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PATTON & RYAN LLC

Last year, we were asked to defend trials in which a cumulative of billions of dollars were at stake. We were privileged (and fortunate) to accomplish successful resolutions in all of them. These challenges seem to get tougher and tougher as plaintiffs' attorneys have no ceiling on greed and obsession for the website and blog highlight reel. In addition to the "no shame" approach of asking for record sums from juries, we also must overcome focus group tested trial techniques, including reptilian interrogations, most or all of which should have no place in a court room. Fortunately, we have faced just about every trick in the book at mediations and trials and have overcome what sometimes feels like impossible odds.

With all of these experiences over the past year, I am definitely overdue to thank all of our clients for the incredible cases pending around the country that we were asked to defend. While many of these trial requests were often with as little as a week's notice to parachute in, our talented trial teams brought each trial to successful conclusion. My memory is that we covered over 20 states last year and maybe more to defend our client's interests.

We sincerely appreciate the immense trust and confidence shown by all of you, given the high stakes involved, particularly with many of the trials proceeding in the more notorious judicial hellholes. No matter the jurisdiction, a strong trial presentation always defeats manufactured liability and damages cases put on by our opponents.

Lastly, the Covid-19 world has certainly created many new challenges with remote court appearances, depositions, and negotiations. We have, nonetheless, positioned the firm to continue litigating cases nationwide without missing a beat. Interestingly enough, we have already been contacted to defend Covid-19 claims. The plaintiffs' bar always seems ready to pounce on the next new wave of cases no matter the legal theories. We certainly appreciate all of you that continue to ask us to defend professional liability and catastrophic loss cases all over the country. The best remains ahead of us.

John W. Patton, Jr.

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Patton & Ryan Stands Firm On Case Evaluation: Leads To Plaintiff Caving

US Steel v. Monarch Welding

As trial attorneys, we here at Patton & Ryan believe in preparing a case for trial unlike other firms who prepare cases to settle. Because of this philosophy, we are able to successfully resolve matters in our clients' favor. That was the case when a major steel manufacturer lost an enormous amount of money through its own actions and inactions in managing its Detroit, Michigan Great Lakes Works facility which ultimately resulted in the death of a crane operator. US Steel suffered property destruction and months of operations outage when a downcomer collapsed and a crane overturned. US Steel sought to recoup these damages from multiple parties. One of those parties was Monarch Welding who retained Patton & Ryan to protect them from an egregious claim well in excess of its policy limits where the facts showed that Monarch never even had a chance to perform work before the catastrophe of equipment failure shut down the facility.

Senior Partner John W. Patton, Jr., along with multiple supporting trial team members, fought and received a defense-friendly Michigan Case Evaluation award, Partial Summary Disposition ruling, a successful Daubert motion barring the testimony of a key US Steel expert witness on damages, nearly every single Defense motion *in limine*, but also a motion allowing us to call the General Litigation Counsel for US Steel as a trial witness. Patton & Ryan continued to push its trial strategy through three court-ordered settlement conferences and always maintained our commitment to trying the case before a Wayne County, Detroit, Michigan jury. John flew from jury selection in one case in Pennsylvania to attend the third court-ordered settlement conference when the judge threatened to jail our adjuster for contempt when he held firm on Patton & Ryan's trial evaluation.

continued...

US Steel continued...

Ultimately, every chance we got, Patton & Ryan ensured that US Steel knew we had every intention of trying the case and would do whatever it took to successfully and zealously defend our client. Accordingly, because Patton & Ryan tries cases, on the eve of trial with just a few days remaining before jury selection, the Plaintiff accepted a very low offer which was a mere fraction of a percentage of what they were seeking from our client.

Because Patton & Ryan prepares cases for trial beginning even at the pre-suit stage all the way to verdict, we are able to successfully resolve cases in a manner which benefits our clients. It is quite clear to our opponents from the time we enter a case until we win that Patton & Ryan does whatever it takes to get a case ready for a victorious defense leaving no stone unturned and no defense argument unexplored.

