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PATTON & RYAN LLC

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I'm proud to announce the promotion of Paul Motz to Managing Partner and Kelly Ferron, Cara Rafanelli and Heather Snider to Partner.

As 2018 winds down on the calendar, it remains our busiest year to date with trials coast-to-coast in over 15 states.

We greatly appreciate the opportunity our clients give our talented staff and look forward to another great year in 2019.

Please feel free to reach out if I can assist in any way.

John W. Patton, Jr.

312.261.5166



Tower Crane Crushes Union Ironworker

John W. Patton, Jr., David F. Ryan, and Kelly L. Ferron, representing defendant *Adjustable Forms, Inc.*, of the multiple named defendants, tried this case to verdict in June and July of 2018 before Judge Edward S. Harming in Cook County, Illinois.

Decedent, a 45-year-old male and a Local 1 Union ironworker, was crushed during the erection of a tower crane when he, without notice, leaned his body outside of the tower crane, in the way of a climber making its way down the tower crane. Our codefendant *Central Contractors* technician, also the assembly/disassembly director and designated signal person, failed to obtain the all clear prior to ordering the *Adjustable Forms*' crane operator, who was unable to see any of the crew approximately 200' below him, to engage the lever to lower the climber. *Adjustable Forms*' crane operator lowered the climber as it crushed the Decedent. *Central* admitted partial fault and stated that this failure was a cause of the injuries and death of the Decedent. *Adjustable Forms* was contractually obligated to enforce safety and OSHA requirements as to every worker on the project, including employees of subcontractors such as the Decedent.

The Decedent made over \$200,000 a year as a foreman ironworker and had a wife and three minor children (ages 11, 13, and 15 at the time of the incident). The Plaintiff did not present any medical evidence during Plaintiff's case-in-chief, and, in fact, counsel for *Adjustable Forms* called the Decedent's treating physician, Dr. Michael Shapiro, who testified that the primary injury the Decedent sustained, a fully transected aorta, is a fatal crushing injury and almost always results in instantaneous death.

Plaintiff's counsel asked the jury for an award of \$90 million. The jury awarded only \$11 million in total, which was reduced to \$10.175 million after the Decedent's portion of negligence was accounted for. Prior to the verdict, the jurors had a question indicating that they were considering apportioning no fault to *Adjustable Forms* due to the Decedent's negligence. Ultimately, *Adjustable Forms* was only found to be 15% liable, and *Central* was found to be 77.5% liable, with the remainder of fault lying with the Decedent.

Comprising the \$11 million, defense economist expert Dr. Baade's estimate of economic loss ranged from \$2.2 million to \$2.7 million, and Plaintiff economist expert Stan Smith's estimate was approximately \$7.6 million. The jury awarded \$3.3 million in economic damages. For grief, sorrow, and mental suffering the jury awarded \$4.5 million to the Decedent's wife and his three children. \$1.5 million was provided for loss of society and \$1.7 million was awarded for pain and suffering.

The last demand prior to trial was \$34 million and last offer (global from all Defendants) was \$10 million. Defendants suggested a verdict of \$6.5 million in closing arguments.

Prior to trial, Patton & Ryan successfully obtained summary judgment on behalf of its other client, *Leopardo, Inc.*, the general contractor on the project, and also obtained a voluntary dismissal of *Elm State, Inc.*, the owner of the subject premises.

Plaintiff's Attorney Unethically Procured Settlement According To Complaint Filed Before Illinois Attorney Registration And Disciplinary Commission

In *Vandenberg v. Brunswick et al.*, Patton & Ryan represented Brunswick, the manufacturer of the yacht, from which the Plaintiff fell while the boat was being illegally operated as a commercial charter. After a four-week trial, the jury sent a note while deliberating that forecasted a defense verdict; but the Plaintiff's attorney, Mark McNabola, convinced the court's clerk to tell him the contents of the note a half hour before Patton & Ryan or its client learned of its existence. During that time, Mr. McNabola negotiated a multi-million-dollar settlement while doing everything in his power to conceal the contents of the note from the defense so that he could get an order dismissing the case pursuant to the settlement. After the jury's note was eventually answered by the court, the jury nearly immediately returned a verdict for the defense.

Patton & Ryan immediately filed post-trial motions to vacate the settlement and to have an evidentiary hearing to determine the level of inappropriate behavior in which Mr. McNabola engaged. Patton & Ryan then began an all-encompassing post-trial evidentiary process in order to vacate the fraudulent settlement, of which the Illinois Attorney Registration and Disciplinary Commission (ARDC), the body responsible for safeguarding the ethical canons governing the practice of law in Illinois, took particular notice.

After what can only have been a lengthy investigation, the ARDC, has found that Patton & Ryan's accusations of fraud during the post-trial process in *Vandenberg* had merit. The Administrator of the ARDC filed an eight-count Complaint against Plaintiff's attorney, Mark McNabola, on October 9, 2018. The first four counts of that Complaint lay out in excruciating detail all of Mr. McNabola's actions that were in direct violation of ethical rules during the *Vandenberg* case.

