



# BACHUS & SCHANKER, LLC

ATTORNEYS AT LAW

*Our Passion is Justice*

## FALL 2008

### Denver Office

1400 16th Street

Suite 450

Denver, CO 80202

303.322.4300 ph

### Colorado Springs Office

102 S. Tejon Street

11th Floor

Colorado Springs, CO 80903

719.227.9800 ph

### Fort Collins Office

123 N. College Avenue

Suite 211

Ft. Collins, CO 80524

970.223.9802 ph

877.653.9800

info@coloradolaw.net

**Don't Forget to Vote!**

November 4th is Election Day

Questions about your legal right to vote?

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## “Trick or Treat” - Halloween Safety Tips.

*Most kids think of Halloween as a time to dress up and eat candy, but four times the average of 5-12 year olds are injured on this ghoulish night. The majority of these injuries are not caused by poisoned apples but by falls and car accidents due to badly lit conditions. With some careful planning, most accidents can be avoided for a safe and fun night. The tips below, from the American Academy of Pediatrics can be a good way to keep Halloween mishaps at bay.*

### Children Should—

- Go to well-lit houses and remain on porches rather than entering houses.
- Travel in small groups and be accompanied by an adult.
- Know their phone number and carry coins for emergency telephone calls.
- Bring treats home before eating them so parents can inspect them.
- Use costume knives and swords that are flexible, not rigid or sharp.

### When walking in neighborhoods—

- Use flashlights, stay on sidewalks, avoid crossing yards.
- Cross streets at the corner, use crosswalks (where they exist), and do not cross between parked cars.
- Stop at all corners and stay together while crossing.
- Wear bright, reflective, and flame retardant clothing.
- Consider using face paint instead of masks. (Masks can obstruct a child's vision.)
- Avoid wearing long, baggy, or loose costumes or oversized shoes (to prevent tripping).

- Remember to look left, right, and left again before crossing the street.

### Parents and adults should—

- Supervise the outing for children under age 12.
- Establish a curfew (a return time) for older children.
- Prepare homes for trick-or-treaters by clearing porches, lawns, and sidewalks and by placing jack-o-lanterns away from doorways and landings.
- Avoid giving choking hazards such as gum, peanuts, hard candies, or small toys as treats to young children.
- Inspect all candy for safety before children eat it. Do not allow children to accept unwrapped candy.



### To ensure the safety of pedestrian trick-or-treaters—

- Make sure children under age 10 are supervised as they cross the street.
- Watch for children in the street and on medians.
- Drive slowly.
- Exit driveways and alleyways carefully.
- Have children get out of cars on the curb side, not on the traffic side

*For additional resources to keep your children safe on Halloween, visit these web sites.*

<http://www.safeusa.org/halloween.htm>

<http://www.halloweenmagazine.com/articles/keep-safety-in-mind.asp>



## Colorado House Bill 1407 Protects Consumers from Insurance Bad Faith

*Colorado House Bill 08-1407 was recently passed into law by the Colorado State Legislature, and signed by Governor Bill Ritter. Taking effect on August 6, 2008, House Bill 1407 strengthens the penalties for the unreasonable conduct of our insurance carriers. House Bill 1407 applies to all insurance policies in effect as of January 1, 2008. (cont on page 3)*

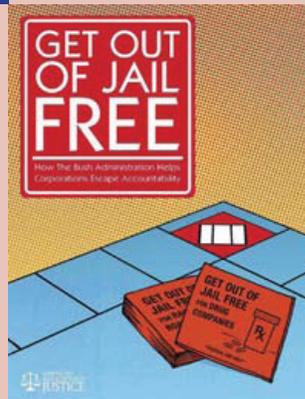
## What is Preemption and How Will it Effect Consumers

*PREEMPTION: pre-emption; (pre-emp-shun); noun*  
*The Rule of Law that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically declared it has "occupied the field." Preemption can occur by Congress passing a law, preempting state or local law. If Congress has not clearly claimed preemption, a federal or state court may examine legislative history to determine the lawmakers' intent toward preemption.*