Patton & Ryan's Preparation Forces Defense Settlements In Catastrophic Med Mal Cases

Patton & Ryan had the opportunity to work on a complex medical malpractice and institutional negligence case in Kansas City, Missouri. Plaintiffs had previously issued a policy demand for each layer of insurance, and he successfully added a count for punitive damages against the individual treaters. Patton & Ryan entered the case after the time for motions *in limine* had expired and with only seven days before jury selection began. Without the ability to file motions *in limine*, the odds were stacked against the Defendants.

Working around the clock, attorneys from Patton & Ryan distilled over thirty depositions, thousands of pages of medical records, pleadings, and Missouri law into a new and defensible theory of the case. Most importantly, Patton & Ryan relentlessly prepared each of the defendant medical providers to testify at trial in accordance with this new theory. After the first few defendant doctors testified, it became glaringly obvious that Plaintiff's counsel was not prepared to combat these well-trained witnesses at trial, and the result was staggering: On January 14, 2019, the Plaintiffs and John Patton began settlement negotiations, and the next morning – the case was over. Patton & Ryan settled the case well within the policy limits, no punitive damages were assessed, and each of the individual medical professional defendants were dismissed prior to the settlement.

In a similar vein, at the beginning of February 2019, Patton & Ryan was asked to represent an organ procurement organization in a lawsuit where the Plaintiff claimed that the transplant resulted in him contracting cancer. With discovery depositions still taking place in the ten days before trial, Patton & Ryan's fresh eyes and detailed breakdown of the case revealed that Plaintiff had overlooked a major issue related to notification by the co-defendant. More importantly, Patton & Ryan's team immediately began meeting with the witnesses who would be testifying at trial to ensure that they understood how to best defend themselves and the case. Just as with the case in Kansas City, witness preparation and a detailed analysis by Patton & Ryan changed the tenor of the last-minute mediation. Patton & Ryan was then able to significantly reduce the settlement value of the case to an amount well below the seven-figure result Plaintiff had been targeting.

Neither of these results would have been possible without the specific knowledge and expertise of the Patton & Ryan team. We have litigated and tried medical malpractice cases in over 25 states on behalf of hospitals as well as medical providers of many specialties; and we have a proven track record of settling them on extremely favorable terms. We bring a unique perspective when it comes to witness preparation, specifically preparing witnesses for both effective direct examination at trial but also surviving and even excelling on cross examination. We are adept at repairing disclosure and evidentiary issues that crop up when a prior firm has been preparing cases to settle precisely because we understand that the best way to settle a case for the best number is to prepare it like we will be trying it, and we are experienced at making ourselves part of the existing team to bring fresh eyes and helpful insight onto a defense. This approach to trials ensures that witnesses feel well-defended heading into trial and that a case is positioned to achieve an advantageous settlement should that be the appropriate result.

How To Protect The Insured When The Insurance Policies Are Low And The Exposure Is Big

Imagine this hypothesis: you have recently received a new claim, it's a "liability admitted" matter, there are large medical specials, a massive future life care plan, and a seemingly sympathetic plaintiff. Additionally, Plaintiff's counsel is seeking a settlement amount in excess of the policy limits. In most circumstances, this demand would seem ridiculous because there are towers of insurance coverage protecting the company, the LLC, or the organization. Plaintiff's alleged damages cannot possibly exceed the value of the insurance policies. But what happens if you are representing an individual? What happens if that individual is independently wealthy, and what if the limits MIGHT not be enough? The attorneys at Patton & Ryan know that research into the Plaintiff's attorney you are dealing with is just as important as researching the claim itself; any claim can be handled effectively if both these principles are followed. However, in circumstances like the one in the hypothesis, ascertaining what Plaintiff's counsel's true intentions are takes on increased urgency and needs to be fleshed out as quickly as possible.

Recently, we were asked by a client to file our appearances in a matter in which there was potential for an excess verdict. In most situations Plaintiff attorneys will not waste their time trying to get blood from a stone. However, this time it was different. We were representing an independently wealthy insured in a case in which there seemed to be a realistic chance for an excess verdict. Plaintiff's counsel's stance at mediation was that maybe the mediator could talk him into talking the policy limits. All insurers are placed into situations daily in which they have to balance the paramount need to defend the interests of the insured and—at the same time—reach an equitable settlement.

