



DATE: November 17, 2021

TO: Colorado Springs City Council

FROM: Office of the City Attorney

SUBJECT: *American Family Mutual Ins. Co. v. City of Colorado Springs and David Absher 21C42226*

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

NATURE OF THE CASE

Plaintiff, American Family Mutual Insurance Company, brought this subrogation claim in the County Court of El Paso County, Colorado, alleging that a vehicle belonging to its insured, Matthew Arce, was damaged in an accident with our employee David Absher.

Plaintiff alleges that Mr. Arce was visiting the Garden of the Gods on November 24, 2020. According to Plaintiff, Mr. Arce followed a City owned vehicle driven by Mr. Absher into a parking lot. When Mr. Absher stopped so did Mr. Arce. However, Plaintiff claims that Mr. Absher began backing up to conduct a three-point turn and struck Mr. Arce's vehicle. Plaintiff accuses Mr. Absher of negligence and negligence per se. Plaintiff is also suing the City under a respondeat superior theory. Plaintiff claims that Mr. Arce's vehicle suffered \$11,590.18 worth of damages. It is seeking to recover that amount plus interest.

According to the police report, on November 24, 2020, at around 12:49 pm, Mr. Absher was in the Garden of the Gods parking lot number 2 when he attempted to conduct a three-point turn. Mr. Absher did not see Mr. Arce's vehicle behind him. Mr. Absher was backing up when the rear bumper of his Ford F-350 struck the front bumper of Mr. Arce's Volvo S90. The accident caused minimal damage to both vehicles.

RECOMMENDATION

The Civil Action Investigation Committee has recommended that the City represent the above-named employee as required by the Colorado Governmental Immunity Act. The

employee 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.