



Patton & Ryan LLC Attorneys at Law

Issue 26

Winter 2015

this issue

- Down In Flames On Appeal **P.1**
- Legal Malpractice Dismissal **P.2**
- Double Victory **P.2**
- The Correct Diagnosis **P.3**
- Fearless John Patton, Jr. **P.4**

As our 10th year in business draws to a close, I can't help but reflect on some of the great clients, staff and friends that have helped make these years so successful at Patton & Ryan. My sincerest gratitude to everyone who was a part of this journey.

I look forward to an exciting 2015. Please call me if we can assist you in any way.

312.261.5166

John Patton, Jr.



PATTON'S GENERAL TORT NEWS

Largest Plaintiff's Verdict Goes Down In Flames On Appeal

Jentz, William, Special Guardian of the Person and Estate of John W. Jentz, a disabled adult v. Conagra Foods, Inc., and West Side Salvage, Inc.

On Tuesday, September 9th, Patton & Ryan, LLC obtained one of its most significant victories in its 10 year history, when the United States Court of Appeals for the Seventh Circuit reversed a \$180 million jury verdict and dismissed our client, ConAgra Foods, Inc., outright from the case as a matter of law. The Seventh Circuit also upheld the \$3 million awarded to ConAgra in its property damage claim. Finally, as if this victory wasn't stunning enough, the Court also affirmed ConAgra's judgment against West Side for indemnification allowing ConAgra to pursue its attorney fees incurred in its defense.

In the summer of 2012, the consolidated cases of John Jentz, Robert Schmidt and Justin and Amber Becker versus ConAgra Foods, Inc. and West Side Salvage, Inc., went to the jury in the US District Court for the Southern District of Illinois in East St. Louis. The case arose out of a grain bin explosion which seriously burned the three Plaintiffs. ConAgra hired West Side to remediate the "hot bin". The three Plaintiffs, who either worked for West Side or its subcontractor, A&J Bin Cleaning, had been working on the bin for seven days before the explosion. The stable of nationally renowned Plaintiffs' attorneys was led by Bob Clifford, who personally handled pre-trial settlement negotiations as well as the trial. John W. Patton, Jr. was hired after the close of discovery and on the eve of trial to lead the defense team for ConAgra. The trial was hotly contested for 17 days, with testimony from scores of witnesses and experts and thousands of exhibits. The jury returned its verdict, awarding the Plaintiffs \$80 million in compensatory damages, apportioning 54% to ConAgra and 46% to West Side. The jury also awarded \$100 million in punitive damages against ConAgra.

Both Defendants appealed to the United States Court of Appeals for the Seventh Circuit, and oral arguments were heard on October 2, 2013 before the three judge panel of Judges Easterbrook, Manion and Rovner, before a packed courtroom. Tuesday, September 9th, 11 months after oral arguments, the Court issued its unanimous opinion, finding "...someone who engages an independent contractor to redress an unsafe condition is not liable when the feared event occurs." Patton & Ryan raised this specific defense at trial and in a Rule 50 motion at the close of Plaintiffs' cases, but the trial judge denied it. John Patton concentrated his cross exam of the witnesses and experts to develop this trial strategy not only to win the case before the jury but also to establish a strong record in the event of an appeal. Relying upon the factual record and legal arguments raised, The Seventh Circuit reversed the jury's verdict and the rulings by the trial court, thereby dismissing all causes of action against ConAgra and awarding ConAgra its costs of defense.

The entire punitive and compensatory awards against ConAgra are now reversed based upon Illinois state law. Further, ConAgra's actions against West Side have been affirmed. ConAgra will now recover its costs and attorney fees in defending this highly sympathetic and challenging catastrophic loss trial.

This case is illustrative of the legal representation and litigation acumen demonstrated by the law firm of Patton & Ryan. The firm is committed to representing its clients skillfully and zealously nationwide from the case's inception and on the eve of trial.

Personal Injury

Legal Malpractice

Patton & Ryan Partners
Successfully Defend Client
Before The Illinois First District
Appellate Court.

Patton & Ryan represented a psychiatrist who evaluated the Plaintiff, a convicted sex offender, in relation to the Illinois Attorney General's petition to involuntarily commit the Plaintiff as a sexually violent person pursuant to the Sexually Violent Persons Commitment Act. 725 ILCS 207/1 *et seq.*

The appeal arose out of the dismissal of a malpractice counterclaim filed against the psychiatrist, in which the Plaintiff alleged the psychiatrist committed malpractice by diagnosing him with a disorder that does not exist in the Diagnostic and Statistical Manual of Mental Disorders I V TR (DSM). Plaintiff claimed the alleged misdiagnosis resulted in damages of deprivation of comfort, companionship and affection, as well as lost gains and earnings resulting from his involuntary detention. The trial, in granting our client's motion to dismiss, followed *Liberman v. Liberty Healthcare Corp.*, 408 Ill. App. 3d 1102 (2011), which applied the "Heck Rule," as set forth in the United States Supreme Court decision in *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Court held that the filing of such a claim in a commitment proceeding is precluded until a favorable termination in the underlying proceedings is reached, so to avoid the possibility of a successful tort action that would implicate the invalidity of a sentence or conviction.

