

Tentative Rulings – February 17, 2005

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Nelson v. Davis – 03CV3159 – Defendant's Motion for Leave of Court to File Cross-Complain

The defendant's motion for leave to file cross complaint is granted. The Court finds the parties agreed, through their attorneys, to stay discovery. As a condition of this agreement the plaintiffs agreed to let the defendant file a cross complaint if the parties were unable to resolve the matter. As the parties have not yet been able to resolve this case, the defendant is entitled to file the cross-complaint attached to the motion.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

MBNA Bank v. Vicari – 04CV3475 - Petition to Confirm Arbitration Award as Judgment

The petition to confirm the arbitration award dated December 31, 2003, is denied, without prejudice. The petitioner failed to provide notice of the Court's tentative ruling procedures as required by Local Rule 4.03.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

Julin, et al. v. County of Amador – 04CV3604 – Petition to Permit Late Claim against Governmental Entity

The petition to file a late claim against a governmental agency is denied. In order to obtain relief the claimant must demonstrate by a preponderance of the evidence the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect. The petitioners have not met this burden.

The failure of Mr. Corren to perform any investigation to determine if a public entity owned or maintained the road is imputed to the petitioners. There is no evidence that Mr. Corren conducted any independent investigation before presumably concluding there was no potential governmental tort liability. Given the facts of the accident, Mr. Corren's failure to conduct some investigation to determine who owned and/or maintained the roadway could not be considered excusable.

To the extent that the petitioners contend that Mr. Corren was not their attorney, it was their duty to diligently investigate this claim within the limitations period. Other than contacting Mr. Corren, there is no evidence the petitioners took any action to determine who owned or maintained the road. The fact the CHP Report was not immediately available does not relieve the petitioners from determining who owned the road in the area where the accident occurred. Given the significance of the issue of ownership and control of the road, it was not reasonable for the petitioners to rely on the common belief that the road was owned by PG&E.

The evidence in support of the petition failed to establish the Josh Julin suffered from a mental or physical disability that prevented him from complying with the claims filing requirements.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.