



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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PERSONAL INJURY PRACTICE

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FIGHTING FOR CONSUMERS; FIGHTING FOR YOU

It's a fact. Injuries hurt people. They can keep us from doing our regular jobs, participating in activities and recreation, and even interfere with our ability to enjoy our family and friends. They can take loved ones away from us, and they can change our lives so that sometimes we are unable to go about even the most basic tasks of everyday living.

When we are injured, how do we begin putting our lives back together again? Is it our sole responsibility to just "gut it out" and "live with it"? Are financial and emotional support available? Who is responsible? Where are you, the consumer; the injured person; the family member or friend of an injured person supposed to turn for help? If you listen to some business leaders and politicians, they want to make sure you can't turn to the courts for help when you really need it.

Recently, the attorneys at **Bachus & Schanker, LLC**, became aware of an article in *Newsweek* magazine attacking people who bring lawsuits for what the writer claimed were frivolous reasons. The article suggested that the court system should be radically overhauled, especially in the medical malpractice arena, and that it should be more difficult for consumers to bring lawsuits. However, this writer failed to consult with any of the consumers involved in the lawsuits it attacked, and the writer failed to consult with any of the attorneys who represented these individuals to find out the true issues of the lawsuits. However, after careful, thorough investigation, lawyers and researchers with the Association of Trial Lawyers of America (ATLA) discovered that *Newsweek* was the one making the "frivolous" claims. Following are some of the myths from the *Newsweek* article and the reality of the system that attor-

neys **Kyle Bachus** and **Darin Schanker** are fighting for every day to protect your rights and benefits:

• **MYTH:** The *Newsweek* article from late last year indicated that individuals like Ryan Warner, who hosted a softball tournament to benefit a nonprofit organization, were afraid to sponsor community events because they were afraid of lawsuits.

• **REALITY:** *Newsweek* failed to report that under the Volunteer Protection Act of 1997, volunteers for nonprofit organizations or government programs around the country cannot be held responsible for their negligence.

• **MYTH:** *Newsweek* also reported that there has been a "litigation explosion" over the past 30 years.

• **REALITY:** In personal injury cases, there has been no "explosion." In fact, since 1992, personal injury claims have declined by 9 percent; automobile-accident claims (which are a majority of all claims) have fallen by 14 percent; and medical malpractice claims per 100,000 people have fallen by 1 percent. (Source: atla.org citing *Examining the Work of State Courts 2002*, p. 25, National Center for State Courts). Here in Colorado, between 1992 and 2001, the tort-case filing rate fell by 37 percent per 100,000 people. In fact, in Colorado in 2003, personal injury cases were less than 3.5 percent of the total cases filed in Colorado courts (Source: Colorado Judicial Branch Statistics).

• **MYTH:** *Newsweek* claimed that lawsuits cost society an estimated \$200 billion a year.

• **REALITY:** These estimates, which were

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We take your family's safety and security personally.

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provided to *Newsweek* by insurance companies and other “reform” groups, are the cost of the entire property/casualty insurance industry. In other words, this \$200 billion includes not only defense and plaintiff’s attorney fees, but also insurance-industry salaries, overhead, and investments, as well as nonlegal claims for property damage caused by natural disasters. In fact, almost 40 percent of the “\$200 billion” goes to insurance-industry overhead.

At **Bachus & Schanker, LLC**, we believe the court system is a way for consumers to achieve justice. It is a way that you, as a consumer, can effect social change. We speak as loud as we can and try to tell someone when we are hurt, or when someone else has done something wrong to us, but our voice is often drowned out by concerns for money, or overhead, and the bottom line. Therefore, consumers are often forced to go

to the courts to make sure their voices are heard, to ensure that businesses and insurance companies provide the services they are being paid to provide, and that doctors provide competent, safe care. The attorneys at **Bachus & Schanker, LLC**, are continuing to fight for your right to a jury trial to ensure that the real facts of your case are heard by people who hear both sides of the case and can sort out the facts and make a sound judgment.

The civil justice system should continue to be a safety net to ensure that consumers get the help they need to begin putting their lives back together again. The attorneys and staff at **Bachus & Schanker, LLC**, believe in you, the consumers, and we will continue fighting for your rights and your ability to access the court system to ensure that your voice is heard.

In hot pursuit

Recently, there have been local news stories about police chases that have resulted in serious injuries and fatalities to innocent bystanders who happened to be at the wrong place at the wrong time. Are these chases and pursuits justified in a busy metropolitan area like Denver when city streets and highways are clogged with traffic and the potential for danger to innocent bystanders is high?

It is important to understand that the job of the police is to serve and protect. They put their lives on the line every day to enforce the laws of our communities and keep our streets safe. However, there is a fine line between keeping our streets safe and creating a danger to others. **Bachus & Schanker, LLC**, attorney **Darin L. Schanker** is currently working on two cases involving local police chases in which one innocent bystander was seriously injured and another was killed as the suspect being chased by police drove into the vehicles the bystanders were driving.

In Colorado, these type of cases may become incredibly complex due to governmental immunity issues involving police departments, potential federal civil rights claims, and dealing with insurance companies. It is important to notify an attorney immediately of any possible claims arising out of these types of situations in order to comply with governmental immunity notice requirements. If you have any questions, please feel free to contact **Bachus & Schanker, LLC**, for more information.

