



# BACHUS & SCHANKER, LLC

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## Insurance industry exposed

### New York Times sets record straight on root of malpractice insurance increases

The *New York Times* published a definitive article debunking the myth that malpractice lawsuits are to blame for excessive medical malpractice insurance rates for doctors (*Behind Those Medical Malpractice Rates*, 2/22/05).

Insurance companies have long attempted to blame litigation by victims of medical malpractice for the “skyrocketing” of doctors’ insurance rates, which have in some cases doubled and tripled over the last three years. But the *Times* refutes that theory, reporting, “the more important factors appear to be the declining investment earnings of insurance companies and the changing nature of competition in the industry.”

Moreover, reported the *Times*, “[s]ome researchers are skeptical that caps ultimately reduce costs for doctors. Mr. [Martin] Weiss of Weiss Ratings (a financial rating service) and researchers at Dartmouth College, who separately studied data on premiums and payouts for medical mistakes in the 1990s and early 2000s, said they were unable to find a meaningful link between claims payments by insurers and the prices they charged doctors.”

As the *Times* notes:

For all the worry over higher medical expenses, legal costs do not seem to be at the root of the recent increase in malpractice insurance premiums.

Government and industry data show only a modest rise in malpractice claims over the last decade. And last year, the trend in payments for malpractice claims against doctors and other medical professionals turned sharply downward, falling 8.9 percent, according to data compiled by the Health and Human Services Department.

This is not the first time a major newspaper has exposed how mismanagement within the insurance industry has been the root cause of huge medical malpractice rate hikes for doctors in recent years. In June of 2002, the *Wall Street Journal* detailed the ways in which market fluctuations and rampant “price slashing” throughout the 1990s forced insurers to raise their medical malpractice rates, beginning in 2002 (*Insurers’ Price Wars Contributed To Doctors Facing Soaring Costs*, 6/24/02).

“Enough is enough,” said Geoff Boehm, Legal Director of the Center for Justice & Democracy. “The *New York Times* has finally laid bare the falsehoods that have driven the movement to limit compensation to patients injured by medical malpractice. It is time for the insurance industry to stop blaming the legal system for their ‘junk’ business and accounting practices, and allow states to better regulate this industry.”

## What to do after an automobile accident

Life can get very complicated in the aftermath of a car accident. Knowing the following steps will simplify what can be a nerve-wracking experience.

1. Seek immediate medical attention if you’ve been injured.
2. Call the police and do nothing else until they arrive on the scene.
3. Tell the truth about the facts of the accident.
4. Copy down all insurance and driver’s license information with the other drivers, and get names and phone numbers of any witnesses. Write down the names, addresses and telephone numbers of all potential witnesses.
5. Obtain the investigating officer’s contact information.
6. Notify your insurance carrier and file a claim as soon as possible. Also notify the other driver’s insurance carrier of the accident.
7. Take pictures of any and all property damage before having your car repaired.
8. Contact an attorney early in the process if you think you need legal representation or have any questions. Your attorney can assess the situation and make sure that all the facts and information that are important to your case are collected and documented appropriately.

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

## Civil justice in America

*Here are some truths our firm lives by:*

- ★ Trial lawyers stand up for people harmed through no fault of their own so that the average American can get a fair shake in court.
- ★ We champion the legal needs of individual consumers and working families who have been injured physically and financially.
- ★ Trial lawyers promote public safety and the public good by compelling corporations and businesses to make safer products, improve workplace safety and fairness, clean the environment, and improve the safety and quality of health care.
- ★ When it comes to assessing the “economic impact” of individual consumers and working families who have been injured, the truth is that those who create the costs of the legal system are those who cause the injuries, not the victims who are injured through no fault of their own or the lawyers who represent them.

*The civil justice system and the right to trial by jury, with the help of trial lawyers, have done all these things.*

## Motorcycle safety

Motorcycling has grown in popularity over the past several years. Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Rider safety depends on five guidelines:

1. Read the vehicle’s manual to fully understand operations and all safety features.
2. Take a safe-rider’s course to hone mental and motor skills for safe street and highway motorcycling. Become proficient at shifting, braking, turning, and responding to emergencies.
3. Wear high-visibility protective clothing, concentrating on protective helmets, eyewear, gloves, boots that cover the ankles, sturdy pants, and a jacket.
4. Always have a valid driver’s license and adequate insurance coverage.
5. Conduct good pre-ride checkups and routine maintenance.

### Driver negligence

Cars rank among motorcyclists’ most serious risks. No matter how diligent a rider may be about safety, problems can always crop up. When two cars collided in front of an experienced rider, he struck the rear of one, suffering leg injuries that required surgery. He also missed ten months of work and will experience future lost income. He sued the driver of one car as well as the driver’s employer for negligent vehicle operation. The parties settled prior to trial.

## Jury waivers

### Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

*We’re encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.*



*Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.*

## Preemptive justice

### What's that?

It's giving away one's rights to trial by jury. Anticonsumer lobbyists and lawmakers have proposed legislation to prevent consumers from using the civil justice system, thus depriving consumers of their right to a day in court.

