



# BACHUS & SCHANKER, LLC

A T T O R N E Y S   A T   L A W

C O L O R A D O ' S   I N J U R Y   L A W   F I R M

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Brought to you by  
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## Colorado joins 38 states in adopting "pure-fault" auto insurance system

A major change is taking place in Colorado's automobile insurance laws this summer, bringing about lower insurance rates and more predictable benefits for consumers. Effective July 1, 2003, Colorado no longer has a "no-fault" system of automobile insurance. Under new laws coming out of the 2003 Colorado General Assembly session, Colorado now has a system where at-fault drivers bear responsibility for the consequences of their actions.

For the past 29 years, Colorado has operated under a "no-fault" automobile insurance system, meaning that if you were injured in an automobile accident, your insurance company, without regard to who was at fault in causing an accident, paid for medical and rehabilitation expenses, as well as lost income and home services. Under that system, only if your medical expenses exceeded a certain amount could you hold the at-fault driver responsible for compensating you for damages not provided by your insurance company's Personal Injury Protection (PIP) policy.

While this system theoretically provided "universal coverage" to people injured in auto accidents by ensuring that, as long as they had their own insurance, their injuries were covered, this system caused auto insurance premiums to skyrocket. Auto insurance companies could and did raise consumers' premiums based on claims they made, even if the accidents were not their fault. Additionally, the cost of running this system was very expensive. In 2000, Colorado had the ninth highest auto insurance rates in the country—higher than California. Consumers often lost under a no-fault system because consumers paid out-of-control premiums and lost many of their constitutional rights to judicial remedies.

In an effort to reform the auto insurance system and lower premium rates, the Colorado Legislature fought a hard battle at the State Capitol this spring. In addition to working closely with the Colorado Trial Lawyers Association (CTLA) to protect consumer rights during this recent legislative session, **Bachus & Schanker, LLC** hired their own lobbyist to protect consumers' pocketbooks

and access to the courts. The Legislature worked long hours to the bitter end, while interest groups formed odd alliances in order to lower Colorado's auto insurance premiums. Most of the battles centered on trying to revise the no-fault system; however, the majority of these attempts curbed consumer rights and benefited the already deep pockets of the insurance industry. With time running out, **Bachus & Schanker, LLC** engaged in a hard-fought lobbying effort, and ultimately the Legislature realized the best alternative to the no-fault system is for Colorado to move toward a pure-fault system.

This reform is a step towards bringing meaningful savings to Colorado automobile insurance consumers and returning Colorado to a system enjoyed by 38 other states by placing the responsibility squarely on the shoulders of the at-fault driver. The savings to the Colorado consumer will come through the elimination of premiums you are currently charged to maintain no-fault insurance on your cars.

### Making the change

Effective July 1, 2003, the no-fault system ceased to exist. In preparing for this change, **Bachus & Schanker, LLC** attorneys **J. Kyle Bachus** and **Darin L. Schanker** visited seven other pure-fault states in June 2003 to gauge how this system impacts consumers and to determine the best ways for attorneys to help their clients. After personally visiting attorneys in Georgia, Alabama, Mississippi, Louisiana, Indiana, Illinois, and Missouri, **J. Kyle Bachus** and **Darin L. Schanker** compiled a law practice guide for other Colorado attorneys. **J. Kyle Bachus** presented information from this practice guide on June 26, 2003, and July 2, 2003, to Colorado lawyers. The attorneys at **Bachus & Schanker, LLC** are ready to work under this new system to ensure the best protection and service for our clients.

What this new system means is that any injuries arising out of automobile accidents occurring on or after July 1, 2003, are subject to a pure-fault system. In essence, the cost for medical

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### PERSONAL INJURY PRACTICE

- Trial attorneys
- Free consultation
- Home appointments available
- 24-hour emergency service
- No recovery. No fee. We do not get paid unless you do.

