P & R

PATTON & RYAN LLC

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this issue

2016 is shaping up to be our busiest and most successful year yet. We've had the honor of being featured in publications such as *Leading Lawyers* and *Forbes*, which have helped spread the word about our firm and our knack for "parachuting" into cases at the last minute.

Since January alone, we have tried cases in both State and Federal Courts in 16 states, including: AZ, CA, CO, FL, IA, IL, IN, MN, MO, MT, NE, NY, PA, TX, VT, and WI, exhibiting our reputation as a national firm.

Business right here at home in the Midwest is also booming. This spring I had the distinction of being admitted to the Wisconsin Bar. We are now looking towards a future for our firm that includes a Wisconsin Patton & Ryan office, in addition to our Illinois and Indiana offices.

Please call me if we can assist you in any way.
312.261.5166

John W. Patton, Jr.

Patton & Ryan Secures Not Guilty Verdict in The Face of Fraud

On May 19, 2016, Patton & Ryan obtained a long-awaited and hard-fought victory when Judge Daniel J. Lynch, after having overturned the $25 million settlement fraudulently procured by Plaintiffs' Counsel, entered judgment on the jury's verdict in favor of Brunswick Corporation and Brunswick Boat Group in the case of *Vandenberg v. Brunswick et al.*

In June of 2015, Patton & Ryan successfully defended Brunswick Corporation and Brunswick Boat Group against product liability claims brought by Scot and Patricia Vandenberg after Plaintiff Scot Vandenberg fell from the upper deck of a boat manufactured by Brunswick. Originally built to specifications for a private owner, the boat was later sold to another Defendant in this action, a company called RQM, which modified it and chartered it to privately booked parties, but allegedly failed to update its safety features or register it for commercial use. Scot Vandenberg suffered the fall that left him paralyzed from the chest down while aboard the boat for a daytime Lake Michigan party cruise that he had booked for his company. Plaintiffs, represented by Mark McNabola and Ruth Degnan of the McNabola Law Group, filed suit in the Circuit Court of Cook County against the boat manufacturer and RQM, who settled out before trial. Partners John W. Patton, Jr. and John A. Ouska, who has since retired, led the Patton & Ryan trial team.

On June 9, 2015, after a nearly month long trial before Judge Elizabeth M. Budzinski, the jury received the case. Just 90 minutes into deliberations, the jury sent out a question that read, "Can we find fault with RQM without finding fault with Brunswick?" Though Judge Budzinski instructed her clerk, Tatiana Agee, to call Counsel for both sides back to the courthouse to discuss the note, Agee called only Plaintiffs' attorney Mark McNabola, and proceeded to read the question to him in hushed tones. McNabola then requested a delay, concealed his improperly acquired knowledge of the note's contents from the Court and the Defense, and rushed to settle the case for an earlier offered $25 million by Brunswick.

...continued on page 2

No Photo Finish: Patton & Ryan Wins $30 Million Paraplegic Defense Verdict In Cook County Horse Racing Case

After nearly six years of litigation, Patton & Ryan successfully obtained a defense verdict on behalf of Arlington Park and Churchill Downs in a catastrophic personal injury/product liability action brought by a professional jockey who was injured when his horse fell during a race at Arlington Park. The Plaintiff jockey, left paralyzed by the May 2009 accident, alleged that it was Arlington Park's synthetic race track and maintenance of that track that caused his paralysis. His wife also brought a loss of consortium claim against Arlington Park and Churchill Downs.

Throughout the trial, both sides presented detailed scientific testimony to the jury. In its case in chief, the Defense, led by Partners John W. Patton, Jr. and Paul Motz, called a veterinarian, an MIT professor in materials engineering, a biomechanical expert, and individuals from Arlington Park's management and maintenance departments. Also among the witnesses called by the Defendants was the top international expert on track safety in Thoroughbred racing who unequivocally explained to the jury that Arlington Park's track surface and maintenance are of the highest quality.

