



**Patton & Ryan LLC**  
Attorneys at Law

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Issue 14

## PATTON'S GENERAL TORT NEWS

Fall 2008

### A Word From John W Patton, Jr.

Since our last issue we have averaged two catastrophic trials a month all of which had successful results by settlement or verdict.

The successes are simply attributed to good old fashioned trial preparation. If your opponent knows you regularly try cases to verdict and do so with great preparation, you can maximize your chances of a favorable result every time.

Please call me at your convenience if we can assist you in any way. - John

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### PATTON & RYAN ACHIEVES DEFENSE VERDICT IN \$12 MILLION PRODUCTS LIABILITY CASE INVOLVING PROFOUND BRAIN DAMAGE

*Brannon v. Pep Boys, et al. No. 06 L 374 (Lake County, Illinois)*

Patton & Ryan achieved a defense verdict on behalf of nationally-known target defendant, The Pep Boys, in a products liability jury trial before the Lake County Circuit Court in Waukegan, Illinois. As is so often the case in large-exposure matters, Patton & Ryan received the trial assignment and took over the case from prior counsel only 45 days before trial was scheduled to commence. The plaintiff, Jimmie Brannon, was a 30 year old resident of Trevor, Wisconsin, who fell and sustained numerous injuries, including open headed severe traumatic brain injury, while operating his Panterra Kamikaze motorized skateboard on a street near his home. Those injuries included cognitive defects and impairment of sensory perception in all five senses brought about by massive skull fractures that produced an open head brain injury. Those injuries were objectively documented and not subject to serious dispute. He alleged that his injuries were the result of the unreasonably dangerous condition of the product. He purchased the product at a Pep Boys location in Lake County, Illinois. The accident occurred during Plaintiff's first use. The skateboard was made in China and imported, packaged, and distributed by a now-defunct California corporation.

At trial, the plaintiff alleged that the skateboard was inherently dangerous in design, had numerous manufacturing defects, and had inadequate warnings. A battery of plaintiff's well known and experienced engineering experts had examined the product and concluded that it had a misaligned motor, misaligned wheels, poor throttle and brake controls and an operator emergency egress design that prevented safe exit. All of these defects, they opined, caused the board to wobble throwing Brannon to the asphalt road at 15 mph. The plaintiff requested in excess of \$12 million in damages: including a \$7 million life-care plan and \$2 million in lost wages. Plaintiff alleged that his brain injury rendered him unable to work and in need of substantial future medical treatment for life.

Patton & Ryan successfully argued for the application of Wisconsin law rather than Illinois law to this action. This allowed the defense of contributory negligence, which is unavailable in Illinois in strict products liability actions. The plaintiff was operating the skateboard on a public roadway, on the wrong side of the street, and approaching a blind turn in the road. He also was not wearing a helmet or other safety equipment. To that end, Patton & Ryan also successfully argued that the "helmet defense" was valid in this case under Wisconsin law, as a matter of failure to mitigate damages. Under Illinois law, little or none of this evidence would have been admitted, and the defense would have been unable to argue that Mr. Brannon was contributorily negligent.

At trial, John W. Patton, Jr., convincingly argued, from the physical and circumstantial evidence, that the plaintiff's injuries occurred when he swerved to avoid a van that may have been rounding the blind turn. The van driver was never named as a party in the case. Moreover, there was no competent evidence, Patton argued, that any condition of the product contributed to causing this accident.

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## FORTY MINUTE DEFENSE VERDICT IN PROXIMATE CAUSE CASE

One of the advantages of Patton & Ryan's trial practice is its training of our associates. While we have a hard earned reputation for specializing in catastrophic loss cases, the fact is we have a thriving lower exposure litigation practice that is handled by our associates. Their training and experience on big cases makes them excellent candidates to try the smaller cases in a cost-effective way for our clients.

A perfect example of this is the *Knox v. Jobe* case recently tried by our associate Zach Vaughn. Mr Vaughn achieved a not guilty verdict in a trucking case after a four day jury trial in Cook County. Patton & Ryan was retained by a trucking company and its driver, who had pulled over to the shoulder of Interstate 80 after his windshield wipers failed in the rain. Plaintiff lost control of her vehicle and struck the rear of defendant's trailer, suffering a punctured lung, six fractured ribs and claimed lifetime residuals. She testified that the trailer was not positioned on the shoulder far enough, and that she was forced to make an evasive lane change, causing her loss of control. After the accident, the truck driver was cited with and pled guilty to driving over his federally regulated hours for the day. Patton & Ryan sought to exclude the hours violation, but the trial judge ruled it was relevant, reasoning that the jury could properly draw an inference of fatigue on the part of the truck driver.

At trial, Plaintiff argued that driving over his hours caused the truck driver to park his vehicle too close to the roadway. Plaintiff also alleged the truck driver was negligent in failing to adequately warn approaching motorists with properly spaced reflective triangles, per Federal Motor Carrier Safety Regulations. Plaintiff argued that had the triangles been properly spaced, Plaintiff would have had enough time to make a safe lane change. Mr. Vaughn argued that the truck driver maneuvered as far on to the shoulder as practicable, given the circumstances, and that our client's violation of the federal regulations had nothing to do with the accident. The jury deliberated for 40 minutes before returning its unanimous defense verdict.

