



Patton & Ryan LLC  
Attorneys at Law

## PATTON'S GENERAL TORT NEWS

### A WORD FROM JOHN PATTON:

"SOME PEOPLE WANT TO CHANGE THE ILLINOIS CONTRIBUTION ACT. READ OUR "SIDEBAR" TO DISCOVER WHY THAT ISN'T IN YOUR BEST INTERESTS, AND WHAT YOU CAN DO TO STOP THE LEGISLATION."

-JOHN



### PATTON & RYAN REACH NOT GUILTY VERDICT IN MEDICAL MALPRACTICE CASE

*Willing v. Anthony Quebedeaux, DPM, d/b/a Helena Foot Specialists*

John W. Patton, Jr., of Patton & Ryan, LLC, achieved a major victory in this jury trial in Helena, Montana. The plaintiff, William Willing, experienced problems with his toes, which defendant Dr. Quebedeaux diagnosed as a hammertoe deformity. After the operation to correct this problem, Willing experienced pain, discomfort, and discoloration of the toes. He eventually sought a second opinion; one of the toes was eventually partially amputated by another doctor; the remaining toes were deformed. Willing sued Quebedeaux under a theory of medical malpractice. The plaintiff argued that Quebedeaux's treatment of him fell below the standard of care, both during and after the operation; he also argued that he was not adequately informed of the dangers of the procedure before he gave his consent. The plaintiff claimed lost wages, pain and suffering, permanent disability, and medical expenses.

The defense, led by John Patton, was effective in arguing that Quebedeaux's treatment plan was within the acceptable standard of care. John was retained on short notice to lead and implement a more effective defense and trial strategy. By John's presenting of credible expert witnesses as well as

Quebedeaux's own testimony, the defense was able to show that Quebedeaux's treatment, far from being substandard, was in fact conservative and correct. Quebedeaux's interpretation of Willing's symptoms was accepted by authorities on the subject, and his follow-up treatment was also within what authorities would recommend. Moreover, the plaintiff's argument that he did not give effective informed consent to the procedure was simply not credible.

Although the plaintiff argued his case forcefully, the jury returned a defense verdict. This was a particularly important victory given that the plaintiff was a retired army colonel, was represented by the former chief judge of the Montana Supreme Court, and was thus a sympathetic and charismatic plaintiff. To defeat liability altogether in such a case represents a significant achievement.

In post-trial motions, the plaintiff argued that he was denied a fair trial because of irregularities in jury selection as well as by claimed prejudicial defense trial tactics. Due to the crafting of careful defense arguments pinpointing the flaws in these unsupported charges, the plaintiff's motion was soundly rejected by the court and the defense verdict was sustained.



## PATTON & RYAN LLC ADDS TO AGGRESSIVE, SENIOR TRIAL TEAM



Since Patton & Ryan clients demand aggressive and experienced trial lawyers to defend and try some of the largest catastrophic loss cases in the country, **C. F. Boyle, Jr.** has joined the Firm as a partner to provide further support to and enhance our trial teams. Chip is licensed to practice in all state and federal courts in Illinois and Michigan and brings with him thirty years' experience in trials and appeals of personal injury and death litigation involving transportation law, construction law and product liability.

He is a former Michigan judicial appointee, President of the Michigan

Association of Defense Trial Counsel, law school lecturer in trial practice and member of the Editorial Advisory Board of Lawyers Cooperative Publishing Company. Chip moved his home and practice to Illinois in 1998 and continues to represent defense and insurance clients in both jurisdictions. He has tried 100+ cases to verdict, first chair, and has successfully represented clients in twenty-one published decisions in a variety of appellate forums including the Michigan Supreme Court, Michigan Court of Appeals, United States Court of Appeals for the Sixth Circuit and, most recently, in the Supreme Court of the United States, in a civil RICO claim brought against his client, a Michigan insurer, wrongfully accused of witness tampering and conspiracy to suspend workers' compensation benefits.

Chip adds to our already strong senior trial team at Patton & Ryan and will also be actively involved in Firm management, particularly trial training and management and trial of catastrophic loss cases. Chip may be reached at direct dial (312) 261-5167 or at [cboyle@pattonryan.com](mailto:cboyle@pattonryan.com).

