

Missouri Lawyers

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WEEKLY

Injured couple prevails in legal malpractice suit

Attorney lets statute of limitations expire on claims



Genevieve Nichols

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A husband and wife hired an attorney after they were injured in a crash. A decade later, a jury awarded them more than \$200,000 based on what they would have received — had their attorney actually litigated their case.

Roy and Cynthia Storts hired attorney Jeremiah Phelan after a 2002 accident involving a new truck they had bought in Eureka with an incorrectly installed trailer, according to the legal malpractice suit. The trailer slammed into the truck, injuring both Roy and Cynthia Storts. Roy Storts suffered whiplash, and Cynthia Storts suffered whiplash and weakness in her right hand.

Their case against the auto dealership, though, never went to trial because Phelan failed to file their claim in a timely fashion. So the couple brought a legal malpractice suit against him, and the jury looked at the malpractice claim in addition to the underlying issues of the long-ago crash.

“At our trial, we had to prove both the legal malpractice claim, which was blowing the statute, which was not that difficult,” said Genevieve Nichols, the plaintiffs’ attorney. “We also had to prove the underlying case. It was more difficult because it’s been 10 years.”

Nichols said Phelan had a “don’t call me, I’ll call you-type attitude” that contributed to the case’s laps-

ing. She said Phelan ultimately decided the Storts were no longer interested in pursuing the case based on a Christmas card he sent them which was returned as undeliverable.

“He never wrote them a letter, he never picked up the phone,” she said.

Phelan’s attorney, Terrance Good, said his client admitted negligence as the statute of limitations had expired on the truck crash claim. He said Phelan knew the couple had a son in Florida, and the lack of contact coupled with the returned holiday greeting led him to believe they had moved away and lost interest in the case.

“We respect what the jury said,” Good said. “We thought the damages were high. They obviously disagreed.”

“The plaintiffs didn’t have any contact with Mr. Phelan for seven years,” Good said. The undeliverable holiday card, Good said, “further made him think they had moved.”

One of the main issues in the underlying injury case was the weakness in Cynthia Storts’ right hand. The defense said it was caused by an underlying case of arthritis, but the jury disagreed.

Phelan, whose law license is in good standing, according to The Missouri Bar, had accepted the truck crash case on a contingency fee basis, so the couple hadn’t paid him for legal work in advance.

“They’re doing well,” Nichols said. “They want their money, though. It’s been 10 years.” **MC**

■ \$239,000 Verdict

LEGAL MALPRACTICE

■ **Breakdown:** \$228,500 for Cynthia Storts’ injuries; \$5,500 for property damage; \$5,000 for Roy Storts’ injuries

■ **Venue:** St. Louis County Circuit Court

■ **Case Number/Date:** 09SL-CC03091/June 7, 2012

■ **Judge:** Thomas Prebil

■ **Plaintiffs’ Experts:** Dr. Michael Polinsky, Chesterfield (neurosurgery); Stephen Limbaugh Sr., St. Louis (legal standards)

■ **Defendant’s Expert:** Dr. David Robson, St. Louis (orthopedic surgery)

■ **Special Damages:** \$45,300 in medical expenses; \$10,500 in lost wages; \$4,000 in property damage

■ **Last Pretrial Demand:** \$160,000

■ **Last Pretrial Offer:** \$100,000

■ **Insurer:** The Bar Plan Mutual Insurance Co.

■ **Caption:** Cynthia Storts and Roy Storts v. Jeremiah L. Phelan Jr.

■ **Plaintiffs’ Attorney:** Genevieve Nichols, Coffey & Nichols, St. Louis

■ **Defendant’s Attorney:** Terrance J. Good, Lashly & Baer, St. Louis