



EVAN STEPHENSON

Partner

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Evan Stephenson's practice focuses on insurance, commercial, and personal injury trials and appeals. In each of these areas, Evan has secured outstanding results. Evan has been selected to *Best Lawyers in America* for insurance litigation, and *Colorado Super Lawyers* has named him a Rising Star since 2012. Evan is an elected member of the American Law Institute.

EDUCATION

University of Virginia School of Law, J.D., 2005 John M. Olin Law & Economics Scholarship (2004-2005)

George Mason University, B.A., 2002, History, *magna cum laude*

GOVERNMENT SERVICE

Law Clerk to The Honorable John Marshall Rogers, United States Court of Appeals for the Sixth Circuit

ADMISSIONS

Colorado

HIGHLIGHTS

- Won a federal jury trial for an insurer as counter-claimant after a homeowners association filed a bad faith lawsuit based on an inflated property damage claim.
- Won an "extraordinary remedy" from the Colorado Supreme Court involving the law of implied waiver of the attorney-client privilege.
- Won a motion to dismiss with prejudice a putative class action brought against a Fortune 50 insurance company. The court ruled that the client's standard form accurately described the nature of underinsured-motorist insurance coverage and could not support any claim against the client as a matter of law.
- Won complete affirmance for an insurer in two published opinions from the Tenth Circuit involving an improperly obtained, eight-figure appraisal award.
- Won a Colorado Supreme Court victory for Travelers in a case Law360 named a top-five insurance ruling of 2016.
- Won the first ever summary judgment order within the Tenth Circuit enforcing the client's Telephone Consumer Protection Act exclusions.
- Submitted an amicus brief in a winning appeal before the Colorado Supreme Court regarding the *Twombly* pleading standard.

INDUSTRIES

- Automotive
- Consumer Products & Services
- Medical Devices & Pharmaceuticals
- Insurance

PRACTICE AREAS

- Commercial Litigation
- Mass Torts
- Appellate
- Class Actions
- Environmental Litigation
- Toxic Torts
- Product Liability
- Personal Injury Defense

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BIOGRAPHY

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CASES

- *Sunflower Condo. Assn. v. Owners Ins. Co.*, No. 16-cv-02946 (D. Colo. 2018) - Won a federal jury verdict in a trial for an insurer pursuing counterclaims against a homeowners association that filed an inflated insurance claim and sought more than \$5 million in total damages.
- *State Farm v. Griggs*, 419 P.3d 572 (Colo. 2018) - Won an "extraordinary remedy" from the Colorado Supreme Court reversing a trial-court order implying a waiver of the attorney-client privilege. The unanimous opinion establishes that the mere "fact that privileged information might become relevant in a given lawsuit could not alone be enough to establish an implied waiver."
- Won a motion to dismiss with prejudice a putative class action brought against a Fortune 50 insurance company. The court ruled that the client's standard form accurately described the nature of underinsured-motorist insurance coverage and could not support any claim against the client as a matter of law.
- *Auto-Owners v. Summit Park*, 886 F.3d 852 and 886 F.3d 863 (10th Cir. 2018) - Won complete affirmance in the Tenth Circuit of landmark rulings governing insurance appraisals. In two published opinions, the Tenth Circuit affirmed trial court rulings vacating an eight-figure appraisal award against the client, disqualifying for bias a national policyholder appraiser, and sanctioning the policyholder and its lawyers for misconduct in connection with the appraisal. Terence Ridley and Evan Stephenson argued the two appeals, respectively.
- *Travelers v. Stresscon*, 370 P.3d 140 (Colo. 2016) - Won Colorado Supreme Court reversal of a unanimous court of appeals ruling in a case of national importance to the insurance industry. In its ruling for Travelers, the Court held that the "notice-prejudice rule" does not apply to "no-voluntary-payment" provisions in insurance policies. This was WTO's fifth consecutive, fully-argued victory before the Colorado Supreme Court in two-and-a-half years. Law360 named *Stresscon* one of the top five insurance rulings of 2016.
- *Phoenix v. Heska*, 2017 WL 3190380 (D. Colo. 2017) - Won the first ever summary judgment order within the Tenth Circuit enforcing the client's Telephone Consumer Protection Act exclusions. The court ruled that the client owed no duty to defend an underlying class action as a matter of law.

