P & R

PATTON & RYAN LLC

Issue 30 Fall 2016

I am happy to announce that this December 8th, I am hosting our annual DRI Insurance Coverage and Professional Liability Seminar Party in New York.

4:30pm - 9:30pm
Bobby Van's -
135 W 50th St, NYC

This is a block from the conference at the Times Square Sheraton. Patton & Ryan's involvement in these great conferences underlines our firm's commitment to zealously representing insurers and professionals in litigation throughout the country.

Invitations will be sent.

Hope to see you there!

Please call me if we can assist you in any way.

312.261.5166

John W. Patton, Jr.

The Last Man Standing: Eight Week Med Mal Trial Ends In Defense Verdict For Pharmacist And Favorable Verdict For Pharmacy

Patton & Ryan recently obtained an incredibly favorable verdict on behalf of their pharmacy and pharmacist clients in the case of *Jesse Cox v. Comprehensive Pharmacy Services, Inc.* et al. The case stemmed from the 2012 death of Joseph Brown, who incurred traumatic brain and spinal injuries following a cervical laminectomy procedure. The decedent's son, Jesse Cox, brought suit against the hospital, the treating neurosurgeons, and the pharmacy and its pharmacists.

Living up to the firm's reputation for parachuting into cases at the last minute, Patton & Ryan accepted the call to take over this complex medical malpractice matter in late January 2016. Though trial was set for April 11 and all discovery was closed but for defense expert depositions, Patton & Ryan rose to the occasion and immediately began to cultivate a defense strategy.

Claiming negligence on the part of the pharmacy and its pharmacists, Plaintiffs alleged that these defendants allowed the decedent to receive a particularly powerful narcotic, though the treating physician had ordered that this medication be discontinued. The central debate in this case was not whether the medication was discontinued by the pharmacy, but whether the pharmacy ever received the discontinue order from the hospital's nursing staff. The pharmacy and pharmacists adamantly maintained that the hospital's nursing staff never sent the order to the pharmacy, though a hospital nurse testified that she definitively faxed the order. There was no documentation that the fax was ever sent.

During pre-trial motions, Patton & Ryan successfully barred many of Plaintiffs' most compelling claims and limited the scope of Plaintiffs' expert testimony. The firm's strong arguments during this phase resulted in obtaining partial summary judgment based on the "learned intermediary" theory.

Motions in Limine also spanned an astounding three weeks, during which Patton & Ryan argued a *Frye* motion and *Frye* hearing which barred Plaintiff's expert pharmacist from testifying to a damaging opinion.

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Medical Malpractice

Patton & Ryan Secures Settlement Of Wisconsin Case Involving 3-Year-Old Tetraplegic For Less Than 7% Of Demand

Partner Paul D. Motz and Attorney Kelly L. Ferron assisted John W. Patton, Jr. in a Wisconsin case in which the minor Plaintiff was a passenger in a car that was struck head-on by a drunk driver and subsequently clipped by a semi tractor-trailer unable to avoid the disabled vehicle in the middle of the highway. Seriously injured in the crash, Plaintiff was appointed a Guardian ad Litem who brought suit on his behalf against the intoxicated driver, the tractor trailer company, and its driver.

Just one week prior to defense expert disclosures, Patton & Ryan was called in to take over the primary defense role on behalf of the semi tractor-trailer company and the driver. Undaunted by the fast approaching trial date and the fact that the case had been in litigation for four years, the Patton & Ryan team accepted the challenge and began tirelessly working to overcome the time constraints and looming deadlines.

Central to this case was the issue of causation of the child's injuries, as the case involved two separate motor vehicle accidents. In the first accident, an intoxicated driver crossed into oncoming traffic and collided head-on with the vehicle, carrying the Plaintiff, his mother and his 4-year-old brother. As a result of that crash, Plaintiff's vehicle was disabled and left in the middle of the highway. The second accident occurred when the driver of a semi tractor-trailer came upon the scene of the first accident and, despite his desperate attempts to avoid hitting the disabled vehicle, clipped the rear corner of the car on the passenger side.

Unfortunately, the minor Plaintiff sustained extremely serious spinal cord and other injuries. Alleging over $15 million in economic damages alone, Plaintiffs retained experts to testify that it was the second accident involving the tractor-trailer that caused the child's tetraplegia, instead of the high speed, head on collision with the drunk driver that stranded the Plaintiff's car without power in the center of the highway.

