



## A WORD FROM JOHN PATTON

At Patton & Ryan, we know that it is our privilege to represent your interests.

I would like to personally thank all of our clients for their support and for another successful year.

Have a happy and safe Holiday season and take my wish for only the best personal and professional successes in 2008.

John Patton, Jr., at (312) 261-5166, or, via email at, [jpatton@pattonryan.com](mailto:jpatton@pattonryan.com).



## PATTON & RYAN DEFEAT WRONGFUL DEATH CASE IN HOTLY CONTESTED JURY TRIAL

*Markham v Vancura*

*Circuit Court of Winnebago County, Illinois*

Patton & Ryan continues to excel at trial. Dave Ryan and Fernando Bustamante recently received a verdict of no liability for our clients, a gasoline tanker trucking company from Wisconsin and its driver, in a wrongful death action in the Circuit Court of Winnebago County, Rockford, Illinois.

This was a head-on collision between plaintiff's passenger car and our client's gasoline tanker truck, at 6:00 am in rural Winnebago County. It was early February 2000, and it had snowed a day or two before the accident, leaving several inches of snow covering the local farm fields. Wind was blowing snow from the fields across the roads in various places, with a significant drifting occurring on the entire road just south of the point of the collision.

Earlier that morning, two other vehicles had traversed this snow/ice and had lost control and skidded off the road. As our tanker truck driver headed southbound, he saw these two other vehicles off the road, and began to slow, but it was too late, as the plaintiff's decedent came over a small hill, hit the snow/ice and skidded into our driver's vehicle. The sympathy factor was overwhelming as the decedent plaintiff was a young woman with close family members.

Our client's semi-tractor tanker was inspected after the accident and found to have 2 bad brakes, and the road conditions were adverse. Plaintiffs presented the testimony of an Illinois State Trooper who inspected the brakes and testified that the bad brakes existed before the accident. Plaintiff also presented the testimony of two retained expert witnesses who said our driver was going too fast for conditions and that he could have stopped before he reached the collision point, if he had had good brakes.

Overcoming this adverse testimony, we focused the case on the real issues, which were the fact that the plaintiff's decedent hit a patch of snow/ice, which had blown onto the road from the adjacent fields, and lost control of her car, sliding into our driver's lane. We presented evidence that our driver had properly slowed down when he recognized a hazard, applied his brakes and kept his truck under control, to try to avoid the accident. The decedent was a 26 year old woman who was survived by two minor children. In his closing argument, Plaintiff's attorney asked for \$3 million. The jury returned its verdict of no liability in 20 minutes.

The pretrial demand was \$5 million, making this case a "must try" for the client and Patton & Ryan. Plaintiff's attorney advised that he had presented the case to a focus group, which had found our clients to be 100% liable. ●

### PATTON & RYAN REDUCE EXPOSURE TO THE BISHOP OF CHICAGO BY \$23 MILLION

John W. Patton Jr. of Patton & Ryan was retained by the Catholic Bishop of Chicago to defend an admitted liability case involving a student enrolled in a Catholic elementary school who sustained catastrophic injuries when a school-owned television stand tipped over and crushed the young man's skull. The trial team at Patton & Ryan received the assignment only three days prior to the commencement of trial in the Cook County Circuit Court. Plaintiff's demand before and at trial was \$42 Million.

On October 23, 2003, minor Plaintiff Mariano Hernandez, then a 4th grade student at St. Genevieve's School, was attending an audio-visual class with fellow schoolmates. The classroom was equipped with a television stand supporting a 27" set, angled downward to permit viewing by the children. During the set-up process, the stand tipped and the television fell forward directly onto the Plaintiff's head at a force estimated at 5000 pounds psi. The stand itself was 20+ years old and generic with no labeling or manufacturer's data attached. No manufacturer could be identified by prior counsel's discovery efforts so the Bishop was the only defendant when the case went to trial.

Plaintiff's injuries were significant; left hemiparesis, traumatic brain injury, seizure disorder and dysarthria, but residuals were disputed. At trial, all of Plaintiff's experts, as well as the treating physicians, including his neurologist, neuropsychologist, physiatrist and rehabilitation specialist, opined that he was permanently impaired such that he needed full-time, daily care and would be unemployable as an adult. Plaintiff's life-care plan exceeded \$15 million. This battery of physicians also characterized the minor plaintiff as mentally retarded for life since he had lost a substantial portion of his frontal lobe. During trial preparation, it was determined that the defense theme would be to point to a pre-injury learning disorder in explaining the Plaintiff's poor school and social skills.

