



BACHUS & SCHANKER, LLC

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We will fight back to ensure that every American gets a fair shake in court

On May 14, 2005, **J. Kyle Bachus** attended the spring Board of Governors meeting of the Association of Trial Lawyers of America (ATLA) at the Drake Hotel in downtown Chicago. Mr. Bachus was elected last summer to serve as one of only two attorneys from the state of Colorado on this national board, which oversees more than 56,000 attorney members worldwide. The Chicago meeting was an important opportunity to confer with some of the best legal minds in the United States regarding efforts being launched by the CEOs of America's largest corporations, insurance companies, and their lobbyists to shield themselves from all personal responsibility. The CEOs and insurance companies are working with lobbyists to pass laws at both the state and federal levels that take away the right to jury trials and, along with that, the average person's access to our nation's courts.

"We will fight back to ensure that every American gets a fair shake in court," Mr. Bachus said. "The great thing about this organization (ATLA) is its commitment to the very same principles upon which **Bachus & Schanker, LLC**, was founded here in Colorado. The goal of ATLA and Bachus & Schanker, LLC, is to level the playing field to **ensure justice for all and not just for the privileged few.**" Both ATLA and Bachus & Schanker, LLC, are passionate about preserving the right to trial by jury, one of the major cornerstones of American democracy. Although the corporate CEOs and insurance companies may not like it, juries cannot be bought and sold. ATLA and Bachus & Schanker, LLC, know that leveling the playing field by preserving jury trials is the only way to ensure corporate accountability when their CEOs allow policies to be implemented in the name of greed that endanger the health, environment, and financial stability of average Americans.

As part of this commitment, ATLA has raised millions of dollars, which are being allocated to educate citizens and lawmakers about these very important issues. If you would like to help in our fight to preserve juries in America or would like to discuss these issues further directly with Mr. Bachus, please contact our office.

Mr. Bachus will again meet with the Board of Governors during the Summer 2005 ATLA Convention, which takes place in Toronto in July.

The five big lies about Colorado tort reform

For years we have heard a steady drumbeat for tort "reform" from the insurance industry and others blaming the legal system for all of society's ills

(everything from economic decline to skyrocketing insurance premiums). They've distorted the facts and mounted a nationwide campaign of misinformation to convince legislatures and Congress to severely restrict the legal rights of average citizens and small businesses. There's no longer a level playing field in the courtroom. Your rights to access the courts and jury trials have been limited, while those with money and power continue to enjoy full access. Ask yourself why.

As early as 1986, statutes were enacted in Colorado to seriously limit your right to have juries decide who should be held accountable when you are harmed. For example, in place of jury decision-making, Colorado has placed arbitrary limits on the amount of medical bills and lost wages you are entitled to when you've been injured, regardless of the severity of your injury. In Colorado, time after time the privileged few have been partially or totally immunized from responsibility for harming others (e.g., ski resorts, llama trekkers, liquor stores and bars, sellers of unsafe baby cribs, public utilities, and negligent homebuilders, to name just a few).

To sell the public, politicians, and the media on the need for tort "reform," crisis after crisis has been fabricated. Big corporations have manipulated statistics, slanted facts, and, yes, outright lied. At **Bachus & Schanker, LLC**, we want to share some of their tactics, because nothing is more infuriating than to have big corporations misuse power and trust to gain an unfair advantage. We have put together a list of what we like to call

"The Five Big Lies." These lies, although only part of the entire picture, clearly paint the landscape of how we have all been misled and manipulated.

Lie Number 1: America's courts are overwhelmed by lawsuits.

The truth: Suits filed in federal and state courts are decreasing. According to data from the Administrative Office of the U.S. Courts, federal tort filings decreased 5 percent in the last decade. Tort trials in 2004 dropped to just 883—20 years before, there were 4,506.

The U.S. Bureau of Justice Statistics (BJS) revealed that civil trials dropped by 47 percent between 1992 and 2001. In Colorado, civil trials have declined 54 percent in the last 15 years. During 2003, there were almost 249,000 cars in crashes in Colorado—but only 3,338 car-crash-injury lawsuits were filed. The typical injured person does not even consider the notion of seeking compensation from some other person or entity. Only 10 percent ever file claims, which include informal demands and insurance claims. Only 2 percent file lawsuits. These statistics are at odds with any notion that we live in an overly litigious society. (Rand Institute)

Lie Number 2: Our economy is being destroyed by outrageous awards given by runaway juries.