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Transportation

Last Man Standing continued from page 1...

Complications also arose during Motions in Limine when the hospital, a central Defendant in the case, settled with the Plaintiffs. Hoping that the pharmacy would have to indemnify the hospital if found liable, the hospital then cooperated with the Plaintiffs' attorneys, but refused to cooperate with the Defense. This severely undermined Patton & Ryan's ability to demonstrate that the hospital and its nurses had negligently cared for the decedent following his surgery.

Partners John W. Patton, Jr. and David F. Ryan met these challenges head-on and proceeded to try the case over a grueling eight week period.

At trial, the Plaintiff called seven expert witnesses, including the NFL's brain injury expert, who all testified that the decedent's injuries and death were directly caused by the negligence of the pharmacy and its pharmacists and the doctors. At the close of Plaintiff's case-in-chief, the two neurosurgeons, who failed to properly identify and treat the decedent's post-surgery complications, were dismissed on directed verdicts.

Faced with the substantial challenge of having to overcome the jury's assumptions that the pharmacy and the pharmacists were guilty of *something* as they were the only defendants left in the case, Patton & Ryan called expert witnesses Dr. Hartman, Dr. Meyer, Dr. Salkind, and Dr. Patel. Each of these experts affirmatively testified that the injuries suffered by the decedent were not a result of the administration of the discontinued medication, as Plaintiffs had alleged. Dr. Meyer, a neuroradiologist, and Dr. Salkind, a neurosurgeon, both testified that Mr. Brown's injuries were caused from a compressive hematoma which was a result of the cervical laminectomy.

Though this case addressed complex medical issues and posed many hurdles along the way, Partners John Patton and Dave Ryan ultimately were able to convince the jury to decide the case on the facts, not on assumptions; to rely on the evidence, not their emotions. Though Plaintiffs requested that the jury award $22.5 million against the pharmacists and pharmacy in their closing arguments, the jury found the pharmacists blameless and returned a verdict of only $1.5 million against the pharmacy.

This incredible outcome serves as a shining example of Patton & Ryan's ability to parachute into a case on the eve of trial, and, even in the face of seemingly insurmountable odds, successfully secure a favorable verdict for our clients. ●

Trying To Get Something Out Of Nothing

After over 15 years of litigation, on the eve of trial, Patton & Ryan successfully settled a personal injury action involving a collision between Plaintiff's vehicle and our client's bus for a mere fraction of Plaintiff's $19.3 million demand. In fact, Patton & Ryan's representation of the bus company was so successful, that the settlement obtained was not only far below Plaintiff's original demand, but amounted to barely half of Plaintiff's alleged medical expenses.

The collision occurred in a residential area in suburban Chicago when the Plaintiff attempted to illegally pass our client's bus, which was turning at the intersection to continue on its route. Failing to complete the illegal passing maneuver, Plaintiff side-swiped the bus with the bumper of her vehicle. Plaintiff alleged that as a result of the fender bender, she sustained severe injuries to her back and neck that required numerous surgeries. Patton & Ryan, however, left no stone unturned, and uncovered the facts that Plaintiff not only had extensive pre-existing medical issues at the time of the accident, but also was involved in prior *and* subsequent accidents.

Based on the facts unearthed by the Patton & Ryan team's exhaustive investigation, the case was rightfully viewed as very questionable on liability and damages. Throughout the protracted litigation of this case, Patton & Ryan steadfastly rebuffed Plaintiff's counsel's efforts to exploit this very minor motor vehicle accident through exorbitant demands and speculative allegations. A number of Plaintiff's allegations speculated that there were defects in the bus route and stop at the location of the accident. Patton & Ryan effectively shut down these claims with the very compelling evidence that though the bus stop and route had been in operation for over 30 years before Plaintiff's collision, not one prior accident had ever been reported at that location.

Although the case was originally filed in 2000, the Patton & Ryan team, brought on in 2006, vigorously readied for the previously set 2007 trial date. So prepared was Patton & Ryan to try the case, that the team pushed to proceed with the trial date as scheduled. Plaintiff, however, was so unprepared for trial that she was forced to non-suit the case.