The Patton & Ryan team prepared its experts accordingly, and skillful cross and direct expert witness examinations by John Patton persuaded the jury that Plaintiff's experts had overstated their case.

The jury did not accept Plaintiff counsel's permanent physical impairment and cognitive deficits arguments and returned a verdict of less than half of the expected pre-trial exposure estimate.

Patton & Ryan specializes in defending just such cases. Here, with only three day's preparation, a high profile, catastrophic case was successfully prepared and defended by the best trial team in the business. ●

#### TIPS FOR ADJUSTERS AND INVESTIGATORS ON THE IMPORTANCE OF RECORDED WITNESS STATEMENTS

The taking of recorded statements from eye witnesses to catastrophic events is a lost art in this day and age of office email and desk investigations. Patton & Ryan strongly encourages its clients to retain this important investigative tool since, many times, these statements prove to be the difference in persuading a jury to accept or reject a critical but contested fact. There are a few pitfalls, however, among them the following:

- Never accept the transcript as accurate unless you personally review the audio. Many times, a pivotal word such as "not" is inadvertently missed in transcription: "I'm sure that the driver of the black car was speeding..." versus "I'm sure that the driver of the black car was not speeding..."
- Many times, the transcriptionist will leave blanks in colloquy when the words are hard to decipher. Careful review can eliminate 99% of these blanks and make an easy cross examination by opposing counsel very difficult indeed.
- Always maintain the audio tape in a safe place; the best place is defense counsel's file, since many times a turncoat witness will deny giving the statement and/or challenge the accuracy of the transcript. In that case, we have to prove the statement. What better proof than the audio tape itself? It's virtually impossible to challenge the audio and the turncoat witness who does so is made to look incredible.
- Be very careful when you provide statement transcripts to your expert or other non-privileged witnesses. A privileged, and sometimes adverse, statement may become inconveniently discoverable due to careless dissemination. Major differences exist in the various jurisdictions concerning the discoverability of these statements. Always ask for the opinion of defense counsel on this important evidentiary issue.

## **MEDICAL MALPRACTICE TORT REFORM HELD UNCONSTITUTIONAL IN COOK COUNTY CIRCUIT COURT**

Cook County Circuit Court Judge Diane J. Larsen has declared that all provisions of the medical malpractice tort reform Act are unconstitutional and therefore has determined that the Act is unenforceable in Cook County. The case, *Lebron v Gottlieb Memorial Hospital, et al* was decided on November 13, 2007. All previously filed Cook County cases were consolidated with *Lebron*, consequently, all such similar cases pending in Cook County are within the ambit of Judge Larsen's decision.

Patton & Ryan clients may recall that in 1997, the Illinois Supreme Court, in the much cited *Best v Taylor Machine Works* decision, determined that similar legislation enacted in 1995 was unconstitutional. The mid-1990s effort by the Illinois legislature that created tort reform applicable to a wide variety of civil cases was invalidated by the Supreme Court in *Best*.

In 2005, the Illinois legislature tried again, this time limiting certain aspects of tort reform to medical malpractice cases, only. At the time of its passage, the legislation was hailed by doctors and insurers as the vehicle that would stop the mass exodus of doctors from Illinois; doctors who could not obtain or afford medical malpractice insurance coverage.

Following the Supreme Court's framework in *Best*, Judge Larsen determined that this current legislative effort was unconstitutional on two grounds: (1) it was impermissible "special interest" legislation, that is, it only benefited health care providers, and (2) it violated the separation of powers doctrine since the legislated caps on non-economic damages amounted to a legislative, rather than judicial, remittitur on damages.

As predicted, physician, insurance and patient advocacy groups reacted immediately and strongly to the decision, complaining that the will of the people had again been thwarted by the well-funded plaintiffs' trial lawyer lobby. Since a state statute has been declared unconstitutional by a circuit court, the case may be appealed directly to the Illinois Supreme Court rather than to the intermediate Appellate Court. Patton & Ryan will continue its efforts to encourage the Supreme Court to take up the case and order a reversal, and will include updates in future newsletter issues. ●

### **MEET OUR NEWEST ASSOCIATES**



(L to R): Michael Vranicar and Kristen A. Schank



# HAPPY HOLIDAYS FROM THE STAFF AT PATTON & RYAN



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