

*Lee v. Ball*, 121 Nev. Adv. Op. 38 (July 28, 2005)<sup>1</sup>

**CIVIL PROCEDURE – ADDITUR – PREJUDGMENT INTEREST**

**Summary**

This case involved an appeal from a district court judgment in a personal injury case, entered pursuant to a jury verdict which initially awarded the plaintiff \$1,300 in damages. The plaintiff subsequently requested a new trial or, in the alternative, additur. The district court awarded the plaintiff an additur of \$8,200 and prejudgment interest, without offering the defendant a new trial on damages.

**Disposition/Outcome**

The Nevada Supreme Court reversed the grant of additur, and remanded the case ruling that the district court abused its discretion by failing to offer the defendant the option of either accepting the additur or having a new trial on damages. The district court further erred in its calculation of prejudgment interest pursuant to NRS 17.130(2),<sup>2</sup> by failing to calculate interest at the statutory rate in effect on the date of judgment.

**Factual and Procedural History**

The plaintiff, while a passenger in the defendant's car, sustained injuries when the defendant negligently turned into oncoming traffic. The plaintiff brought suit to recover general and special damages; the jury awarded him \$1,300. The plaintiff subsequently requested that the district court either grant an additur or order a new trial on damages. The court granted an \$8,200 additur, but did not offer the defendant the option of a new trial. Further, the court awarded the plaintiff prejudgment interest based on a pro-rata formula that combined various statutory rates in effect before the entry of final judgment.

The defendant appealed, arguing that the district court erred by: (1) granting the additur; (2) failing to offer him a new trial on damages; and (3) calculating prejudgment interest erroneously.

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<sup>2</sup> NEV. REV. STAT. 17.130(2) provides:

When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

## **Discussion**

### **I. Additur**

Pursuant to *Drummond v. Mid-West Growers*,<sup>3</sup> Nevada courts have discretion to grant additur when a two-prong test is satisfied: (1) the damages award must be clearly inadequate, and (2) the case must be a proper one for granting a new trial on damages. When both prongs are satisfied, the court has discretion to grant a new trial unless the defendant consents to additur. However, *Drummond* further specifies that additur is only appropriate when it is presented to the defendant as an alternative to a new trial on damages.

In this case, the Nevada Supreme Court determined that additur was proper because the damages award was substantially less than the conceded proofs on special damages, and thus was clearly inadequate. Additionally, the district court granted additur in an unrecorded hearing, and neither party submitted a record of that hearing on appeal. Nevertheless, despite the fact that additur was warranted, because the district court did not offer the defendant the option of a new trial as required by *Drummond*, the Court held that the award of additur constituted an abuse of discretion.

### **II. Prejudgment Interest**

NRS 17.130(2) provides that interest on a judgment accrues from the date of service of the summons and complaint to the date that the judgment is satisfied. The rate of interest is set by this statute as “a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent.”<sup>4</sup>

The Court held that the district court erred when it calculated prejudgment interest by combining various rates of interest in effect between the time of service and the entry of judgment. The district court further erred by awarding interest for a period of time before service was effected.

## **Conclusion**

Nevada courts may grant additur when a damages award is clearly inadequate and when the case is a proper one for granting a new trial on damages. Additur, however, is only proper when it is presented to the defendant as an alternative to a new trial on damages.

NRS 17.130(2) requires that prejudgment interest be calculated at the statutory rate in effect on either January 1 or July 1, as the case may be, immediately preceding the date of judgment.

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<sup>3</sup> 91 Nev. 698, 708-13, 542 P.2d 198, 205-08 (1975).

<sup>4</sup> NEV. REV. STAT. 17.130(2).