On appeal, the Illinois First District Appellate Court upheld the trial court's dismissal of Plaintiff's malpractice action, albeit on different grounds. Although the Appellate Court rebuked the Plaintiff's misrepresentation of *Liberman*, it found it did not need to apply *Liberman*, and instead affirmed the dismissal on the basis of the Plaintiff's failure to establish the elements of a malpractice claim against the psychiatrist.

Double Victory

Patton & Ryan Pulls Off a Double Victory
in a Recent Legal Malpractice Case

With diligent investigation, Patton & Ryan was able to secure a Plaintiff's voluntary dismissal of the malpractice claim, while our client was able to continue his counterclaim for his unpaid fees, which he eventually won.

The Plaintiff and his two business partners were members and equal owners of BG Home Health Providers, LLC. Sometime in October of 2010, a dispute arose between the Plaintiff and his two co-owners. On 10/21/10, the Plaintiff retained our client, an attorney, to represent him in his dispute with his co-owners. On 10/26/10, the co-owners sent Plaintiff a cross-purchase offer to buy Plaintiff's interest in BG Home Health Providers for \$100,000. Goetz forwarded the cross-purchase offer and BG Home Health Provider's Operating Agreement to our client on 10/28/10 and asked him to review the documents. The Plaintiff claimed that our client failed to advise Plaintiff that pursuant to Section 9.4 of the LLC's Operating Agreement, Plaintiff's only options were to accept the offer or reject the offer and make a counter offer under the same terms. On 11/8/2010,

Plaintiff submitted his reply to the cross purchase offer to the co-owners, rejecting their offer, which Plaintiff believed was not the fair market value. The co-owners claimed that Plaintiff failed to meet the conditions of the operating agreement, which ultimately resulted in arbitration where the arbitrator ruled in favor of the co-owners.

Plaintiff subsequently filed a malpractice suit against our client in the Circuit Court of Cook County, alleging that, as a result of our client's malpractice, the Plaintiff lost his membership shares in the company and the opportunity to buy out the co-defendant's shares. The Plaintiff alleged that our client failed to advise Plaintiff as to his options to either accept the co-owner's offer to buy him out, or to make a counter offer to buy out his co-owners on the same terms.

In our initial meeting with our client, we identified critical evidence to support our defense that Plaintiff did not have the financial resources to make a counter offer to buy out his co-owners, and, therefore, had to simply reject his co-owners' offer and attempt to negotiate a better price. This strategy

resulted in an arbitration over many issues surrounding ownership, financial misdeeds, and other violations of the Operating Agreement. We discovered that our client had retained his handwritten notes from his initial meeting with the Plaintiff. These notes indicated that Plaintiff told our client that Plaintiff had no money to buy out his co-owners and could not raise the money. During discovery, we also subpoenaed Plaintiff's banking records and credit card records. We also dug into his divorce court files and found an affidavit as to his finances near the time of the underlying incidents. During our investigation and discovery, we were able to uncover enough evidence in support of our defense, that we forced Plaintiff to voluntarily dismiss his case. In addition, our client maintained his counterclaim against Plaintiff, seeking to recover his unpaid fees, which he eventually won by summary judgment.

Patton & Ryan's hard work at the outset of the litigation, combined with focused discovery, led to a complete victory for our client, including the recovery of his fees.

Patton & Ryan Delivers Correct Diagnosis in Medical Malpractice Complaint

Plaintiff was a salaried employee participating in the medical residency program in neurosurgery administered by the Tulane University School of Medicine Office of Graduate Medical Education. After raising concerns regarding patient care to the Chairman of the Tulane Department of Neurosurgery in March, 2007, Plaintiff was referred to the staff psychiatrist at Tulane for a psychiatric evaluation. The staff psychiatrist reported that his preliminary evaluation indicated the probable presence of a personality disorder was impairing Plaintiff's interpersonal functioning. Plaintiff was suspended from the Tulane Neurosurgery Department clinical service, including regular patient care, consults, on-call coverage and operative duties at University and Tulane Hospitals. The staff psychiatrist reported that Plaintiff was impaired and not fit for duty to the Physicians Health Foundation of Louisiana and informed Plaintiff that he had a right to a second opinion.

Plaintiff received a second opinion from a California doctor who had been treating Plaintiff for Attention Deficit Disorder for four years, who refuted the staff psychiatrist's findings. The Chairman of the Tulane Neurosurgery Department requested a third independent evaluation, providing three options of psychiatrists for Plaintiff to select from.

