ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

"Slip opinions" are the opinions delivered by the Supreme Court Justices and are subject to modification, rehearing, withdrawal, or clerical corrections. Modifications to previously posted opinions will be linked to the case number in the petition for rehearing section the day the changes are announced.

Click on the case number to view the opinion in pdf format.

OPINIONS

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Original Proceeding Pursuant to C.A.R. 21 Park County District Court, Case No. 09CR02 Honorable Stephen A. Groome, Judge	Case No. 09SA91

In Re:

Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Malinda E. Spykstra.

RULE MADE ABSOLUTE
EN BANC

CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2009) Appeal from the Ballot Title Setting Board	Case No. 10SA100

In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #45

Petitioners:

Dr. Mark Earnest; Peter Leibig; Albert Schnellbacher, Jr.; AARP Colorado; Colorado Community Health Network; Colorado Coalition for the Medically Underserved; and Colorado Consumer Health Initiative;

v.

Respondents:

Linda Gorman and Jon Caldara, Proponents,

and

Title Board:

William A. Hobbs, Dan Domenico, and Dan Cartin.

ACTION AFFIRMED
EN BANC

JUSTICE HOBBS delivered the Opinion of the Court.
CHIEF JUSTICE MULLARKEY concurs in part and dissents in part, and JUSTICE MARTINEZ joins in the concurrence and the dissent.
JUSTICE MARTINEZ concurs in part and dissents in part, and CHIEF JUSTICE MULLARKEY joins in the concurrence and the dissent.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Appeal from the District Court Water Division 3, Case No. 07CW45 Honorable O. John Kuenhold, Judge	Case No. 09SA191

Plaintiff-Appellant:

V Bar Ranch LLC,

v.

Defendants-Appellees:

Craig Cotten, Division Engineer for Water Division No. 3 and George Gallegos,

and

Appellee Pursuant to C.A.R. 1(e):

Dick Wolfe, State Engineer for the State of Colorado.

JUDGMENT AFFIRMED
EN BANC

JUSTICE MARTINEZ delivered the Opinion of the Court.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Interlocutory Appeal from the District Court Washington County District Court Case No. 09CR19 Honorable Douglas Vannoy, Judge	Case No. 09SA330
Plaintiff-Appellant: The People of the State of Colorado, v. **Defendant-Appellee:** Rodger Earl Null.	
JUDGMENT AFFIRMED EN BANC JUSTICE BENDER delivered the Opinion of the Court. JUSTICE HOBBS concurs in part and dissents in part. JUSTICE EID concurs in the result in part and dissents in part.	

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Interlocutory Appeal from the District Court El Paso County District Court Case No. 09CR2219 Honorable Gilbert Martinez, Judge	Case No. 10SA6
Plaintiff-Appellant: The People of the State of Colorado, v. **Defendant-Appellee:** Aaron Bradley Holt.	
JUDGMENT AFFIRMED EN BANC JUSTICE BENDER delivered the Opinion of the Court. JUSTICE COATS dissents, and JUSTICE EID joins in the dissent.	

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA1785	Case No. 09SC183
Petitioner: Paul Misenhelter, v. **Respondent:** The People of the State of Colorado.	
JUDGMENT AFFIRMED EN BANC JUSTICE RICE delivered the Opinion of the Court.	

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 08CA767	Case No. 09SC612

Petitioners/Cross-Respondents:

City of Manassa and Pinnacol Assurance,

v.

Respondent/Cross-Petitioner:

Dale Ruff,

and

Respondent:

Industrial Claim Appeals Office of the State of Colorado.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART
EN BANC

JUSTICE COATS delivered the Opinion of the Court.
JUSTICE MARTINEZ dissents, and JUSTICE BENDER joins in the dissent.

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Appeal from the District Court Water Division 1, Case Nos. 02CW403, 02CW105(B), 04CW362(A) Honorable Roger A. Klein, Judge	Case No. 09SA75

Concerning the Application for Water Rights of Farmers Reservoir and Irrigation Company; Burlington Ditch, Reservoir and Land Company; Henrylyn Irrigation District; United Water and Sanitation District; and East Cherry Creek Valley Water and Sanitation District in Adams, Arapahoe, Denver, Douglas, Elbert, Jefferson, and Weld Counties.