## PATTON & RYAN REACHES FAVORABLE SETTLEMENT IN PRODUCTS CASE

*Casey v. Tyco Healthcare Corp.*

Patton & Ryan recently reached a highly favorable settlement of this complex case. The alleged malfunction of a surgical stapler during a colectomy caused serious and disabling injuries. Interestingly, the plaintiff did not name the surgeon who used the stapler as a defendant; what should have been a malpractice case instead became a hard fought products case.

Because the doctor was absent, defendants chose to take full advantage of the "empty chair" defense. We argued that the doctor misused the equipment and did not read its instructions and warnings. The equipment itself was well-designed, safe, and well-documented. We elicited testimony from the designers and marketers of the equipment about its high level of safety and its record of performance. We also presented experts who testified that the equipment performed up to the standards expected of similar medical devices.

John Patton prepared the case to the brink of trial prompting plaintiff's counsel to request mediation. Defendant's full preparedness for a multi-week trial led plaintiff to drastically drop an initial, non-negotiable demand of \$15 million to a fraction of the claimed economic damages that would have been presented to the jury. This represented a tremendous victory in this medical device case.

## MEET OUR NEWEST ASSOCIATES



Back (L to R): Helen Aavik, Kevin Kelly, & Karen Mitch  
Front (L to R): Donna Rizzuto and Mitzi Heniff

## ILLINOIS APPELLATE COURT: SETTLING DEFENDANTS MUST APPEAR ON THE VERDICT FORM

*Ready v. United/Goedecke Services, Inc.*,  
367 Ill. App. 3d 272 (2006)

In a significant victory for the Illinois defense bar, the Illinois Appellate Court, First District, ruled that under Illinois' code of civil procedure, defendants that settle prior to trial shall appear on the verdict form for purposes of apportionment of fault. The case, tried by John W. Patton of Patton & Ryan LLC, was a wrongful death case in which a worker was killed while constructing a pipe-fitting project at a power plant near Joliet, Illinois. The worker's estate brought a wrongful death action against the premises defendant, the general contractor on the project, and a subcontractor (United). All save United settled prior to trial. The trial judge ruled, pursuant to then-current precedent, that the settled defendants would be excluded from the verdict form. As such, the jury was never given the opportunity to consider whether the premises defendant or the general contractor were at fault for the accident, and as such, United was assigned an unfairly large percentage of the fault for the accident.

On appeal, the First District ruled that the trial court's decision to exclude the settled defendants from the verdict form was based on an incorrect understanding of the law. The statute in question, 735 ILCS 5/2-1117, states that "defendants sued by the plaintiff" should appear on the verdict form. This phrase, the First District said in its opinion, should be taken to mean "defendants named by the plaintiff at any time," not "defendants remaining in the case at the time of trial." The court explained, "...a remaining defendant's culpability should be assessed relative to the culpability of all defendants, including settling defendants. Only in this manner can the intent of section 2-1117, that minimally culpable defendants be

held minimally responsible, be achieved." The plaintiff argued that the result of placing settling defendants on the verdict form would result in an unfair windfall to the remaining defendants: since defendants already get a set-off from their verdict to account for amounts already paid by settling parties, the plaintiff argued that also adding settled defendants to the verdict form would account for those defendants twice. But the Court did not agree with this argument: "United will not receive a 'double benefit'; rather, United will be assessed its degree of fault relative to the fault of all defendants sued by the plaintiff as well as the plaintiff's fault. The fact that there is a set-off of the total judgment for the settlement amount is not a 'double benefit'; it is in essence the settling defendants' payment of their portion of the total judgment."

The case was argued before the Supreme Court of Illinois on May 22, 2007. John Patton appeared and was instrumental in outlining the arguments for Appellate Counsel.

In addition to its obvious benefits for our clients and for the cause of justice, this ruling will also have a direct effect on cases which Patton & Ryan has pending. If affirmed, Illinois juries will now have the full facts available to them, instead of those distorted by plaintiffs' counsel to eliminate true culpability.

