

**No. 01 C 5536**  
**IN THE**  
**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF ILLINOIS**  
**EASTERN DIVISION**

---



---

<b>BONNIE JONES, as the parent and</b> <b>next friend of ZACHARY JONES,</b> <b>a Minor, and JOSEPH PRESSLEY,</b> <b>Plaintiffs,</b>	) ) ) ) ) ) ) )	
<b>vs.</b>	) <b>No. 01 C 5536</b> ) )	
<b>PATRICK &amp; ASSOCIATES,</b>  <b>Defendants.</b>	) <b>Honorable Paul Plunkett,</b> ) <b>Presiding</b> )	

---



---

**PLAINTIFFS' CORRECTED RESPONSE TO DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT**

NOW COME the Plaintiffs, by and through their attorneys, Thomas Peters, Kevin Peters, and Mary DeSloover, and in response to the Defendant's Motion for Summary Judgment, state as follows:

**Case History**

This case arose out of a beating of the Plaintiffs by Louis Pratt, a security guard employed by Patrick and Associates Jones v. Patrick & Associates, 442 F3d 533, 534 (7<sup>th</sup> Cir. 2000). Defendant Pratt was working at Prairie View apartments and encountered Joseph Pressley whom Pratt

believed had a small bag of marijuana in his hand. A chase ensued and Pressley ran away, leaving his car behind. Later that night, Pressley returned to the apartment complex, and Pratt again tried to apprehend him, a scuffle took place, and Pratt's finger got injured in Pressley's car door. Id. Pratt reported the incident to the North Chicago Police Department, as required by his employer, and the NCPD apprehended Pressley. Later, Pratt went to the North Chicago Police Station to drop off his written report and persuaded a police officer, Berg, to allow him entry to the lock-up area. Id. Once inside the cell area, Pratt used mace and his billy club to beat a juvenile, Plaintiff Jones, whom he apparently mistook for Pressley. Id. After having beaten and macing, Pratt proceeded to beat and mace Pressley. Id.

Plaintiffs filed a lawsuit and presented federal claims under 42 USC §1983 against North Chicago and Officer Berg and state claims for battery and negligence against Pratt and his employer, Patrick & Associates. Id. On June 24, 2003, North Chicago and Officer Berg settled with the Plaintiffs and were dismissed from suit. On October 28, 2004, Pratt proceeded to trial where he was found liable. Subsequently, having been found liable at a bench trial, Pratt entered into a release and settlement agreement with the Plaintiffs as to the amount of damages.

Prior to Pratt's trial, on February 9, 2004, this Court granted Defendant Patrick & Associates' Motion for Summary Judgment Id.

On February 7, 2005, this Court entered a final and appealable judgment. Plaintiffs appealed and the Seventh Circuit reversed this Court's grant of summary judgment on the Plaintiffs' respondent superior claim and remanded the case to this Court. Id., at 538.

### **Argument**

The Defendant, after having fully briefed their position to the Seventh Circuit Court of Appeals, having appeared for oral argument before the Seventh Circuit, and having lost at the Seventh Circuit, now cite to this Court a rule from American National Bank & Trust Company v. Columbus-Cuneo-Cabrini Medical Center, 154 Ill 2<sup>nd</sup> 347, 355, 609 N.E.2d 285 (1992). Based on American National Bank, Defendant asks this Court to ignore the Seventh Circuit's remand, and to grant summary judgment (again). Defendant does not explain the context or the reasoning of the American National Bank & Trust court, and for good reason. Once the reasoning of American National Bank and its related cases is reviewed and applied to the facts, the Defendant's renewed motion is hollow and totally without merit.