The truth: According to the BJS, the median inflation-adjusted award in all tort cases dropped 56 percent between 1992 and 2001. In 2001, the median jury award was \$28,000, certainly not outrageous. In Colorado, the number of personal injury suits filed per 1,000 people has dropped dramatically.

(continued on back page)

We take your family's safety and security personally.

What's wrong with "tort reform"?

The real meaning of "tort reform": taking away the legal rights of American families

Some federal and state lawmakers want to pass "tort reform," or litigation-limiting, legislation to give insurance companies and corporations more power to overturn the rights that the average citizen has to seek redress for harm through our court system.

If elected officials legislate away our citizens' right to trial by a jury of their peers in a courtroom, the new power that big insurers and companies will acquire will affect us all.

Lawbreaker protection

By limiting victims' rights, "tort reform" protects negligent drivers, greedy corporate managers, and polluters by bypassing the effective, centuries-old approach of using citizen juries to hold wrongdoers accountable for the harm they cause to others.

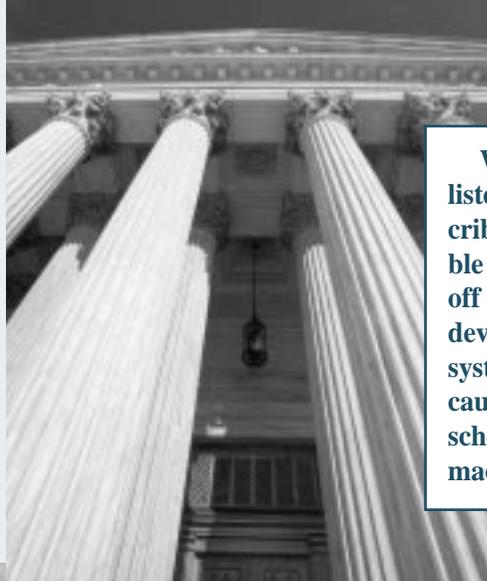
Wrongdoer defense

"Tort reform" will provide a trump-card defense for pharmaceutical companies that market drugs which injure or kill people. It will give manufacturers

who sell unsafe products an automatic shield against liability. Reform will even give nursing homes that negligently cause our elderly to suffer a "free pass" from legal action.

Unprotected victims

The most insidious effects of "tort reform" are that our civil justice system will no longer protect those who have been seriously injured or killed by careless medical errors or defective products or drugs...and no one will have the right to hold wrongdoers accountable.



When juries speak, corporate America listens. That's why...defectively designed cribs no longer strangle infants; flammable children's pajamas have been taken off the market; once-harmful medical devices have been redesigned; auto fuel systems have been strengthened; cancer-causing asbestos no longer poisons homes, schools, and workplaces; and farm machinery has safety guards.

Red-light runners

In 2002, drivers who ran red lights were responsible for 207,000 crashes, 178,000 injuries, and 921 fatalities in the United States. Red-light runners are irresponsible and dangerous drivers who put us all at risk.

The National Campaign to Stop Red Light Running believes that this problem is epidemic, particularly in urban areas.

Here are a couple of injury cases that show the extent of potential injuries and compensation from red-light runners.

A taxi driver

A cab ran a red light, striking a motorcyclist. The rider suffered multiple rib fractures, lung contusions, a fractured femur, a dislocated shoulder, chronic pain, numbness, stiffness, and scarring. The parties settled for medical expenses and an additional award for loss of consortium.

Trucker

An oil truck sped through a red light and collided with a car. A passenger suffered a subarachnoid hemorrhage, multiple fractures requiring jaw surgery, a tracheotomy, and memory loss, as well as loss of employment. The parties agreed to a major settlement.

