

COLORADO COURT OF APPEALS

Court of Appeals No.: 07CA2126
Boulder County District Court No. 06CV339
Honorable D.D. Mallard, Judge

William T. Richardson, individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

v.

Mendota Insurance Company, a Minnesota corporation,

Defendant-Appellee.

JUDGMENT VACATED AND CASE
REMANDED WITH DIRECTIONS

Division IV

Opinion by: JUDGE ROY

Webb and Hawthorne, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)

Announced: November 20, 2008

Hill & Robbins, P.C., Robert F. Hill, John H. Evans, Jr., Nathan P. Flynn, Denver, Colorado; Evans & McFarland, LLC, J. Luke McFarland, M. Gabriel McFarland, Golden, Colorado; McFarland Law Offices, Zachary C. McFarland, Thomas D. McFarland, Golden, Colorado, for Plaintiff-Appellant

Montgomery, Kolodny, Amatuzio & Dusbabek, L.L.P., C. Michael Montgomery, Erik R. Neusch, Denver, Colorado, for Defendant-Appellee

Roberts Levin Rosenberg, PC, Bradley A. Levin, Denver, Colorado, for Amicus Curiae Colorado Trial Lawyers Association

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HILL & ROBBINS, P.C.

This division issued its opinion in *Wagner v. Travelers Property Casualty Co.*, ___ P.3d ___ (Colo. App. No. 07CA2112, Nov. 13, 2008). While there may be insubstantial and technical differences in the language of the insurance policies at issue, this case springs from the same complaint as *Wagner*; it shares a significant portion of the record with *Wagner*; the motions and briefs filed in the trial court, the trial court's orders, and the appellate briefs are substantively similar; and the cases were argued as one. Indeed, the parties agreed at oral argument that there is no distinction between this case and *Wagner* which would dictate or justify a different analysis or result.

Therefore, as we are persuaded by the rationale and holding of *Wagner*, the summary judgment here is vacated and the case is remanded for further proceedings consistent with the opinions expressed in *Wagner*.

JUDGE WEBB and JUDGE HAWTHORNE concur.

Court of Appeals
STATE OF COLORADO
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NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41 (b), the mandate of the Court of Appeals may issue forty-six days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52 (b) will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT:

Janice B. Davidson
Chief Judge

DATED: July 1, 1998