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We have just completed one of the busiest and most successful six months of trials around the country in our history. Our willingness to accept last minute trials in all jurisdictions has no bounds. A new practice area for the firm is being retained to attend mediations scheduled shortly before trial.

Our clients want to project the unmistakable commitment to trying the subject case to verdict in the event unreasonable demands carry the day. Our new role has been quite successful in getting cases settled. If no settlement, we will fight to verdict.

*John W.
Patton, Jr.*

312.261.5166



Defense Of Catastrophic Car Seat Product Liability Case

Patton & Ryan recently obtained a favorable settlement for its clients in a complex, catastrophic products liability case pending in the United States District Court for the District of Nebraska. The case involved numerous defendants, some located in foreign jurisdictions throughout the world.

The Plaintiff parents alleged that their seven-month-old child suffered catastrophic permanent brain damage and related neurological injuries due to a strangulation injury that occurred in an infant car seat when the mother left the child unattended while taking a shower. The case presented a unique set of facts relating to liability and damages. Plaintiffs' theory of how the incident took place and the mechanism of injury changed throughout the course of expert discovery.

The Defendants denied liability, stating it was their position that the child's injuries were entirely the fault of the mother's negligent care and supervision. Despite the numerous obvious and conspicuous warnings that she testified she read, the mother left the child unattended and improperly strapped into his car seat for much longer than she testified to.

The case also involved spoliation issues relating to Plaintiffs' alteration of the car seat itself, as well Plaintiffs' disposal of evidence that was present at the scene of the incident. Through our defense experts, we were able to establish that Plaintiffs' own experts altered the product and made modifications to it.

Although the child was resuscitated, he suffered catastrophic brain damage, resulting in millions of dollars of medical expenses. An interesting element to Plaintiffs' damages claims also related to the fact that the injured child had a healthy twin brother, which Plaintiffs intended on raising at trial.

Products Liability

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Successful Settlement Immediately Prior To Jury Selection

Patton & Ryan recently jumped into a case, which ultimately led to a successful and almost unprecedented result in a paraplegic, products liability case. Following numerous favorable rulings on motions in limine, prepared by Patton & Ryan, Plaintiff's counsel repeatedly dropped their demand and negotiated with themselves while the prospective jurors awaited assignment. Fully prepared to proceed to verdict, Plaintiff's demand became too good for Patton & Ryan's client to pass by.

Plaintiff alleged that while building a garage, for another company, a board he barely stepped on broke due to a manufacturing defect. Plaintiff fell approximately 9 feet breaking his back, rendering him a paraplegic.

Patton & Ryan was brought in immediately following the denial of Defendants' Motion for Summary Judgment. In meticulously assessing the case, with its Defendants expert witness disclosures looming, it became obvious that there was a dispute as to how Plaintiff's accident occurred. Although experts had already been retained by Defendants primary counsel and were ready to be disclosed, Patton & Ryan could not look past the need for an additional expert.

With the many apparent holes and suspiciousness as to how Plaintiff's accident occurred, Patton & Ryan hired a biomechanical expert to evaluate whether Plaintiff's injuries could have occurred as he had alleged.

Products Liability

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Car Seat case continued from page 1

Patton & Ryan inherited this case during the discovery phase of the case which allowed us to aggressively defend the matter through written discovery and depositions prior to the expert discovery phase of the case. After the Court allowed discovery on jurisdictional matters relating to numerous dispositive motions, the Court entered an aggressive discovery schedule which required the parties to complete all inspections, written discovery, depositions and expert discovery within one year. As a result, the parties conducted approximately 32 fact witness and ten expert depositions within ten months. Due to the jurisdictional considerations of the parties, location of the evidence, and expert witness locations, these depositions took place all over the country.

This products liability case involved complex foreign jurisdictional issues and a challenging discovery schedule set by the Court. Patton & Ryan was up for the challenge and aggressively defended the case by thoroughly conducting the necessary discovery and depositions. We also filed numerous pre-trial motions, including *Daubert* motions relating to all of Plaintiffs' liability and damages experts, which ultimately resulted in Patton & Ryan obtaining a favorable settlement for its clients.