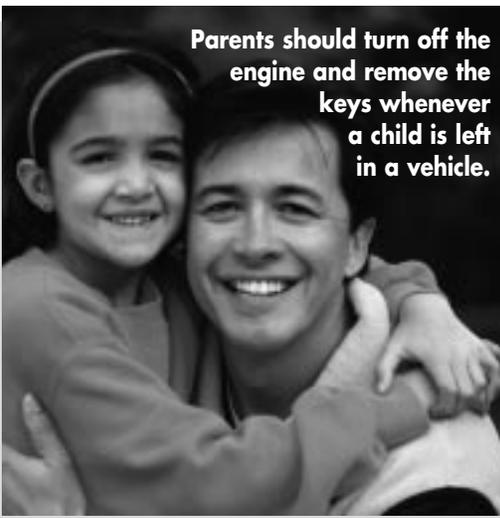
A civil justice system MYTH

➤ MYTH

Jurors are not rational. Because they don't understand the subtleties of law, they get swept away by the emotional pleas of lawyers and their clients. As a result, juries give lawsuit plaintiffs huge punitive damages awards on a regular basis.

➤ FACT

You, your friends, neighbors, and coworkers are America's juries. And you are not irrational. Contrary to common belief, juries rarely award punitive damages. Only 3 of every 100 juries hearing personal injury cases ever award punitive damages. Furthermore, when juries grant punitive damages, the amounts jurors award tend to be small. In fact, the U.S. Department of Justice reports a decreasing trend in payout amounts for personal injury cases. Between 1992 and 2001, the median payment for personal injury cases dropped 56 percent, to \$28,000.



Parents should turn off the engine and remove the keys whenever a child is left in a vehicle.

Car power-window safety

Some auto power-window controllers can harm or kill children.

For the sake of safety, parents should check whether a child can place a foot, knee, elbow, or hand on any power-window controller and unknowingly raise a window. The windows may injure or choke a child leaning out the window. According to www.vehicleinjuries.com, seven children died from electric car windows in 2004.

New National Highway Traffic Safety Administration regulations requiring safer window switches in all new cars should help, but won't go fully into effect until 2008. New switches must be pulled up to raise the window. The problem is that even many newer cars have nonrecessed, door-mounted toggle or rocker controllers that can close the window when a child presses down on them.

For safety, parents should turn off the engine and remove the keys whenever a child is left in a vehicle.

Window entrapment

The federal government and child-advocacy groups pressured manufacturers into designing safer power-window switches, but not before tragedies occurred and the courts intervened. A child became entrapped in a car window that had a toggle-type switch and suffered brain damage from oxygen deprivation. After his guardian sued the car manufacturer for defective switch design, the parties settled to cover the child's medical expenses, life-care costs, and loss of future earnings.

FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Philips PC Peripherals** has recalled 15,000 Hewlett-Packard (HP) L2035 Flat Panel Monitors. Incorrectly installed back-panel ground clips can electrically shock users.
- ✓ **Wal-Mart Stores, Inc.**, has asked buyers to return 600,000 **GE Oval and Double Dish Slow Cookers**, which have handles on bases that may break, spill hot food, and burn consumers.
- ✓ **Royal Appliance** has recalled 20,000 Dirt Devil® Sweeper Vac™ vacuum cleaners. The vacuum's rotors can lock and overheat, causing smoke and fire hazards.
- ✓ **Swing-N-Slide® Corp.** asked consumers to return 72,000 extra-duty and heavy-duty swing seats with defective seat-attachment grommets, which can break and injure users.
- ✓ **American Suzuki Motor Corp.** recalled 27,000 2004-2005 Eiger and Vinson ATVs. Incorrectly mounted fuel tanks can leak and burn riders.

Flu vaccine shortage and so-called "frivolous" lawsuits



This past fall and winter, some advocates of limiting Americans' legal rights blamed "frivolous"

lawsuits for the flu vaccine shortage the nation experienced.

The blame was a fabrication—just plain false. Here's why.

There have been very few lawsuits against flu vaccine manufacturers. A comprehensive search from 1980 to the present found only seven reported cases based on flu vaccine injuries.

Flu vaccine manufacturing is very risky *not because of lawsuits, but because of economic risk*. Very few pharmaceutical manufacturers remain in the business because...

- competing is expensive. Demand varies since new vaccines must be developed annually to deal with changing virus strains.
- flu vaccine technology is time-consuming, labor-intensive, and expensive, requiring investment of hundreds of millions of dollars.
- there is little incentive to compete. No single U.S. government agency is responsible for ensuring an adequate vaccine supply. The production, sale, and distribution of flu vaccines are handled almost entirely by pharmaceutical companies.
- quality-control expenses and safety regulations are a big deterrent.

