Patton & Ryan LLC
Attorneys at Law

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Issue 15 **PATTON'S GENERAL TORT NEWS** Spring 2009

A Word From John W. Patton, Jr.

As we wade through these tough economic times, one thing has always been true; Patton & Ryan delivers first class service to our clients. But equally important is the fact that our fees have always been significantly below market average.

Our philosophy since day one has been to deliver the best service at rates that are fair and cost effective.

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

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PATTON & RYAN ACHIEVE "NOT GUILTY" IN ILLINOIS TOLLWAY WRONGFUL DEATH CASE; CO-DEFENDANT FOUND 100% RESPONSIBLE

***Estate of Lewis Lingafelter, Jr. v. Overnight Transportation Company, James Garrett, and Illinois State Toll Highway Authority,* No. 06 L 1810**

Only weeks were left before trial and two big hurdles were in the way when Patton & Ryan agreed to defend the Illinois Tollway in a wrongful death case. The Estate of Lewis Lingafelter on behalf of his young widow and unborn daughter sued Overnite Transportation and the Tollway. Besides overwhelming sympathy for the widow, a major hurdle was that Tollway personnel and supervisors had gone on record to say that their safety procedures were "grossly inadequate." Also making matters worse, the Tollway had no experts to rebut co-defendant's two accident reconstructionists or plaintiff's economist. This predicament just made Patton & Ryan dig in and quickly establish the trial team to prepare the winning defense.

On December 6, 2005, Lewis Lingafelter, a 27-year-old man from central Illinois, was testing reflective lane markings on Interstate 294 in the western suburbs of Chicago. Lewis was a newlywed whose wife was three months pregnant. He had been working for a Tollway contractor that night and the Tollway was responsible for establishing a safe work zone for Lewis and his co-worker.

Before the accident, four Tollway trucks with large flashing arrowboards and strobe lights went out to close down two lanes of traffic and provide the safe work zone for Lingafelter's crew. A short time before the accident, one of the Tollway trucks left for other duties. As the other work crew remained in place, James Garrett, driving a semi for Overnite, violently rammed a stopped Tollway vehicle at 55 mph. The Tollway vehicle was pushed forward striking and killing Lingafelter.

By scouring the accident records including investigation reports, photographs, witness statements and deposition transcripts, Patton & Ryan was able not only to find flaws with the co-defendant's accident reconstruction but also to develop a strong cross-examination of the investigating Illinois State Trooper. During the cross, the trooper convincingly testified for the first time that he believed co-Defendant Garrett was the sole cause of the accident. Diligent investigation also resulted in the location of a key witness who lived in Wisconsin and whose evidence deposition was essential to proving that the accident was Garrett's fault alone. At the time of the accident, Garrett was being followed by another Overnite driver, Wetley, who was learning the route. By the time of trial, Wetley no longer worked for Overnite, which now claimed it could not locate him and produce him for trial. Patton & Ryan attorneys and investigators quickly tracked down Wetley in Wisconsin who ultimately testified that Garrett never slowed or swerved before crushing the Tollway truck. Wetley testified that "I had my hand on the directional thinking is he going to hit this truck or move over." He also told the jury that the left lanes were free and clear, so the accident was entirely avoidable.

Wetley's evidence deposition testimony likely led Garrett and Overnite to admit liability on the eve of trial. Unfortunately, Overnite joined plaintiff in bashing the Tollway for violating its own safety plans and changing the safety zone configuration just minutes before the accident. Together this disturbing alliance tried to make the case that the Tollway's conduct was a proximate cause of the accident. Though the Tollway's Maintenance Director admitted that the safety plan was "grossly inadequate" to channel traffic that night,

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PATTON & RYAN SECURES FAVORABLE VERDICT IN CATASTROPHIC TRAIN DERAILMENT CASE

Poppel v. Metra No: 05 L 010320 E
(Cook County, Illinois)

What do you do when faced with the following dilemma?