Preemptive justice is essentially very unfair in that it does not derive from intellectual debate by committees or research by learned scholars. Instead, it is based on insidious half-truths, supported by urban legend-type anecdotes and outright lies—all nurturing a political agenda to destroy citizens' rights.

What are some examples of existing or proposed preemptive legislation?

- Limits on compensation juries may provide for harm done by HMOs, hospitals, and physicians.
- The Federal Asbestos Trust Fund, which prevents initiation of liability lawsuits in state courts.
- Gun manufacturer liability eradication.
- The "Class-Action Fairness" bill to federalize and impede virtually all individual and mass-action tort cases.
- "Obesity" lawsuit protection for food manufacturers.

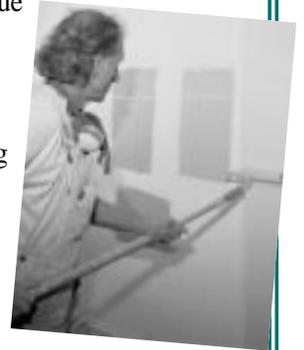
What do all preemptive-justice initiatives have in common? They reduce the accountability of insurers, drug manufacturers, physicians, and others for the welfare of customers and patients. Preemptive-justice measures will also save insurers, drug manufacturers, physicians, and others a lot of money by shifting the financial burden of their errors to the victims and other taxpayers. Some call these ideas tort "reform," but is it reform to take away people's rights?

## Asbestos UPDATE

Even though manufacturers knew of the deadly dangers of asbestos products 70 years ago, they concealed health hazards from workers and the public. In the 1970s, asbestos use was limited but not prohibited, but corporations continue to wage legal and public relations battles to avoid accepting responsibility. The following are some recent developments.

### Painter

A commercial painter working since the 1950s and now suffering from terminal mesothelioma sued manufacturers of asbestos-laden, joint-compound products to which he had been exposed during his career. Following a settlement, a jury reached a verdict of compensatory and punitive damages against the manufacturer for failure to warn of danger to the worker.



### Pipe fitter

A pipe fitter and plumber serviced and installed boilers for more than 40 years. He died at age 71 from lung disease after inhaling asbestos dust for 40 years.

His wife and estate brought a wrongful-death suit against boiler manufacturers and asbestos suppliers for failure to warn her husband about the dangers of working with their products. The manufacturers settled and a jury found the defendants 100 percent guilty, awarding the estate compensatory damages.

## BURN SAFETY ON THE JOB

Unfortunately, many American workers are burned in fires at offices, factories, retail establishments, and other workplaces.

Office fire safety measures should include monitoring and training employees in the use of heat-producing electrical appliances, such as microwave ovens, hot-water dispensers, and coffee makers. Training also may include guidelines for burning candles or potpourri and smoking.

Factory or plant personnel training is usually comprehensive and should include orientation on handling and using combustibles, flammable liquids or gases, electrical equipment, and flammable metals.

All training should emphasize understanding how fires start, notifying fire departments, extinguishing fires, evacuating in emergencies, and helping coworkers who may be on fire or who have suffered burns.

### Poor fire training

When a fire started in an auto aftermarket-supply company, its sales manager drove a burning truck out of the building and returned to help others evacuate. He suffered first-, second-, and third-degree burns over 20 percent of his body. He subsequently sued his employer, alleging negligent fire training and management in failing to comply with local fire regulations and operating without a permit. A jury found his employer and its parent company each 50 percent liable for his injuries and awarded the sales manager compensatory damages.

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## FIRM NEWS

In our continued effort to provide our clients with excellent service, **Bachus & Schanker, LLC**, is pleased to welcome two new case managers, two new litigation paralegals, a new assistant, and a new associate to our team.

- ▶ **Crest Cummings** has joined Bachus & Schanker, LLC, as a case manager after 18 years working with Farmers Insurance Company as a claims adjuster. Crest brings his strong knowledge of Colorado insurance law and unique insight of having worked on both sides of insurance disputes with one of Colorado's largest insurance companies.
- ▶ **Angela McCarrison** joins our litigation team as a paralegal. She brings to our team over 20 years of Colorado litigation experience.
- ▶ **Jamie Cameron**, who has been with Bachus & Schanker, LLC, for over three years, joined our staff as a receptionist while she was attending paralegal classes, then upon her graduation moved into a case manager position, and has now joined the Litigation Department as a paralegal.
- ▶ **Treiva Johnson** joins our firm as an assistant to our medical secretary, Shawn Pelle. The addition of her position will help us process our clients' medical records requests even more efficiently.
- ▶ **Leslie A. Johnson** has joined our firm as a case manager working for Darin L. Schanker. Leslie brings the experience of working in both plaintiff and defense firms.
- ▶ **Keith Fuicelli** is our newest associate attorney. He graduated from University of Colorado School of Law in 2000. Prior to joining Bachus & Schanker, LLC, Mr. Fuicelli worked at a large insurance defense firm, litigating complex civil cases. Before that, Mr. Fuicelli was a Deputy District Attorney in Jefferson County, Colorado, where he worked in the Crimes Against Children Unit.



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