And, now that there is a surplus of flu vaccine, no one is *crediting* the civil justice system.

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The five big lies about Colorado tort reform *(continued from front page)*

Lie Number 3: There are too many frivolous lawsuits.

The facts speak for themselves. The number of suits and the size of verdicts are significantly down. When was the last time you read of an outrageous verdict in Colorado? When did you last hear of a frivolous lawsuit in this state? Why are big business, the insurance industry, and special interest groups continuing to beat the tort reform drum?

You may have heard the stories about these frivolous suits.

- The robber who fell through the skylight and then sued the building owner.
- The man who tried to trim his hedge with a lawn mower and cut off his hand.
- The strongman contestant who developed a hernia while towing a refrigerator up a hill and sued the contest sponsors.
- Best of all, the Winnebago operator who was injured when his motor home ran into a ditch after he left the driver's seat of the moving vehicle to fetch a cup of coffee from the galley. He supposedly sued the manufacturer.

Although whoever dreamed up these fictitious lawsuits had a vivid imagination, a search of court records throughout the nation revealed no such suits have ever been filed. These fabrications (all debunked at www.snopes.com) might be comical if it were not for the fact that the stories were invented to help persuade you and everyone that our civil justice system is broken and tort reform is necessary.

Lie Number 4: It costs Americans \$300 billion per year to pay for lawsuits.

The truth: This oft-quoted fable first appeared in the late 1980s, invented by Tillinghast-Towers Perrin. Its inflated numbers

scared Americans into believing that our system of civil justice harmed the U.S. economy. Tillinghast's estimates were roundly criticized by experts. Finally, in late 2004, this insurance-related firm publicly admitted that its annual study was actually a myth. The figure measured costs, they wrote, "not directly related to...tort claims." Tillinghast included...

- insurance-industry overhead (executive salaries, advertising, and inefficiencies)
- payments for property damages (fender-benders) and nontort PIP benefits without any lawyers, courts, or lawsuits involved.

These two factors alone are half the Tillinghast total. The study never looked at or included costs **saved** by the tort system in terms of injuries and deaths prevented due to safer products and practices, wages not lost, or health-care expenses not incurred.

Insurance-industry profits are booming. The property-casualty insurance industry enjoyed a record-breaking \$38.7 billion in profits in 2004, the highest ever (Insurance Services Office). U.S. health-insurance firms recorded the highest profits in a decade (Weiss Ratings). Average pay for the five top executives at the largest health insurers almost doubled over the last four years to \$3 million a year (*Investors Business Daily*). Health insurers raised premiums 59 percent during the same four-year period (Kaiser Family Foundation).

Lie Number 5: If we pass so-called tort "reform," insurance costs will drop.

Colorado is a laboratory rat for the tort "reformers." The American Tort Reform Association says our state passed ten out of their ten major tort reforms (the only state to do so). Our judges punish those filing frivolous cases;

lawyers must file certificates that their cases "do not lack substantial justification." Our laws require judges to arbitrarily cut down awards for:

- noneconomic damages
- punitive damages
- economic losses (if the special interest has a high-powered lobbyist).

Think about that last one: We let certain special interests escape paying for the actual medical bills and lost wages of those they hurt—even if they've broken the law when they cause the harm!

The National Association of Insurance Commissioners reports that on a per-resident basis, back in 1984, Colorado residents paid insurance premiums of \$512; the national average was \$513. By 2003, Colorado premiums per capita had grown to \$1,711—but U.S. premiums were up to only \$1,452. Would you be surprised to learn that insurance profits are higher in Colorado than in the United States as a whole?

Why are these people lying? Think about those amazing insurance-company profits. Consider the size of executive salaries. Understand why insurance companies that are in the business of assessing and insuring risk salivate over the ability to charge huge premiums for little or no risk, because tort reform has eliminated risk from the business.

Someone once said, "Fool me once, shame on you—fool me twice, shame on me." Let's not allow ourselves to be fooled again. Get the facts. Educate yourself. Make sure the legal rights of average citizens are the same as those enjoyed by the privileged few. Educate your legislators, the media, your family, friends, and neighbors. Tell anyone who will listen, and even those who won't, that the lying needs to stop—our constitutionally guaranteed rights need to be protected.