- A catastrophic train derailment with admitted liability.
- An extremely sympathetic plaintiff: a pregnant single 28 year old mother with multiple fractures and permanent brain injury who will require 24 hour a day care for the rest of her life.
- The plaintiff's lead attorney is nationally renowned and refuses to negotiate any terms in an effort to set a record verdict.

You call Patton & Ryan.

In February, John W. Patton, Jr. defended against such an action and came away with an extremely favorable verdict. The case arose from the derailment of a commuter Metra train in Chicago on September 17, 2005. Patton & Ryan was immediately selected to be lead trial counsel on all actions arising from this catastrophic accident. Among the injured was claimant Renea Poppel, at the time a 25 year old single mother who worked as an admissions counselor for Kaplan University. Ms. Poppel had a two year old son at home and was pregnant at the time. As a result of the derailment, Ms. Poppel fractured her pelvis, right arm, skull and cervical spine. She suffered a traumatic brain injury with resulting loss of cognitive function, impaired vision and speech and ataxia. Her experts characterized her as a quadriplegic. She remains unable to walk unassisted and spends most of her day in a wheelchair. The past medical bills totaled almost $1.7 million, and her anticipated future medical bills total approximately $51 million. She is unable to work for the rest of her life and her lost wages totaled over $3.2 million.

Plaintiff's economic expert indicated that the total economic award should be over $20 million, and her attorneys asked for an additional $50 million in non-economic damages. Plaintiff's counsel suggested to the jury a total of at least $67 million and that $100 million "might" just be too much. In the end, the jury accepted the economic damage analysis provided by the defendant's economist and ignored the plaintiff's expert entirely. The amount awarded for future wage losses was, to the dollar, the number suggested by the defense economist.

The amount awarded for future medical expenses was the total suggested by the defense economist with a slight increase as suggested by Mr. Patton in his closing statement.

The real challenge is the non-economic line items on the verdict form. With Plaintiff's counsel, under Illinois law, being allowed to suggest any number, the great risk is that the jury will compromise to the middle. The jury clearly favored the defense with awarding $17 million for non-economic damages.

These cases are not for the timid. Our firm is nationally recognized for trying the "damages only" cases because of our success in keeping the damages down.

Please keep us in mind for your next catastrophic loss case and/or trial. ●

LINGAFELTER

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he clarified his comments that the warning vehicles were more than sufficient to prevent the accident. Overnite had disclosed two experts who claimed big, bright flashing arrows were confusing and inadequate to meet Uniform Traffic Control designs. However, Overnite withdrew their experts at trial likely to avoid cross-examination. Instead, they changed their strategy to call Tollway's human factors expert in the hopes he would support their case because he had testified that a Tollway sign two miles back was ineffective. Their tactics backfired. The most important aspect to his testimony was that he was a nighttime vision researcher and a powerful advocate for the efficacy of the arrowboards and strobe lights. Our expert, like the Troopers and Wetley before him, emphasized that the warnings were plainly visible from a substantial distance away and Overnite's driver could not have missed them had he been paying attention.

By the closing, John W. Patton Jr. and the trial team had built the foundation for a powerful argument that Garrett/Overnite was 100% responsible. The jury deliberated less than 1½ hours before returning a verdict of Not Guilty on behalf of the Tollway. This quick deliberation through the lunch hour is a clear indication Mr. Patton's strategy overcame the inherent danger of a codefendant teaming up with the Plaintiff. Ultimately, the jury found James Garrett and Overnite 100% liable for the decedent's death and awarded Lewis Lingafelter's wife and daughter over $22.5 million in damages.

While pleased with the defense verdict for our client, the amount of the damages award against Overnite is ridiculous. In this case, Overnite was to eager to blame the Tollway and therefore didn't aggressively challenge the outrageous sums requested by Plaintiff's counsel.

