

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01710 (KMT)

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|------------------------------|---|
| ROGER HILL, an individual, |) |
| |) |
| Plaintiff |) |
| vs. |) |
| |) |
| MARK WARSEWA an individual; |) |
| LINDA JOSEPH, an individual, |) |
| and the State of Colorado |) |
| Defendants) |) |

**DEFENDANTS WARSEWA’S AND JOSEPH’S RESPONSE TO
PLAINTIFF’S MOTION TO CERTIFY A QUESTION TO THE
COLORADO SUPREME COURT [ECF NO. 43]**

Defendants Mark Warsewa and Linda Joseph (“Defendants”), by and through their attorneys Kirk B. Holleyman and Kirk Holleyman, P.C. submit this Response to Plaintiff’s Motion To Certify A Question To The Colorado Supreme Court [ECF No. 43].

Plaintiff’s Motion should be denied, for the following reasons:

1. Plaintiff’s First Amended Complaint on its face shows that he does not meet the threshold requirement of having prudential standing to pursue this matter. Therefore the motion must be denied, because if it were later determined that the Plaintiff did not have prudential standing, a ruling by the Colorado Supreme Court would be an improper advisory opinion. *See Farmers Ins. Exch. v. Dist. Court for Fourth Judicial Dist.*, 862 P.2d 944, 947 (Colo. 1993) (“A declaratory

judgment action is only appropriate when the rights asserted by the plaintiff are present and cognizable ones. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.”) (internal quotations omitted).

2. These Defendants also agree with the arguments set forth in “The State of Colorado’s Response to Plaintiff’s Motion To Certify A Question To The Colorado Supreme Court [ECF No. 43]”, which is ECF No. 44, and incorporate those reasons for denial of the Plaintiff’s motion by reference as if set forth fully herein.

Dated: October 9, 2018.

KIRK HOLLEYMAN, P.C.

/s/ Kirk B. Holleyman

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2018, I caused a copy of the foregoing to be served via CM/ECF pursuant to Fed.R.Civ.P. 5 on all counsel who have entered their appearance in this case.

/s/ Kirk B. Holleyman
