



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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Vioxx taken off the market

On September 30, 2004, Merck & Co. announced that it would be taking the prescription drug Vioxx off the market. The move was stunning for a blockbuster drug that had been marketed in more than 80 countries, with worldwide sales totaling \$2.5 billion in 2003. Vioxx, promoted by the likes of Olympic gold medalists Dorothy Hamill and Bruce Jenner, had been sold in the United States for more than five years. Merck's decision to pull Vioxx off the shelf followed the release of a clinical trial that found patients taking a low dose of Vioxx for 18 months were twice as likely to have a heart attack or a stroke as patients taking a placebo.

The study, an analysis of a database of 1.4 million Kaiser Permanente members, found that those who took Vioxx were more likely to suffer a heart attack or sudden cardiac death than those who took Celebrex, Vioxx's main rival. Based on their findings, FDA researcher David Graham and his collaborators linked Vioxx to more than 27,000 heart attacks or sudden cardiac deaths nationwide from the time it came on the market in 1999 through 2003. The new Vioxx study was not the first to raise concerns about heart attack and stroke risk. "We have been concerned and aware of the potential for cardiovascular effects for the last few years," Steven Galson, acting director of the FDA's Center for Drug Evaluation and Research, said the day Merck announced the withdrawal. "This is not a

total surprise." The company estimates that approximately 20 million U.S. patients have taken Vioxx since its introduction in 1999. In 2001, the Food and Drug Administration sent Merck a letter rebuking the company for a promotional campaign that minimized potentially serious cardiovascular problems caused by Vioxx.

In June 2000, Merck submitted a safety study called VIGOR (Vioxx Gastrointestinal Outcomes Research) to the FDA that found an increased risk of serious cardiovascular events, including heart attacks and strokes, in patients taking Vioxx compared to patients taking naproxen. After reviewing the results of the VIGOR study and other available data from controlled clinical trials, the FDA consulted with its Arthritis Advisory Committee in February 2001 regarding the clinical interpretation of this new safety information. In April 2002, the FDA implemented labeling changes to reflect the findings from the VIGOR study. The labeling changes included information about the increase in risk of cardiovascular events, including heart attack and stroke.

Bachus & Schanker, LLC, is here to help you and your family. If you suspect Vioxx has harmed you or a loved one, now is the time for action. If you need help or have any questions regarding your legal rights pertaining to health issues resulting from the use of Vioxx, contact our office.

FIRM NEWS

On Monday, August 30, 2004, **Bachus & Schanker, LLC**, hosted a fund-raiser for U.S. Congressional candidate **Dave Thomas** that was attended by United States Congressman and Democratic Whip, **Steny Hoyer**. Congressman Hoyer and numerous labor and Consumer Union members and leaders attended an informal party on our terrace. It was our distinct honor to have such an inspiring guest of honor.

Bachus & Schanker, LLC, again opened their

doors during this heated election time to Colorado State House candidate **Morgan Carroll**. Ms. Carroll was running for State House District 36 in Aurora, a seat once held by her late father, John S. Carroll. Ms. Carroll is a fellow member of the Colorado Trial Lawyers Association (CTLA) and has served on its Board of Directors. On November 2, 2004, Ms. Carroll was one of the many Democrats elected to represent the

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We take your family's safety and security personally.



Unaccompanied minors

Although most parents want to accompany their children traveling by air to vacations, summer camps, or boarding schools, situations may occur in which minors must fly alone.

Most airlines have established programs to help children travel by themselves efficiently and safely.

Parents also can take several steps:

- ✓ Book reservations early on airlines that agree to greet, escort, and monitor

children traveling alone. There may be additional fees.

- ✓ Inform your child on how to be safe at airports and on airlines. Tell them not to talk to strangers, to buckle their seat belts, and generally to be aware of their surroundings.
- ✓ For first flights, talk to your child about airports, airplanes, and what will happen on the trip. Instruct your child about how to use an airplane's bathroom, how to call an attendant, and what to do if lost or in an emergency.

- ✓ Prepare a carry-on bag for your child. Include a cell phone, phone contacts, medications, medical history, and other necessary documentation. Pack a familiar drink and snack as well as books or favorite electronic games.

