

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

GEOFF DAVIDIAN,

Plaintiff,

v.

Case Nos. 2006-CV-011909
2006-SC-045116

JPMORGAN CHASE BANK,
N.A., and JEFF CHILDS,

Defendants-
Petitioners.

**DEFENDANTS-PETITIONERS' REQUEST FOR
TEMPORARY RELIEF UNDER WIS. STATS. §809.52**

**MILWAUKEE COUNTY CIRCUIT COURT
CASE NOS. 06-CV-011909 AND 06-SC-045116
HON. DENNIS FLYNN, PRESIDING**

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This Request for Temporary Relief is narrowly-tailored and seeks only limited relief: that is, to maintain the status quo, in the underlying action, by staying the effect of a Milwaukee County Circuit Court order, regarding the discovery issues discussed below, until this Court has had an opportunity to consider, and rule upon, the attached Petition For Leave to appeal that non-final order (the “Petition”).

As is further demonstrated in the Petition, this case is a strong candidate for acceptance by this Court as a discretionary appeal under Wis. Stats. § 808.03(2). It presents issues that generally relate to the appropriate scope of discovery in this, and most other, civil litigation matters; issues on which this state’s appellate courts have not yet had an opportunity to provide guidance for many years, but with which its lower courts are, or should be, grappling on a regular basis.

Here, the plaintiff, Geoff Davidian, is a former customer of the defendant-petitioner JPMorgan Chase Bank (“Chase”). The alleged transgressions at the heart of this case total \$361.38, all but \$65.00 of it comprised of amounts refunded to bank customer Geoff Davidian within days of the errors being discovered and the remainder involving the annual fee for Davidian’s debit card.

The order that the defendants-petitioners are seeking leave to appeal requires Chase to: (1) produce the names and contact information for other customers who have received refunds for fees assessed due to bank error; and (2) make its Chief Executive Officer and one of its former board members available for deposition. In granting this order, the Circuit Court denied the defendants-petitioners’ request for a protective order that would have relieved Chase of its obligation to submit to these discovery requests.

The defendants-petitioners contend that the Circuit Court erroneously exercised its discretion when it issued this order. It is their belief that disclosing the names of Chase's customers may be a violation of the customers' right to privacy, as well as certain federal privacy laws, most notably, the Gramm-Leach-Bliley Act (the "GLBA"). As such, they believe the Circuit Court should not require them to choose between violating, either, the GLBA or the Court's order. The defendants-petitioners also believe the Circuit Court erroneously exercised its discretion by refusing to place limits on Davidian's use of the discovery process when the probative value of the discovery he seeks is so dramatically outweighed by the cost of the discovery process to the defendants-petitioners, not to mention amount that is at stake in this matter.

Pursuant to the recommended practice, the defendants-petitioners asked the Circuit Court, itself, to stay its order

long enough for this Court to consider and rule on the attached Petition. However, the Circuit Court denied this request. Instead, it ordered its Clerk to release the names of Chase's customers (which were previously filed with the Court under seal), to Davidian, on Friday, October 19, 2007, at 4:00 p.m. At that time, Davidian will be free under the Court's various discovery orders to contact any or all of the customers identified on this list.

The bank customers presently have no knowledge that the Circuit Court has ordered the disclosure of their personal financial information. Moreover, the short time-frame between the hearing on these matters and the Court-ordered disclosure of the customers' names (approximately just 75 hours) will scarcely even allow Chase the opportunity to alert its customers to the fact that: (1) a court has compelled Chase to turn over their personal financial information; and (2) they may be contacted by Davidian about that information.

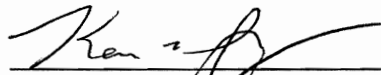
Obviously, an appeal on the issues presented in the attached Petition will materially advance the termination of this litigation or, at least, clarify any further proceedings. Such an appeal is also necessary to protect the defendants-petitioners from substantial and irreparable injury. What is equally important, however, is that such an appeal would clarify issues of general importance in the administration of justice. To date, no Wisconsin court has addressed the issue of whether the GLBA prohibits the disclosure of personal financial information to private plaintiffs in civil litigation matters and, similarly, the law presently provides very little guidance regarding the extent to which the amount in controversy should inform a court's decision when trying to determine the appropriate scope of discovery.

This Court can, and should, answer these questions. It can only do so, however, if the appeal is not rendered moot by the operation of the Circuit Court's order. Thus, the

defendants-petitioners respectfully request that the Court enter an order, pursuant to Wis. Stats. § 809.52, which stays the execution or effect of the Circuit Court's order, and specifically directs the Clerk of the Circuit Court to refrain from disclosing the names of Chase's customers, until such time as this Court has an opportunity to consider and rule upon the attached Petition.

Dated this 18 day of October, 2007.

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