At closing arguments, the Plaintiffs requested that the jury award $30 million. In response, Patton skillfully highlighted the Defense experts' opinions, and made it clear to the jury that not only had the Plaintiffs failed to meet their burden of proof, but that it was actually the actions of another jockey that proximately caused the accident and the Plaintiff jockey's resulting injuries.

On May 6, 2016, following the grueling four week trial, the jury received the case. After only 80 minutes of deliberations, they returned a verdict for the Defense, unanimously agreeing that the synthetic track did not contribute to or exacerbate the Plaintiff's injuries. This significant defense victory came just one day prior to the famed Kentucky Derby.

Product Liability

Nearly half an hour after reading McNabola the note, and over ten minutes after McNabola secured the settlement, Agee finally contacted Patton to come to court to discuss the settlement and a note that "had just come out."

When Counsel for both sides finally arrived, the Judge asked what had caused the delay, explaining that the jury was waiting for an answer. Plaintiffs' Counsel Ruth Degnan gave no response, choosing to also remain silent about her superior knowledge of the note, the Judge's orders to appear in court, and the delay - even after the Judge then read the note aloud. At Patton's request, Judge Budzinski allowed the jury to continue deliberating after answering the jury's question in writing. Within ten minutes of receiving the answer, the jury returned a fully signed, unanimous verdict in favor of Brunswick.

Patton & Ryan Questions Validity of Settlement

After learning that the jury had actually sent out the note nearly 30 minutes before he was contacted by Agee, Patton realized that something improper had likely occurred and rushed to the courthouse, alerted Judge Budzinski, and requested an evidentiary hearing to determine the circumstances under which the settlement was procured. The Defense team mobilized and immediately filed a post-trial motion to vacate the settlement and enter judgment on the verdict.

After conducting her own internal investigation, the Judge filed a memorandum order detailing her findings on June 15, 2015, stating that Agee denied reading the note to Plaintiffs' Counsel, but that the Court's legal extern had told her that she witnessed Agee whispering the content of the note on that first phone call to McNabola. Following the filing of the order, Judge Budzinski recused herself due to her status as a potential witness.

Post-Trial Evidentiary Hearing and Motion to Vacate the Settlement

After months of motion practice, the evidentiary hearing finally occurred in October of 2015, with Judge Daniel J. Lynch presiding over the proceedings. As the trial attorneys for both sides were also witnesses, Dan K. Webb of Winston & Strawn, LLP was brought on as additional representation for Brunswick, and C. Barry Montgomery of Williams, Montgomery & John, Ltd. appeared on behalf of the Plaintiffs.

During the hearing, the Court heard testimony from the trial attorneys for Plaintiffs and Defendants, administrative clerk Agee, extern Brook Reynolds, and the Vandenbergs. The Defense team, having obtained phone records under subpoena from the Circuit Court of Cook County, the McNabola Law Group, and Patton & Ryan, LLC, presented evidence that unequivocally demonstrated that McNabola received notice of the existence of the note almost a full half hour prior to John W. Patton, Jr., and that Agee had never attempted to contact Patton.

During his testimony, McNabola admitted that he knew the contents of the note prior to negotiating the settlement and that he made no effort to inform either John W. Patton, Jr. or the Court. While under questioning, Degnan was also forced to admit that she kept quiet about McNabola's knowledge of the note's contents despite having the opportunity to tell the Judge and Defense Counsel in chambers. Extern Brook Reynolds also delivered the shocking testimony that after she heard Agee whisper the contents of the note to McNabola over the phone, Agee told her "I always like to give [plaintiffs] a little more of an opportunity to kind of settle or figure this out first before the defense."

