

Memorandum 90-79

Subject: New Topics - Defendant's Request for Plaintiff's Statement of Damages

At the March meeting the Commission considered the suggestion of Judge Robert C. Todd of Orange County that the Commission revise Code of Civil Procedure Section 425.11. That section provides that, in an action in superior court for personal injury or wrongful death damages, the plaintiff must notify the defendant of the amount sought on demand of the defendant.

Judge Todd points out that the provision is useless since the plaintiff usually responds that the amount of damages is unknown but will be made available when it becomes known. He believes that the provision can be made useful and can help both attorneys and judges.

Judge Todd's specific suggestions to upgrade this section are:

(1) The plaintiff's response must contain specifics as to each item of damages claimed, including loss of income, medical expenses, pain and suffering, expenses of last illness and death, general damages, punitive damages, costs, and attorney's fees.

(2) The court may sanction a plaintiff who fails to respond.

(3) The section should be expanded to cover indemnity cross-complaints.

The Commission decided to forward a copy of Judge Todd's letter to the Litigation Section of the State Bar, with a request for their comments on it. Attached to this memorandum is the Litigation Section's response. They do not believe the suggested revisions would be a particularly helpful addition to the law, and are concerned that they would result in unneeded additional work by the attorneys in every case. "The time and expense of a change to the Code of Civil Procedure and corresponding additional document filing does not seem warranted."

These concerns are they same as those expressed by the staff at the March meeting. The staff recommends that the Commission not study this matter, considering the other major priority matters on the Commission's agenda.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

CINNAMON, CASTERTON & HAGEDORN

MAY 09 1990

RECEIVED

MICHAEL M. CINNAMON  
JAMES C. HAGEDORN, INC.  
MICHAEL P. CASTERTON  
G. ANTHONY TESSIER, JR.  
MICHAEL S. CINNAMON  
WILLIAM P. FAIRWELL  
SUNNY D. DOBASHI  
THOMAS A. BUSCH  
L. STUART LIST

AN ASSOCIATION OF LAW CORPORATIONS  
1515 RIVER PARK DRIVE, SECOND FLOOR  
SACRAMENTO, CALIFORNIA  
95815  
TELEPHONE (916) 929-6800

MAIL TO:  
P. O. BOX 254948  
SACRAMENTO, CALIFORNIA 95865-4948  
FAX (916) 929-2124

May 8, 1990

California Law Review Commission  
Attn: Nathaniel Sterling  
4000 Middlefield Road, Suite D2  
Palo Alto, CA 94303-4739


Re: Code of Civil Procedure Section 425.11

Dear Mr. Sterling:

On behalf of the State Bar Litigation Section, I am responding to your reference of the letter and accompanying documents of Superior Court Judge Robert C. Todd of Orange County. The Litigation Section believes Judge Todd's suggested revisions would not be worth all of the time, money and expense which is inherent in both the revision itself and the resulting additional work (slight though it might be) necessary by every civil attorney in compliance with that section.

The information (i.e., a plaintiff's demand) is usually available to any settlement conference judge without such additional work. On those cases where it is not already available, it is easily acquired simply by request or in the process of negotiations. The time and expense of a change to the Code of Civil Procedure and corresponding additional document filing does not seem warranted.

Sincerely,

  
JAMES C. HAGEDORN

JCH:jg

cc: Janet K. Carver  
Mark Neubauer, Esq.