

## **Tentative Rulings –March 9, 2006**

**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.**

**Serber v. Estate of Johnson: 04CV3608**

### ***Motion to Compel Production of DMV Photographs***

Plaintiff's Motion to Compel DMV Photographs is hereby denied.

Vehicle Code §1808, subdivision (e) states that the Department of Motor Vehicles "shall not make available or disclose personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994." The Driver's Privacy Protection Act is delineated in 18 U.S.C. §2721. Said provision prohibits the disclosure of any personal or highly restricted personal information about an individual obtained in connection with a motor vehicle record, except with express consent or under specific conditions outlined therein. A person's photograph is considered highly restricted personal information. Exceptions, which allow disclosure of such information, are if the information is to be used in connection with a civil, criminal, administrative, or arbitral proceeding in a state or federal court or when the information is disclosed pursuant to a court order. In addition, any disclosure of personal information is subject to the prohibition outlined in Vehicle Code §12800.5, subdivision (a), paragraph 2, which provides that the Department of Motor Vehicles shall not sell or distribute the photographs or physical characteristics of any licensee to any private person, association, partnership or corporation, without the licensee's consent.

A qualified privilege exists in a person's personal information, such as DMV records. In determining whether such records are disclosed, the court will balance the right of privacy versus the need for discovery. (Britt v. Superior Court (1978) 20 Cal.3d 844, 855-856.) Discovery of personal information may be ordered if there is a compelling public interest in said information. (Ibid.) Moreover, the court may require that the person whose privacy is affected be given the opportunity to object to the disclosure. (Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, 657.)

When determining whether personal information should be divulged, the court should look to the purpose of the information sought, the effect the disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting the disclosure, and the ability of the court to grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the disclosure undertakes certain specified burdens, which appear just under the circumstances. (Valley Bank, supra discussing Greyhound Corp. v. Superior Court (1961) 56 Cal.2d 355.) When feasible, the court should impose partial limitations, rather than a total denial of discovery. (Ibid.)

At this juncture, after so much time has passed, the necessity for obtaining the DMV photos has waned. On November 3, 2005, the court granted the motion to compel the deposition of Nicholas Johnson. That deposition should provide the plaintiff with sufficient information to either positively identify or, at least, narrow down the possible drivers. Moreover, this matter has been referred to arbitration and a trial date has been set for May, 2006. The arbitrator was assigned on January 12, 2006. His award is due to the court within 90 days of that assignment. Therefore, if the matter is ready for arbitration, the identity of the driver of the vehicle should be known.

In addition, the plaintiff has many other avenues by which he can obtain the identity information. For example, depositions of all three potential drivers should lead to the positive identity of the appropriate defendant. Moreover, Plaintiff could have avoided this entire situation by simply naming all three potential drivers as defendants and dismissing them as appropriate.

As there was no reply to the opposition filed by the DMV, at this juncture in the litigation, the court hereby denies the motion. However, if the plaintiff is unable to complete the deposition of Nicholas Johnson, pursuant to the prior Court order, and/or complete the depositions of Brandon and Jeremiah Johnson and, therefore, is unable to identify the driver of the vehicle, the plaintiff may

resubmit this motion with evidence of his failed attempts to identify the driver of the vehicle involved in the subject motor vehicle collision.

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.