

IN THE SUPREME COURT OF THE STATE OF NEVADA

FARMERS INSURANCE EXCHANGE,

No. 37071

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JAMES A. BRENNAN, SENIOR
JUDGE,

FILED

SEP 07 2001

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

Respondents,

and

DANIEL TULLES,

Real Party in Interest.

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion for partial summary judgment in an action involving an insurance dispute.

Nevada's Constitution provides this court with original jurisdiction to issue writs of mandamus.¹ This court issues writs of mandamus in order "to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion."² But "[e]ven when mandamus is available as a remedy, we are not compelled to issue the writ because it is purely discretionary."³

¹Nev. Const. art. 6, § 4.

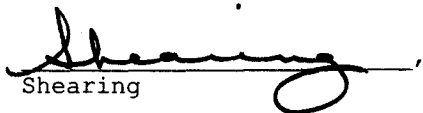
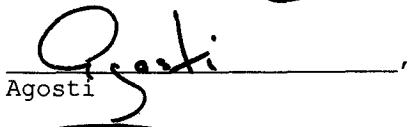

²Kindred v. Dist. Ct., 116 Nev. 405, 410, 996 P.2d 903, 906 (2000) (citing NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981)).

³State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 361, 662 P.2d 1338, 1340 (1983).

While we discourage the use of mandamus petitions to contest district court orders denying motions for summary judgment,⁴ we have granted extraordinary relief when there are no disputed factual issues and, pursuant to clear authority under a statute or rule, the district court is obligated to grant summary judgment.⁵

Having reviewed the petition, answer, and the accompanying exhibits in this matter, we conclude that Farmers Insurance Exchange has failed to demonstrate that (1) there are no disputed issues of material fact and (2) the district court is obligated to grant partial summary judgment. Accordingly, we

ORDER the petition DENIED.


Shearing J.

Agosti J.

Rose J.

cc: Hon. James A. Brennan, Senior Judge
Law Office of V. Andrew Cass
Albert D. Massi, Ltd.
Clark County Clerk

⁴See *id.* at 362, 662 P.2d at 1340 ("[J]udicial economy and sound judicial administration militate against the utilization of mandamus petitions to review orders denying motions to dismiss and motions for summary judgment.").

⁵*Smith v. District Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997).