Opposer-Appellant:

City of Englewood,

v.

Applicants-Appellees:

Burlington Ditch, Reservoir and Land Co.; Farmers Reservoir and Irrigation Co.; United Water and Sanitation District; Henrylyn Irrigation District; and East Cherry Creek Valley Water and Sanitation District;

and

Opposers-Appellees:

Metro Wastewater Reclamation District; Public Service Company of Colorado; Town of Lochbuie; Platte Valley Irrigation Co.; City of Aurora; Golf Course Heritage Todd Creek; Todd Creek Farms Metro District; Centennial Water and Sanitation District; City of Boulder; Harmony Ditch Company; Irrigationists' Association; City of Thornton; State Board of Land Commissioners; Colorado Division of Wildlife; City of Blackhawk; City and County of Broomfield; City and County of Denver Water Board; City of Brighton; Lower Latham Reservoir Company; Aggregate Industries-WCR, Inc.; Albert Frei and Sons, Inc.; Henderson Aggregage Ltd; HP Farms, Inc.; PV Water Holdings, LLC; Adams County Board of Commissioners; Riverside Irrigation District; Riverside Land Co.; Brighton Ditch Company; Parker Water and Sanitation District; Platte Valley Irrigating

---

and Milling Co.; Central Colorado Water Conservancy District; South Adams County Water and Sanitation District; Rangeview Metropolitan District; Equus Farms Inc.; State Water Engineer; Fulton Irrigation Ditch Co.; City of Greeley; Northern Colorado Water Conservancy District; Bijou Irrigation Company; Bijou Irrigation District; City of Commerce City; David Dechant; Consolidated Ditches Company of District No. 2; City of Sterling; and Arapahoe County Water and Wastewater;

Appellee Pursuant to C.A.R. 1(e):

James Hall, Division Engineer for Water Division No. 1.

JUDGMENT AFFIRMED
EN BANC

JUSTICE EID delivered the Opinion of the Court.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

PETITIONS FOR REHEARING

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA1746	Case No. 09SC171
Petitioner: Jaime Perez, v. **Respondent:** The People of the State of Colorado.	
Petition for Rehearing DENIED. EN BANC. JUSTICE RICE, JUSTICE COATS, and JUSTICE EID would grant the Petition.	

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA1581 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 08CA2179	Consolidated Cases Case No. 09SC586 Case No. 09SC769
09SC586 **Petitioners:** Benchmark/Elite, Inc., and Colorado Insurance Guaranty Association, v. **Respondent:** Richard Simpson, **and Concerning:** The Industrial Claim Appeals Office.	
* * * * *	
09SC769 **Petitioner:** City of Colorado Springs, v. **Respondent:** Steven Bennett, **and Concerning:** The Industrial Claim Appeals Office.	
Petition for Rehearing DENIED. EN BANC.	

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

PETITIONS FOR WRIT OF CERTIORARI

No. 09SC677
Court of Appeals Case No. 07CA137

Petitioner:
John Thomas Beilke,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 09SC758
Court of Appeals Case No. 05CA1621

Petitioner:
James Edward Lucas,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 09SC870
Court of Appeals Case No. 08CA1905

Petitioner:
Russell M. Boles,
v.
Respondents:
Rebecka Oaks and The Colorado Parole Board.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 09SC879
Colorado Court of Appeals Case No. 08CA1443

Petitioners:
Richard C. Day and Loretta Jean Day,
v.
Respondent:
Bruce Johnson, M.D.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issue:

Whether, the court of appeals properly concluded that CJI-Civ. 15:4, the "unsuccessful outcome/exercise of judgment" instruction, correctly states the law and should be given in medical malpractice cases.

DENIED AS TO ALL OTHER ISSUES.

No. 09SC973
Court of Appeals Case No. 08CA2223

Petitioner:
The People of the State of Colorado,
v.
Respondent:
D.W.

Petition for Writ of Certiorari DENIED. EN BANC.

CHIEF JUSTICE MULLARKY would grant as to the following issue:

Whether the court of appeals erroneously interpreted developing Colorado law regarding what findings are necessary to support an award of restitution for the victim's relocation expense under section 18-1.3-602(3)(a).

