

## Another debt to society

*State seeks former inmate's money from prison injury*

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Hortense Cain emerged from a lengthy prison term in 2002 with one thing of value — a tort claim against the state of Missouri for a debilitating knee injury. Three years later, that claim was made good when a

jury awarded her \$550,000.

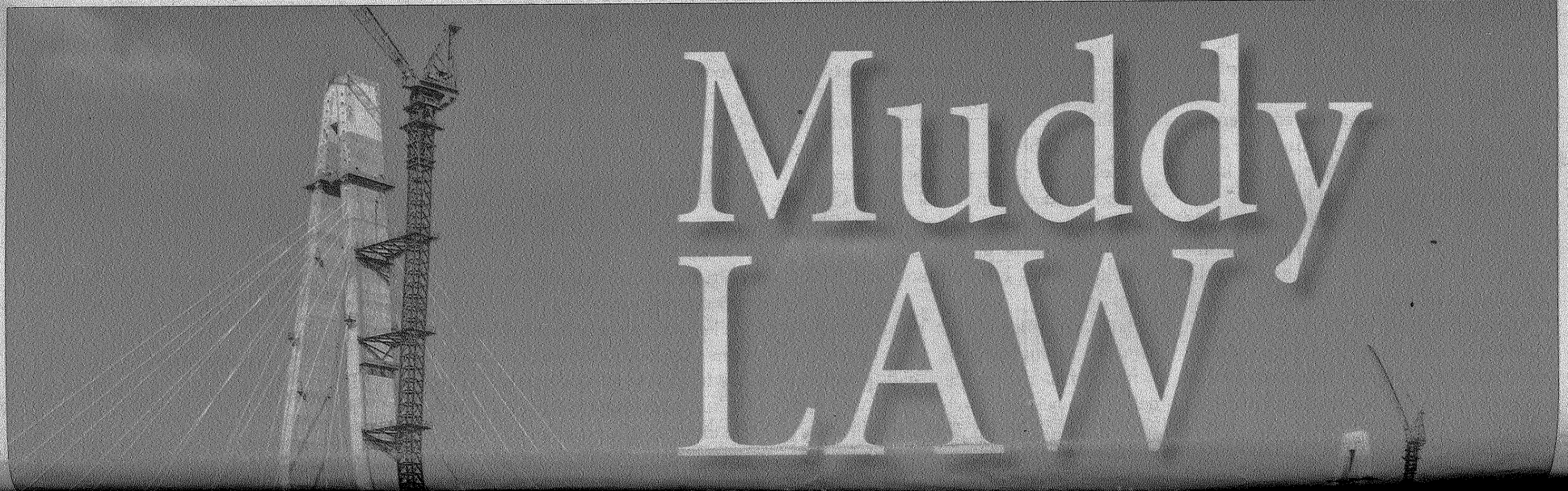
Comparative fault, damage caps, legal fees and Medicaid liens whittled the award to about \$84,000. Now the state is demanding that Cain honor an agreement she made years ago to turn over half of the money in partial repayment of the cost of incarcerating her.

The trouble is, whatever is left of Cain's money might or might not be in the custody of her lawyer, Peter P. Fiore Jr., of Cohen, Stone, Rich & Fiore in St. Louis. He's not particularly interested in helping the state reimburse itself. And he's asking an appeals court to declare that he is not required to cooperate in the garnishment

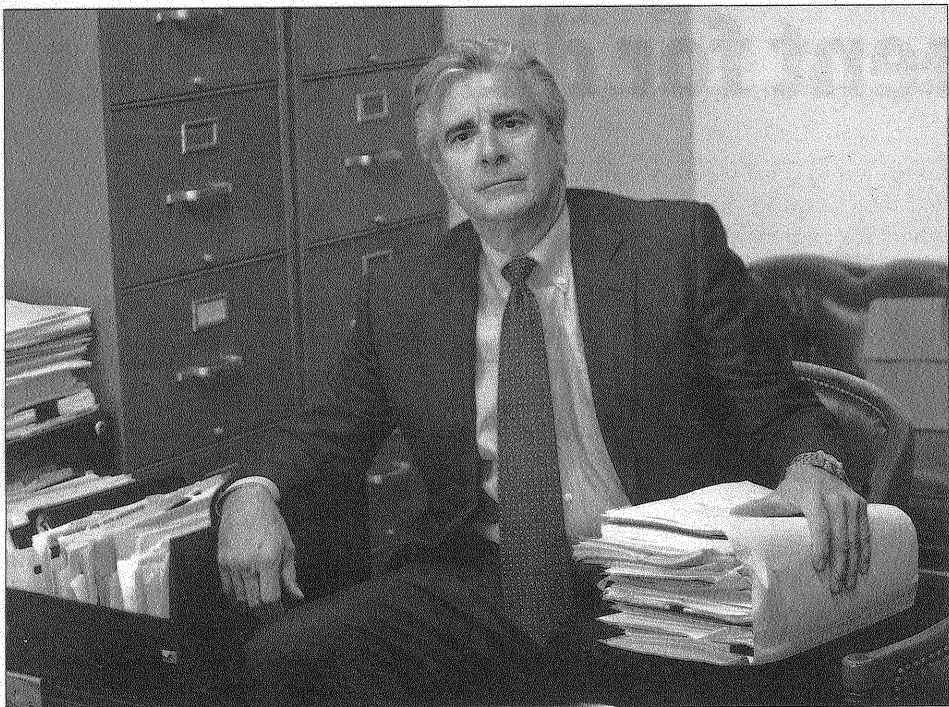
action.

