

Memorandum 68-26

Subject: Study 55 - Additur

You will recall that Code of Civil Procedure Section 662.5 (authorizing additur) was enacted in 1967 upon recommendation of the Commission.

The California Supreme Court thereafter, in Jehl v. Southern Pacific Co., 66 Cal.2d 821, 59 Cal. Rptr. 276, 427 P.2d 988 (1967), overruled Dorsey v. Barba and authorized use of additur, whether or not the verdict was supported by substantial evidence. See Exhibits I, II, and III (attached).

The Jehl case presents a problem that may be resolved in any one of three ways:

(1) Repeal Code of Civil Procedure Section 662.5 (authorizing additur) on the ground that it is unnecessary in light of the Jehl case. Exhibit IV (gold) is a draft statute that would accomplish the repeal of Section 662.5.

(2) Revise Section 662.5 to conform it to the Jehl decision. Exhibit V (blue) is the staff's draft of an amendment to Section 662.5 that is intended to do this.

(3) Leave Section 662.5 in the code without amendment. Sub-division (b) of the section would prevent the section from being construed as a limitation on the right to use additur in cases where the verdict is not supported by substantial evidence.

The staff recommends that Section 662.5 be repealed. The Jehl decision establishes that additur may be used by trial courts. We

see no need to attempt to codify the result of that decision in the statutes and we are concerned that an attempt to do so would create more problems than would be eliminated by the codification. The law relating to remittitur is not codified and we are not aware of any problems that exist because this body of law is not codified.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT IV

An act to repeal Section 662.5 of the Code of Civil Procedure,
relating to new trials.

The people of the State of California do enact as follows:

Section 1. Section 662.5 of the Code of Civil Procedure is repealed.

~~662.5.--(a)--In any civil action where the verdict of the jury on the issue of damages is supported by substantial evidence but an order granting a new trial limited to the issue of damages would nevertheless be proper, the trial court may grant a motion for a new trial on the ground of inadequate damages and make its order subject to the condition that the motion for a new trial is denied if the party against whom the verdict has been rendered consents to an addition of so much thereto as the court in its discretion determines and specifies in its order.~~

~~(b)--Nothing in this section precludes a court from making an order of the kind described in subdivision (a) in any other case where such an order is constitutionally permissible.~~

~~(c)--Nothing in this section affects the authority of the court to grant a motion for a new trial on the ground of excessive damages and to make its order granting a new trial subject to the condition that the motion for a new trial on that ground is denied if the party recovering the damages consents to a reduction of so much therefrom as the court in its discretion determines and specifies in its order.~~

Sec. 2. The repeal of Section 662.5 of the Code of Civil Procedure is not intended to make any change in existing law as stated in *Jehl v. Southern Pacific Co.*, 66 Cal.2d 821, 59 Cal. Rptr. 276, 427 P.2d 988 (1967).

EXHIBIT V

662.5. (a) In any civil action where ~~the verdict of the jury on the issue of damages is supported by substantial evidence~~ but an order granting a new trial limited to the issue of damages would nevertheless be proper, the trial court may grant a motion for a new trial on the ground of inadequate damages and make its order subject to the condition that the motion for a new trial is denied if the party against whom the verdict has been rendered consents to an addition of so much thereto as the court in its discretion independent judgment determines from the evidence to be fair and reasonable and specifies in its order. The court shall prescribe in its order the time within which the party against whom the verdict has been rendered must accept the additur, and in no case may this time be longer than the jurisdictional period for granting a new trial. If the party fails to consent within the prescribed time, the order granting the new trial becomes final.

(b) Nothing in this section precludes a court from making an order of the kind described in subdivision (a) in any other case where such an order is constitutionally permissible.

(c) Nothing in this section affects the authority of the court to grant a motion for a new trial on the ground of excessive damages and to make its order ~~granting a new trial~~ subject to the condition that the motion for a new trial ~~on that ground~~ is denied if the party recovering the damages consents to a reduction of so much therefrom as the court in its discretion determines and specifies in its order.