COLORADO SUPREME COURT

State v Juul—*Supreme Court reverses finding of personal jurisdiction* - 2022CO46 (9/26/22) The district court's denied defendants Adam Bowen, James Monsees, Nicholas Pritzker, and Riaz Valani' s motions to dismiss for lack of personal jurisdiction. Defendants are California residents who served in various capacities as officers or directors of JUUL Labs, Inc., an e-cigarette manufacturer, or its predecessor companies. The court concluded that that because (1) the district court based its determination on allegations directed against JUUL and the group of defendants as a whole, rather than on an individualized assessment of each defendant's actions, and (2) the State did not allege sufficient facts to establish either that defendants were primary participants in wrongful conduct that they purposefully directed at Colorado, or that the injuries alleged in the amended complaint arose out of or related to defendants' Colorado-directed activities, the district court erred in finding that the State had made a prima facie showing of personal jurisdiction in this matter.

COLORADO COURT OF APPEALS

Woo v. Baez—2022COA113 (09/29/22). Plaintiff appealed the judgment dismissing his claims against defendants Jose Angel Baez and Michelle Medina for lack of personal jurisdiction and his claims against defendant Richard Bednarski due to Woo's failure to file a certificate of review. The Court of Appeals reversed the jurisdiction dismissal as to the claims against Baez and Medina because the district court erred by denying substituted service upon the attorney representing them in a regulatory action. The

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Court also rejected the unconstitutional 'as applied' challenge to the certificate of review statute, finding because Woo could not comply with the statute solely because he was indigent, the challenge to its constitutionality failed.

People v. Johnson—*Court of Appeals adopts per se approach to race-based juror challenges* - 2022COA118 (10/13/22) The Court of Appeals held that when the proponent of a peremptory challenge offers both a race-based and a race-neutral explanation in response to a Batson challenge, the trial court must apply the "per se" approach and uphold the challenge because once a discriminatory reason has been offered, this reason taints the entire jury selection process. Applying that approach here, the division reversed the defendant's convictions and remands for a new trial. Because it may arise on remand, the division addresses, and rejects, the challenge to the admission of the generalized expert testimony about common features of domestic violence relationships even though some of those features "had no logical connection" to the facts of the case.

People v. Romero—*Court of Appeals reverses conviction because record as to reason for pre-emptory challenge was not contained in record* - 2022COA119 (10/13/22) A division of the court of appeals considers whether the trial court's ultimate ruling denying a Batson challenge was clear error. The majority examined whether anything in the record supported the trial court's decision to credit the prosecution's proffered race-neutral reason (that the juror appeared disinterested) for the peremptory challenge. The majority concluded that the trial court's ruling was clear error because (1) there was nothing in the record supporting the trial court's decision to credit the prosecution's subjective assessment that the juror appeared disinterested, not even an identification of the juror's behavior that led the prosecution to believe he was disinterested; and (2) other parts of the record tended to undermine the credibility of the prosecution's assessment that the juror appeared disinterested. The majority therefore reversed the judgment of conviction and remands for retrial. The dissent disagrees.

DiPietro v Coldiron—*Attorney client privilege records not subject to disclosure under Open Records Act* - 2022COA121 (10/13/22) In this C.A.R. 4.2 interlocutory appeal, The Court of Appeals considered as a matter of first impression whether records protected by the attorney-client privilege, or the deliberative process privilege are nevertheless subject to disclosure to a "person in interest" under the Colorado Open Records Act. The division concluded that they are not subject to disclosure under the plain language of section 24-72-204(3)(a).

Home Improvement, Inc. v. Villar No.—*Court of Appeals addresses the meaning of service at a last known address* - 2022COA129 (11/03/22). A division of the court of appeals defined for the first time "address" and "last known address" as those terms are used for purposes of service of process by mail or publication in and in rem proceeding. Rule 4(g) permits service by mail or publication under certain circumstances. A verified motion seeking service by mail or publication must state "the address, or last known address" of the person to be served. For service by mail, a copy of the process must be sent by registered or certified mail to such address and a signed return receipt is required before service is complete. Return of the mailing establishes that the address is not the last known address. Thus, "address" is the place at which a party generally recognizes that another party can be communicated with, and "last known address" is the most recent such place.

TENTH CIRCUIT COURT OF APPEALS

Atlas Biologicals v. Biowest, et al.—Docket: 20-1401 (10/11/22). Plaintiff-Appellee Atlas Biologicals, Inc. sued its former employee Thomas Kutrubes for various federal intellectual-property claims. Kutrubes, seemingly as an attempt to thwart Atlas's ability to collect a likely judgment against him, transferred his 7% ownership interest in Atlas to Atlas's rival Defendant-Appellant Biowest, LLC ("Biowest"). Once Atlas found out about this alleged transfer, it sought a writ of attachment in the district court against Kutrubes's interest in Atlas, which the district court granted. But in granting the writ, the district court explained that it did not know what interest Kutrubes still had in Atlas and raised the idea of Atlas filing a separate declaratory judgment action. Atlas did so, and that action was the lawsuit before the Tenth Circuit in this appeal. The question for the Court was whether the district court properly found in favor of Atlas in this action in light of the fact that it did not have an independent source of federal jurisdiction to decide the question of state law that the action presented—a question that implicated a third party not involved in the initial suit. Reviewing these matters de novo, the Tenth Circuit concluded the district court acted properly and within the scope of its jurisdiction and agreed with the district court's resolution of the merits.

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The Law Office
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Denver, CO 80237
Phone: 303-951-6607

Ike Eckert
Legislative Director
Hall & Evans, LLC
1001 Seventeenth Street, Suite 300
Denver, CO 80202
303-628-3321

Danielle Bergman
Community Outreach Director
Murphy & Decker, P.C.
730 17th Street, Suite 925
Denver, CO 80202
720-644-5452

Katelyn Werner
Communications Chair
Quintairos, Prieto,
Wood & Boyer, P.A.
216 16th Street, Suite 1750
Denver, CO 80202
Phone: 720-798-1620

Bo and Glenna Donegan
CDLA Offices
643 Dexter Street
Denver, Colorado 80220
303-263-6466