The American Association of Justice has just released the report "Get Out of Jail Free; How the Bush Administration Helps Corporations Escape Accountability." According to this report, several federal agencies that were created to ensure public and consumer safety, have started a movement to wipe out state laws that were enacted to protect consumers—basically granting immunity to irresponsible companies that put profit over public safety. These agencies include:

- Food and Drug Administration (FDA)
- National Highway Traffic Safety Administration (NHTSA)
- Consumer Product Safety Commission (CPSC)
- Department of Homeland Security (DHS)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Transportation Safety Administration (TSA)
- Federal Railroad Administration (FRA)

These changes are being made without a Congressional vote, not put



before the public for comment and at times, in direct conflict with existing federal policies. These agencies are claiming that their rules preempt or override state laws which are typically more strict.

The AAJ report states, "The administration instructed agencies to insert complete immunity preemption language in the preamble of rules, stating that products that meet federal agency regulations are not subject to state law. This language would effectively block all

product liability lawsuits being adjudicated and would let corporations "get out of jail free" even when their products seriously injure or even kill Americans."

In the past, Congress and the federal regulatory agencies have worked in tandem to provide a two-fold layer of protection for American consumers. Preemption strips both layers of protection, leaving individuals and their families who have suffered serious injury or death no means of obtaining restitution for medical bills, lost wages, compensation for pain and suffering or to even pay for funeral expenses. The only thing preemption protects is Corporate America's pocketbook.

**For more information about preemption and how it effects your rights as a consumer visit our web site at: [www.coloradolaw.net](http://www.coloradolaw.net)**

## Bachus & Schanker Lights the Night for the Leukemia and Lymphoma Society

On September 25, 2008, beneath a beautiful Colorado night-time sky, the employees of Bachus & Schanker joined over 6,000 other walkers at



Denver's Washington Park as part of the Leukemia and Lymphoma Society's Light the Night Walk. Light the Night is the Society's largest fund raising effort for its battle against blood cancers, including leukemia, lymphoma, nonHodgkins Lymphoma and Multiple Myeloma. The participants in Denver's Light the Night Walk raised over \$550,000 and showed their support for all those

affected by blood cancers by carrying lighted balloons that glowed in the twilight as the participants circled the park.

The group rallied in support of one of our own, Dan Patterson, who is a survivor of Multiple Myeloma and the current president of Colorado Trial Lawyers Association (CTLA). Bachus & Schanker, the founding partners and employees made donations of over \$4,500 including the proceeds of a bake sale and individual and corporate fund-raising efforts. And as

an inspiration to us all, Dan Patterson's team raised over \$35,000 for the Leukemia & Lymphoma Society.

While many of us at Bachus & Schanker have had our lives touched by cancer, one of our case managers, Courtney had special motivation to walk on Thursday. Just that very day she found out that the daughter of a close family friend was diagnosed with Leukemia. This little girl is only three years old and faces two years of chemotherapy among other challenges.

### What is The Light the Night Walk?

The Leukemia and Lymphoma Society relies on donations to fund its lifesaving research, patient information and support programs in order to meet their goal of finding a cure by 2015

Light The Night Walk is the nation's night to pay tribute and bring hope to people battling cancer. People form teams of friends and family or co-workers. They raise funds for cancer research and bring help and hope to people battling cancer.

More than a walk, the evening is a supportive community gathering that includes music, food and family activities.

Visit [www.lightthenight.org](http://www.lightthenight.org) for more information

*(con't from page 1)*

H.B. 1407 states that “a person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant.” First-party claimants can be an individual, corporation, association, partnership, or other legal entity asserting an entitlement to benefits owed directly to, or on behalf of, an insured party under an insurance policy. A first-party claim is established when a relationship is created between a person and an insurance company when that person pays a premium to the insurance company in exchange for coverage.

