

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HARLAND HAWLEY, ET AL.,
RESPONDENTS**

vs.

**EDWARD D. TSEONA,
APPELLANT**

DOCKET NUMBER WD76358

DATE: NOVEMBER 25, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Michael W. Manners, Judge

Appellate Judges:

Division Three: Gary D. Witt, P.J., Joseph M. Ellis, J. and Anthony Rex Gabbert, J.

Attorneys:

Christopher P. Sweeny, for Respondents

Michael T. Moulder, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

HARLAND HAWLEY, ET AL., RESPONDENTS

v.

EDWARD D. TSEONA, APPELLANT

WD76358

Jackson County, Missouri

Before Division Three Judges: Gary D. Witt, P.J., Joseph M. Ellis, J. and Thomas H. Newton, J.

Edward Tseona appeals from a judgment entered against him in the Circuit Court of Jackson County in a wrongful death action brought by the family of Greg Hawley. Specifically, Appellant challenges the trial court's award of prejudgment interest and the amount of compensatory damages awarded to Respondents.

AFFIRMED IN PART; REVERSED IN PART.

Division Three holds:

(1) Appellant did not waive his right to challenge the trial court's award of prejudgment interest by paying a portion of the overall award where no evidence indicates that any of the partial payment was intended as payment of the prejudgment interest award and Appellant has maintained that he made a partial payment of the compensatory damages award to cut off the accrual of post-judgment interest on that amount.

(2) The plain language of § 408.040.2 requires that a demand offer in a wrongful death case, to be effective, must be accompanied by certain documentation, including "written authorizations sufficient to allow the party . . . to obtain records from all employers and medical care providers." Respondents acknowledge, and the record clearly reflects, that they did not provide such written authorizations to Appellant. The statute clearly requires, at the very least, that plaintiffs make a good faith, legitimate effort to provide the required documents, and in the case at bar, there was no evidence, or even a bare assertion, that any of the Respondents made any attempt to obtain the required authorizations or that they had or would have had any difficulty obtaining them. As Respondents failed to comply with the requirements for a demand offer under § 408.040.2 by neglecting to provide the requisite authorizations, they were not entitled to prejudgment interest under that state. The award of prejudgment interest is, therefore, reversed.

(3) In this court-tried case, viewing the evidence in the light most favorable to the trial court's award, the record contains substantial evidence supporting the trial court's award of a total of \$14,000,000 in compensatory damages to the six plaintiffs, and that award was not grossly excessive.

Opinion by Joseph M. Ellis, Judge

Date: November 25, 2014

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