PATTON & RYAN LLC

SUMMER 2018 ISSUE 36

Through the first eight months of this year, we have been retained to parachute in on trials in over 10 states. All trials resulted in very favorable resolutions.

We appreciate the confidence of our clients in sending us coast-to-coast on high risk catastrophic loss trials. Keep them coming!

We have plenty of resources to protect your interests.

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

John W. Patton, Jr.

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Appellate Court Restores Quadriplegic Defense Verdict; Establishes Key Defense Law

The Illinois First Appellate District overturned a Cook County judge's decision to order a new trial on a $30 million quadriplegic defense verdict that Patton & Ryan Partners John W. Patton, Jr. and Paul D. Motz obtained in May 2016. In so doing, the Appellate Court published its decision that both clarified and enhanced the application of the Sole Proximate Cause defense for defendants in Cook County.

This catastrophic personal injury/product liability action was brought by a professional jockey against Arlington Park and Churchill Downs. The Plaintiff was left paralyzed when his horse fell during a race at Arlington Park. The Plaintiff jockey alleged that it was Arlington Park's use of a synthetic race track and the maintenance of that track that caused his paralysis. The Plaintiff's wife also brought a loss of consortium claim against both of Patton & Ryan's clients. The defense of this matter focused on both the actions of a jockey that the Plaintiffs never sued and the alleged improper maintenance that was never contemplated or required by the product manufacturer.

Patton & Ryan took over the defense as lead trial counsel a week before the trial was to begin. At that time, and after five years of litigation, the defense was unified with the product manufacturing defendants. On the eve of jury selection, the co-defendants settled, leaving only the racetrack as the Plaintiffs' target. Despite this settlement, the Court still allowed the Plaintiffs' product liability theories to proceed against the racetrack owners.

After a four-week trial, the jury returned a defense verdict in less than eighty minutes. The jury also returned a special interrogatory in favor of the defendants on the issue of sole proximate cause. During post-trial motions, the trial court granted Plaintiffs' request for a new trial on the basis that a defendant cannot avail itself of the sole proximate cause defense when there is evidence of two alternative sole proximate causes. The Appellate Court conclusively rejected this legal interpretation, stating: "the sole proximate cause theory should be just as viable with two or more nonparty actors as it is with a single nonparty." The Court continued its reasoning: "the point is that the group of nonparties are exclusive in the sense that their collective negligence was 100% of the Plaintiff's injury and the party-defendant's contribution to the injury was zero."

Catastrophic Lunch-Break Accident Means Defendants Not Liable

Patton & Ryan trial lawyers obtained a unanimous defense verdict on behalf of both the Allstate Corporation and Kelly Services in a high-risk, two-week jury trial in Cook County in May of 2018.

Plaintiff presented as an extremely sympathetic young man in his early 20s, with a promising life ahead of him before it was cut short in a motorcycle versus auto accident that rendered him paralyzed from the waist down. The driver of the automobile was an employee of Kelly Services, working at the Allstate corporate campus.

Due to the accident, Plaintiff was incontinent to bladder and bowel function. Plaintiff was present before the jury every day in the courtroom in his wheelchair, along with his large family. Although the motion judge previously refused to put sympathy aside and grant our motion for summary judgment, we were able to minimize the highly emotional and sympathetic impact of the case by focusing the jury on the applicable law, demanding that the jury set aside their feelings and follow the instructions of the court.

This case had the potential to cause a tectonic shift in scope of employment and agency law across the country, touching virtually all industries with employees or temporary workers. Plaintiff asked the jury for more than $52 million. Through the skillful advocacy of the attorneys at Patton & Ryan, the jury set aside Plaintiff's appeals of sympathy and returned a 12-0 unanimous verdict for our clients.

Marina Explosion Minimized

John W. Patton, Jr. and David F. Ryan, along with attorney Kelly L. Ferron, a Florida-licensed attorney, were brought into three boat explosion cases that had been litigated for five (5) years previously. The cases all arose out of a major explosion aboard a 32' pleasure craft in Tampa, Florida, which very severely injured 11 individuals. One Plaintiff had three limbs amputated, and another lost a leg at the hip. Others sustained a plethora of fractures, collapsed lungs, and other injuries requiring multiple surgeries. Patton & Ryan worked with Miami counsel to defend the subject boat's marina that also employed an individual who did work on the subject marine generator that was involved in the explosion just a few months before the incident.

