

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE POWER COMPANY, INC., A
NEVADA CORPORATION D/B/A
CRAZY HORSE TOO GENTLEMEN'S
CLUB; RICK RIZZOLO,
INDIVIDUALLY; AND VINCENT
FARACI, INDIVIDUALLY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, THE HONORABLE JACKIE
GLASS, DISTRICT JUDGE; AND
DISCOVERY COMMISSIONER
THOMAS BIGGAR,
Respondents,
and
KIRK HENRY AND AMY HENRY,
Real Parties in Interest.

No. 45141

FILED

APR 29 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rizzo*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION

This emergency petition for a writ of mandamus or prohibition seeks to compel the district court to consider certain factors¹ regarding

¹See Keating v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995).


whether a partial stay of civil discovery is appropriate in light of a concurrent related criminal investigation, and also seeks to stay the deposition of Vincent Faraci pending the district court's consideration of those factors.

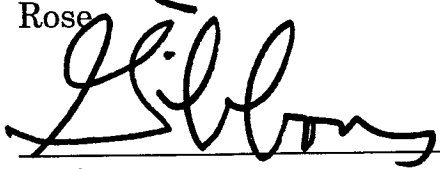
We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. Normally, the decision maker should weigh various interests when deciding whether to stay civil proceedings, or any portion of civil proceedings, in light of parallel criminal proceedings, including the materiality of the witness's testimony to the civil proceedings and the factors listed in Keating v. Office of Thrift Supervision.² Although it is unclear in this instance whether the discovery commissioner and the district court adequately considered the various interests, including petitioners', we note that Faraci is not a defendant in the civil action and that petitioners have indicated that he is not a percipient witness. Additionally, should Faraci invoke the Fifth Amendment at his deposition, the parties will have an opportunity to request that the district court assess and address any impact of that invocation before trial. Accordingly, as petitioners have ample opportunity to obtain adequate protection of their interests before the district court trial, we deny the petition.³


²45 F.3d 322, 324-35 (9th Cir. 1995) (citing Federal Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989)).

³See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

It is so ORDERED.⁴


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Goodman & Chesnoff
Patti & Sgro
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Campbell & Williams
Hunterton & Associates
Clark County Clerk

⁴Petitioners' alternative motion for an emergency stay pending this court's consideration of this petition is denied as moot.