Plaintiff selected Resurrection Behavioral Health's Multidisciplinary Assessment Program. Patton & Ryan's client was member of this team. Plaintiff participated in the multidisciplinary assessment, including a psychological evaluation by our client, an evaluation by a drug and alcohol counselor, hair analysis, blood work, a history and physical, and a psychiatric evaluation. Plaintiff's psychiatric evaluation was ended early, according to Plaintiff because of the psychiatrist's hostile and confrontational behavior. Plaintiff's subsequent request to be evaluated by a different psychiatrist was denied. The assessment team diagnosed Plaintiff with Borderline Personality disorder, Personality Disorder Not Otherwise Specified with Narcissistic and Antisocial Features, and Amphetamine and Opiate Dependence. The team stated that it was not appropriate at the present time for Plaintiff to practice medicine with requisite competency, safety and skill.

Tulane terminated Plaintiff's contract and removed him from the payroll. The Louisiana State Board of Medical Examiners also suspended Plaintiff's medical license.

Plaintiff filed a twelve count complaint with three counts against our client for medical negligence, tortious interference with contract, and tortious interference with prospective economic advantage.

Plaintiff alleged that our client, and the other doctors involved in the multidisciplinary assessment, tortiously interfered with Plaintiff's contract with Tulane by knowingly making false statements in the multidisciplinary assessment report or verbally for the purposes of obtaining payment from Tulane for continued referrals for evaluations. Plaintiff alleges that our client performed one or more of the intentional or negligent acts mentioned in the medical negligence count, which caused Plaintiff's termination, emotional distress and financial damages.

Plaintiff also alleged that our client, and the other doctors involved in the multidisciplinary assessment, tortiously interfered with Plaintiff's prospective economic advantage because the doctors, with knowledge of Plaintiff's reasonable economic expectancy as a neurosurgeon, made false statements in the multidisciplinary assessment report were verbally sufficient to justify an award of punitive damages.

Patton & Ryan vigorously defended our client by successfully moving to dismiss both the original complaint and the first amended complaint. Plaintiff then filed a third amended complaint, and P & R again filed a motion to dismiss, with prejudice.

The trial judge, agreeing with our arguments, entered a memorandum opinion and order dismissing Plaintiff's case with prejudice. The claims against our client in the third amended complaint included medical negligence, ordinary negligence, tortious interference with contract, and tortious interference with prospective economic damage. The trial judge found that the allegations failed to demonstrate the necessary physician-patient relationship or special relationship required to support a claim for medical negligence against the defendant doctors. With respect to Plaintiff's claim for ordinary negligence, the judge stated that Plaintiff failed to make any showing regarding the standard of care for test givers from which the defendants allegedly deviated. Regarding the tortious interference with contract claim, the judge held that Plaintiff is precluded from pursuing that claim because he failed to attach the executed contract or explain why the contract was not available. Lastly, with respect to Plaintiff's tortious interference with prospective economic advantage claim, the judge stated that Plaintiff could not have had a reasonable expectation of a continued business relationship with Tulane because that relationship was dependent on the outcome of the evaluation. Because this was Plaintiff's third amended complaint in his second lawsuit since 2009, the judge opined that Plaintiff had exhausted his opportunities to plead a viable complaint and he dismissed the case with prejudice.

Contact Information



Patton & Ryan LLC
Attorneys at Law

PRESORT
FIRST-CLASS MAIL
US POSTAGE
PAID
PERMIT NO. 267

Illinois

330 N. Wabash Ave.
Suite 3800
Chicago, IL 60611

p: 312. 261.5160
f: 312. 261.5161

Indiana

260 E. 90TH Drive
Merrillville, IN 46410

p: 219. 793.9000
f: 219. 793.9211

www.pattonryan.com

Areas of Practice:

- Bad Faith Litigation
- Catastrophic Loss Trial Practice
- Civil Litigation & Insurance Defense
- Commercial Litigation
- Construction Law
- Employment Law
- Medical Malpractice
- Premises Liability
- Products Liability
- Professional Liability
- Trucking and Transportation

Other News Spotlight



Fearless John Patton

Civil Defense SWAT Team Leader
Ensures Plaintiff's Lawyers Earn Their Results

Leading Lawyers Magazine, September, 2014

All John W. Patton Jr. wanted was a quiet Sunday morning.

The co-founding partner of Patton & Ryan LLC had some paperwork to catch up on and needed to start preparing an upcoming case. So he drew up a simple game plan: get to the office early, finish work by noon, go home to be with his family.

He arrived at 6:30 to an empty office. He made a pot of coffee and sat down at his desk. Out of the window in his corner office at the IBM Building — now the AMA Plaza — the sun was not yet rising. All was going according to plan.

At 9 a.m., the phone rang. On the phone was a client with whom Patton had a 10-year relationship. After the briefest of niceties, the client got to the point: "What are you doing tomorrow?"

Looks like we'll be discussing a new case, thought Patton, who had nothing on the books for Monday.

"It's an office day," he said.

"We need you to get on a plane today and fly down to St. Louis, Missouri, and pick a jury tomorrow morning," said the client.

To read the entire article, go to:

<http://pattonryan.com/wp-content/uploads/LeadingLawyers.pdf>

www.pattonryan.com