The issues were quite complicated, and Patton & Ryan worked extremely closely with its electrical engineers, cause and origin expert, and metallurgist who actually built a to-scale test chamber simulating the engine compartment of the subject vessel to run a series of tests in order to determine both the fuel source and the ignition source (fuel source + ignition source = explosion). Our attorneys worked with our experts at their facility and observed many of these tests in order to learn the most probable causes of the explosion, build our defenses and prove, systematically, that each theory set forth by Plaintiff's key experts on both the ignition source and the fuel source was incorrect. Our testing did just that.

Creating additional complications, the Plaintiff failed to preserve the subject vessel. By the time suit was filed three (3) years after the incident, the boat had been in drydock in a junkyard, in the Florida elements and heat, which destroyed much evidence and made things quite problematic for our experts to determine the cause and origin of the explosion, particularly in identifying the ignition source. Patton & Ryan thus drafted a motion to obtain a jury instruction on spoliation (the sole remedy available in Florida), creating a negative inference that the Plaintiff's failure to preserve the vessel properly was due to it having negative effects on Plaintiff's case. We also filed a number of summary judgment motions, all of which helped lead to an excellent settlement.

Ultimately, Patton & Ryan's aggressive, hardline, and proactive approach in defending this case, ensuring the defense had the most effective experts, ensuring that the necessary motions were prepared, and working closely with our experts and their testing to prove Plaintiff's experts completely wrong, all done within a span of less than a year, led to a very favorable settlement of approximately 15% of what Plaintiff was seeking to obtain for all eleven (11) Plaintiffs in all three cases.

Auto Accident Injuries Refuted Resulting In Favorable Settlement

This case involved a rear-end accident between two vehicles on Interstate 64 in the Township of Caseyville, in plaintiff-friendly St. Clair County, Illinois. Plaintiff filed her lawsuit against the Defendant alleging that the Defendant negligently drove his vehicle into the back of her vehicle and that her injuries were a direct and proximate result of that accident.

Following the accident, Plaintiff presented to the emergency room where CT-scans of her head and neck came back unremarkable. In the months that followed, she sought care from her doctor, a family practice physician, and sought treatment irregularly at a physical therapy facility over the course of one month. She experienced little or no improvement during this time.

She was eventually advised by the physical therapy personnel to discontinue her treatment with them. She then sought the care of Dr. Matthew Gornet at the recommendation of her sister-in-law. Dr. Gornet performed an MRI on April 18, 2016, and indicated that injuries were shown in her cervical spine at C5-6 and C6-7.

After meeting with Dr. Gornet, Plaintiff's treatment became more aggressive. She received injections at both the C5-6 and C6-7. After receiving only temporary relief from the injections, Plaintiff elected to proceed with a cervical disc replacement on September 2, 2016.

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Aggressive Motion And Jury Selection Process Leads To Successful Settlement In Las Vegas Medical Malpractice Trial

As we are routinely asked to do, Patton & Ryan recently dropped into a case shortly prior to trial, which ultimately led to a successful result in a vent-dependent quadriplegic medical malpractice case. The main issue in the case was the cause of Plaintiff's quadriplegia, upon which the Plaintiff and Defendants vehemently disagreed.

The case was rightfully viewed as very questionable as to liability; therefore, Patton & Ryan defended the case by pushing back against Plaintiff's speculative allegations and demands. Plaintiff arrived at Defendant's hospital with an aggressive bacteria already attacking his body. The Defendants provided proper care and treatment given the circumstances and how Plaintiff presented at their hospital. After a few days of treatment at Defendant's hospital, Plaintiff was transferred to another hospital for continued care and treatment. At the time of transfer Plaintiff was able to move all extremities. Eight days after transfer, he was unable to move his extremities and inevitably became a quadriplegic.