Eventually, Plaintiff refiled and discovery was reopened. This was not the only impediment to resolving this case, however, as Plaintiff underwent a number of medical procedures allegedly related to the minor car accident that further lengthened the litigation process. Despite the numerous delays in the case, Patton & Ryan continued to provide a zealous defense and aggressively prepared the case for trial in the face of Plaintiff's outrageous settlement demands.

On the eve of trial, Patton & Ryan made one final attempt to settle the case. In an effort to tip Plaintiff towards settlement, Patton & Ryan propounded Plaintiff's counsel with its various pretrial motions to bar testimony regarding all irrelevant evidence and testimony, including Plaintiff's arguments that the bus stop and route were defective or even remotely relevant to the actual facts of this case. Ultimately, it was Patton & Ryan's creative and thorough trial preparation in this questionable liability and damages case that directly led the Plaintiff to settle for such a small portion of her original demand the day before the trial was set to commence. ●

Transportation

Wisconsin Settlement continued from page 1...

In order to combat Plaintiff's assertions that Patton & Ryan's clients caused the child's injuries, the Patton & Ryan trial team worked to ensure that only the best experts had been retained for the Defense. Patton & Ryan attorneys conferred with each previously retained expert, ultimately deciding to let go several experts retained by prior counsel whose opinions were unfavorable to the Defense's position. The team then retained new trucking experts, as well as a new physiatrist and life care planner. Patton & Ryan also obtained last minute key deposition testimony from the Wisconsin Highway Patrol accident reconstructionists that was completely supportive of the Defense's liability position.

While deposing Plaintiff's medical expert, Patton & Ryan attorneys secured unexpected testimony that the child's injuries actually resulted from the first accident, not the second accident involving our clients. As a result of the Patton & Ryan team's extensive preparation of the Defense experts, each expert testified virtually seamlessly at their deposition, effectively and substantially deteriorating Plaintiff's case.

Patton & Ryan also successfully overcame four (4) Daubert challenges while limiting Plaintiff's accident reconstructionist and conspicuity experts' opinions. The Patton & Ryan team also secured wins on a number of key Motions in Limine, including a motion that barred damaging video training materials. Patton & Ryan's rigorous defense so weakened Plaintiff's case that we obtained an extremely favorable settlement, despite the fact that Plaintiffs' attorneys had previously indicated that they would never consider settling this matter because they were certain they would obtain an extraordinarily large verdict, which they wanted for advertising purposes.

Ultimately, Patton & Ryan's aggressive, hard-line, and proactive approach in defending this case by obtaining the aforestated key testimony and ensuring the defense had the most effective experts - all within a mere couple of months - finally led to a settlement of *approximately 3%* what Plaintiffs had planned on asking the jury, *less than 7%* of Plaintiff's last demand, and for *only 11%* of Plaintiff's claimed economic damages. ●

Holding The Line On Construction Liability

Patton & Ryan recently scored a huge victory when we obtained summary judgment for a general contractor and subcontractor in a *construction liability* case where a worker sustained serious and permanent injuries on a construction site. Plaintiff icurred his injuries to his back while attempting to manually move a several hundred pound steel elbow at the direction of his employer, another subcontractor on the construction project. At the outset of the case, Patton & Ryan implemented a proactive defense strategy that involved proving that our clients were not in charge of site safety. This included bringing in Plaintiff's employer on a third-party complaint for contribution.

After diligent preparation of the insureds representatives and conducting depositions of all the key players in the case, Michael G. Vranicar of Patton & Ryan successfully argued for summary judgment in the Cook County Circuit Court, thereby saving our clients the expense and inconvenience of defending this catastrophic claim at trial. Patton & Ryan won summary judgment by demonstrating that in order to establish liability for job site injuries, Plaintiffs must necessarily prove control of job site safety and function. Through skilled advocacy and preparation, Patton & Ryan proved that Plaintiff's employer retained full control over all his actions at the time of the accident and thereby defeated Plaintiff's claim. Patton & Ryan also created a clear record in successful defense of this claim which allowed the First District Appellate Court to affirm the lower court's ruling of summary judgment.