Lawsuit mythbusters

Below are some real-life examples of how lawsuits have made our communities and families safer. In reading these excerpts, it is important to remember that laws making it more difficult to bring lawsuits (tort reform) are devastating to our families and communities. (Excerpts from *Center for Justice and Democracy*, <http://centerjd.org>.)

- A 20-year-old woman underwent a hysterectomy and had part of her lung removed after a pregnancy test produced false positives for cancer. After the case, the manufacturer sent out warning letters to doctors and laboratories about the test’s propensity to give false positives. (Source: *Ruffer v. Abbot Laboratories*, No. 99-2-27090-8; King County Super. Ct., Wash., verdict June 29, 2001)

- A 79-year-old woman was crushed to death after a Home Depot forklift operator knocked down lumber and other merchandise stacked several feet above her. After the case settled, Home Depot announced plans to change its merchandise-stacking policies. (Source: *Hamilton v. Home Depot, U.S.A., Inc.*, No. SC060655; Los Angeles County Super. Ct.,

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Profiles in

FAMILY BRAVERY

One reason why defective products seem to go undetected for a long time is that victims often settle prior to trial and, as part of the settlement, agree never to talk about the products' deficiencies.

A family that lost its young son in a vacation accident deserves special mention for its bravery in sharing information about a defective elevator. The inn where the family stayed had an old, two-story elevator with an outer door and inner folding gate separated by a seven-and-a-half-inch gap. The family's son was crushed to death after being trapped in the gap.

When the family planned to sue the inn and the elevator manufacturer for their loss, they learned from their lawyer's investigation that several other children had died in similar elevators. Motivated by the loss of their son, they promised to do all they could to prevent other children from being hurt or killed as a result of dangerous elevators.

The case was resolved, but only after the parents insisted that they would not settle until the elevator company agreed not only to make the necessary technical changes to protect riders, but also to publicize the hazard so other children would not be harmed in elevators.



DUI & A

A conviction for driving under the influence of alcohol, a controlled substance, or a prescribed or over-the-counter medication is serious.

Q: What are some possible outcomes of DUI?

A: Drivers can lose their driver's licenses, have difficulty obtaining auto insurance, or even lose their vehicles to impoundment, among others.

Q: What's the difference between suspension and revocation of a driver's license?

A: A judge can order a *temporary* DUI suspension for 90 days or six months. Judges can also revoke driver's licenses indefinitely in serious cases or repeat-offender incidents.

Q: What happens to drivers who get caught driving while their license is suspended or revoked?

A: Judges can send them to jail, exact large fines, or sentence them to significant community service for this very serious offense.

Q: What help can a lawyer provide for DUI offenses?

A: The best counsel is to never commit DUI. Lawyers can investigate matters helpful in preparing a defense to obtain alternate punishment, minimize an outcome, or obtain a dismissal.

Mandatory arbitration

More and more businesses are adding mandatory arbitration clauses to the fine print of documents they require consumers and employees to sign. They claim that avoiding going to court saves everyone time and money.

In reality, mandatory arbitration bypasses everyone's rights to seek remedies through the courts, which leaves consumers and employees not only unprotected against wrongdoing, but also offers little recourse in disagreements. What's wrong with them? They can be dreadfully unfair and are not bound by state or

federal laws. Further, although corporations pay costs to industry-insider arbitrators, consumers may have to pay thousands in legal fees and are restricted on the evidence they can bring to arbitration.

Service contract

An appeals court invalidated a binding arbitration agreement that a long-distance telephone-service provider required its subscribers to sign. The court said the "take-it-or-leave-it" service contract was "unconscionable" because it did not give consumers a meaningful choice to negotiate, modify, or waive fees or terms and conditions.



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FIRM NEWS

• In late January, **Darin L. Schanker** gave presentations to the National Business Institute (NBI) regarding premises liability cases in Colorado and to the Colorado Trial Lawyers Association (CTLA) about how to try automobile accident cases cost effectively. Mr. Schanker's trial experience is a valuable resource for other attorneys.

• **Melissa Hessler**, a recent University of Denver College of Law graduate, joined **Bachus & Schanker, LLC**, as an associate. Hessler had worked at **Bachus & Schanker, LLC**, for three years as a paralegal while finishing law school. As an associate attorney, she will continue in the firm's personal injury litigation practice.

• **Bachus & Schanker, LLC**, recently added two new litigation paralegals, **Darla J. Cope-land** and **Dawn Rozecki**, who have more than 24 years of litigation experience between them. The addition of these two paralegals to the **Bachus & Schanker, LLC**, team will greatly benefit our efforts to provide top-quality legal services to our clients.

"Client Access" page provides 24-hour access to our firm

Bachus & Schanker, LLC, clients are encouraged to use the "Client Access" page on our Web site. This online access is provided exclusively for use by our clients and is designed so that 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!

Lawsuit mythbusters

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Cal., settlement August 2, 2000)

• A four-year-old suffered severe burns after another child set her clothes on fire with a multipurpose lighter. Information uncovered in the lawsuit prompted the Consumer Product Safety Commission to investigate multipurpose lighters and ultimately issue child-safety standards for them. (Source: "Safety Standard for Multipurpose Lighters; Final Rule," 16 CFR Part 1212; enacted December 22, 1999)