"The bottom line is, they're fishing," Fiore said in an interview. "When they start fishing in my pond, I go, no, you can't come over here. This is a protected area. It's a special place because of the attorney-

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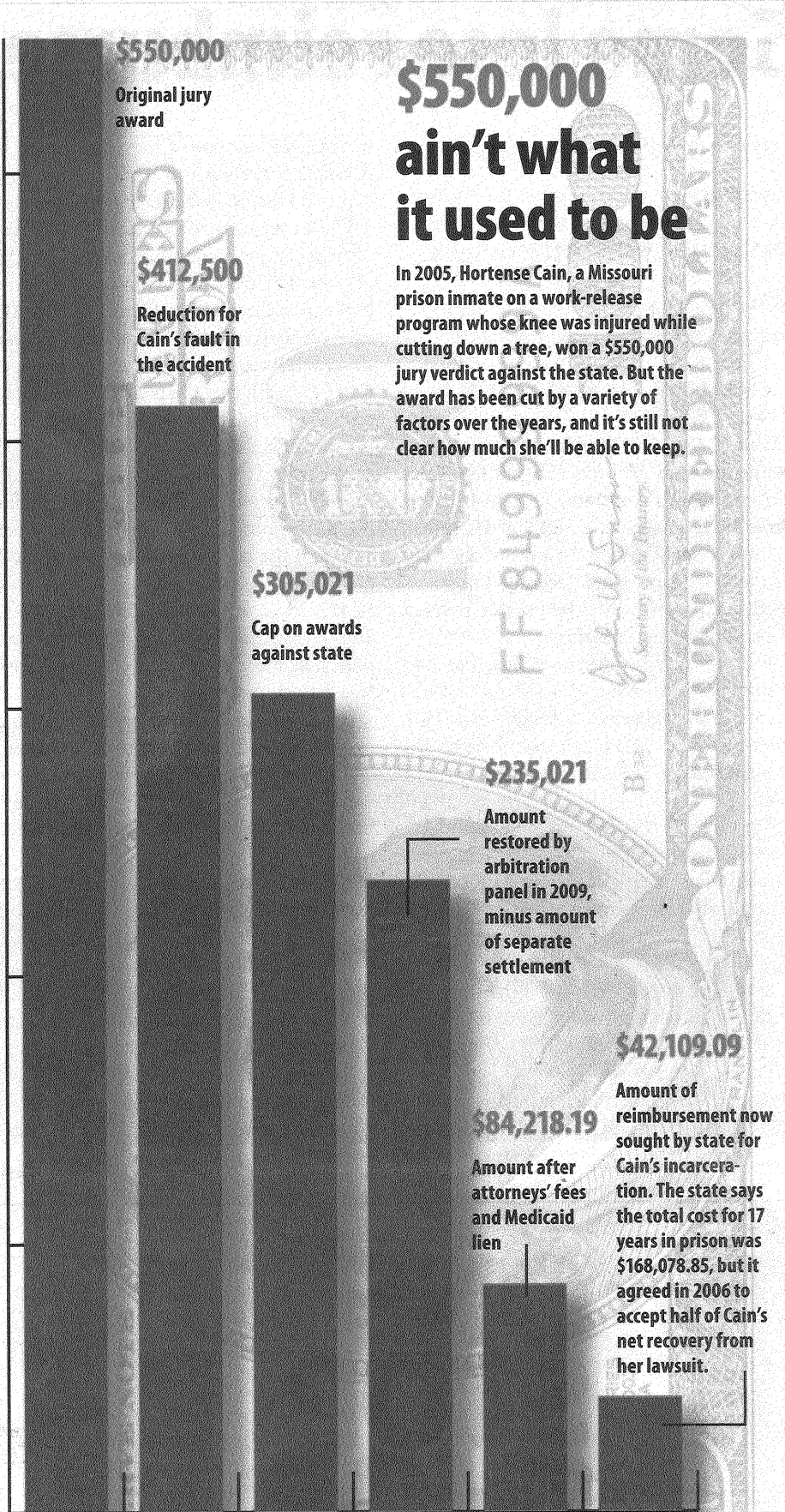
Peter P. Fiore Jr., of Cohen, Stone, Rich & Fiore in St. Louis, has been Hortense Cain's attorney throughout her lengthy court battle. "She's going to need a new knee again because of this horrible injury she sustained," Fiore says. "Where's she going to get it? She doesn't have health insurance. She's going to get it through Medicaid — another state agency. This is one big stupid shell game." Photo by Karen Elshout