Most importantly, H.B. 1407 establishes a course of action against an insurance company, when pursuant to C.R.S. § 10-2-1115, “if an insurer delays or denies authorizing payment of a covered benefit without a reasonable basis for that action.” If your insurance company denies a claim or delays payment without reasonable cause, you can pursue a lawsuit against your insurer and possibly recover double the applicable insurance benefits, as well as any costs and attorney fees.

Additionally, “an insurance policy, insurance contract, or plan that is issued in Colorado shall provide that a person who claims health, life, or disability benefits, whose claim has been denied in whole or in part, and who has exhausted his or her administrative remedies, shall be entitled to have his or her claim reviewed de novo in any court with jurisdiction and to trial by jury.” So what that means to consumers is

you don't have to take “no” as an answer from you insurance company; you now have recourse in the court system.

The new amendment also reads, “the General Assembly declares that this section is a law regulating insurance.” Through this statement, the Colorado Legislature hopes to overcome ERISA-governed benefit plans and their preemption of Colorado state law. An exception to the general rule of ERISA preemption exists for “any law of any State which regulates insurance . . .” 29 U.S.C. § 1144(b)(2)(A). As a result, House Bill 1407 will apply to all insurers registered to do business in Colorado, regardless if such an insurer is also governed by ERISA federal law.

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. Visit <http://www.dol.gov/dol/topic/health-plans/erisa.htm>, for more information on ERISA.

This consumer-friendly House Bill should work wonders for first-party claimants who have trouble bargaining with their own insurance company for payments of benefits which are owed to them. With this legislation, insurance companies will think twice about delaying payments to their deserving customers in hopes that they will grow exhausted and overwhelmed, and possibly walk away empty handed. Instead, when these customers grow overwhelmed, they have a new avenue of relief—that is, House Bill 1407.

### ***Pikes Peak Challenge Summit***

On Saturday, September 6, 2008 Bachus & Schanker employees, John Gleason and Jodie Sandell conquered Pikes Peak in the Pikes Peak Challenge Summit, a Special Event of the Brain Injury Association of Colorado (BIAC). This unique fund raising event is held every September, not only to raise funds, but to increase public awareness of Traumatic Brain Injury (TBI). It's also a great way to allow participants to experience the thrill and triumph of conquering one of Colorado's famous 14'ers.

Funds raised help provide support to over two thousand survivors of Traumatic Brain Injury (TBI), their families and professionals. Thousands more are served through community outreach programs such as Memorial Health System's Think First for Kids Head and Spinal Cord Injury Prevention Program, which teaches children, through classroom presentations, the necessary tools for brain injury prevention. Additionally, these funds help enable the BIAC to incorporate soldiers who have suffered TBI while serving in Iraq, into existing programs.

Participants including survivors of TBI along with family members and other supporters gathered early in the morning at Barr Trail in Manitou Springs, Colorado and began the ascent up this glorious 14,110 foot mountain. They crested the summit after 13 miles and 7400 vertical feet to the cheers of spectators and supporters.

For more information visit: [www.pikespeakchallenge.com](http://www.pikespeakchallenge.com)

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Bachus & Schanker, LLC  
Attorneys at Law  
1400 16th Street, Suite 450  
Denver, CO 80202

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**B**achus & Schanker, LLC is pleased to welcome Stephen A. Justino as an Attorney of Counsel to the firm. Mr. Justino grew up in upstate New York and received his law degree in 1985, has practiced plaintiff's personal injury law in Denver since 1992.

He is licensed to practice law in the states of New York, Connecticut and Colorado, U.S. Colorado District Court, and the U.S. Court of Appeals, Tenth Circuit.

Mr. Justino who served in the U.S. Army Judge Advocate General (JAG) Corp from 1986 - 1992, specializes in personal injury claims under the Federal Tort Claims Act (FTCA) which allows private parties to sue the United States in federal court for most torts due to negligence committed by employees of the United States government.

Mr. Justino understands first hand the devastation caused by personal injury accidents and works diligently to obtain justice for his clients.

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