



## EVAN STEPHENSON

### Partner

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**An elected member of the American Law Institute, Evan Stephenson focuses his practice on insurance, commercial, and class action litigation, with a particular emphasis on trials and appeals. In each of these areas, he has secured outstanding results for his clients. Based on input from clients, colleagues, and industry peers, Evan is listed in *Colorado Super Lawyers* and *The Best Lawyers in America*.**

### 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 first-in-nation opinion disqualifying lawyers from suing a former client.
- Won 10th Circuit appeal for Owners Insurance Co. against inflated insurance claims.
- Won a defense jury verdict for an insurance company against a policyholder who failed to comply with the statute of limitations.
- Won a trial court ruling for Owners Insurance Co. on remand from the Colorado Supreme Court, proving that a policyholder-appointed appraiser was improperly biased. The trial court vacated *in toto* a \$3 million property-damage appraisal award.
- Won a groundbreaking ruling from the Colorado Supreme Court requiring insurance appraisers to be fully unbiased and impartial.
- Won a complete jury verdict for an insurance carrier in a bellwether bad faith trial involving *Nunn* agreements.
- Won a federal jury trial for an insurer as counter-claimant, and won recoupment of a past coverage payout, after a homeowners association filed a bad faith lawsuit based on an inflated property damage claim.

### INDUSTRIES

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

### PRACTICE AREAS

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

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## BIOGRAPHY

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## CASES

### Trials

- Won a defense verdict for an insurance company in Denver County District Court against a policyholder who had sued for uninsured motorist benefits. The jury found in less than half an hour that the plaintiff had failed to cooperate or comply with the statute of limitations.
- *Owners Ins. v. Dakota Station II Condo Ass'n, Inc.*, No. 2015-cv-31037 (Jefferson Cty. Dist. Ct. Colo. 2020) - Won for Owners Insurance Company in the trial court on remand from the Colorado Supreme Court, proving that a policyholder-appointed appraiser was improperly biased and had inflated a \$3 million property-damage appraisal award. The court vacated the inflated award *in toto*, granting all the relief Owners requested.
- Won a jury verdict in a bad faith action in Broomfield County District Court, Colorado, for a Fortune 50 insurer in a bellwether trial involving a *Nunn* agreement and a judgment over 30 times the insurer's policy limit. The jury found in favor of the client in approximately two hours.
- *Sunflower Condo. Ass'n 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. The Court entered judgment for the client for the full amount that had been paid in benefits, plus interest and costs.
- *Baker v. The Phoenix Ins. Co.*, No. 12-cv-01788 (W.D. Wash. 2014) - Completed a five-day trial of a multimillion-dollar bad faith case. Obtained a favorable settlement after evidence closed.
- *King v. Allstate Insurance Co.*, No. 11-cv-00103 (D. Colo. 2013) - Following a seven-day trial, WTO won a defense verdict against a nationally renowned plaintiff's bad faith lawyer in a multimillion-dollar excess judgment case. Before this trial, WTO's opposing counsel had never lost a bad faith case. The jury deliberated less than two hours before returning a defense verdict.

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## Appeals

- *Persichette v. Owners Ins. Co.*, 2020 CO 33 - Won a groundbreaking state supreme court ruling disqualifying a client's former lawyers from participating in a lawsuit against the client. The published opinion is the first state supreme court decision that disqualifies lawyers from pursuing litigation against an insurance-company client they previously represented.
- *Sunflower Condo. Ass'n v. Owners Ins. Co.*, No. 18-1478, 2020 WL 598981 (10th Cir. Feb. 7, 2020) - Won a significant appeal for Owners Insurance Company against a condominium association that filed an inflated insurance claim and sought more than \$5 million in total damages.
- *Owners Ins. Co. v. Dakota Station II Condo. Ass'n, Inc.*, 443 P.3d 47 (Colo. 2019) - Won a groundbreaking ruling from the Colorado Supreme Court requiring insurance appraisers to be fully unbiased and impartial.
- *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."
- *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.
- *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.
- *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.
- *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.

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## Class Actions

- *Snyder v. ACORD*, 2019 WL 319407 & 2016 WL 192270 (D. Colo.) - 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 counsel and argued the successful motion for the fee award of more than \$1.5 million.
- 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.
- *Tietzworth v. Sears, Roebuck and Co. and Whirlpool Corp.* (N.D. Cal. May 4, 2012) - Won denial of certification of a putative nationwide class action complaint alleging that certain Whirlpool washing machines contained defective electronic control boards that caused the machines to malfunction and could potentially cause them to "explode."
- Won a motion to dismiss one of the nation's largest marijuana manufacturers facing labeling claims in the first class action brought against a marijuana grower in Colorado.

## Commercial Litigation

- *Lobato v. Travelers*, No. 18-cv-00504-REB-MEH (D. Colo. 2019) - Secured a "walk away" dismissal of a multimillion-dollar underinsured-motorist lawsuit for bad faith and punitive damages. One month before trial, the plaintiffs agreed to drop the lawsuit, and the client paid nothing.
- *Franklin D. Azar & Associates, PC v. Ferguson* (Denver Cnty. Dist. Ct. Colo. 2012) - Won a 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."
- Obtained a favorable confidential settlement for a Fortune 500 product manufacturer in an arbitration. The client sought a multimillion-dollar recovery from a supplier that had breached its indemnity obligations.
- Defending a Fortune 500 product manufacturer from over \$250 million in indemnity claims alleging that its products caused environmental contamination.
- Representing a national insurance carrier in pursuing over \$75 million in losses arising from a wildfire from an at-fault party.
- Represented a group of investors in an international RICO and fraud action brought in federal court to reclaim governance of an energy company.
- Defended an energy company from an action brought by a contractor seeking multimillion-dollar recovery arising from a major pipeline construction project.

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- Obtained a favorable settlement for a provider of contract and claims administration services for vehicle service contracts in a lawsuit alleging tortious interference with contractual relations.
- Represented the former CEO and president of a major internet retailer, and recovered from the defaulting party money owed plus attorney fees on a substantial promissory note.

## 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 Eastern District of Missouri

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

## LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

American Law Institute, Elected Member

Restatement of the Law Third, Torts

Martindale-Hubbell AV<sup>®</sup> Peer Review Rated

*Benchmark Litigation*

40 & Under National Star, 2019

*The Best Lawyers in America*

Insurance Litigation, 2018-2019

*Colorado Super Lawyers*

Insurance Coverage, 2019-2020

*Colorado Rising Stars*

Insurance Coverage, 2012-2018

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

- "Just Win, Baby: The Tenth Circuit Rejects the "Anything Goes" Tactics of the Hail-Litigation Gold Rush," 96 DENV. L. REV. 267 (2019).

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- "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).
- "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).