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- *Warne v. Hall*, 373 P.3d 588 (Colo. 2016) - Assisted in winning a ruling from the Colorado Supreme Court requiring Colorado state courts to apply the *Twombly* pleading standard. WTO co-authored an amicus brief for the Colorado Civil Justice League urging the Court to adopt "plausibility" pleading in Colorado to discourage forum shopping and improve the Colorado justice system.
- *Snyder v. ACORD*, 2016 WL 192270 (D. Colo.) - Successfully represented seven codefendants in a property insurance class action lawsuit in Colorado. Plaintiffs claimed they were systematically underinsured in a "monumental" conspiracy, in violation of federal RICO and antitrust laws, and involving virtually all property insurers in Colorado as well as industry trade groups. WTO served as liaison committee counsel, and the joint defense group ultimately won its motion to dismiss.
- *Allstate Ins. Co. v. Med. Lien Mgmt., Inc.*, 348 P.3d 943 (Colo. 2015) - In this groundbreaking decision, the Colorado Supreme Court reversed a ruling in the Colorado Court of Appeals against Allstate. The supreme court held that medical-lien companies' contracts purporting to assign to them a portion of a claimant's future injury settlement are not true assignments and cannot be enforced against liability insurers.
- *Burnham v. Allstate Indem. Co.*, No. 14-cv-32652 (Arapahoe Cnty. Dist. Ct. Colo. 2015) - Obtained a ruling that a breach of contract by the insurer is a prerequisite to asserting a bad faith claim and dismissing all claims because Allstate complied with its property-loss-appraisal procedure.
- *GK's Gym, Inc. v. Northland Ins. Co.*, No. 14-cv-30621 (Larimer Cnty. Dist. Ct. Colo. 2014) - Won a motion to dismiss all claims, including for statutory penalties, for failure to state a claim. The Court ruled that WTO's insurance company client had correctly denied coverage for a sexual assault on the basis that it was not an "occurrence" under a general liability policy.
- *King v. Allstate Insurance Co.*, No. 11-cv-00103 (D. Colo. 2013) - Following a seven-day trial, the jury returned a complete defense verdict against a nationally renowned plaintiff's bad faith lawyer in a multimillion dollar excess judgment case. Before the King trial, WTO's opposing counsel had never lost a bad faith case. The jury returned with a defense verdict after deliberating for less than two hours.
- *Fann v. Hartford Underwriters Ins. Co.*, 2013 WL 3927664 (D. Colo. 2013) - In this insurance bad faith case, Evan orally argued several discovery motions seeking sanctions for the plaintiffs' discovery conduct. The Court ultimately agreed and imposed issue sanctions.
- *Franklin D. Azar & Associates, PC v. Ferguson* (Denver Cnty. Dist. Ct. Colo. 2012) - Obtained ruling holding that the Azar firm's employment agreement impermissibly restricts the right of departing attorneys to practice law, and rejecting the Azar firm's claim that its "playbook" for litigating cases is a "trade secret."
- *Allstate Ins. Co. v. von Metzger*, 774 F. Supp. 2d 1157 (D. Colo. 2011) - Obtained summary judgment in favor of WTO's client based on an insurance policy's pollution and business exclusions.

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- *Cowan v. Stovall*, 645 F.3d 815 (6th Cir. 2011) - Won a ruling from the U.S. Court of Appeals for the Sixth Circuit that overturned the trial court's verdict in a federal habeas corpus appeal by WTO's pro bono client.
- *Allstate Property & Casualty Insurance Co. v. Salazar-Castro*, No. 08-2110-CM, 2011 WL 1668966 (D. Kan. 2011) - Obtained partial summary judgment for Allstate and dismissal of the opposing parties' affirmative defenses and their claims for underinsured motorist benefits. After a single day of trial, the defendants agreed to a stipulated judgment in Allstate's favor. Evan argued and won two key issues on the first day of trial that helped end the case in the client's favor.

REPRESENTATIVE CLIENTS

Allstate - Regional Trial and Appellate Counsel

BAR & COURT ADMISSIONS

Colorado

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Tenth Circuit

U.S. District Court for the District of Colorado

U.S. District Court for the Northern District of Illinois

LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

American Law Institute, Elected Member

Martindale-Hubbell AV[®] Peer Review Rated

Colorado Rising Stars

Insurance Coverage, 2012-2018

The Best Lawyers in America

Insurance Litigation, 2018-2019

Colorado Civil Justice League

Lawyer of the Year, 2011

Law Week Colorado

Up-and-Coming Lawyer, 2011

International Association of Defense Counsel

Defense Research Institute

Rex E. Lee Law Society

Honorable Order of Kentucky Colonels, member

ARTICLES & PRESENTATIONS

Articles

- "Will the Colorado Supreme Court Prevent a Potential Statewide Auto Insurance Crisis? The Impact of the Court of Appeals' Decision in *Fisher v. State Farm*," co-author, *Denver Law Review* (April 5, 2017).
- "Survival of the Fittest?: The Origins and Evolution of the Substantial-Similarity Doctrine," *The Wayne Law Review* (Summer 2011).

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- "Costing 'Early Offers' Medical Malpractice Reform," *7 Engage: The Journal of the Federalist Society Practice Groups*, at 155 (October 2006).
- "Early Offers: An Approach to Medical Malpractice Reform, Contingencies," at 42 (September/October 2006).
- "Evading the No Child Left Behind Act: State Strategies and Federal Complicity," *B.Y.U. Educ. & L.J.* 157 (2006).
- "Alone and Out of Excuses: The Tenth Circuit's Refusal to Apply Federal Rule of Evidence 407 to Product Liability Actions," *36 N.M. L. Rev.* 391 (2006).
- "An Economic Model Costing 'Early Offers' Medical Malpractice Reform: Trading Noneconomic Damages for Prompt Payment of Economic Damages," *35 N.M. L. Rev.* 259 (2005).

Presentations

- "What the Hail? Exposing Biased Insurance Appraisers," presented at the 28th Annual ACIC General Counsel Seminar Survey (July 28, 2017).
- "Hot Coffee - Tort Reform," presented at University of Colorado Law School, (March 12, 2012).