### SIDEBAR

In response to the *Ready* case described above, the politically connected plaintiff's bar of Illinois sprung into action. In February, state Senator John Cullerton, a Democrat representing portions of Chicago's north side, introduced an amendment to section 2-1117 to explicitly exclude settled defendants from verdict forms. It adds the following language: "The apportionment of fault under this Section only applies to the parties still remaining in the case at the time of the final determination

by the trier of fact. It does not apply to the defendants or third party defendants that have been dismissed for any reason, including settlement."

This legislation, if passed, would short-circuit our work in the courts to place settled defendants on Illinois verdict forms. This would result in fundamental unfairness. Essentially, if this legislation eventually passes, defendants who cannot reach settlement before trial would pay a premium for that: juries would never hear that there are other culpable parties and would therefore assign all the blame to the remaining defendants for the sole reason that they are the only people left in the room against whom blame can be assigned because of their deep pockets. This defeats the purpose of assigning minimal blame to minimally culpable parties, and thereby introduces deliberate flaws into the civil justice system. In short, this is not a matter of plaintiff or defense, or of Democrat or Republican: it is a matter of fundamental fairness.

Preserving appellate error is critical to a successful trial practice. The *Ready* case exemplifies our skill in that regard and our commitment to success at every level.

Patton, joined by the defense bar, launched into action to defeat this legislation. However, there should be no mistake that such pro-plaintiff legislation will continue to be proposed. We will continue to enlist our clients and the defense bar to challenge and defeat such legislation in the future.



## PATTON & RYAN WIN *PRO BONO* VICTORY IN POLITICAL ASYLUM CASE

*In re: Koffi Adjnanor*

In a case exemplifying Patton & Ryan's aggressive dedication to pursue justice, this time on behalf of a disadvantaged *pro bono* client, United States Immigration Court Judge John Brahos granted Koffi Adjnanor's political asylum petition after a contentious trial. Mr. Adjnanor was represented at trial by Patton & Ryan, LLC.

Mr. Adjnanor, a citizen of the Togolese Republic, sought political asylum in the United States after being tortured at the hands of the then ruling Togolese government. Mr. Adjnanor, a successful pharmaceutical company owner, joined a dissident political party in the mid 1990s and by 1998 had become a party leader.

He was arrested and tortured by the government on not fewer than five occasions, but, after his last imprisonment, managed to escape to neighboring Benin, where he lived in hiding for almost 13 months before securing a visa to the U. S.

Our team presented four live witnesses corroborating Adjnanor's version of events at trial. We also secured affidavits from doctors and psychiatrists to the effect that Mr. Adjnanor's physical and mental condition was consistent with his having been brutally tortured.

Presiding Judge Brahos grants *fewer than 25%* of the petitions for asylum assigned to his courtroom for review, and initially took a harsh position with respect to Mr. Adjnanor. We eventually convinced the judge that Mr. Adjnanor had been persecuted for his political activities, but still had to overcome an immigration rule denying asylum to petitioners that firmly resettled in another, non-discriminating country prior to arriving in the U. S.

The petition was opposed on this ground as well since Mr. Adjnanor had resided briefly in Benin in an effort to escape from torture and political persecution. Patton & Ryan secured the expert testimony of Dr. Jeffrey Lawrence, who testified that Togolese death squads operate with impunity in Benin and other West African nations, effectively closing off that avenue of repatriation.

The asylum system is designed to keep people out of the United States. Exceptions are rare and only allowed in the most unusual cases. All involved were pleased that Mr. Adjnanor was afforded an opportunity to prove his visa and entry worthiness before Judge Brahos, and are grateful that the judge listened to, and carefully balanced, the evidence presented during trial. This was so due to comprehensive trial preparation and exacting performance – a Patton & Ryan attribute that Mr. Adjnanor, now a free man, has come to appreciate.

## CONTACT INFORMATION



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Patton & Ryan, LLC, offers a variety of legal services locally and nationally. We would be happy to visit your office to discuss our highly successful and cost-effective approach to litigation. Please refer all inquiries to John W. Patton, Jr., at (312) 261-5166, or, via email at, [jpatton@pattonryan.com](mailto:jpatton@pattonryan.com)