IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPREME COURT CASE NO.

GAVIN AND MIHN-HAHN COX,

Petitioners,

V.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

MGM GRAND HOTEL, LLC, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD, BACKSTAGE EMPLOYMENT AND REFERRAL, INC. and TEAM CONSTRUCTION MANAGEMENT, INC.

Real Parties In Interest.

From the Eighth Judicial District Court, Clark County, Nevada
Case No. A-14-705164-C

EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E), IMMEDIATE ACTION IS NECESSARY AS TRIAL IS ALREADY IN PROGRESS

BRIAN K. HARRIS, ESQ.
Nevada Bar No. 7737
HEATHER E. HARRIS, ESQ.
Nevada Bar No. 7666
CHRISTIAN N. GRIFFIN, ESQ.
Nevada Bar No. 10601
HARRIS & HARRIS
2029 Alta Drive

BENEDICT P. MORELLI, ESQ.
New York Bar No. BM6597
ADAM E. DEUTSCH, ESQ.
New York Bar No. AD8836
MORELLI LAW FIRM PLLC
777 Third Avenue, 31st Floor
New York, New York 10017
(212) 751.9800 - Telephone

Las Vegas, NV 89106
Telephone: (702) 880-4529
Facsimile: (702) 880-4528
Bharris@harrislawyers.net
Attorneys for Petitioners

(212) 751.0096 - Facsimile
bmorelli@morellilaw.com
adeutsch@morellilaw.com

GAVIN COX AND MINH-HAHN COX
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AFFIDAVIT OF CHRISTIAN N. GRIFFIN IN SUPPORT OF PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Christian N. Griffin, being first duly sworn, now depose and say:

1. I am an attorney at law duly licensed to practice in all courts of the State of Nevada, and counsel for Petitioners Gavin Cox and Minh-Hahn Cox in this matter.

2. If called as a witness in this matter, I could and would testify to the facts herein, which are presently known to me.

3. I have personal knowledge of the matters set forth herein, and I am competent to testify to the matters set forth in this affidavit, and will do so if called upon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

_____
CHRISTIAN N. GRIFFIN

SUBSCRIBED and SWORN to before me
This 7 day of May, 2018.

Peggy Fromhart

NOTARY PUBLIC

PEGGY A. FROMHART
Notary Public State of Nevada
No. 92-0497-1
My appt. exp. Feb. 29, 2020

NRAP 26.1 DISCLOSURE

The law firms representing Real Parties in Interest, Gavin Cox and Minh-Hahn Cox, in District Court and in this Court are Morelli Law Firm, PLLC and Harris & Harris

DATED this 7th day of May, 2018

HARRIS & HARRIS

By:

BRIAN K. HARRIS, ESQ.
Nevada Bar No. 7737
HEATHER E. HARRIS, ESQ.
Nevada Bar No. 7666
CHRISTIAN N. GRIFFIN, ESQ.
Nevada Bar No. 10601
2029 Alta Drive
Las Vegas, Nevada 89106
702.880.4529 - Telephone
702.880.4528 - Facsimile
BENEDICT P. MORELLI,ESQ.
New York Bar No. BM6597
ADAM E. DEUTSCH, ESQ.
New York Bar No. AD8836
MORELLI LAW FIRM PLLC
777 Third Avenue, 31st Floor
New York, New York 10017
212.751.9800 - Telephone
212.751.0096 - Facsimile

EMERGENCY PETITION FOR WRIT OF MANDAMUS

COME NOW, GAVN COX AND MINH-HAHN COX (hereinafter "Petitioners"), by and through their counsel, Morelli Law Firm, PLLC, and Harris & Harris, and hereby submit this Petition respectfully requesting issuance of a Writ of Mandamus pursuant to NRAP 21 and NRS 34.160. Petitioners are entitled to a writ relating to the District Court's erroneous May 4, 2018, Oral Order (Written Order and notice Pending) in which the District Court granted the Oral Motion of Real Parties in Interest for a Jury View under *NRS 16.100* of the location of Petitioner GAVIN COX's fall at the MGM Hotel and Casino currently scheduled for May 8, 2018 at 8:00 p,m,