Arguing proximate cause in cases where coincidental negligence is in evidence requires consummate preparation and special trial skills. Trying cases the Patton & Ryan way produced this very favorable result. ●

## Summer Fun!



*John Patton, Jr. and staff enjoy the summer sun at a Cubs game.*



*Dave Ryan (right) and staff recovering after the Race Judicata 5k*

*...continued from page 1*

### **Brannon v Pep Boys**

Following Wisconsin law, this Illinois jury answered a verdict consisting of special interrogatories, as requested by Patton and vigorously opposed by plaintiff's counsel. When asked whether the condition of the product was a cause of the plaintiff's injuries, the jury answered "NO." In response to the question as to what percentage of the plaintiff's injuries were caused by the product as opposed to the plaintiff's negligence, the jury answered that the plaintiff's negligence represented 100% of the cause of the accident. Upon reading those answers, the court announced a defense verdict.

Patton & Ryan are experts in dropping into catastrophic loss cases at the last minute to take them to verdict. Please consider us for your next case. ●

## PATTON & RYAN URGES INSURERS TO FIGHT PAYMENT OF EXCESSIVE MEDICAL BILLS, AS NOW EMBRACED BY THE ILLINOIS SUPREME COURT

For the last several years, Patton & Ryan trial attorneys have faced uncertainties in the application of the collateral source rule when arguing plaintiff's economic damages in jury trials. Under that rule, benefits received by the plaintiff from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor.

Medical providers frequently accept a discounted rate from private insurance providers as full satisfaction for their services. With regard to Medicare and Medicaid, the federal government requires medical providers who accept Medicare and Medicaid payments to agree to accept what they determine is reasonable payment in full satisfaction of their bills, and not to bill the patient/recipients for any unpaid excess. The issue at the center of the recent cases has been whether the plaintiff may present evidence of pre-discounted medical bills as part of her losses in the tort action. Should a plaintiff be able to recover the full amount billed for their medical expenses or only the discounted amount accepted by the provider?

In 2005, the Illinois Supreme Court addressed but did not fully resolve the issue in *Arthur v. Catour*. In that case, the court held that the plaintiff's damages were not limited to the amount that her private insurance company paid to her health-care providers. Assuming that those providers' bills are proven reasonable, the plaintiff could submit the entire amount of her medical bills to the jury. However, in *Arthur*, the medical bills were paid by a private insurer. The court in *Arthur* did not resolve the issue of whether the principle would apply when the plaintiff's medical bills were paid by Medicaid, a welfare program, or Medicare, medical care for which the plaintiffs are not billed at all. In an earlier opinion, *Peterson v. Lou Bachrodt Chevrolet Co*, the court held that the plaintiff could not recover the value of free medical services from Shriners' Hospital for Crippled Services and forbade recovery when the plaintiff had not incurred any liability.

The Illinois Supreme Court finally resolved the questions regarding the collateral source rule in the unanimous decision of *Wills v. Foster*, decided in 2008.

In *Wills*, the court held that a prevailing personal injury plaintiff's recovery of the reasonable value of her medical expenses is not limited to the amount actually paid, whether by Medicare, Medicaid, private insurance, or some other source. The court chose to focus on the value of the loss rather than its cost. The court carefully examined the three approaches for valuing the amount of the loss suffered by the plaintiff as: (1) actual amount paid; (2) benefit of the bargain; and (3) reasonable value. After discussing each approach, the court noted that its language in *Arthur* did not make it clear whether the court had adopted a reasonable-value approach or the benefit-of-the-bargain approach. The *Wills* court made it clear that it now adopted the reasonable-value approach and overruled *Peterson*.

Among its reasons for its position, the court noted that the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons. Further, the court cited section 920A of the Restatement, supporting the reasonable-value approach, which allows all injured plaintiffs to recover the reasonable value of medical expenses and does not distinguish between those who have private insurance, those whose expenses are paid by the government, or those whose receive gratuitous services for their treatment. Additionally, the court noted that the benefit-of-the-bargain approach discriminates among plaintiffs, providing a lesser recovery to a plaintiff whose expenses are covered by Medicaid than for one injured to the same extent who happens to have insurance.

Finally, the court discussed the evidence necessary to establish the reasonable value of medical services to injured plaintiffs. The court held that the jury may consider the amount billed, and the defendant may introduce testimony that the billed amounts do not reflect the reasonable value of the services rendered, but that the defendant may not present evidence that the bills were compromised for lesser amounts.

The *Wills* decision is plaintiff-oriented and permits recovery of increased damages that personal injury plaintiffs will not have to repay to their medical insurers. Patton & Ryan has encouraged its insurer clients to adopt a system of bill review to ensure that the billed amounts are in fact reasonable, and to provide or authorize experts to challenge unreasonable line items. The day of the in-patient \$12.00 aspirin is again at hand unless challenged as unreasonable.



### Patton & Ryan "Motion for Touchdown Pumas" flag football team

(Back row l-r) Kristen Schank, Brian "kilt-man" McGinnis, Don Carrillo, Zach "one-knee" Vaughn, Melissa Hunt

(Front row l-r) Krysten Kelly, Sarah "the crusher" Cruse, Amanda "bags" Bagley and Melissa "step on their neck" Blankinship

Not pictured: Jeanette Grady, Will Springer, Dan Marks, Brian McCarthy and Richard "the Heisman pose" Schumacher

## OTHER NEWS SPOTLIGHT

### MEET OUR NEWEST ASSOCIATES



(L to R): Sarah Cruse, Amanda Bagley, Darcie Campanella,  
Don Carrillo

## CONTACT INFORMATION



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