Products Liability continued from page 1

Following his review, Defendants' biomechanical expert opined that there was no evidence to support that the board broke and that Plaintiff could have fallen the way he claims to sustain his injuries.

In an effort to uncomplicate the highly technical aspects of the case, Patton & Ryan prepared extensive Motions in Limine to bar Plaintiff's products liability allegations against Defendants operating and manufacturing process, and was ultimately successful. Following settlement, the presiding judge was highly complimentary of the motions prepared by Patton & Ryan.

There is no question that the retention of the biomechanical expert and the motions in limine prepared by Patton & Ryan ultimately led to the settlement of a mere 10% of Plaintiff's original demand against the Defendants.

Patton & Ryan was recently called to defend a mass transportation company and its subsidiary in a rare Illinois Dead-Man's Act case.

Prior to her death, Plaintiff, an elderly woman, suffered a fall as she attempted to exit a minivan. Allegedly, the Plaintiff was caused to fall because she was not assisted by the minivan operator as she attempted to exit. Plaintiff claimed injuries to her lower extremities and she was admitted to a hospital for approximately one week for treatment, testing, and observation. Following the incident, Plaintiff died from issues unrelated to the incident and, shortly thereafter, Plaintiff's attorney disclosed two newly discovered independent witnesses who allegedly observed the incident. Plaintiff's medical damages totaled more than \$45,000.00 and the demand was more than \$140,000.00.

Patton & Ryan vigorously and aggressively defended the matter by seeking out the two newly discovered witnesses and obtained statements from each witness that they had, indeed, not witnessed the incident, but merely arrived following the incident. In addition, Patton & Ryan quickly secured a voluntary dismissal for the mass transportation provider.

Ultimately, Patton & Ryan filed a Motion for Summary Judgment, which forced Plaintiff's attorney to rely on the Illinois Dead-Man's Act as both a sword and shield – a shield in that the minivan operator could not testify at trial as to the incident or any conversations with the Plaintiff, and a sword in that Plaintiff's attorney alleged, in a cross Motion for Summary Judgment, that there was no genuine issue of material fact that the Plaintiff had fallen, which breached the duty to use the highest degree of care, as she attempted to exit the minivan.

Thereafter, John W. Patton, Jr., and his team retained an expert to successfully challenge the severity of Plaintiff's injury and expose the numerous pre-existing conditions that, more likely than not, played a significant role in the incident. As a result of Patton & Ryan's thorough investigation, diligent representation, and vigorous defense tactics, the case against the subsidiary successfully resolved for a tiny fraction of Plaintiff's demand hours before the hearing on our Motion for Summary Judgment.

Transportation

High Exposure Premises Liability Case Involving Natural Gas Explosion Resolved

Patton & Ryan was called to defend an apartment complex owner and its related property management company in connection with an explosion and fire caused by a natural gas leak in an apartment that severely injured two teenage boys.

The teenage boys were guests of the tenant who had resided in the apartment for several years. Prior to the fire, the tenant's natural gas service had been turned off for several weeks due to non-payment. After the tenant paid her gas bill, a service technician for the local gas company restarted gas service at the apartment a day before the fire. The gas service technician observed that there was an uncapped gas line for a gas-operated clothes dryer while in the apartment. The tenant did not have a clothes dryer connected to the line. The technician did not place a cap on the line before turning gas service on despite his employer's requirements that unused gas lines were to be capped prior to establishing gas service.

The valve to the unused gas line was accidentally opened by someone within the apartment sometime after gas service was reinstated. Despite being aware of the odor of natural gas throughout the apartment the day before the fire, the tenant admitted that she left the two teens and her four young children in the apartment and went to work without informing anyone about the odor. After the tenant's children left for school, it is believed that gas was ignited when one of the teens turned on the range to begin cooking.