Petitioners are entitled to a writ relating to the District Court's erroneous May 4, 2018 Oral Order in which the District Court granted the Motion of Real Parties in Interest to allow the Jury in this case to view the location of Petitioner GAVIN COX's November 12, 2013 fall, despite substantial modifications to the location since the incident. Specifically, following the close of Petitioners' case-in-chief, Real Parties in Interest made an Oral Motion to the Court, before the Jury, for a Jury View of the premises at the MGM Grand Hotel and Casino. Petitioners argued that substantial changes to the lighting, curbing, slope of the ramp and alterations to the surface of the concrete and curbing in the area where

GAVIN COX's fall occurred would make the Jury View prejudicial to Petitioners and of limited probative value to the jury. Over Petitioners objections, the Court concluded that modifications to the area could be explained to the Jury *after* the viewing. In light of the substantially different condition of the subject area, Petitioners respectfully petition this Honorable Court to issue a Writ of Mandamus to direct the Honorable Mark Denton to amend the May 4, 2018, Oral Order to Deny the Oral Motion of Real Parties in Interest for a Jury View under NRS 16.100.

Writ consideration is appropriate as it is necessary for the Court to address this important issue of the substantial changes made to the subject area before the jury is exposed to those changes at the scheduled May 8, 2018, Jury View.

I. RELIEF SOUGHT BY PETITIONER

A Writ of Mandamus to direct the Honorable Mark Denton to amend the May 4, 2018 Oral Order granting the Oral Motion of Real Parties in Interest to permit a Jury View of the substantially modified premises of the MGM Grand Hotel and Casino where Petitioner GAVIN COX, was caused to slip and fall on November 12, 2013.

The Order is an abuse of discretion because the Jury will view the premises without many, if not all, of the factors that were present and contributed to the subject November 2013 fall. Permitting the scheduled May 8, 2018, View will irreparably taint the Jury in this case after weeks of evidence and testimony.

II. ISSUES PRESENTED

1. Whether the court abused its discretion granting an oral Motion for a Jury View in light of the substantial modifications to the area since the November 12, 2013, incident.
2. Whether the court has abused its discretion by permitting a Jury View of premises which must be re-assembled by an adverse party prior to the Jury View and are, as such, subject to further modification from their actual condition on the night of November 12, 2013.

III. STATEMENT OF FACTS

On November 12, 2013, Petitioners, GAVIN COX and MINH-HAHN COX ("Petitioners"), attended the David Copperfield Show at the MGM Grand Hotel and Casino. During the show, GAVIN COX was randomly selected to participate in the "Thirteen" Illusion. During the illusion, as Mr. Cox was navigating the outside portion of the route chosen by Real Parties in Interest,

DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD A/K/A DAVID KOTKIN, BACKSTAGE EMPLOYMENT AND REFERRAL, INC., and MGM GRAND HOTEL, LLC, he was caused to slip, fall, and suffer serious injuries while he was being directed to run outside of the MGM Grand Hotel and Casino.

The Cox Parties filed their Complaint on August 6, 2014.

Trial in this matter began on April 3, 2018. Petitioners rested their Case in Chief on May 3, 2018.

The parties and the Defendants' Expert Witnesses acknowledge that substantial modifications have been made to the outdoor portion of the Thirteen Illusion identified as the "runaroud."

The parties further acknowledge that Mr. Copperfield is no longer performing the Thirteen Illusion and has not been for quite some time. As such, the condition of the props and stage area used for the Thirteen Illusion are not the same as on the night of November 12, 2013. Moreover, the Defendants have presented absolutely no evidence that the interior portion of the "runaround" route is substantially similar today to the condition it was on the night of the accident.