*We take your family's safety and security personally.*

## Colorado joins 38 states...

(continued from front page)

care will no longer be covered by your own automobile insurance unless you purchase optional "Medical Payments Coverage," which will be offered by insurance companies in various amounts. Medical Payments Coverage will pay for medical expenses up to the limits of coverage you purchase. Any person injured by an at-fault driver will be entitled to seek full recovery against the at-fault driver, regardless of the amount and extent of injuries. Medical expenses incurred before resolution of such an injury claim will be covered by the optional medical payments coverage, if purchased, and/or available health-insurance coverage. If you had an automobile injury claim pending before July 1, 2003, it will not be affected by this change. It will still be handled under the no-fault system.

The best way for you to prepare for this change in auto insurance policies is to protect your own financial security by buying the highest possible bodily injury liability coverage and uninsured motorist coverage you can afford (uninsured motorist coverage is more critical to have at higher levels in the fault-based system). You should purchase Medical Payments Coverage as high as makes economic sense to you. Your insurance agent can best explain to you the cost savings by the total elimination of no-fault coverage and whatever increases you choose in bodily injury liability and uninsured motorist coverage, as well as the addition of medical payments coverage. The attorneys at **Bachus & Schanker, LLC** are always available to discuss any of these new changes with you.

If you have any questions regarding this historic and dramatic switch in how automobile insurance coverage will be handled, please feel free to call us. We can discuss your options and what may be best for you and your family.

## Value-added CLIENT SERVICE

At our law firm, client service isn't just a catch phrase that merely gets lip service. We strive to provide "value-added" service to each client. That means a level of *individual attention* and *personal service* clients appreciate.

- We know that prompt, reliable, and professional legal service is what our clients want—and what we must deliver.
- Our goal is to efficiently respond to client requests. We strive to answer all questions and inquiries promptly, and follow through on what we say we will do.
- We do our utmost to maintain the same sense of urgency that our clients feel about their issues and cases, and to stay in frequent communication.
- To every extent possible, we try to make the legal experience as personal and pleasant as we can.
- When we find them, we correct client-service deficiencies right away. We want to hear what you like about us and what we can improve.

## What caused this accident?

Automobile accidents in which drivers or passengers are seriously injured or killed are always terrible. When there is doubt about the cause of an accident, which may be hidden by vehicle damage, an experienced trial attorney can research and investigate the real cause of harm. Here are two actual accident cases.

### Safety-check failure

Three disabled residents returning from a picnic outing were killed when ejected from their van, which overturned in a crash. A jury awarded compensatory damages and punitive damages to the decedents' survivors when investigation revealed liability on the part of the group home. Research showed that the group home was negligent in hiring the driver, who had extensive criminal and traffic-violation records. He also failed to conduct a safety check on the van, which had a flat tire, prior to departure.

### Negligent hiring

After a driver who was struck from behind by an 18-wheel truck suffered brain damage, examination revealed that the truck driver's employer and a professional driving organization had failed to conduct criminal-background checks, which would have revealed the driver's two previous accidents and felon status. The injured driver and his wife received a negligence settlement from the trucking company following the first day of trial.



# Frivolous lawsuit legends

## Just plain bunk

*If you haven't received a Stella Awards e-mail...you will. They're outrageous...and almost always made up. Here's a famous, but phony, example.*

**M**r. Grazinski bought a brand-new 32-foot motor home. Driving home on a superhighway, he set the cruise control for 70 mph and went to the kitchen to make some instant coffee. The land cruiser left the highway, crashed, and rolled over many times. Grazinski sued the vehicle manufacturer, claiming his owner's manual didn't give warning not to do what he did, and was awarded \$1.75 million and a new motor home by a jury. It's totally untrue.

There are dozens of other phony lawsuits buzzing around the Internet. Go to [www.atlanet.org/](http://www.atlanet.org/) and look for "Consumer & Media Resources," then "Factsheets & Resources," or go to [www.snopes.com](http://www.snopes.com), which debunks tortured tort myths, such as the microwaved poodle, the run-over hubcap thief, and the man who suffered mental anguish due to his garage door.

By the way, these awards are mockingly named for Stella Liebeck, the woman who actually was terribly burned by a cup of McDonald's coffee. However, the circumstances and actual outcome of her case were exaggerated to make people think badly about our legal system.