- ✓ During check-in, give attendants instructions and other information, particularly the name and photo of the person who will meet the child upon debarkation. Request that an attendant walk the child to the aircraft.

- ✓ Remain at the airport until the plane is airborne.

- ✓ Confirm that your child arrived and was greeted at the destination.

Travel problems

When an unaccompanied minor was allegedly molested by a fellow passenger during a flight, her mother sued for negligent supervision. Although the airline argued it had no duty to protect the child, the court permitted the parent to sue since the airline had assumed additional legal responsibility in creating and charging for a separate class of unaccompanied minor passengers.

Trial by jury

Americans demonstrate their patriotism through military service, voting on Election Day, and serving on juries.

Our firm encourages all citizens to perform jury duty. Throughout our nation, courts are increasingly trying to make jury duty more effective and pleasant.

Many courts provide clearer jury instructions and permit jurors to take notes. Some states have raised the *per diem* pay. Others have set up a "one day, one trial" system that respects jurors' time.

Some Florida courts provide complimentary parking and child-care services.

A California city replaced the coin-operated coffee machines in juror waiting rooms with a centrally located gourmet coffee shop. Another California city operates a mystery-book library for jurors.

In New York's Nassau County, jurors can go online with complimentary wireless access for laptops and even sign up for mammograms or prostate screenings. There's also a blood-donation option.

Litigation explosion?

What litigation explosion?

Special-interest groups have been falsely decrying the existence of a "litigation explosion" for decades. They oppose the way citizen lawsuits and our civil justice system can serve as fair and fundamental checks on the power of businesses and governments.

To minimize accountability for wrongdoers' harmful conduct, special-interest groups and their highly paid lobbyists promote efforts to limit the legal rights of American families, claiming that too many lawsuits have led to excessive costs and delays. They just don't trust the American people.

But there is no litigation explosion.

- Since 1992, lawsuit filings have declined by nine percent.
- Automobile lawsuit filings, which make up the majority of all tort (or personal injury) claims, have fallen 14 percent since the early 1990s.
- Medical malpractice filings per 100,000 persons have dropped one percent.
- In 22 of the 30 states that the National Center for State Courts examined, population-adjusted lawsuit filings declined from 1992 to 2001. The average change in tort filings across all 30 states was a 15 percent decrease.
- The Department of Justice's Bureau of Justice Statistics reported that the number of civil trials decreased by 47 percent between 1992 and 2001.
- The median inflation-adjusted award in all lawsuits dropped 56 percent between 1992 and 2001 to \$28,000.



Con artists and the elderly

Con artists view some seniors as easy prey in their schemes to steal money. American Association of Retired Persons surveys show that more than half of telemarketing-fraud victims are age 50 or older. Other sources claim that more than 14,000 illegitimate telemarketers steal at least \$40 billion from unwary older—and younger—consumers annually.

The most common scams include calls about phony prize notifications, bad-credit clearance offers, fraudulent home inspections and repairs, expensive buyers clubs, deceptive investments, unnecessary and unwanted phone service subscription “slamming,” and others. Some seniors fall for scams claiming the ability to recapture money from the same scammers who took their money the first time.

To be safe from fraud, law-enforcement authorities often offer these guidelines:

- Never pay up-front fees for prizes or offers.



- Refuse to make payments by wire or through private couriers.
- Always ask for detailed, printed information on any offer.
- Do not release Social Security or credit-card numbers to unknown persons.
- Donate only to known charities.
- If a deal sounds too good to be true, it is.



Life insurance scam

An elderly couple’s insurance agent allegedly promoted a life insurance policy that would provide a \$5 million death payment and other benefits. After the couple pledged \$700,000 in personal assets to collateralize the premium loan, the premium lender demanded an unexpected \$35,000 first-year premium payment, threatening foreclosure on the collateral. When the couple sued for negligence, fraud, securities fraud, and statutory elder abuse, the agent and lender settled before the case went to court.