The teenage boys suffered extensive second and third-degree burns, respiratory failure, and underwent multiple surgeries, including burn debridement, skin grafting, and tracheostomy. The burns caused significant keloid scarring and other deformities. Plaintiffs' past medical damages totaled more than \$5 million with claimed future medical damages exceeding \$7.5 million. Plaintiffs' settlement demand was \$80 million against all defendants.

The critical issue in the case was who should have prevented the fire. Plaintiffs contended that the apartment defendants should have discovered the uncapped gas line during routine maintenance inspections. Plaintiffs alleged that the failure to conduct the routine maintenance inspections of the apartment eventually contributed to the explosion and fire.

Over the course of discovery, including more than 50 depositions, Patton & Ryan attorneys were able to confirm that the gas service technician failed to abide by his company's policies with respect to capping unused gas lines before initializing gas service. Cementing this information allowed for the preparation of a Motion for Summary Judgment, which motivated Plaintiffs to resolve the matter at mediation.

Once again, Patton & Ryan's attorneys employed their proactive and aggressive defense tactics and as a result of the thorough investigation, diligent representation, and vigorous research, the case against the apartment complex owner and management company was resolved for a fraction of Plaintiffs' \$80 million demand.

Patton & Ryan routinely defends commercial property owners and management companies and is ready to defend your company in any jurisdiction at any time.

Premises Liability



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330 N. Wabash Ave.
Suite 3800
Chicago, IL 60611
p: 312. 261.5160
f: 312. 261.5161

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

Other News Spotlight

Successful Defense In Wrongful Death

A seven-year-old boy was walking to school with his mother when he unexpectedly jumped from the sidewalk into the street. At the exact same moment, a school district truck being driven by a school district employee turned the corner and hit and killed the boy.

At the time of the incident, employees of the municipality's Water Department were attempting to close a valve to stop the flow of water coming from a break in the school district's water service line, located roughly 100 feet to the west of the area of impact. Plaintiff, the boy's mother, sued both the municipality and the school district; Plaintiff alleged the municipality had failed to implement proper and sufficient temporary traffic control when responding to the water leak. Plaintiff's demand was \$12 million.

Through expert witness discovery, it quickly became clear that the municipality's expert witnesses' opinions were more complete and scientifically sound, compared with those of the Plaintiff's and the school district's experts. In fact, Patton & Ryan affirmatively turned the spot light on the school district, highlighting the district's complete failure to respond to its own water leak in any manner.

After vigorous motion practice and expert discovery, Patton & Ryan was able to resolve Plaintiff's claims against the municipality for a small fraction of Plaintiff's demand on the morning our motion for summary judgment was to be heard and two days before trial was scheduled to begin.

Motion For Summary Judgment Granted

Associate Anthony Parker of Patton & Ryan secured a tremendous victory when the Chief Judge of Kane County, Illinois granted our Motion for Summary Judgment in a \$1M subrogation/coverage matter. Plaintiff's complaint, filed in 2014, alleged over \$1M in property damage was caused when a pipe carrying a methanol solution broke and spilled thousands of gallons of the liquid into the building. Plaintiff provided property insurance at the time of the leak.

Plaintiff's complaint sought relief from the contractor responsible for installing the pipe under a theory of equitable subrogation. At issue was whether the insurer had a contractual right to subrogation. Prior to construction of the building, all parties entered into an Owner Controlled Insurance Program (OCIP) and agreed to waive all rights to subrogation.

Plaintiff argued the subrogation waiver terminated at the completion of construction and a Builder's Risk exclusion contained within the insurance policy excluded coverage and therefore, the subrogation waiver did not apply.

Defendant's Motion for Summary Judgment argued Plaintiff was not entitled to bring their claim because: (1) the language of the Subrogation Waiver applied to any and all claims and was not limited in scope; (2) Builder's Risk exclusions only apply during the construction period; and (3) an exception to the Builder's Risk exclusion applied and thus, the Subrogation Waiver was still in effect at the time of the 2012 liquid leak.

Following oral arguments by attorney Parker, the court agreed with our position and the motion was granted. Plaintiff's last demand was \$680,000.

Wrongful Death

Insurance Coverage

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