Our research into this particular Plaintiff's attorney consisted of watching his interviews, YouTube videos, reading his book, obtaining copies of his witness examinations, as well as his openings and closings from other cases. What we quickly realized was that this was this attorney's *modus operandi*. Using scare strategies, coupled with questionable tactics at trial, this attorney would force the hand of insurers to pay out over what the true valuation of the case was. Now that we knew who we were dealing with, we were prepared to counter his tactics.

How do you counter these tactics? The question itself is more daunting and difficult than the process. After you have spent time, reviewing the situations in which your opponent has succeeded versus the instances in which they failed, it becomes readily apparent what are their strengths and weaknesses. This is a strategy that Patton & Ryan insists be used when handling all claims. However, in these situations when the limits are lower and the potential exposure is greater, this evaluation of the Plaintiff's attorney needs to be completed sooner.

A policy demand can add additional stress to already stressful litigation, so it's not hard to imagine what a demand in excess of the policy creates. Patton & Ryan has been placed in this situation many times and has always told our clients the same thing: Plaintiff is telling you one thing, but what does the evidence show? In this particular case, Plaintiff's life care planner was alleging that Plaintiff needed around-the-clock care, that Plaintiff could not use his right shoulder anymore, and that Plaintiff could not taste or smell anymore. With facts like these and doctors to back up most of the allegations, it would seem that there was some veracity to Plaintiff's allegations. However, we were in possession of surveillance which could neutralize much of Plaintiff's allegations. We felt that with this information we could, at the very least, bring Plaintiff back to the negotiation table.

The stakes in litigations are always high, but situations where the insured could personally be impacted drive up these stakes. In these cases, protecting the insured is directly related to asking how much information do you know about the attorney? How much information do you know about their motives? And how much information do you truly have on the Plaintiff's claims?

The Utter Importance Of Discovery And Disclosure By Clients

One of the biggest hardships for attorneys in representing clients is ensuring that we are getting the full picture. This was a hurdle that was nearly detrimental in a case when it was discovered that the insured withheld vital information regarding what occurred after an unfortunate outcome following a surgery. Without having all of the information and documents in the possession of the insured, it is nearly impossible to properly evaluate and defend a case. At Patton & Ryan, we focus our efforts in trying to ensure our clients are providing all potentially relevant evidence in order for us to ascertain what must be disclosed pursuant to the rules of any given state, and also what can assist us in providing the most thorough and zealous defense for our clients.

Patton & Ryan was recently brought in to assist in a catastrophic medical malpractice case immediately before expert discovery commenced, following completion of written discovery. Unbeknownst to the defense attorneys, there was a note following the surgery that directly supported Plaintiffs' claims. Plaintiffs' counsel had a picture of the note, due to an agreed upon product inspection prior to outside counsel being retained. Following the inspection, photographs were sent to all parties involved. One of those photographs was a picture of the note memorializing reportedly what had occurred during the surgery. However, the insured never turned over the inspection materials to counsel and they were also never produced by Plaintiffs in discovery. Our office did not discover the note until the last deposition in the case when Plaintiffs' counsel presented it to the individual he thought authored it. Not knowing about this vital note almost derailed the defense strategy for trial and settlement negotiations. Fortunately, we were still able to resolve the matter just shy of trial.

When we have all the evidence and understanding of the case and the parties involved, we are equipped with providing our best recommendations for a resolution–is the case suitable for trial or is settlement the best resolution? This was an example of why at Patton & Ryan, we always tell our clients that we need to know everything–the good, the bad, and the ugly. We emphasize to our clients that we cannot properly defend the case and work for the best resolution for the client.

PATTON &RYAN LLC

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AREAS OF PRACTICE

- Appellate Litigation
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- Catastrophic Loss
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- 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

Patton & Ryan Welcomes Our Newest Partners

Whitney L. Burkett

Mei Chan

Joseph B. Moore, III