On May 4, 2018, Real Parties in Interest moved the Court by Oral Motion to permit a Jury View under *Nevada Revised Statute 16.100.* Petitioner opposed any Jury View based on the known substantial changes made to the premises since 2013, including, but not limited to, the following modifications to the outdoor portion of the "runaround" where GAVIN COX's accident occurred: lighting, landscaping, slope of the ramp, removal of a construction dumpster, and alterations to the surface of the concrete and curbing, all in the exact area where GAVIN COX slipped and fell.

After argument, the District Court issued the following Oral Order:

"I grant a view."

A true and correct copy of the Trial May 4, 2018, Transcripts containing Motion, Argument and Order on the subject is attached hereto as Petitioners Appendix, Exhibit "1," at Page 119, Line 21.

Following the District Court's Oral Order on May 4, 2018, it is believed Real Parties in Interest, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD A/K/A DAVID KOTKIN, BACKSTAGE EMPLOYMENT AND REFERRAL, INC., and MGM GRAND HOTEL, LLC, instructed employees of one or more of their companies to make alterations to the current condition of the indoor or stage portion where the Thirteen Illusion

was previously performed. Tweets obtained by Chris Kenner, Executive Producer of BACKSTAGE EMPLOYMENT AND REFERRAL, INC. and the Copperfield Show and a witness in this trial, appear to indicate that Mr. Kenner has been tasked with preparing some, or all, of the areas for the Jury View. *See Tweets from and in response to Chris Kenner at Petitioners' Appendix, Exhibit "3."*

There has been absolutely no direction from the Court as to the conditions expected for the Jury View of the indoor portion of the "runaround" or stage area and no agreement between the parties relative to the condition of the indoor or stage area for the Jury View. The Court did not even direct that the conditions for the Jury View must be substantially similar to the night of GAVIN COX's accident. The condition of the entire Jury View area is in the exclusive control of Real Parties in Interest, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD A/K/A DAVID KOTKIN, and BACKSTAGE EMPLOYMENT AND REFERRAL, INC., MGM GRAND HOTEL, LLC. Thus, if the Jury View is allowed to go forward as currently scheduled, there is a serious risk of substantial prejudice to the Petitioners in that the Real Parties in Interest may alter the condition of the premises to their own benefit for the jury to see.

Petitioners now bring this Petition for Writ of Mandamus as they believe the District Court erroneously granted the Motion of Real Parties in Interest for a Jury View of the substantially modified premises of the area of the November 12, 2013, illusion.

A Writ of Mandamus is necessary and appropriate as the Jury View is scheduled for May 8, 2018, at 8:00 p.m. Given that the Jury in this case has been present for weeks of testimony regarding the condition of the premises in 2013 and has already seen a plethora of pictures and video of the premises from the date of the accident, permitting the Jury to view the substantially modified premises at this late date will not assist the jury in making its decision with regard to the condition or safety of the premises in 2013. Instead, a Jury View of the 2018 condition of the premises would irreparably prejudice Petitioners by asking the Jurors to imagine the condition as it was in 2013, not in 2018. Moreover, the fact that the premises are in the exclusive control of the Real Parties in Interest creates a substantial risk that the premises will be altered further to their benefit. Such as result runs contrary to the very purpose of a Jury View. The Court's Order of a Jury View given the substantially changed outdoor portion of the premises – combined with the potential for further

modification of the indoor portion of the premises – should be reversed and a Jury View precluded.

IV. STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT AND POINTS AND AUTHORITIES

A. Legal Standard for Writ of Mandamus

This court has original jurisdiction over the extraordinary remedies of writs of mandamus, prohibition and certiorari. Nev. Const. Art. 6 Sec. 4 and 6. The Supreme Court of Nevada may issue a writ of mandamus to control a district court's arbitrary or capricious exercise of discretion. Marshall v. District Court, *108 Nev. 459, 466, 836 P.2d 47, 52 (1992); see also* Round Hill Gen. Imp. Dist. v. Newman, *97 Nev. 601, 637 P.2d 534 (1981)*. A party is entitled to a writ of mandamus when a tribunal such as the district court has failed to legally and properly discharge its obligations under the law.

