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PATTON
& **RYAN** LLC

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This year has started out with a flurry of trials around the country in which we have parachuted in. Many have already been successfully resolved.

Please remember we look forward to conducting, at your place a business, our special presentation, "How to Defend Cases." We provide this service on all the variety of tort cases we defend throughout the country.

Give me a call should this be a benefit to your team.

John W. Patton, Jr.

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Fourth District Appellate Court Affirms Defense Verdict In \$31 Million Pediatric Malpractice Case

Following oral argument by John W. Patton, Jr. of Patton & Ryan, on November 15, 2017, the Fourth District Appellate Court issued its opinion affirming the defense jury verdict in *First Bankers Trust Company, Inc. et al v. Koke Mill Associates, LLC.*, Case No. 15L97. The Fourth District Appellate Court held that the trial court did not abuse its discretion in finding the prejudicial impact of expert testimony by a nurse practitioner outweighed its probative value in a case involving physician negligence. Koke Mill Associates was represented by partner, John W. Patton, Jr. and associate, Kathryn R. Vaughan.

This case involved an infant, Dramara Sivels, Jr. (hereinafter "DJ") who was discharged from Memorial Medical Center in Springfield, Illinois 36 hours after birth. 63.5 hours after birth DJ was admitted to St. John's with possible sepsis. The sepsis ultimately became meningitis, and DJ's neurological system was irreversibly damaged as a result of the infection. Plaintiffs claimed that Koke Mill, acting through its agent Dr. Vasconcelles, negligently discharged DJ less than 48 hours after his birth despite his alleged complicated post-partum course which included respiratory distress, low blood glucose labs, feeding difficulty, vomiting and sleepiness. The trial court limited the scope of testimony of Plaintiffs' nursing expert which led to Plaintiffs' appeal. The Appellate Court held that the prejudicial impact of having a nurse render opinions that could be inferred to be critical of physician would outweigh any probative value of having the nurse testify. Plaintiff then called four expert physicians to testify against Koke Mill.

Mastering the Complexities of Complex Regional Pain Syndrome

Complex Regional Pain Syndrome ("CRPS") is a controversial and nebulous pain condition that is being increasingly seen in personal injury cases. The condition often results in severe permanent neuropathic pain and functional limitations. Extreme cases can result in total disability requiring extensive skilled nursing care. Over the past decade and half, improvements in the diagnostic criteria (known as the Budapest Diagnostic Criteria) for CRPS have led to its increased acceptance as a compensable medical condition.

Lead trial attorney John W. Patton, Jr. and associate Ryan J. Reguly recently parachuted in to defend a leading national event management and marketing firm in a damages only federal trial in the Northern District of Illinois involving an alleged severe case of CRPS. Prior to Patton & Ryan taking over the defense, its client had already been found 100% at fault in a previous liability trial. Patton & Ryan was undeterred by this challenge and eagerly undertook an aggressive defense.

This case began as a relatively straight forward trip and fall injury involving an attendee of a medical conference at a convention center in suburban Dallas, Texas. While hurrying to a meeting, the Plaintiff tripped over an overturned folding table left unattended by the event staff

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cleaning up the area, and injured her left arm and hand. The Plaintiff refused to seek medical treatment in Texas and flew home to Chicago that same day. Initially, adjusters assessed the claim as minor injury targeted for a nominal settlement.

Eventually, Plaintiff found her way into the care of a leading Chicago-based expert on the diagnosis and treatment of CRPS. At the first visit, this expert diagnosed Plaintiff with CRPS and immediately began an aggressive course of treatment culminating in the implantation of a permanent spinal cord stimulator. Following the implantation of a spinal cord stimulator, Plaintiff claimed her CRPS was greatly improved, but immediately began reporting neck pain from the surgery. She then underwent another series of painful injection to treat this newly developed neck pain. What had begun as a soft tissue injury to Plaintiff's left wrist, had slowly developed into a debilitating permanent pain condition limiting the use of her entire left arm and chronic neck pain.

After being called to the defense, Patton & Ryan quickly jumped in and began building a three-pronged defense challenging the CRPS diagnosis, causation, and the degree of the Plaintiff's subjective pain. Relying on its vast knowledge and experience in defending against CRPS claims, Patton & Ryan disclosed prior deposition testimony from Plaintiff's Chicago-based CRPS expert in which he

admitted he could not tie CRPS to a fall from years prior. Patton & Ryan also obtained surveillance showing that the Plaintiff had full and normal use of her left arm. Patton & Ryan provided this information to its pain management expert who testified at trial that the Plaintiff did not have CRPS due to her lack of physical symptoms and attributed Plaintiff's subjective pain to symptom magnification.

At trial, Patton & Ryan proved, through the effective use of video surveillance, expert testimony, and impeachment, that Plaintiff was vastly overstating her subjective pain complaints. The physician diagnosing Plaintiff with CRPS also conceded on cross-examination that he could not causally relate the CRPS to her fall. Sensing that Patton & Ryan had scored serious points during trial, the Plaintiff reduced her request for damages at trial to \$6.5 million, down from her \$8.2 million pre-trial demand. Ultimately, Plaintiff was awarded only \$2.6 million in damages, which was approximately 30% of the pre-trial demand. In this case involving catastrophic damages resulting from a rare and complex pain condition, Patton & Ryan's unique knowledge and experience tempered the Plaintiff's expectations and saved its clients millions of dollars.

