

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIEMENS BUILDING  
TECHNOLOGIES, INC., A  
DELAWARE CORPORATION N/K/A  
SIEMENS INDUSTRY, INC.; AND  
CHRISTOPHER REYES, AN  
INDIVIDUAL,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ELIZABETH GOFF GONZALEZ,  
DISTRICT JUDGE,

Respondents,

and

MARNELL CORRAO & ASSOCIATES,  
INC., A NEVADA CORPORATION;  
THE M RESORT, LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
EDGEWATER GAMING, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; COLORADO BELLE  
GAMING, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; MARNELL  
PROPERTIES, LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
AND SAFECO INSURANCE  
COMPANY OF AMERICA,  
Real Parties in Interest.

No. 59132

FILED

APR 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court discovery order concluding that depositions

noticed under NRCP 30(b)(6) would be treated as regular witness depositions.<sup>1</sup>

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Writ relief is generally not available, however, when the petitioners have a plain, speedy, and adequate remedy at law. See NRS 34.170; NRS 34.330; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. It is within our discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioners bear the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Because discovery matters are within the sound discretion of the district court, see Matter of Adoption of Minor Child, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002), writ relief is generally only appropriate to review discovery orders in exceptional

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<sup>1</sup>Petitioners' codefendant in the district court action, Safeco Insurance Company of America, has filed a motion for leave to appear as a real party in interest and file an answer to the writ petition. Although petitioners state in their reply brief that Safeco had no authority to file an answering brief, no opposition to the motion has been filed. Having considered the motion, we grant it. Accordingly, we direct the clerk of this court to file Safeco's answer, provisionally received on January 9, 2012. We further direct the clerk to add Safeco Insurance Company as a real party in interest and to conform the caption in this proceeding to the caption in this order.

situations. See Valley Health System v. Dist. Ct., 127 Nev. \_\_\_, \_\_\_, 252 P.3d 676, 679 (2011).

In the underlying district court action, petitioners moved for sanctions against real parties in interest on the ground that individuals designated by real parties in interest as the persons to be deposed on their behalf pursuant to NRCP 30(b)(6) were not prepared to answer questions at the depositions.<sup>2</sup> The district court found that sanctions were appropriate and ordered real parties in interest to pay the deposition costs and attorney fees related to the depositions, plus a \$1,000 sanction to be paid to the Legal Aid Center of Southern Nevada Pro Bono Project. Rather than enter the more harsh sanctions, requested by petitioners, prohibiting real parties in interest from entering evidence at trial on topics covered in the depositions and from supplementing their NRCP 30(b)(6) depositions, the district court directed that petitioners could “choose to retake” these depositions.

In light of the district court’s broad discretion with regard to discovery matters, see Matter of Adoption of Minor Child, 118 Nev. at 968, 60 P.3d at 489, and because requiring a party to pay attorney fees and costs incurred as a result of its actions is a permissible sanction for failure of a party to appear for a deposition, see NRCP 37(b)(2), (d), which is the standard that petitioners asked the district court to apply in imposing sanctions for the deficiencies that arose at the NRCP 30(b)(6) depositions, we conclude that the district court did not abuse its discretion by declining to impose the more harsh sanctions of prohibiting real parties in interest from presenting certain evidence at trial and from supplementing their

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<sup>2</sup>NRCP 30(b)(6) permits a party to name a corporation as a deponent and provides that the corporation must designate a person to testify on its behalf.

depositions. To the extent that petitioners argue that the district court's statement that they could choose to retake the depositions meant that, if they chose not to, real parties in interest would be bound to, and thus limited by, the original depositions for the purposes of summary judgment and trial, we conclude that this argument lacks merit, as such an interpretation would be contrary to the district court's decision to enter the monetary sanctions, rather than the evidentiary sanctions requested by petitioners. Furthermore, the district court did not abuse its discretion by clarifying in a later order that the original depositions would be treated as regular witness depositions, rather than NRCP 30(b)(6) depositions binding on the corporations, as this treatment was consistent with the court's original order imposing sanctions of attorney fees and costs, but declining to impose the more harsh sanctions requested by petitioners.

Because the district court did not abuse its discretion by entering the challenged discovery orders, we

ORDER the petition DENIED.<sup>3</sup>

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

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<sup>3</sup>To the extent that petitioners ask this court to issue a writ directing the district court to quash deposition notices filed by Safeco, we reject this request because the district court found that those deposition notices had been withdrawn and because we conclude that nothing prevented Safeco from noticing the depositions.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Holland & Hart LLP/Las Vegas  
Jolley Urga Wirth Woodbury & Standish  
Eighth District Court Clerk