Mandamus lies where discretion is manifestly abused or is exercised arbitrarily or capriciously. Round Hill Gen. Improvement Dist. v. Newman, *97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)* citing Henderson v. Henderson Auto, *77 Nev. 118, 359 P.2d 743 (1961).* A writ of mandamus is an extraordinary remedy. Consequently, the Court will only exercise our discretion to entertain a mandamus petition when there is no plain, speedy and adequate

remedy in the ordinary course of law or there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration. GMC v. Eighth Judicial Dist. Court of Nev., *122 Nev. 466, 469, 134 P.3d 111, 114 (2006)*

Where, as here, there is not only a clear error but one that unless immediately corrected will wreak irreparable harm or further avoidable error, Mandamus is appropriate. *See* Double Diamond Ranch Master Ass'n v. Second Judicial Dist. Court, *354 P. 3d 641, 646-647 (Nev. 2015) citing* In re Linee Aeree Italiane (Alitalia), *469 F.3d 638, 640 (7th Cir. 2006); see also* Scarbo v. Eighth Judicial Dist. Ct., 125 Nev. 118, 121, 206 P.3d 975, 977 (2009).

Petitioners will suffer irreparable harm if, following the close of their case-in-chief, the Jury is permitted to view a premises which has been substantially modified so as to directly impact many, if not all, of the allegations made by Petitioners and retained experts in this case as to the factors contributing to the events of November 12, 2013.

Petitioners respectfully request this Honorable Court to issue a writ of mandamus as Petitioners have no adequate remedy at law to address the erroneous May 4, 2018, Order granting a May 8, 2018, Jury View.

Determining this issue now pursuant to a Writ of Mandamus would prevent irreparable harm and promote judicial economy.

B. Issuing a Writ of Mandamus will Promote Judicial Economy

The Supreme Court has stated that it would "exercise its discretion" when "an important issue of law requires clarification" and declared that "the primary standard" in the determination of whether to entertain a writ petition will be "the interests of judicial economy." *Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997).* Trial in this matter began on April 3, 2018, and the subject Jury has heard weeks of evidence and testimony. Specifically, the Jury has heard, and been shown, an abundance of testimony and evidence regarding the exact condition of the premises on the night of November 12, 2013. Should Petitioners be forced to pursue a remedy by appeal for the Court's abuse of discretion, the result will be a significant waste of Judicial and Party time and resources. Judicial economy and administration militate in favor of determining this particular issue at the present time before the substantial prejudice to the Petitioners cannot be undone.

V. DISTRICT COURT ABUSED ITS DISCRETION BY PERMITTING JURY VIEW

The District Court May 4, 2018, Oral Order is erroneous because Petitioners provided clear undisputed evidence that the location where the Thirteen Illusion is performed has been substantially modified since the underlying incident on November 12 2013. Specifically, the outdoor portions of the premises have been substantially modified in a manner so as to prevent returning them to their November 2013 condition. The Real Parties in Interest do not dispute this fact. Further, because the Thirteen Illusion is no longer performed at the MGM Grand, the Real Parties in Interest, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD A/K/A DAVID KOTKIN, BACKSTAGE EMPLOYMENT AND REFERRAL, INC., and MGM GRAND HOTEL, LLC (the "Copperfield Parties") are required to "recreate" the indoor or "stage" portion of the premises. The Copperfield Parties have essentially been given carte blanche by the District Court to unilaterally "recreate" the Thirteen Illusion set without direction from the Court or contribution from Petitioners. Therefore, it is impossible for the Court or the Petitioners to verify that the condition of the premises during the Jury View is not further substantially altered. The 2018 "recreated" versions of the Thirteen

Illusion premises, specifically the outdoor portion of the "runaround" route where GAVIN COX's accident actually occurred, will *not* assist the jury in rendering a fair verdict in this case.