Underinsured motorist coverage

Why you should have it

Are you wondering if you have enough insurance coverage to adequately protect you and your family should an accident occur? One type of insurance that is often overlooked is uninsured motorist (UM) coverage. You should always purchase uninsured motorist coverage when you buy your auto insurance. Many consumers do not realize its importance, and insurance agents often try to downplay it. UM coverage may likely be the most important coverage you buy because it covers YOU if you suffer injuries caused by...

- someone who does not have any insurance.
- someone who has insurance but did not purchase bodily injury coverage.
- someone who does not have enough bodily injury coverage.
- a hit-and-run driver.

Please do not assume you have UM coverage just because your agent sells you full coverage. Our experience proves that UM coverage is extremely important, given the number of drivers on the road with minimal or no insurance.

Too often we see victims of accidents who have no UM coverage and have been victimized by drivers with no insurance coverage. These victims are always shocked that the at-fault drivers cannot be forced to pay for their losses. Many times, these victims go without any compensation for grave or catastrophic injuries.

We encourage you to review your auto insurance policy to make sure you have enough UM coverage. It is inexpensive, considering its vital importance!

You can’t predict accidents, but you can prepare for them and protect yourself and your family. Review your insurance policy and make sure you have adequate UM coverage.

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FIRM NEWS *(continued from front page)*

citizens of Colorado. We at Bachus & Schanker, LLC, congratulate her and look forward to her term as a House Representative

Bachus & Schanker, LLC, was also pleased to host the **Colorado Trial Lawyers Association (CTLA)** Auto Litigation Committee meeting at our office on September 30, 2004. We welcomed over 40 attorneys to a standing-room-only meeting of many of Colorado's finest trial lawyers. **J. Kyle Bachus** was a featured speaker at the Committee's October 2004 meeting. He educated his fellow lawyers on how we run our civil litigation practice at Bachus & Schanker, LLC. It was an honor to be asked by his fellow attorneys to direct and instruct them in the best way to handle automobile litigation cases.

Darin L. Schanker cohosted the Troubleshooter Sunday Radio Show on Sunday October 31, 2004, on 630 KHOW from 8:00 to 10:00 a.m. Darin was asked to cohost the show because of his expertise in the field of personal injury and insurance law. During the show, Darin and host **Chris Kane** responded to callers on a multitude of topics, including insurance law, general negligence, and questions regarding automobile collisions. The Trouble-

shooter network is a nationally syndicated radio program heard locally on KHOW. They take live calls and provide real help to consumers across the country. They also recap the major events of the week and take a look ahead. Darin joined Kane, the Troubleshooter staff, and deputies to help solve your problems, answer your questions, and take your complaints on the Troubleshooter Sunday Show. He looks forward to another appearance soon.

On September 20, 2004, **J. Kyle Bachus** was called upon again to serve on the faculty of the National Business Institute and present a seminar to over 40 attorneys entitled "Advanced Personal Injury Practice in Colorado." Lecture topics included: evaluating the issues of liability, causation, and damages; case investigation; the role of ADR or mediation in settlement proceedings; use of jury consultants and focus groups; handling motions and appeals; practical advice on utilizing experts and expert testimony; subrogation concerns with Colorado's change to a pure tort system; and also discussed was the best way to handle personal injury cases involving health-care plans that are formed under ERISA (Employee Retirement Income Security Act).

On October 19, 2004, at the invitation of the National Business Institute, **Darin L. Schanker** spoke to a group of Denver attorneys regarding the admissibility of evidence and expert testimony under the Colorado Rules of Civil Procedure. Recent Supreme Court decisions have made this one of the most contested areas of litigation in Colorado. Attendees received continuing legal education credits based on this all-day event, which took place at the Executive Tower Inn, located in downtown Denver.

Bachus & Schanker, LLC, is pleased to announce that we have two new associate attorneys. Our new associates are **Leslie E. Oliver** and **Tia M. Cauldwell**. Leslie has been with Bachus & Schanker, LLC, since January of 2003, when she joined us as an intern during her second year of law school. Leslie became our law clerk in July of 2003. She passed the bar this October and was pleased to accept our offer to join the firm as an associate. Tia is a 2003 graduate of the University of Denver Law School and joined us after spending a year with her practice focused primarily in mass tort litigation. Additional information regarding our new associates can be found on our Web site: www.coloradolaw.net.