Defendants and their experts agreed that the condition causing Plaintiff's quadriplegia was not preventable. Defendants' position was that the sole cause of Plaintiff's quadriplegia was the aggressive bacteria infection he developed prior to his arrival at the hospital. Plaintiff and Plaintiff's experts believed that there was a different cause that the Defendant at the first hospital missed and failed to diagnose, causing Plaintiff's quadriplegia.

In an attempt to exploit our Defendant, Plaintiff tried to allege that the subsequent treating hospital and all medical providers had no involvement in causing Plaintiff's quadriplegia. However, some of Plaintiff's own experts agreed that the subsequent treating hospital could have prevented Plaintiff's unfortunate outcome and were negligent as well.

To further assist with defending the case, new law was created allowing non-parties to be listed on the verdict form. Therefore, allow the defense to argue that if the cause of Plaintiff's injuries was due to the lack of treatment Plaintiff received, as being argued by Plaintiff, the defense was permitted to argue the cause of his injuries was the subsequent treating hospital, plaintiff chose not to sue.

Therefore, as an alternative to Defendants' argument that there was nothing to prevent Plaintiff's quadriplegia, the defense would have been permitted to put the subsequent hospital on the verdict form in an effort to show that it was the hospital's negligence in its treatment of Plaintiff for eight days following his transfer from the Defendants' care. Due to the circumstances, and because it was a several liability case, he defense became much stronger on the eve of trial with the new law.

At the beginning of jury selection, Patton & Ryan renewed all of Defendants' previously denied pertinent motions in limine and motions for summary judgment. After approximately one week of jury selection, with numerous motions for mistrial made by the defense and knowing we were fully prepared to proceed to verdict, Plaintiff accepted the last offer made at mediation one month prior.

Medical Malpractice

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Plaintiff maintained her demand of $2 million even after the medication. Working closely with four experts (medical billing, bio mechanical, neuroradiological and an orthopedic expert) we were able to refute Plaintiff's claims and show exaggeration of her injuries, pain, treatment needed and charges for that treatment.

Less than a week after our experts were disclosed, Plaintiff accepted our offer of a small percentage of the initial demand.

PATTON &RYAN LLC

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AREAS OF PRACTICE

- Appellate Litigation
- Attorney Malpractice Defense
- Catastrophic Loss
- Civil Litigation and Insurance Defense
- Commercial Litigation
- Construction Defect
- Employer Liability
- Insurance Coverage and
- Bad Faith Litigation
- Labor & Employment Law
- Mass Torts
- Medical Malpractice and Medical
- Device Defense Litigation
- Municipal Entity Defense
- Product Liability
- Professional Liability
- Transportation & Trucking Litigation

Other News Spotlight

Aggressive Investigation And Surveillance Leads To A Favorable Settlement

Patton & Ryan recently obtained a favorable settlement by utilizing surveillance to convince a Plaintiff to settle his claim. A 48-year-old iron worker sustained an elbow injury at work. The Plaintiff possessed a quality liability argument and wage-loss claim after it was objectively determined he could no longer engage in iron work. Plaintiff's experts claimed he was unemployable and would never work in any capacity again. Through aggressive investigation, Patton & Ryan obtained records from the Illinois Secretary of State in which the Plaintiff represented he was working six days per week as a handyman. Patton & Ryan followed-up with dedicated surveillance and obtained video of the Plaintiff engaging in work. The resultant settlement reflected only the diminution in earnings capacity rather than a complete and total wage loss.

Close Coordination With Experts Leads To A Favorable Settlement

Patton & Ryan obtained an outstanding settlement in a clear case of liability after uncovering a secretive plot between the Plaintiff's attorneys and her neuropsychologist to work hand-in-hand through litigation. The Plaintiff, a 65-year-old female, was a passenger in the insured's bus at the time of a collision. She sustained musculoskeletal injuries and also claimed traumatic brain injury based solely on her own treating neuropsychologist. Patton & Ryan retained their own expert neuropsychologist and doggedly sought all information related to the treating neuropsychologist. By obtaining records that are rarely produced to the opposition, it was discovered that the treating neuropsychologist had conspired with the Plaintiff's attorney to assist him in questioning experts. The resultant embarrassment and the collapse of the Plaintiff's claim for neurological deficits enticed Plaintiff to accept a reasonable settlement offer.