The Plaintiff has now filed a Petition for Leave to Appeal to the Illinois Supreme Court, arguing for an expansion of Illinois premises liability law on construction sites. Patton & Ryan has answered Plaintiff's Petition and will continue to aggressively fight expansion of any laws that would increase our clients' risk of exposure. In doing so, we are drawing a line in the sand over which we will not allow the Plaintiff's Bar to step. Patton & Ryan is adamant about protecting our clients' best interest in every phase of litigation with a focus on curtailing defense costs. ●

Construction Liability

Illinois High Court Strikes Down Six Person Jury

In a monumental victory for the defense bar, the Illinois Supreme Court ruled that a 2015 amendment to the Illinois Code of Civil Procedure limiting the size of civil juries to six persons was "facially unconstitutional." Chief Justice Garman delivered the unanimous decision in *Kakos v. Butler*, 2016 L 120377, holding that Public Act 98-1132 violated Article I, section 13 of the Illinois Constitution. In reaching its decision, the Illinois Supreme Court found that the drafters of the Illinois Constitution clearly intended to protect and preserve the size of a civil jury as it existed at the time the current Illinois Constitution was adopted in 1970. The Supreme Court found that the Illinois Constitution created a constitutional right to a 12-person jury that could not be infringed upon by the State Legislature.

The initiative to cut the size of the civil jury in Illinois down to six jurors was spearheaded by the plaintiff-friendly Illinois Trial Lawyers Association. Many commentators questioned the swift passage of the bill halving the size of Illinois juries and viewed it as a parting gift to the Illinois Trial Lawyers Association by then exiting Illinois Governor Pat Quinn. Many of Chicago's most prominent Plaintiffs' attorneys spoke up in favor of reducing the size of the jury, while the Defense Bar opposed the proposal.

Research on the issue has supported the practical experience of many defense practitioners that smaller juries are inherently pro-plaintiff. Research shows that smaller juries generate less debate and reach less predictable results. Additionally, smaller juries are easily dominated by a single strong personality and are more likely to be swayed by a single juror's appeal to emotion. In protecting the right to a 12-person jury, the Supreme Court has dealt a blow the Plaintiff's Bar. The attorneys at Patton & Ryan applaud the Supreme Court for this recent decision and look forward to continuing to win trials before a jury of 12 of our peers. ●

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Labor & Employment Law
Mass Torts
Medical Malpractice and Medical Device Defense Litigation
Municipal Entity Defense
Product Liability
Professional Liability
Transportation & Trucking Litigation

Other News Spotlight

The Best Defense Is A Good Offense

Two weeks before trial in DuPage County, Patton & Ryan settled a case involving a right ankle fracture and resulting surgery from a slip and fall down an apartment staircase for 60% of settlement authority. Our aggressive defense tactics in this *premises liability* action with questionable constructive notice caused the recalcitrant Plaintiff to settle significantly under what was originally anticipated. In many of the counties in Illinois, DuPage included, all trial materials must be completed and submitted to opposing counsel and the trial judge, one to two weeks before trial. As is the Patton & Ryan custom, our trial materials addressed skillfully and tenaciously every potential weakness of the Plaintiff's case, thereby intimidating Plaintiff into accepting a settlement offer well below settlement authority. Plaintiff's attorney indicated that part of the decision to settle was influenced by the video evidence deposition of Plaintiff's treating physician taken by Patton & Ryan the day before the final pre-trial conference. The physician's skillfully elicited testimony severely curtailed the Plaintiff's damages claim and was indicative of the type of defense Patton & Ryan routinely presents. Trial Judge Kenneth L. Popejoy expressed his satisfaction with Patton & Ryan's trial preparation. Overall, not only were we able to gain a favorable outcome for our client, but we were also able to showcase what Patton & Ryan does best: *win cases.* ●

Upcoming Events

11/9-11/16	PLUS 2016 Conference, Chicago, IL
12/8-9/2016	DRI Insurance Coverage and Practice Symposium, New York City, NY

Successful Pre-Discovery Mediation

Patton & Ryan recently obtained a favorable settlement in a *personal injury/products liability* case wherein prior counsel had already disclosed, pre-suit, an unfavorable report to opposing counsel. Despite the unfortunate circumstances, Patton & Ryan was still able to successfully argue that the manner in which the Plaintiff was using the product at the time of the accident was against warnings provided for on the label. Additionally, there were questionable circumstances surrounding the Plaintiff's willingness to cooperate with the advice of medical providers. Before discovery commenced and at the client's behest, Patton & Ryan was able to use this evidence to entice Plaintiffs into a settlement for less than a third of their original demand, and almost half of prior counsel's settlement recommendation. ●

Premises Liability

Product Liability