Judge Vacates $25 Million Settlement

On January 19, 2016, Judge Lynch vacated the $25 million settlement on a myriad of legal grounds, including: fraud in the inducement, unilateral mistake, due process, equitable estoppel, public policy, and "the general notion of the obstruction of justice." He also discussed the potential applicability of criminal statutes to this situation, specifically 735 ILCS 5/32-8, *Tampering with a Public Record.*

In his ruling, Judge Lynch twice noted that he found Patton to be a credible witness while stating that he did not believe Plaintiffs' contention that McNabola thought Defendants had also received meaningful notice of the note. Specifically, Judge Lynch stated that, "McNabola had clear and convincing signs that he alone had taken possession of superior knowledge. He had negotiated a unilateral delay followed by a unilateral mistake of fact through civil fraud." He also rejected Plaintiffs' attempts to deny the materiality of the jury's question, which he said related "…to the central issue in this case," and was, in fact, "highly suggestive of a favorable outcome for the defendant one hour and 20 to 30 minutes after the start of deliberations." After discussing in detail the numerous violations of the Illinois Professional Rules of Conduct made in pursuit of securing the settlement, Judge Lynch summed up his findings as follows:

> *"…an attorney has a legal and equitable duty to reveal in a timely and meaningful way both the mere existence of, and further, the full contents of a jury note to all parties whom the attorney reasonably should know may be unaware of either. That duty is at least equal to the Court's same minimum duty. It is owed to the attorney's opponent and transcends duties owed to the attorney's own client. That particular duty is owed to due process itself."*

Judge Lynch Reconvenes Original Jury

Following extensive further motion practice, Judge Lynch determined that justice required that he reconvene and poll the jury regarding their June 9, 2015 verdict. On February 22, 2016, under thorough questioning by Judge Lynch, all twelve jurors confirmed that they had arrived at their verdict for Brunswick free of any improper influence, and that had Judge Budzinksi asked them to pronounce that verdict in open court that same day, they would have done so. Judge Lynch dismissed the jury, allowed the parties time to each file a supplemental brief on any due process issues not yet examined by the Court, and set a date for final arguments and possible ruling on the one issue that remained before the Court, whether to enter judgment on the jury verdict.

Plaintiffs Continue Desperate Attempts to Salvage Settlement

Plaintiffs continued to take measures to get their hands on the funds from the overturned settlement, and brought in yet another set of attorneys, Joseph A. Power of Power, Rogers & Smith and John Kralovec of Kralovec, Jambois & Schwartz to replace Mark McNabola and Barry Montgomery as their representation.

Though the Vandenbergs had attended each hearing in front of Judge Lynch that addressed McNabola's fraudulent inducement of the settlement, Plaintiffs' new Counsel argued, among other things, that they only learned of his indiscretions when Judge Lynch ruled to overturn the settlement. Plaintiffs' Counsel also engaged well known attorneys with no involvement in this case to sign affidavits speculating on how they would have handled the events of June 9, 2015. On March 9, 2016, Plaintiffs' Counsel contacted Brunswick's representatives and attempted to accept Brunswick's long dead June 9, 2015 settlement offer, after which they filed a Motion to Enforce Settlement.

Defense Secures Entry of Not Guilty Verdict

On May 19, 2016, nearly a year after the jury executed the verdict for Brunswick, Judge Lynch entered judgment on that verdict. He also ruled on two other motions before the court.

First, Judge Lynch granted Defendants' Motion to Strike the Affidavits of the unrelated attorneys, stating that the affidavits, "which are identical to the Vandenbergs' present position… [are] presented to the Court in a way that is both time and scienter warped," and that they completely ignored "the superseding due process and constitutional aspects of this fact pattern" that are at the heart of this case. He went on to say that the record demonstrated that, when Defendants' allowed the settlement to be placed on the record, they were " honoring the settlement that they had agreed to in good faith, all while facing the immediate appearance of bad timing or a court delay in communicating to both sides…[and] did not know during that particular time period was that the settlement had actually been procured through apparent crime, bad faith, and fraud."

Next, the Court denied Plaintiffs' Motion to Enforce Settlement, explaining that "[t]he suggestion that the offer remained open for acceptance on March 9th of this year, nine months after it was communicated, had been overtaken by the jury's question, crime, bad faith, fraud, and clear abuse of due process."