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 09SC993
Court of Appeals Case No. 07CA427

Petitioner:
Michael Alan Brante,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 09SC1005
Court of Appeals Case No. 09CA6

Petitioner:
Town of Vail,
v.
Respondent:
Richard Colucci.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 09SC1050
Court of Appeals Case No. 08CA1358

Petitioner:
Air Wisconsin Airlines Corporation, a Delaware corporation,
v.
Respondent:
William L. Hoeper.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether the court of appeals erred in finding that the trial court properly submitted the issue of Air Wisconsin's qualified immunity under the Aviation Transportation Security Act to the jury under Colorado law where federal courts generally require resolution of qualified immunity as a matter of law early in the proceedings.

Whether the court of appeals properly found that a de novo review of the record demonstrated clear and convincing evidence of actual malice.

Whether the court of appeals erred in finding that Air Wisconsin's statements were not substantially true and not non-actionable statements of opinion.

DENIED AS TO ALL OTHER ISSUES.

No. 10SC61
Court of Appeals Case No. 08CA1925

Petitioner:
Arthur Lewis Ford,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC63
Court of Appeals Case No. 06CA1421

Petitioner:
Tyrus Michael Sarnella,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC64
Court of Appeals Case No. 06CA1427

Petitioner:
Tyrus Michael Sarnella,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC84
Court of Appeals Case No. 06CA1859

Petitioner:
Donja Vaughn,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC96
Court of Appeals Case No. 08CA747

Petitioner:
Darnell Jackson,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC111
Arapahoe County District Court Case No. 09CV1618

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

Petitioner:
Dennis C. Germany,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC121
Court of Appeals Case No. 08CA2036

Petitioner:
Julio Cesar Rios,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC125
Court of Appeals Case No. 09CA309

In Re the Marriage of
Petitioner:
Valarie Carter,
and
Respondent:
Michael Carter.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC129
Court of Appeals Case No. 07CA160

Petitioner:
Sergio Rodriguez-Garza,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC134

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

Court of Appeals Case No. 07CA841

In Re the Marriage of
Petitioner:
Leonard J. Kroll,
and
Respondent:
Susan M. Kroll.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC135
Court of Appeals Case No. 08CA61

In Re the Marriage of
Petitioner:
Leonard J. Kroll,
and
Respondent:
Susan M. Kroll.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC144
Court of Appeals Case No. 08CA2553

Petitioner:
Kevin Gooley,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC148
Court of Appeals Case No. 08CA1091

Petitioner:
Thomas Abeyta,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC154
Court of Appeals Case No. 08CA447

Petitioner:
Jesse Angelo Folks,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC160
Jefferson County District Court Case No. 09CV5122

Petitioner:
Edwin A. Wright,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC173
Court of Appeals Case No. 08CA1397

Petitioner:
Stanimir Pavlov,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC188
Court of Appeals Case No. 07CA211

Petitioner:
Darrius Taylor,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC190
Court of Appeals Case No. 07CA1380

Petitioner:
Arnold Anthony Cary,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC207
Court of Appeals Case No. 07CA2371

Petitioner:
Robert Rodriguez,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC230
Court of Appeals Case No. 08CA802

Petitioner:
Daniel Lee Schaal,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC231
Court of Appeals Case No. 08CA1531

Petitioner:
Clinton Erickson,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC233
Court of Appeals Case No. 09CA408

Petitioner:
John H. Baca,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC234
Court of Appeals Case No. 07CA1626

Petitioner:
Joseph D. Lujan,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC235
Court of Appeals Case No. 09CA187

Petitioner:
Dunston Sidner,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC237
Court of Appeals Case No. 07CA486

Petitioner:
James Ray Taylor,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC246
Court of Appeals Case No. 06CA1088

Petitioner:
Raymond Lamont Allen,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC247
Court of Appeals Case No. 09CA629

In Re the Marriage of
Petitioner:
Patrick Conarro,
and
Respondent:
Kathy Conarro.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 21, 2010

No. 10SC258
Court of Appeals Case No. 08CA727

Petitioner:
Alfredo Enrique Vargas,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.