The Complaint details extensive unethical actions regarding other cases and fee arrangements by Mr. McNabola that began as early as 2003, alleging that he knowingly assisted other attorneys in violating the Rules of Professional Conduct in Counts V through VIII. The Complaint explains how Mark McNabola violated his duty to be honest with his own client regarding fees he would charge them for litigation expenses in Counts I and II, it also alleges that he retained consulting lawyers to whom his clients would ultimately owe payment without first obtaining their consent. In Count IV, the Complaint also describes Mr. McNabola's knowingly false and misleading statements to the court in a June 15, 2015 post-trial pleading. Notwithstanding the seriousness of these counts alone, Count III describes an even more shocking disregard for the most basic ethical rules shown by Mr. McNabola's actions during the settlement process of the *Vandenberg* case.

Count III describes Mark McNabola's inexcusable failures to provide competent representation to his client regarding settlement and to follow his client's direction to settle his case in a timely fashion. Next, the Complaint points out that Mr. McNabola inappropriately communicated with a judicial official outside the presence of the parties "by conduct including inducing Agree to read Respondent the content of the jury note without all the parties present and without the judge's consent and without disclosures to all parties. . . ." (ARDC Complaint, ¶99g). Further, the ARDC's Complaint explains that Mr. McNabola made "material omissions of fact, by conduct including failing to disclose to Patitucci, Patton, and the Court Respondent's knowledge of the content of the jury note both before and after settlement negotiations and before the order dismissing the case was entered. . . ." (*Id.* at ¶99h). Finally, the ARDC describes Mr. McNabola's fraudulent actions by explaining that he "[failed] to apprise Patitucci, Patton, and the court of his advance notice of the content of the jury note. . . ." (*Id.* at ¶99i).

This case serves as a cautionary tale about the lengths to which some attorneys will go in order to procure a settlement for their clients. Patton & Ryan's litigators are prepared to deal with, even the most surprising situations, quickly and effectively. Without the swift and immediate response of Patton & Ryan's trial attorneys in filing necessary post-trial motions, this staggeringly unethical behavior may have gone unchecked.

Semi-Tractor Trailer vs. SUV

Patton & Ryan recently faced an uphill battle in defending a case of clear liability in a catastrophic semi tractor-trailer versus SUV accident. Dash-cam video depicted a heinous collision wherein the Defendant driver clearly ran a surface-street red light and T-boned the Plaintiff's vehicle. Prior to trial, the Plaintiff's attorneys opposed P&R's attempt to admit liability in an effort to position themselves to deliver a prejudicial narrative at trial and potential punitive damages. However, P&R overcame the Plaintiff's efforts and admitted liability, providing a strong argument to exclude the crash video at trial and stifling any attempts by the Plaintiff to claim punitive damages.

The Plaintiff, a 58-year-old male, sustained massive brain bleeding, broken neck, broken ribs, crushed pelvis, collapsed lung, and a series of other life-threatening injuries. He was hospitalized for over three months and went through an extensive rehabilitation course of over a year involving six follow-up surgeries and comprehensive rehabilitation therapies. It was claimed, fairly credibly, that the Plaintiff would suffer from life-long musculoskeletal and neuropathic pain as well as severe traumatic brain injury sequela including cognitive deficits. P&R successfully obtained the "raw data" of the Plaintiff's treating neuropsychologists and proved that he was able to heal and recover to a cognitive baseline equivalent to his pre-injury status.

The Plaintiff, who was also employed as a commercial truck driver, never returned to work and claimed he required twenty-four-hour managed care. His wife also brought a loss of consortium claim, significantly increasing the Defendants' exposure. Patton & Ryan was able to obtain surveillance video which directly contradicted pain and disability statements the Plaintiff made to P&R's expert physician during an independent medical evaluation which was itself video recorded. The resulting video comparison led to the unavoidable conclusion that the Plaintiff, though severely injured, was a liar who was exaggerating his disabilities. P&R utilized the video comparison and the other issues discussed above to achieve a confidential settlement far below potential verdict outcomes. The positive result was indicated by the fact that the Plaintiff's attorneys advised them not to accept the settlement offer that they ultimately agreed to. As always, Patton & Ryan demonstrated that an aggressive defense leads to outstanding results.

Claim Against Off-Duty Chicago Police Officer Successfully Resolved

Patton & Ryan was recently called to defend an off-duty Chicago police officer who was working as a security guard at a legendary Chicago Restaurant.

Plaintiff, a Canadian who was visiting Chicago to watch an NHL playoff hockey game, was asked to leave the restaurant at closing time. Plaintiff, who had consumed some alcohol before this time, became agitated and heated words were then exchanged between the two. A physical altercation followed where Plaintiff received the brunt end of the bodily harm.

Plaintiff was arrested and later found guilty. Due to extensive media coverage, mostly from third-party cell-phone footage, Plaintiff sued the Defendant individually and in his role as an officer, the security company for whom the Defendant worked, the restaurant, as well as the Chicago Police Department for its alleged cover up of the incident.

As a result of Patton & Ryan's thorough investigation, diligent representation, and vigorous defense tactics, the case was successfully resolved for a fraction of Plaintiff's demand. Furthermore, the settlement was reached before expensive oral discovery could take place, saving the client thousands of dollars. Lastly, a confidential agreement was reached protecting the client as well as the details of the settlement.



Paul Motz Promoted To Managing Partner

Since joining Patton & Ryan in 2013, Paul has been a vital team member as well as trying numerous high-exposure cases, coast-to-coast.

His most recent experience includes trying cases involving medical malpractice, products liability, transportation and catastrophic loss.



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AREAS OF PRACTICE

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- 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

Patton & Ryan Welcomes Our Newest Partners



Kelly Ferron



Cara Rafanelli



Heather Snider