These types of clear liability cases require experienced defense counsel to fight not only liability but damages as well. The outcome speaks for itself. ●

MARCH BRINGS ANOTHER VICTORY TO PATTON & RYAN!

Odell Holmes v. McHugh Construction Company No. 05 L 11767 *(Cook County, Illinois)*

For the second time in as many months, John W. Patton, Jr. achieved success through trial in the Cook County Court.

When the client presented John W. Patton, Jr. with the case of *Odell Holmes v. James McHugh Construction Company*, with only four weeks to trial, Patton drew together a trial team and got down to business. Patton & Ryan prepared to defend against a construction worker's claim for millions based upon multiple injuries sustained atop a high-rise under construction in downtown Chicago.

Plaintiff Odell Holmes claimed he fell onto a stack of peri joists, as a result of a gust of wind while carrying a 4-foot by 8-foot sheet of plywood on the 19th floor of McHugh Construction's Grand Plaza project, located in the heart of downtown Chicago.

After the accident, Mr. Holmes claimed severe injuries to both his right knee and his back. He underwent four back surgeries to treat multiple-level lumbar herniations, along with a right knee arthroscopy, claiming these injuries were a result of his fall. The back surgeries clearly left him permanently disabled at a relatively young age.

Forty-one year old Mr. Holmes presented with approximately $1.1 million in past medical expenses, substantial future medical expenses and claims of permanent future wage loss and loss of a normal life to the tune of millions of dollars.

With this defense challenge ahead, Patton & Ryan's trial team quickly commenced a full investigation into Mr. Holmes' employment and medical background. When dropping in on cases, we take nothing for granted and turn over every stone. This approach uncovered key evidence in the case, including McHugh observations and opinions, accident reporting records, witness statements and medical records illuminating Mr. Holmes' pre-and post-accident medical treatment.

As a result of this quick comprehensive investigation, Patton & Ryan was prepared to prove Mr. Holmes' prior work injuries and prior surgeries were the cause of present claims and that the accident couldn't have happened as alleged.

It also revealed that Mr. Holmes had previously filed numerous worker's comp and civil suits for work-related injuries.

As the trial date loomed, Patton & Ryan battled with the Court and Plaintiff's counsel, struggling uphill for admission of defense experts, previously barred from testifying by the Court prior to Patton & Ryan taking over defense of the matter. The Court refused to reconsider forcing the case to trial without any defense expert addressing Plaintiff's preexisting medical condition. All of this evidence would have to now be received through cross-examination of Plaintiff's treaters and experts. Undaunted, Patton & Ryan moved ahead to try the case. Settlement negotiations proved fruitless, as Patton & Ryan and its client firmly believed that Mr. Holmes' multi-million dollar demand was grossly disproportionate to the questionable liability and damages claimed.

This trial lasted no longer than through the testimony of the first witness called by Plaintiff. The reason for the quick and decisive victory is clear. In his opening, Mr. Holmes' attorney attempted to show failure of McHugh Construction and its supervisors to follow safety on the site, leading to Plaintiff's injuries. John W. Patton, Jr., however, pointed to Plaintiff's own responsibility to ensure his on-the-job safety, as acknowledged by upcoming witness testimony and contract documents. Plaintiff advanced only as far as his first adverse witness, the McHugh Project Manager. As a result of close and concerted witness preparation, this Project Manager repeatedly refuted Plaintiffs' assertions that the Company was solely responsible for keeping its workers safe. He also repeatedly refuted that the Company failed to fulfill its safety obligations.

Shortly after the Project Manager's testimony, Plaintiff's counsel approached the court to accept the offer conveyed by the defense prior to jury selection.

Patton & Ryan has again shown that on very short notice it can fix existing problems and prepare any case for successful resolution or trial. ●

Other News Spotlight

MEET OUR NEW STAFF

(L to R): Jessica Ohlson, Elizabeth Bardauskis, Christine Clark, Joseph Cadrecha (Paralegal)

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