In American National Bank, the plaintiff brought suit against a medical center on the theory of vicarious liability due to the acts of its

employees. Pursuant to a **pre-trial** settlement agreement reached between the plaintiff and the employees before trial, the employees were dismissed from the suit. The court held that the **pre-trial** settlement between the agent and plaintiff extinguished the principal's liability. In reaching its conclusion, the court cited both the reasoning and the outcome of Bristow v. Griffiths Construction Company, 140 Ill. App. 3d 191, 488 N.E.2d 332 (1986) with approval and adopted its reasoning. So, to understand American National Bank, the court first must examine the holding and the reasoning in Bristow.

In Bristow, a suit was brought against an employee and his employer, Griffiths Construction Company. The plaintiffs sought recovery from the construction company based solely on the acts of its employee under the doctrine of respondent superior. The plaintiffs, prior to trial, executed a covenant not to sue the employee in exchange for \$20,000, and the employer moved for summary judgment contending that the covenant not to sue the employer discharged the employer's liability.

The Bristow court granted the employer's motion for summary judgment, and stated... "Because we find an action for indemnity remains viable in cases involving vicarious liability, the employee in this case would gain nothing in return for the \$20,000.00 and ***relinquishing his right to defend*** (emphasis added) unless the covenant not to sue also extinguished

the employer's vicarious liability..." Thus, the critical fact in Bristow and in American National Bank, was that the agent gave up his right to defend as to liability. In forfeiting that right, the agent got nothing in return so the courts in Bristow and American National Bank held that to protect the agent from an indemnification suit, the employer must also be discharged.

The rule of American National is not absolute, it must be viewed and applied to the specific facts of each case. (See, for example, Equistar Chemicals, L.P. v. BMW Constructors, Inc., 353 Ill. App. 3d 593, 817 N.E.2d 534, 288 Ill. Dec. 175, (Ill. App. 3 Dist. March 26, 2004), Fortae v. Holland, 334 Ill. App. 3d 705, 778 N.E.2d 159, 268 Ill. Dec. 173. (Ill. App. 5 Dist. Jul 18, 2002) ) The specific facts before this court remove this case from the general holding in American National. Although the Illinois Supreme Court held that a **pre-trial** settlement with the agent should result in an order extinguishing the principal's vicarious liability, that case did not pertain to a case where the agent went to trial on the merits, was held liable, and entered into an agreement after the entry of the judgment. American National's holding does not apply because here the employee is not relinquishing his right to defend. Pratt exercised his right to defend himself, went to trial, and he was found liable. The settlement Pratt entered into with the Plaintiffs simply capped the amount of Pratt's damages, and thus was not

a detriment to him. To the contrary, the settlement agreement protects Pratt by capping the damages after the finding of liability. Since Plaintiff cannot secure a verdict against Patrick that exceeds the amount owed by Pratt, he has limited his exposure, even though he lost the trial.

Further, there are additional facts, which distinguish Plaintiffs' case from *American National* and *Bristow*. At the time of trial of the agent, Pratt, and the subsequent settlement, the principal had been granted summary judgment and was no longer a party to the case. Under these circumstances, where the principal has been dismissed, is the agent required not to enter a settlement? Is the agent required to wait out the period of an appeal to see if the principal will be reinstated? The application of the rule on these facts would discourage settlements after trial, and waste precious resources, including judicial resources, unnecessarily. The application of the *American National* rule in this way, would prove to be contradictory to the purpose of the *American National* rule.

Finally, Patrick & Associates has waived this argument. They had ample opportunity in their brief and oral argument before the Seventh Circuit to argue this position. They did not argue it because when the procedural facts of this case are examined, the *American National* rule does not apply. By not arguing this position at the Seventh Circuit, Patrick &

Associates saved it for this “Hail Mary” pass at this juncture. To grant the defendant’s Motion for Summary Judgment, after the Seventh Circuit has reversed and remanded it for a hearing on the respondent superior issue would be in error.

Respectfully Submitted

s/Mary DeSloover  
Thomas Peters  
Kevin Peters  
Mary DeSloover  
Attorneys for the Plaintiffs  
407 S Dearborn, Suite 1675  
Chicago, Illinois 60605  
(312) 697-0022