# Asbestos update

**E**ven though manufacturers knew the deadly dangers of asbestos products 70 years ago, they concealed health hazards from workers and the public. In the 1970s, asbestos use became limited but was not totally banned, because the asbestos industry successfully lobbied against the prohibition of its use. But corporations continue to wage legal and public relations battles to avoid accepting responsibility. Here are some recent developments.

## Asbestos industry seeks protection

The asbestos industry and its allies are spending millions of dollars trying to win a bailout from the U.S. Congress. They want to deny most victims of asbestos poisoning the right to even go to court. The industry claims these victims, who are sick but not yet dying, are "unimpaired" and should lose their legal rights.

## Unreasonable danger

A 66-year-old construction plumber who was exposed to asbestos between 1950 and 1970 is now suffering pleural malignant mesothelioma and undergoing chemotherapy. His lawyers negotiated a post-verdict settlement following a jury award by demonstrating that the asbestos products with which he came into contact were unreasonably dangerous, and that product manufacturers and distributors failed to warn of their danger.

If you suspect that you or a loved one has been injured by asbestos, contact an attorney right away. The law limits the time anyone has to act. An attorney may be able to help not only with Workers' Compensation and actions against responsible parties, but also with compensation for medical care, lost wages, and pain and suffering.



# FOR YOUR SAFETY

## Recalled product roundup

**H**ere are some recently recalled products you may have in your home or at work.

- ✓ **Oceanic USA** is recalling about 24,700 Oceanic CDX first-stage scuba-diving regulators, which can leak air when bumped or shaken hard and injure or drown divers.
- ✓ **Pace Products, Inc.**, recalled 145,000 children's soap-making kits in which microwave oven-heated soap may overheat, leak from a tray mold, and burn children.
- ✓ **Makita U.S.A., Inc.**, of La Mirada, California, recalled 180,000 circular saws whose lower blade guard can jam and injure users.
- ✓ **Montrose Wholesale Candies & Sundries, Inc.**, has called back 247,000 disposable cigarette lighters that lack child-resistant mechanisms, which are required by federal law, and can cause burns to children.
- ✓ **Brooklyn Lollipop Imports & Exports, Inc.**, called back 22,000 electric fans. Their undersized wiring, unpolarized power plugs, and improperly sized grills may overheat and shock or electrocute consumers.

## CPSC chair speaks out

Harold "Hal" Stratton, new chairman of the Consumer Product Safety Commission, has promised to be an activist in encouraging manufacturers to recall and correct defective products as quickly as they can.

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The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

## FIRM NEWS

**B**achus & Schanker, LLC partners have been busy for the past three months protecting consumer interests and sharing their experiences with other attorneys in the field.

■ **J. Kyle Bachus** gave a presentation to the Colorado Trial Lawyers Association (CTLA) on June 26, 2003, regarding the change in the auto insurance laws to the new pure-fault system. He based much of his information on the trips he took around the nation at the beginning of June to gauge how other attorneys best served their clients under this new system.

■ **Darin L. Schanker** will give a presentation to the National Business Institute (NBI) regarding expert testimony and evidence at trial. Mr. Schanker's experience in admitting and excluding expert testimony at trial is a valuable resource for other attorneys.

■ **Cornell Johnson**, a recent University of Colorado Law School graduate, joined **Bachus & Schanker, LLC** as an associate attorney. He will continue in the firm's personal injury litigation practice.

## *An honor*

The Colorado Trial Lawyers Association (CTLA) has nominated **Darin L. Schanker** to be an officer for the CTLA organization. Both **Mr. Bachus** and **Mr. Schanker** are on the Board of Directors of CTLA, with **Mr. Bachus** currently serving on the Executive Committee of the organization.

## What is **NEW** on the Web

**I**n our continuing effort to better serve you, **Bachus & Schanker, LLC** created an online "Client Access" page exclusively for use by our clients. The "Client Access" page was designed so our clients can make inquiries and provide updated information about their cases 24 hours a day, every day. All you have to remember is **coloradolaw.net**.

You can find the link to the "Client Access" page on the top left-hand side of the **Bachus & Schanker, LLC** home page. Click on the link, and you will find a window where you can make your inquiry, as well as a drop-down menu where you can select the case manager, paralegal, or attorney who will receive your inquiry.

Try it, and let us know what you think!

