

Patton & Ryan is prepared to handle your case regardless of the venue or trial date.

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*John W.  
Patton, Jr.*



## PATTON'S GENERAL TORT NEWS

### Patton & Ryan Wins Summary Judgment

John W. Patton, Jr. and the firm recently won a rare summary judgment in favor of our client in a construction negligence case pending in Cook County, Illinois.

Plaintiff was making a delivery of materials onto the Calumet City Water Reclamation site for a sheet metal subcontractor of the insured, Patton & Ryan's client. While on the Calumet site, Plaintiff was told by the subcontractor's foreman to assist in the unloading of two 200 pound metal ducts from the back of a flatbed trailer. As required by contract with the insured, the sheet metal subcontractor was responsible for providing its own equipment handling materials to unload the metal ducts. Failing to do so, it was decided among Plaintiff, plaintiff's foreman and another sheet metal subcontractor employee to unload the metal ducts without any equipment. As such, Plaintiff was told by the subcontractor foreman to climb onto the trailer and push the first metal duct towards the rear of the trailer. When Plaintiff began to push, he felt a pop in his lower back. He advised the foreman of his back but continued to unload the duct from the truck. Plaintiff did not report his injuries to his employer, the subcontractor, until approximately one month later.

On November 22, 2011, Plaintiff filed his complaint naming the insured and the general contractor as defendants, for injuries he allegedly suffered from unloading the metal ducts, claiming that both defendants were negligent in failing to provide safe work conditions and proper supervision over Plaintiff. Subsequently, Patton & Ryan, on behalf of the insured, filed its motion for summary judgment arguing that the insured had no control over the manner,

means and methods of Plaintiff's employer, the sheet metal subcontractor, regarding the work of its own employees. Patton & Ryan argued that the insured had no actual or constructive notice of Plaintiff's decision to unload a 200 pound metal duct from the trailer of a flat bed truck. Last, Patton & Ryan argued that there was no unsafe condition present whereby a duty was imposed upon the insured to the Plaintiff.

On April 23, 2015, the trial court granted Patton & Ryan's motion for summary judgment finding that there was evidence to establish that the insured did not maintain the requisite control over the operative details over Plaintiff's work necessary to invoke liability for his independent acts and that there was no evidence that the insured directed the means and methods of Plaintiff's work. As such, the trial court held that the insured did not retain sufficient control over Plaintiff's work to be held liable under Restatement (Second) of Torts, section 414. Further, the trial court found that testimony established that Plaintiff and other subcontractor employees made the decision on their own to remove the 200 pound elbow from the trailer and Defendants were unaware of the accident when it occurred. More importantly, no evidence was produced which established that the decision of independent contractors to remove a 200 pound elbow is an unsafe condition which Defendants should have been aware of. Because the insured lacked knowledge of the unsafe condition, the Court granted summary judgment in its favor and against Plaintiff.

Summary Judgment

## Water Leak Sealed Off in Condo Association Case

Patton & Ryan was called in late in the game to represent a developer of residential and commercial condominiums located on the Estuary in Oakland, California. The Homeowners Association, the governing body for the condominiums, brought a construction defect action against the developer in the Superior Court of California in the County of Alameda. The Homeowner's Association alleged that water had intruded into the condominiums and the associated common property and caused significant damage. Further, the Homeowner's Association alleged that this water intrusion through the windows, doors, decks and elsewhere was due to faulty construction. As a result, the Homeowner's Association filed a complaint against the developers based on the theories of strict liability, breach of implied warranty, negligence per se and breach of contract.

Patton & Ryan was brought into the case to represent the developers with a quickly approaching trial date and very little discovery completed. The developer's previous counsel had scheduled the trial and promised the Judge that they would be ready for trial by the scheduled date. However, after making this promise, the previous counsel made virtually no progress with its trial preparation. This failure on the part of the developer's previous counsel left Patton & Ryan with a short window of time and a large amount to be accomplished before trial. In spite of these obstacles, Stephen Niemeyer of Patton & Ryan, along with a team of Associate Attorneys, worked furiously to prepare the case for trial. Patton & Ryan gathered and organized discovery and ensured that its clients would receive exceptional representation at trial. With Patton & Ryan prepared to provide such trial representation, its clients were able to resolve the case on favorable terms.

Construction Defect

## Patton & Ryan Plays Hardball in Head-On Catastrophic Loss

Just three months before trial, the day before the expert witness and exhibit disclosure deadline, John W. Patton, Jr. of Patton & Ryan was brought in to serve as lead trial counsel in a catastrophic injury matter that had been pending in Palm Beach County, Florida for over two years.

This case involved a serious motor vehicle accident where our client's employee, in the course and scope of her employment, sped over a grassy median on a major South Florida highway, into oncoming traffic, and collided with the Plaintiff's vehicle head-on at a high rate of speed. As a result of the subject accident, the Plaintiff sustained serious injuries, including multiple lumbar fractures, rib fractures, right foot fracture, pubic ramus and iliac bone fractures, a subdural hemorrhage in her brain as well as respiratory failure and a left patellar rupture. She spent nearly two months in the hospital following the accident. Liability was admitted.