Personal Injury

Summary Dismissal In Tragic Child Injury Case

Patton & Ryan Partner, Stephen R. Niemeyer and Associate, Ryan H. Voss, recently obtained summary dismissal in a tragic case wherein a ten-year-old child's leg was amputated after he was struck by a commuter train while running across a grade-level railroad crossing. The child and his mother brought suit against the commuter rail company, his school district, and the school bus contractor (who was represented by P&R), alleging that the district and the school bus contractor had negligently designated the child's bus stop in close proximity to the grade crossing.

P&R, being fully aware of the tragic and sympathetic nature of this case, knew that a delicate motion strategy needed to be employed to achieve summary dismissal and avoid a hazardous trial. Therefore, P&R employed a "rope-a-dope" strategy, taking a facially passive position at the initiation of the suit by answering the complaint instead of filing a motion to dismiss. When the co-defendant school district aggressively filed their own motion to dismiss, the Plaintiffs' attorneys focused heavily on establishing liability against the district. In the process, the Plaintiffs argued that it was the school district, and the school district alone, that designated bus stops.

Just as P&R planned, in fighting the school district's motion, the Plaintiffs had inadvertently proved they had no case against the school bus company. We filed a motion citing Plaintiffs' own arguments which was granted in an expedited manner. As a result, P&R's client was extricated from this case with a minimal amount of discovery and expense to the client. Moreover, the extremely sympathetic nature of the case would have made for a verdict potential in the high seven figures. Thus, the "rope-a-dope" strategy led to an optimal result for P&R's client.

Expert Discovery Leads To Successful Settlement In Trucking Case

After disclosing defendants' experts and damaging video surveillance of Plaintiff, Patton & Ryan successfully settled a case for a fraction of Plaintiff's demand in a motorcycle vs. semi-tractor case. The Plaintiff motorcycle driver failed to come to a stop while approaching a stalled semi-tractor on a highway with ongoing road construction. Due to road construction there was a concrete barrier wall lining the right lane, resulting in no shoulder for the semi-tractor to pull over to.

At the time of the accident, Plaintiff failed to properly brake his motorcycle or change lanes in order to avoid the approaching stalled semi-tractor. As a result of his failures, Plaintiff lost control causing the motorcycle to laydown resulting in him skidding into the concrete barrier wall and continuing to slide toward the stalled semi-tractor. Plaintiff himself never made contact with the semi-tractor.

Based on the facts, the case was rightfully viewed as very questionable as to liability and damages; therefore, Patton & Ryan continued to defend the case by pushing back against Plaintiff's speculative allegations and demands. In an attempt to exploit Defendants and their lack of involvement in causing Plaintiff's own injuries, Plaintiff attempted to allege that the semi-tractor had improper reflective tape, which caused Plaintiff to be unable to perceive and recognize the semi-tractor in order to avoid his accident. However, Plaintiff's own experts agreed that had Plaintiff properly applied his brakes his accident would have never happened.

Due to him not wearing a helmet, Plaintiff suffered a fractured skull, which Plaintiff alleges resulted in him suffering a traumatic brain injury. In an attempt to exploit an accident that Plaintiff caused himself, Plaintiff's counsel was erroneously alleging that Plaintiff needed 24-hour care and assistance in all of his daily living activities. However, due to Patton & Ryan's aggressive work-up of the case it was uncovered that Plaintiff's alleged traumatic brain injury was not as severe as Plaintiff's counsel was alleging.

Throughout the discovery process, including defendants' neuropsychological expert's evaluation and video surveillance, it was exposed that Plaintiff lived on his own after leaving a medical care facility following the accident. Discovery and video surveillance also revealed that Plaintiff did not need any assistance in most daily living activities.

Patton & Ryan's comprehensive efforts in preparing the case from the very beginning, on a very questionable liability case, led directly to the settlement of this case, at mediation, for a portion of Plaintiff's original demand.



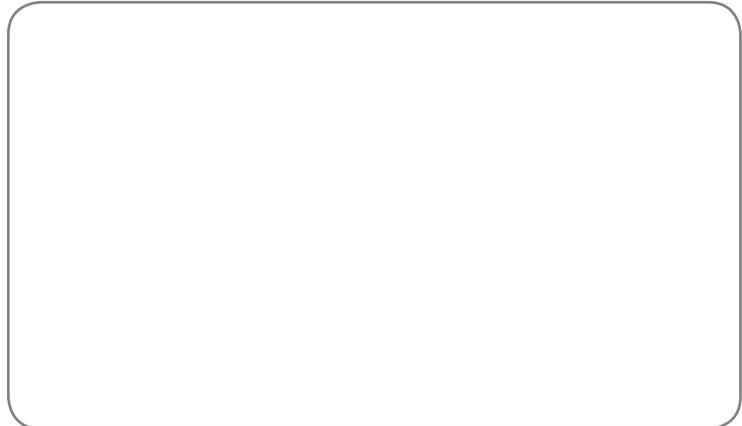
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- Product Liability
- Professional Liability
- Transportation & Trucking Litigation



Other News Spotlight



New York City Post-Holiday Party

Patton & Ryan hosted their annual post-holiday party at The Capital Grille in lower Manhattan. The annual party is a way for the staff at Patton & Ryan to say thanks to many of the clients based in the New York area. Likewise, the social event allows clients to get to know the staff.

From left to right: Attorneys Heather Snider, Katie Vaughan and Natalie Eschbach. Partners Dave Ryan, John Patton, Jr., and Paul Motz. Attorneys Tony Parker and Ben Levinsky.