



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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Client awarded \$3.75 million in suit against State Farm

When her house caught fire and burned to the ground on February 12, 2001, KW was distraught, but she was strong. She had been through worse in her life and found comfort in knowing that her home and its contents were fully insured. Yes, things would be even more difficult for a while, but what was important was that she had survived, and her home would soon be rebuilt and its contents replaced by State Farm. You see, KW is a 71-year-old quadriplegic who has been confined to her bed or wheelchair since suffering a spinal-cord injury in an automobile accident more than 35 years ago. To KW, her specially equipped home in the Colorado foothills meant everything. She had heated floors to make sure her lower body stayed warm; special buttons to open and close windows and blinds; a specially designed kitchen, bathroom, and bedroom; and many other items. She even had a wheelchair-accessible deck built around the entire outside of her home so she could spend time outside.



Mr. Bachus sued State Farm for Bad-Faith Breach of Insurance Contract and for violating the Colorado Consumer Protection Act along with other claims. In addition, the State Farm agent was sued for negligence and his bad-faith conduct.

These small luxuries were important because KW's severe physical limitations prevented her from leaving her home but for a few times each year. Ironically, the last time she left her home before it was destroyed by fire was six months earlier, during the summer of 2000, when she was forced to evacuate because of a nearby forest fire. When KW returned home after the forest fire scare, she was concerned about her home and called her State Farm agent just to make sure she was fully covered in case something awful happened. As a result of that call, her State Farm agent came out, examined KW's property, returned to his office, and later called and told KW not to worry, she was "adequately insured."

Five months later, a nursing aide accidentally started a fire that burned KW's house to the ground. When KW made a claim with State Farm for the replacement cost of her home, State Farm told KW that she did not have enough insurance to replace her home or its contents. In fact, KW was essentially insured for only about half of the amount it was going to cost to replace her home and its contents. When KW told State Farm that was impossible because her State Farm agent had been up to the home less than six months before the fire and confirmed she had enough

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insurance, State Farm wanted to know if KW had any documentation **to prove what she was saying**. When KW said she had no documentation, State Farm told KW that the agent denied being up at her house before the fire. State Farm also told KW that State Farm's own investigation revealed that KW **intentionally** chose to underinsure her home and that KW would need to come up with the other half of the money if she wanted to rebuild, because State Farm was not going to pay for it. It was later learned that State Farm took this position despite the fact that the type of policy issued to KW was only available to those who agreed to fully insure their homes.

Meanwhile, KW was forced to stay in a nursing home. Her State Farm policy stated that it would pay for up to 24 months of alternative living expenses incurred during the time it would take to replace the home. However, State Farm only agreed to pay for 90 days. State Farm took the position that if KW had not **intentionally chosen to underinsure her home**, the house could have been rebuilt in 90 days. Since KW did not have the money to rebuild, State Farm cut off payment to the nursing home after 90 days. KW did manage to find a mobile home company who could manufacture a modified trailer for her special needs that she could afford to buy with the limited money State Farm would pay, but that was going to take another six months to manufacture, deliver, and set up.

With the nursing-home costs piling up, KW invoked a provision in her policy to dispute State Farm's decision to only pay 90 days of alternative housing. After all, the only reason KW was in the nursing home so long was because State Farm refused to pay for the cost of replacing her home. By this time, KW's nursing-home bills totaled more than \$70,000. Under the appraisal provision in her policy, KW and State Farm would each be required to appoint a **disinterested and impartial property appraiser** to consider the issue, and reach an agreement. As required by the policy, KW appointed a property appraiser. However (unknown to KW at the time), State Farm appointed one of its own attorneys to serve as the other appraiser, despite the fact that the attorney was not a property appraiser and was certainly not disinterested or impartial.

Before the appraisal process finished, KW was referred to Attorney **J. Kyle Bachus**, a partner at **Bachus & Schanker, LLC**, by another lawyer. The case was investigated and after giving State Farm one final

opportunity to pay KW what she clearly was owed under the policy, Bachus & Schanker, LLC, filed a lawsuit. Mr. Bachus sued State Farm for Bad-Faith Breach of Insurance Contract and for violating the Colorado Consumer Protection Act, along with other claims. In addition, the State Farm agent was sued for negligence and his bad-faith conduct.

During the course of the lawsuit, KW's version of the events was proven true. State Farm's own internal documents showed that at the very time State Farm was telling KW that the agent denied going to her house, State Farm had learned from the agent himself that he **had been there**. When the agent was confronted with State Farm's own internal documents at his deposition, the agent admitted that, yes, he had been to KW's home before the fire and, yes, he had called KW back afterwards to tell

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her she was adequately insured. State Farm's assertion that the agent denied going to KW's home before the fire was absolutely untrue. In fact, the agent testified that he specifically told State Farm that he had failed to take into account KW's special-needs items when he evaluated the house. Bachus & Schanker, LLC, also took the deposition of the attorney appointed by State Farm as an "appraiser." During his deposition, the attorney admitted an ongoing financial relationship with State Farm and admitted that he had no experience as a property appraiser. The attorney also admitted that he specifically told State Farm when he was contacted about serving as an appraiser that he **could not serve** if doing so required the attorney to be impartial or disinterested. But State Farm decided to appoint him as an appraiser anyway.

There is much more to KW's story but only limited space in this newsletter to tell you about what happened.

In the end, after a long and fierce battle against State Farm, the most powerful insurance company in the United States, justice for KW was finally obtained. On December 20, 2002, an agreement was reached to settle the suit filed by KW in exchange for payment by State Farm to KW in the amount of \$3.75 million. KW was right all along!

