



**DATE:** December 20, 2017

**TO:** Colorado Springs City Council

**FROM:** Office of the City Attorney

**SUBJECT:** *Pinnacol Assurance v. Sam Martinez; City of Colorado Springs; and Joshua Wonders*

**CASE NUMBER:** 17CV32759

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the employee involved.

### **NATURE OF THE CASE**

Plaintiff, Pinnacol Assurance (“Pinnacol”), brought this subrogation claim in the District Court of El Paso County, Colorado. Plaintiff is seeking to recover monies paid to Nicholas Budnella after he was allegedly injured in a traffic accident with co-defendant Joshua Wonders. Four of Plaintiff’s five claims are directed at either Sam Martinez or the City of Colorado Springs (“City”) (collectively, “City Defendants”). Plaintiff alleges that Mr. Martinez negligently serviced the traffic signals at the intersection of Boychuk Avenue (“Boychuk”) and Hancock Expressway (“Hancock”). Plaintiff also claims that the City negligently maintained the same signals. Plaintiff further claims that the City is responsible for Mr. Martinez’s actions under the theory of respondeat superior. Finally, Plaintiff claims that the City negligently entrusted Mr. Martinez to maintain the traffic signals. In all four claims, Plaintiff accuses City Defendants of causing or contributing to the accident. Mr. Budnella has not yet filed a lawsuit against City Defendants.

Plaintiff alleges that on or about June 9, 2017, Mr. Budnella attempted to make a left turn from southbound Hancock to Boychuk. Plaintiff claims that the signals controlling the intersection were flashing red when Mr. Budnella stopped at the intersection. However, Plaintiff alleges that as Mr. Budnella made his turn, the traffic signals for Hancock turned green. Plaintiff claims that Mr. Wonders, who was traveling north on Hancock, failed to observe Mr. Budnella and struck his van. According to Plaintiff, Mr. Budnella filed a workers’ compensation claim as a result of the accident. Plaintiff alleges that it paid medical costs and benefits to or on behalf of Mr. Budnella.

According to reports, on June 9, 2017, at or about 11:20 am, Mr. Martinez was updating the software that controlled the traffic signals at the intersection of Hancock and Boychuk. While the software was updating, the signals for the intersection were set to flashing red. When the software finished updating, the signals switched from flashing red to solid red for seven seconds. The signals then resumed their normal operation. A witness statement indicates that Mr. Budnella entered the intersection while the lights were still flashing red. The statement does not indicate how long Mr. Budnella remained in the intersection. However, the witness does claim that he observed a green light for both directions of Hancock just after the accident. Mr. Martinez did not observe the accident.

### **RECOMMENDATION**

The Civil Action Investigation Committee has recommended that the City represent Mr. Martinez as required by the Colorado Governmental Immunity Act. Mr. Martinez was acting in the course and scope of his employment, and was acting in good faith. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.