# Lawyer fighting state plays cards close to his vest

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client privilege." Fiore has represented Cain throughout her lengthy court battle. In February 2000, when Cain was an inmate at the Women's Correctional Center in Vandalia, she was part of a work-release program to maintain a highway right of way for the Missouri Department of Transportation. Her crew had partially cut down a tree and had stopped to fix the chainsaw when the tree fell in an unexpected direction, hitting Cain and injuring her knee. In 2005, a Marion County jury awarded Cain a \$550,000 verdict, though she was held partially at fault and it was capped at \$305,000 under a statute that limits damages against state entities. The Missouri Highways and Transportation Commission, however, argued that Cain's claim should have been barred altogether because the agency had sovereign immunity. Two years later, the Missouri Supreme Court ruled that Cain met an exception to sovereign immunity. The tree had been left in a dangerous condition by state employees — i.e., the members of the work-release crew, who were paid \$7.50 a day for their labor. Nonetheless, the court also said one of the jury instructions at Cain's trial was faulty, so the case was sent back to be retried. Fiore, worried he wouldn't have the same luck with a small-town jury twice, successfully requested that it go to arbitration. Cain won \$235,000 from the arbitration panel in 2009. According to a copy of the arbitration award filed in court, the amount represented Cain's original jury award capped at \$305,000 minus a separate \$70,000 settlement Cain reached with Correctional Medical Services, a private firm that provides health care for prisoners. (Cain had sued the company in federal court, claiming doctors there had denied her knee replacement surgery following the tree accident. Fiore declined to discuss

the 2007 settlement, saying it was confidential.) Cain, now 69, was incarcerated from 1985 to 2002 for a series of stealing and bad-check convictions. The Department of Corrections calculated the cost of housing her during that time was more than \$168,000. Following Cain's original jury trial, the state filed an action against her seeking to be repaid for the cost of housing and feeding her in prison. The Missouri Incarceration Reimbursement Act allows the state to recover up to 90 percent of an inmate's assets. But in 2006, the two sides reached an agreement: The state would limit its recovery to half of the net proceeds of her suit. Fiore was Cain's lawyer in that matter, too. The Attorney General's Office, citing a 2010 statement from Fiore's office, alleges that after deducting attorneys' fees and a Medicaid lien, Cain was left with \$84,218.19. Pursuant to the 2006 agreement, the attorney general demanded its half of Cain's share — a little more than \$42,000. Fiore didn't respond to the agency. The Attorney General's Office then sought a contempt motion. Notice of the motion was mailed to Fiore, but Cain was never personally served because the state couldn't locate her. Neither Cain nor Fiore showed up at the trial. In July 2010, Cole County Circuit Judge Paul Wilson (who later lost a re-election bid for the office but is now a candidate for the Missouri Supreme Court) found Cain in contempt for refusing to comply with the 2006 consent judgment. The state followed up by filing a writ of garnishment against Fiore's law firm, to whom the award check originally was sent. Fiore refused to respond to the state's interrogatories in the garnishment. He did, however, move to throw out the state's case. Judge Daniel Green, who succeeded Wilson on the bench, agreed. Late last year, he quashed the garnishment and voided the contempt order. The Attorney General's Office has urged



the Western District Court of Appeals to overturn Green's decision. Laura Elsbury, an assistant attorney general, argued Oct. 24 that the contempt order was just an attempt to enforce the valid consent judgment Cain signed in 2006. Fiore's firm, she said, should be required to answer the interrogatories, which aren't seeking confidential information, she said. "They knew the state had a valid claim," Elsbury argued. Fiore, however, told the court that forcing lawyers to answer questions about their knowledge of their clients' funds was deleterious to the attorney-client relationship. Judge Cynthia Martin asked if the court should draw a "bright line" preventing garnishment actions on lawyers. Yes, Fiore replied. "It's a classic example of violating the privilege," he said. Fiore added that the state is merely an unsecured creditor seeking to collect on a debt and that it should go through normal channels to collect it. Fiore has refused to confirm that the state's claimed \$42,000 figure is correct. At one point, Judge Alok Ahuja asked Elsbury if she even knew for sure that Fiore's firm has the money. "I've inquired," she said. "But I do not know." Nanci Gonder, a spokeswoman for the

Attorney General's Office, didn't respond to a request for further comment. While Fiore isn't questioning the basic validity of the 2006 agreement, underlying his case is an argument that the state should leave Cain alone. In a February 2010 letter to the Attorney General's Office, Fiore offered to settle the case for \$5,000 — arguing, in effect, that Cain already has paid her debt to society. Cain's age, criminal record and background have left her unable to get a job, and she has "no real estate, no motor vehicle, no health insurance, no bank accounts and lives from day to day," he wrote. "This award is her only chance to improve her condition and give her and her family some hope for the future," Fiore said in the letter. In an interview, Fiore pointed out that the entire action involves one agency of the state of Missouri trying to recoup money paid out by another agency, leaving his client with almost nothing. "What's going to happen here?" he said. "She's going to need a new knee again because of this horrible injury she sustained. Where's she going to get it? She doesn't have health insurance. She's going to get it through Medicaid — another state agency. This is one big stupid shell game." The case is State ex rel. *Chris Koster v. Hortense Cain*, WD74734. **NC**