**Congratulations, KW, from Bachus & Schanker, LLC,
for in your fight for justice, you have
indeed prevailed!**

Seniors and falls

One of the most common, and serious, problems facing retirement facility or nursing home residents is the risk of falls. Anyone who is responsible for a senior parent or elderly relative in a residence can collaborate with management and staff to reduce the potential for falls by their loved ones. They can...

- check to see that corridor and room lighting is sufficiently bright.
- periodically inspect and eliminate hazardous obstacles such as rugs, lamp cords, or other objects.
- schedule annual eye-health and vision-quality checkups.
- promote participation in exercise and other programs to maintain physical strength and improve balance.
- request that aides monitor residents after administering medications that may cause dizziness or confusion.
- encourage the elderly to use canes, walkers, or other mobility devices when needed.
- ask caregivers about the use of bed rails or restraints if unsteadiness or falling from bed occurs.

A resident's fall

After his mother suffered a fatal head injury after falling from her bed, a son won a jury verdict on her behalf in a lawsuit. He alleged that the nursing home failed to provide safe care and services because it did not use appropriate bed-safety restraints, even though the staff was aware of her known tendency to fall out of bed.



LEGAL LEXICON

Many clients find legal terms puzzling. From time to time, we'll offer some easy-to-understand definitions to help clear things up. This time, we'll address the meanings of several important legal terms related to employees and the workplace.

Affirmative action

State and federal regulations and policies intended to compensate members of minorities for unfair discriminatory practices that existed in the past.

At-will employment

Two parts: An employer's right to terminate workers without providing any reason; an employee's right to quit a job without explanation.

Disability benefits

Social Security Administration funds available to employees under age 65 who qualify under medical regulations describing an inability to work due to accident or injury.

ERISA

The Employee Retirement Income Security Act of 1974 is a federal law that requires employers to furnish employees with clear and comprehensive information about their pension rights. Court interpretation of ERISA has made HMOs and other managed-care insurers immune from lawsuits for injuries they cause by delaying or denying appropriate care. A federal Patients' Bill of Rights that would allow patients to hold HMOs accountable in court has been under consideration for several years.

Sexual harassment

Unwelcome sexual conduct on the job that makes workers feel that they are in an intimidating, hostile, or offensive workplace.

The ABCDs of skin moles

Everyone has moles—pigmented skin spots that usually pose no health threats. Physicians recommend examining moles twice yearly to monitor changes in appearance, which might indicate problems.

Medical experts recommend using the "ABCD" rule to determine if a mole needs a physician's attention. Evaluate each mole's...

ASYMMETRY Healthy moles are symmetrical. Both sides should look the same.

BORDER A mole's border should be round, not jagged or splotchy.

COLOR Normal moles are light to medium brown, not black.

DIAMETER Typically, healthy moles are smaller than the size of a pencil eraser and do not grow in size.

Some people are more prone to skin conditions than others. Individuals with more than 75 moles and skin that burns easily should pay particularly close attention to mole changes. If you have a mole that looks different than the last time you checked it, please ask your physician about it.

More than a mole

Even those who take great care of their skin can run into trouble. A 45-year-old patient was scrupulous about reporting skin disorders to his dermatologists. A year after a lesion appeared, doctors ordered a biopsy, which revealed it was not a hemangioma—a noncancerous vascular tumor—but a malignant melanoma. The patient sued and received a settlement, after alleging failure to diagnose in a timely manner, permitting the melanoma to metastasize to other organs.

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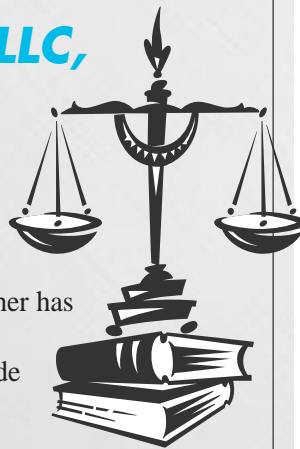
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BACHUS & SCHANKER, LLC, CONTINUES GROWTH

The firm is very proud to announce that in order to allow for continued expansion, founding partners **J. Kyle Bachus** and **Darin L. Schanker** have purchased the company shares from Jon Schumacher and have hired two associate attorneys. Mr. Schumacher has left the practice of law to pursue outside interests.

Bachus & Schanker, LLC, will continue to provide comprehensive legal services and serve the needs of Mr. Schumacher's former and current clients.



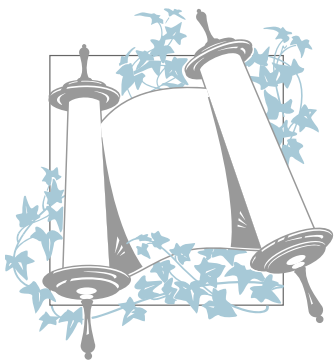
OUR NEW NEWSLETTER!

We're sending our new newsletter to you because we care about your family's security and well-being.

In each issue, we'll give you information to help keep you and your family safe and healthy. Our newsletter will suggest protective steps to reduce the chances of harm or injury in your car, at home, at work, at school, or at play. We'll also update you about legal issues and cases you'll find helpful and which can improve everyday living.

Should you or a loved one suffer personal injury—and find you need us—you'll learn a lot here about what your legal options and remedies may be.

We hope you enjoy this newsletter. We have prepared it with the same personal and professional touches that you feel when you visit our practice. We also thank those who ask us to represent their legal needs and those who recommend us to others. We hope you'll share this information with friends and neighbors.



An honor

The Colorado Trial Lawyers Association has named **Darin L. Schanker** the 2003 Outstanding Young Trial Lawyer of the Year.

Website launch

In order to provide continued comprehensive and cutting edge service to our prospective and current clients, **Bachus & Schanker, LLC**, will be launching its new Website on April 1, 2003. Please make a point to visit us at www.coloradolaw.net!