Finally, and most importantly, Judge Lynch granted Defendants' Motion to Enter Judgment on the Jury Verdict. Judge Lynch ruled that he was convinced that in accordance with the law and rules governing trials in Cook County, the jury properly reached a unanimous verdict in favor of Brunswick as indicated by their fully executed Verdict Form B. Eloquently summarizing the reasoning for his conclusion, Judge Lynch stated:

> *"[w]hen a Court is faced with the ultimate power to put forth and find equitable and special remedies, it must do so in a way that is fair by being just…It cannot equitably grant a mistrial as a lesser even public policy based remedy, as that would trample the due process rights of Brunswick on the fact of this jury's clear verdict."*

Patton & Ryan Stymies Runaway Settlement Negotiations

In September 2010, Plaintiff, a 38-year-old man, was admitted to the general medical floor at defendant hospital with severe community acquired pneumonia by his primary care physician. Plaintiff was seen by multiple physicians during his stay from September 20th-22nd, 2010; most notably multiple pulmonologists, an anesthesiologist, and an emergency room physician. Plaintiff was eventually transferred to the ICU once his condition began to worsen. While in the ICU, he developed a tension pneumothorax, most likely during the process of intubation. That tension pneumothorax led to cardiac arrest and a permanent brain injury.

Multiple unsuccessful attempts at settlement with seasoned mediators occurred prior to Patton & Ryan's retention and involvement in the matter, and Plaintiffs' demands remained steadfastly exorbitant up through and during trial. Their initial demand clocked in at $50 million dollars, and their final demand made at the last unsuccessful mediation session two months prior to trial was $39.5 million.

At trial, Plaintiffs alleged claims of medical negligence against four different physicians and their private medical practices as well as the hospital under theories of agency and institutional negligence. Patton & Ryan successfully quashed the claims of vicarious liability based on actual agency of the doctors on a motion for summary judgment prior to trial. The hospital denied that any of the independent contractor physicians were "apparent agents" of the hospital and that any of the alleged policies and procedural violations constituted negligence or caused Plaintiff's injuries. Defendants also alleged that Plaintiff knew and understood the employment status of all physicians who treated him because he signed a clear and unequivocal consent form when he arrived for admission – as well as on three prior occasions. Therefore, the hospital could not be vicariously liable for the medical negligence of those physicians.

With a fast approaching trial date and little of the discovery process completed, Patton & Ryan took over the defense of the case after it became apparent that the Plaintiff would not settle. 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.

The case proceeded to trial in April 2016. During a full week of pretrial evidentiary motions, Patton & Ryan prohibited Plaintiffs' counsels from employing inappropriate and irrelevant testimony regarding areas outside their expertise from each of Plaintiffs' experts. More importantly, Patton & Ryan's pretrial motion arguments successfully and significantly limited Mr. Reynolds' fiancé from testifying regarding various damaging and improper "opinions" elicited by Plaintiffs' counsels during her two depositions. These wins on pretrial evidentiary issues significantly limited Plaintiffs' ability to put on their case and led directly to the settlement of the case against the hospital, prior to jury selection and far below Plaintiffs' previous demands.

Product Liability Medical Malpractice

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Transportation & Trucking Litigation

Other News Spotlight

Parachuting

One of the hallmarks of Patton & Ryan is our ability to 'parachute' into a case on the eve of trial. This unique skill set was put on display one Saturday this past spring when Partner John W. Patton, Jr. answered a client call to take over as lead trial counsel in a four fatality trucking accident case in the Plaintiff friendly venue of Corpus Christi, TX.

By Monday, just 48 hours after receiving the call, Patton was on the ground in Texas selecting a panel of six jurors. Back at home, a team of Patton & Ryan attorneys had already mobilized and begun drafting pre-trial motions, preparing key liability witnesses, and drafting cross-examinations. Less than a week after Patton & Ryan 'parachuted in,' a favorable settlement was obtained on behalf of our client.

Upcoming Events

10/19-23/16	DRI 2016 Annual Conference, Boston, MA
11/9-11/16	PLUS 2016 Conference, Chicago, IL
12/1/2016	CLM 2016 Conference, New York City, NY

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