

**CASE ANNOUNCEMENTS**  
**COLORADO SUPREME COURT**  
**TUESDAY, OCTOBER 15, 2013**

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"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 of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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**[2013 CO 59](#)**

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**[Supreme Court Case No. 11SC801](#)**

*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 09CA2362

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**Petitioner:**

The People of the State of Colorado,

v.

**Respondent:**

Michael Lee Jones.

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**Judgment Reversed**

*en banc*

**JUSTICE RICE** delivered the Opinion of the Court.  
**CHIEF JUSTICE BENDER** concurs in the judgment.

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**PETITIONS FOR REHEARING**

**Supreme Court of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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**2013 CO 58**

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**Supreme Court Case No. 11SC55**  
*Certiorari to the Court of Appeals*  
Court of Appeals Case No. 08CA2326

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**Petitioner:**

Christopher Brian Marquez,

v.

**Respondent:**

The People of the State of Colorado.

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Petition for Rehearing DENIED. EN BANC.  
JUSTICE BOATRRIGHT would grant the Petition.

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**PETITIONS FOR WRIT OF CERTIORARI**

No. 12SC795  
Court of Appeals Case No. 09CA809

**Petitioner:**

Juan Aguilar-Martinez,

v.

**Respondent:**

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

CHIEF JUSTICE BENDER would grant as to the following issues:

Where the district court erroneously instructed the jury that an individual could constitute an enterprise, whether the court of appeals erred in finding that such error did not warrant reversal.

Whether petitioner's Colorado Organized Crime Control Act conviction must be vacated because the prosecution's closing argument combined with the erroneous tendered instructions created an impermissible variance.

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No. 12SC871  
Court of Appeals Case No. 10CA1494

**Petitioners:**

City of Littleton, Colorado, Littleton Fire Rescue, and CCMSI,  
v.

**Respondents:**

Industrial Claim Appeals Office; Julie Christ, surviving spouse and personal representative of Jeffrey J. Christ, deceased; and Michelle Parris, on behalf of Lauren Parris.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether the court of appeals erred in its interpretation of section 8-41-209, C.R.S., in determining that the statute is effectively irrebuttable, contrary to the intent of the General Assembly and the unambiguous wording of the statute.

Whether the court of appeals erred in holding petitioners' medical evidence, while admittedly persuasive and credible, to be insufficient as a matter of law to rebut the statute's presumption.

Whether the court of appeals failed to defer to the Administrative Law Judge's Findings of Fact, thereby committing reversible error in contravention of the mandates of appellate review.

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No. 12SC950  
Court of Appeals Case No. 10CA1988

**Petitioner:**

Chad Andrew Bertanzetti,  
v.

**Respondent:**

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC2  
Court of Appeals Case No. 10CA2287

**Petitioner:**

Michael Van De Weghe,  
v.

**Respondent:**

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC95  
Court of Appeals Case No. 11CA2358

**Petitioner:**

Tari Vickery,  
v.

**Respondent:**

Richard K. Diamond, as Chapter 7 Trustee for IVDS Interactive Acquisition Partners, a Florida general partnership.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC108  
El Paso County District Court Case No. 12CV368

**Petitioner:**

William Muhr,

v.

**Respondent:**

Abila Security and Investigations, Inc.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC151  
Court of Appeals Case No. 11CA1667

**Petitioner:**

Edward Melvin Hoaglin,

v.

**Respondent:**

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC243  
Court of Appeals Case No. 12CA760

**Petitioner:**

Jack McGuire,  
v.

**Respondents:**

Family Dollar Stores, Inc.; Ace American Insurance Company; and Industrial Claims Appeal Office of the State of Colorado.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether petitioner is entitled to an increase in his average weekly wage due to the cost of his dependents' fringe benefits.

Whether the first page of the Dependent Audit Form sent to petitioner's old address was adequate to apprise petitioner he had to respond with information on all of his dependents, or risk forfeiting their insurance coverage.

Whether petitioner had a duty to introduce evidence pertaining to the third party administrator's authority to act as an agent or subagent for the respondent employer.

Whether the findings of fact support the Administrative Law Judge's conclusion that notice to the third party administrator is not imputed to the employer.

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No. 13SC265  
Court of Appeals Case No. 12CA1255

**Petitioner:**

The People of the State of Colorado,  
v.

**Respondent:**

M.G.

Petition for Writ of Certiorari DENIED. EN BANC.

CHIEF JUSTICE BENDER and JUSTICE BOATRIGHT would grant as to the following issues:

Whether the court of appeals erred in concluding that the magistrate's comments improperly inferred the juvenile's guilt from her silence rather than properly inferred her guilty knowledge from her actions.

Whether the court of appeals erred by not applying the plain error standard of review when no contemporaneous objection was made in the trial court to the alleged error.

Whether there was sufficient evidence supporting the magistrate's findings of guilt despite the alleged reference to the juvenile's silence.

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**CASE ANNOUNCEMENTS  
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No. 13SC272  
Court of Appeals Case No. 11CA2566

**Petitioner:**

Robin Schiesser,

v.

**Respondents:**

Ranee Donia and Brandon David.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE MÁRQUEZ would grant as to the following issues:

Whether the court of appeals disregarded the mandatory statutory language of section 13-20-602(4), C.R.S. (2013), when the division declined to exercise its discretion and affirm the magistrate's order on the ground that plaintiffs' certificate of review was facially deficient.

Whether the court of appeals erred in interpreting the certificate of review statute insofar as it concluded the statute did not require the consulted expert have experience equivalent to that of a Colorado licensed acupuncturist.

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No. 13SC320  
Court of Appeals Case No. 09CA900

**Petitioner/Cross-Respondent:**

Portercare Adventist Health System, d/b/a Porter Hospital,

v.

**Respondent/Cross-Petitioner:**

Robert T. Lego.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

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No. 13SC356  
Court of Appeals Case No. 10CA1480

**Petitioner:**

The People of the State of Colorado,  
v.

**Respondent:**

Omer Kelil Hassen.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issue:

Whether the court of appeals erred in concluding that exclusion of the public from a small portion of a criminal trial constituted structural error.

DENIED AS TO ALL OTHER ISSUES.

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No. 13SC373  
Arapahoe County District Court Case No. 12CV394

**Petitioner:**

The People of the State of Colorado,  
v.

**Respondent:**

Tyson B. Hay.

Petition for Writ of Certiorari DENIED. EN BANC.

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**CASE ANNOUNCEMENTS**  
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No. 13SC560  
Court of Appeals Case No. 12CA2190

**Petitioner:**

Mike Zukowski,  
v.

**Respondents:**

Town of Castle Rock and CIRSA.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether the court of appeals in Town of Castle Rock and CIRSA v. Industrial Claim Appeals Office and Mike Zukowski, 2013 CA 2190, misconstrued the application of the statutory presumption found at section 8-41-209, C.R.S., by holding that legislative presumption of cancer causation for fighters “can be overcome by establishing that the risk of cancer from other sources outweighs the risk created by firefighting.”

Whether the court of appeals improperly equated “risk” with “cause,” by holding that showing “risk” or “precursor” factors can sufficiently establish a preponderance of the medical evidence that a firefighter’s cancer did not occur on the job, thereby rejecting statutory presumption created by the Colorado Legislature that petitioner’s skin cancer (melanoma) was, in fact, caused by his job.

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No. 13SC737  
Court of Appeals Case No. 13CA470

**Petitioner:**

J.W.,

v.

**Respondent:**

The People of the State of Colorado,  
In the Interest of Minor Children: J.W. and A.W.

Petition for Writ of Certiorari DENIED. EN BANC.

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