

ANNOUNCEMENTS

COLORADO SUPREME COURT

MONDAY, SEPTEMBER 23, 2002

"Slip opinions" are the opinions as filed by the judges with the clerk. Slip opinions are subject to modification, rehearing, withdrawal, or clerical corrections. A link to any modifications to previously posted opinions will appear in the petition for rehearing section of the announcement document the day the changes are announced.

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

OPINIONS

SUPREME COURT, STATE OF COLORADO Two East 14 <sup>th</sup> Avenue Denver, Colorado 80203  Interlocutory Appeal from the District Court Mesa County, Case No. 01CR1128 Honorable Amanda D. Bailey, Judge	Case No. <a href="#">02SA97</a>
Plaintiff-Appellant:  THE PEOPLE OF THE STATE OF COLORADO,  v.  Defendant-Appellee:  LARRY L. TRIANTOS.	
ORDER REVERSED AND CASE REMANDED EN BANC  JUSTICE KOURLIS delivered the Opinion of the Court.	

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SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203  Appeal from the District Court Water Division No. 4, Case No. 92CW17 Honorable J. Steven Patrick, Judge	Case No. <a href="#">01SA273</a>
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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF DOUBLE RL COMPANY IN THE UNCOMPAHGRE RIVER, OURAY COUNTY,

**Applicant-Appellant:**

DOUBLE RL COMPANY,

v.

**Appellee:**

TELLURAY RANCH PROPERTIES,

and

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

WAYNE SCHIELDT, Division Engineer, Water Division No. 4.

JUDGMENT REVERSED WITH DIRECTIONS  
EN BANC

JUSTICE BENDER delivered the Opinion of the Court.

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PETITIONS FOR REHEARING

SUPREME COURT, STATE OF COLORADO Two East 14 <sup>th</sup> Avenue Denver, Colorado 80203  Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 98CA838	Case No. <a href="#">00SC672</a>
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**Petitioner/Cross-Respondent:**

THE PEOPLE OF THE STATE OF COLORADO,

v.

**Respondent/Cross-Petitioner:**

WAYNE ROBERT STEWART.

Opinion modified, and as modified, Petition for Rehearing DENIED. En Banc.

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PETITIONS FOR WRIT OF CERTIORARI

No. 01SC744

Court of Appeals Case No. 00CA1624 (9/13/01)

LAWRENCE S. ALLEN, M.D., MICHAEL K. MILLER, M.D.,  
TIMOTHY R. COLLINS, M.D., and COLORADO PERMANENTE  
MEDICAL GROUP, P.C.,

Petitioners,

v.

KAREN PACHECO,

Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether plaintiff wife is required to arbitrate her claim for the wrongful death of her husband where her husband's agreement with his health maintenance organization (HMO) includes a provision requiring the arbitration of all claims for medical malpractice, including claims for "death," and claims by a "Member's heir or personal representative," where plaintiff wife is not a party to the agreement.

Whether, notwithstanding the court of appeals' failure to reach this issue, the Federal Arbitration Act preempts the restrictive provisions of § 13-64-403, 5 C.R.S. (2001), and requires enforcement of the arbitration provision.

DENIED as to all other issues.  
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No. 02SC135

Court of Appeals Case No. 00CA149 (1/17/02)

CHARLES MCDOWELL, Petitioner,  
v.  
THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 02SC205  
Court of Appeals Case No. 00CA472 (2/28/02)

CHAYNE ANTHONY SCIALABBA, Petitioner,  
v.  
THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 02SC207  
Court of Appeals Case No. 00CA667 (11/23/01)

JOSEPH CRAZYHORSE ROYBAL, Petitioner,  
v.  
THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 02SC230  
Court of Appeals Case No. 01CA244 (3/7/02)

WILFRED ROUX, Petitioner,  
v.  
STATE OF COLORADO; DEPARTMENT OF  
NATURAL RESOURCES; DIVISION OF PARKS  
AND OUTDOOR RECREATION; and MARVIN J.  
WILDER, individually, Respondents.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 02SC242  
Court of Appeals Case No. 00CA1586 (11/23/01)

EVERGREEN HIGHLANDS ASSOCIATION,  
a Colorado non-profit corporation, Petitioner,  
v.  
ROBERT A. WEST, Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Where a planned community's covenants empower a certain percentage of

the owners to "change or modify any one or more" of the covenants, may the specified percentage of owners adopt a covenant requiring all owners to pay assessments to the homeowner association?

Does a planned community's homeowner association have the implied power to collect assessments from all owners to defray the cost of maintaining common areas?

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No. 02SC247  
Court of Appeals Case No. 01CA208 (2/28/02)

CYPRUS AMAX MINERALS COMPANY, Petitioner,  
v.  
LEXINGTON INSURANCE COMPANY,  
ZURICH SPECIALTIES LONDON LIMITED, and  
GERLING-KONZERN ALLEGEMEINE VERSICHERUNGS-AG, Respondents.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether the court of appeals erred in determining the respondent insurance companies' ("Insurers") duty to *indemnify* Cyprus by applying a *duty to defend* analysis, i.e., restricting its review of the underlying case to the four corners of the complaint and ignoring other evidence of what was at issue in the underlying litigation and settlement.

Whether the court of appeals erred in holding that damages sought by Coeur d'Alene Mining Company ("Coeur"), based on allegations that negligent misrepresentations by Cyprus led it to purchase mining property that was subsequently damaged by a landslide causing Coeur to incur remediation costs, were purely "economic" losses and not "property damage" as defined in the subject insurance policies.

Whether the court of appeals erred in effectively holding that, even if there was a sufficient "causal connection" for Cyprus to have been held *liable* for the costs of repairing property damaged by a landslide due to its alleged negligent misrepresentation, there was not a sufficient "causal connection" to bring such liability within the *coverage* provided by the subject insurance policies.

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No. 02SC255  
Court of Appeals Case No. 00CA178 (9/27/01)

WESLEY MARYMEE, Petitioner,  
v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC256

Court of Appeals Case No. 99CA1288 (1/17/02)

ALONZO LYDELL MOORE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC259

Court of Appeals Case No. 00CA396 (2/14/02)

DIANNA L. BURTON, Personal Representative of  
the Estate of John P. Kreisheimer, deceased,

Petitioner,

v.

In re the Marriage of JOHN R. MITCHELL  
and JANET L. MITCHELL,

Respondents.

John R. Mitchell,

Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC266

Court of Appeals Case No. 02CA503

ROCKY MOUNTAIN ANIMAL DEFENSE,

Petitioner/Cross-Respondent,

v.

COLORADO DIVISION OF WILDLIFE; JOHN MUMMA,  
in his official capacity as Director of the  
Colorado Division of Wildlife; COLORADO  
DEPARTMENT OF NATURAL RESOURCES; GREG WALCHER,  
in his official capacity as Executive Director  
of the Colorado Department of Natural Resources;  
COLORADO WILDLIFE COMMISSION; BERNARD L. BLACK,  
JR., MARK LE VALLEY, TOM BURKE, OLIVE VALDEZ,  
PHIL JAMES, RICK ENSTROM, MARIANNA RAFTOPOULOS,  
and ROBERT SHOEMAKER, in their official capacities  
as members of the Wildlife Commission; COLORADO  
DEPARTMENT OF AGRICULTURE; DON AMENT, in his  
official capacity as Commissioner of the Department  
of Agriculture; KEN SALAZAR, in his official  
capacity as Attorney General; and BILL OWENS, in  
his official capacity as Governor,

Respondents/Cross-Petitioners.

