mailto:jmeseck@wsteele.com">jmeseck@wsteele.com</a> <a href="mailto:jmark@wsteele.com">jmark@wsteele.com</a> <i>Counsel for Anthony J. Jansa and Jansa Trucking, LLC</i></p>
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*Original Signature on File*

*s/ Nicole Marion* \_\_\_\_\_  
Nicole Marion