Immediately upon their retention, Patton & Ryan dove in, working tirelessly to get up to speed on the case and overcoming the time constraints and looming deadlines by bringing in an expert orthopedic surgeon, radiologist, and economist to provide rebuttal opinions to Plaintiffs' damages experts, and by obtaining an IME. Patton & Ryan also ensured the depositions of the Plaintiff, Plaintiffs' experts, Plaintiffs' treating physicians, and all fact witnesses were scheduled in the very tight time frame prior to the discovery cutoff date. All of the foregoing actions proved crucial strategies in vigorously defending our client and in chipping away at key aspects of the Plaintiff's damages case to effectuate a favorable settlement.

Also aiding in the prompting of the favorable settlement was Patton & Ryan's aggressive arguments of Motions in Limine and their *Daubert* motion seeking to exclude the testimony of Plaintiff's expert economist based on the unreliable methodology he utilized in coming up with his figures. At the hearing on the *Daubert* motion, after the Judge indicated that he planned to grant said Motion, the Plaintiff conceded that their economist would be precluded from using the challenged methodology. Patton & Ryan also successfully argued key Motions in Limine, first and foremost a Motion in Limine to only allow the Plaintiff to introduce the amounts of her medical bills paid by Medicare, rather than the total amounts of the medical bills, to the jury. Moreover, Patton & Ryan was also successful in precluding introduction of Plaintiff's life care planner/physiatrist's high-end range/worst case scenario figures to the jury.

After the outcome of the Motions in Limine and the closure of expert discovery, the Plaintiff finally began to show a genuine interest in negotiating, and drastically reduced her demand. Overall, the case settled for a fraction of the Plaintiff's last demand made just prior to Patton & Ryan being brought on board.

Catastrophic Loss

## Patton & Ryan Secures Quick Resolution for Hospital Security Company

Patton & Ryan successfully defended a security company in a bodily injury action arising out of an incident that occurred on March 28, 2012, at a medical center in Waukegan, Illinois. Plaintiff, a patient care manager at the hospital, alleged that he responded to a “code-grey,” which is the hospital’s code for a situation in which a security officer’s presence is needed for emergency assistance with a violent or potentially violent individual. Three security officers from the security company also responded to the “code-grey” and the three security officers along with Plaintiff attempted to restrain the combative patient.

According to Plaintiff, the four of them carried the patient to an ER room, each individual holding one of the patient’s limbs, and began attempts to put him in four point restraints. The patient continued to wiggle and kick and, during the process of trying to put him in the restraints, the patient was thrown on top of Plaintiff.

Plaintiff’s primary claimed injury was to his low back. As a result, Plaintiff underwent a left-sided L5/S1 hemilaminectomy and a lumbar fusion at the L5-S1 level. Plaintiff’s medical damages totaled approximately \$480,000. Plaintiff also sought lost wages which totaled approximately \$110,000. Plaintiff’s demand was \$3 million.

Patton & Ryan took over the defense of the case after it became apparent that the Plaintiff would not settle and a trial date was fast approaching despite the fact that discovery had barely begun. Our attorneys quickly took over the case, deposed witnesses, obtained and reviewed the medical records and located an eyewitness, another hospital employee, who challenged and contradicted Plaintiff’s version of the incident. The eyewitness said that the patient was not thrown onto Plaintiff but that Plaintiff stumbled on his own and fell.

In addition, Patton & Ryan identified and retained a board certified neurosurgeon, Dr. Robert Beatty, who successfully challenged the severity of Plaintiff’s injuries and the necessity of the two surgical procedures Plaintiff underwent.

Patton & Ryan’s trial team, led by partner Michael G. Vranicar and together with associate Dean Ameti, prepared for trial. On the first day of trial during hearings on the motions in limine, the judge took time to conduct a settlement conference. At that point, Plaintiff finally reduced his demand to a reasonable value and the case settled for a mere fraction of the original demand and less than his claimed economic damages.



Personal Injury



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Medical Malpractice and Medical  
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Municipal Entity Defense  
Product Liability  
Professional Liability  
Transportation & Trucking Litigation



## Other News Spotlight

### 7th Circuit Says What Happens in Mexico Stays in Mexico

Following oral argument by Natalie Eschbach of Patton & Ryan, on February 4, 2016, the Seventh Circuit Court of Appeals issued its opinion affirming the district court's dismissal of Plaintiff's complaint in *Noboa v. Barceló Corporación Empresarial, S.A., et al.*, Case No. 15-2001. The Seventh Circuit Court of Appeals held that the district court correctly found that it lacked personal jurisdiction over the defendants; Rancho Carisuva, a Mexican eco-adventure company, and Barceló Corporación Empresarial, a Spanish corporation. Rancho Carisuva was represented by partner, John W. Patton, Jr. and associate, Natalie J. Eschbach.

The Plaintiffs decedent was killed in an accident involving an all-terrain vehicle while the decedent was visiting a hotel in Mexico. The appellate court affirmed the district court's dismissal of Plaintiff's complaint, finding that neither company was subject to jurisdiction in Illinois.

The appellate court rejected Plaintiff's argument that the decedent's death was connected to Illinois by her action of booking her trip to Mexico through Orbitz's website. The fact that the decedent booked her trip to Mexico through Orbitz's website and paid for the trip through the use of a computer located in Illinois did not amount to jurisdiction over the defendants. The court also held that neither defendant conducted business in Illinois, and that neither defendant was subject to Illinois' general jurisdiction.

### Patton & Ryan Launches New Website



[www.pattonryan.com](http://www.pattonryan.com)