A. The District Abused Its Discretion by Ordering a Jury View of Outdoor "Runaround" Location

The District Court abused its discretion by Ordering a Jury View of the outdoor portion of the "runaround" since the outdoor premises are irrefutably not in the same or a similar condition to the condition on the night of this incident, November 12, 2013. The District Court heard undisputed evidence that significant changes had been made to the outdoor portion of the "runaround" at the MGM Grand Hotel and Casino since November 2013. These changes have significantly impacted the surface, lighting, incline and general overall condition of the path and surrounding area taken by Mr. Cox when he slipped and fell in November 2013. A Jury View of a premises so dissimilar to the condition of the premises at issue in this case will not assist the Jury in rendering a decision and will ultimately only lead to confusion, speculation, and substantial prejudice to the Petitioners.

As stated by Counsel for Real Party in Interest Backstage Employment and Referral, Inc., the case of Eikelberger v. State, *83 Nev. 306, 429 P.2d 555*

(1967) is a case that involved substantial changes prior to a Jury View. However, the Eikelberger finding does not support a Jury View where, as here, the subject of the case has been modified. In Eikelberger, the Court permitted a Jury View of condemned property where the area *surrounding* the property had drastically changed. On appeal the Court upheld the Jury View because "[t]he property in issue had not changed in general appearance." *See* Eikelberger *at 310, 558.*

No Nevada rule or law supports a Jury View where a premises has been so significantly altered. In contrast to Eikelberger, the outdoor portion of the "runaround" (i.e. the property at issue where the accident actually occurred) has completely changed in its general appearance. This essential fact cannot be disputed. Following Mr. Cox's slip and fall in November 2013, Real Party in Interest MGM Grand Hotel, LLC ("MGM") made numerous changes to the area. Specifically, MGM:

1. Removed a large tree that covered the "runaround" pathway shielding it from the dim overhead lighting. *See Petitioners' Appendix, Exhibit "2," Trial Exhibit Numbers 84.000020 and 93.000030.*

2. Removed a second large tree which directly obstructed the sole overhead lighting in the "runaround" area in 2013. See *Petitioners' Appendix, Exhibit "2," Trial Exhibit Numbers 84.000022 and 93.000033.*

3. Reduced the slope of the ramp on which Mr. Cox fell. *See Petitioners' Appendix, Exhibit "2," Trial Exhibit Numbers 84.000023 and 93.000020.*

4. Made sweeping changes to the concrete flooring texture and curbing in the outdoor "runaround" area. *See Petitioners' Appendix, Exhibit "2," Trial Exhibit Numbers 84.00023 and 93.000020.*

MGM's numerous modifications to the outdoor portion of the "runaround" area make the area far more akin to the "drastically changed" surrounding area than the subject property Eikelberger. As a result of MGM's wholesale changes, the probative value of a Jury View, if any, is far outweighed by the prejudice to Petitioners by showing the jury the property's 2018 condition and asking them to imagine the area as it was in 2013.

Where, as here, the probative value of the view would be outweighed by the lack of context, Courts prefer to have evidence presented in the controlled

environment of a Courtroom. In Green v. A.B. Hagglund & Soner, *634 F. Supp. 790 (D. Idaho 1986)* the Idaho Court concluded the limited probative value of allowing the jury to view the hill upon which the accident occurred would be outweighed by the potential prejudice. The Green Court determined "while the jury might very well be better able to appreciate the steepness of the hill . . .the fact of steepness alone may itself be confusing if the jury is unable to visualize the relative location and timing of the events taking place the day of the accident." The Green Court determined that the steepness of the grade could be adequately presented in court in a more controlled environment at a time when counsel for all parties could advocate their positions and explain the location and timing of events taking place. *Id at 797.*

Similarly in this case, it will be impossible for the jury to adequately appreciate the slope, concrete, lighting or relative placement of Mr. Cox or other participants in the illusion. Without context of the subject premises in a substantially similar condition to that of the night of November 12, 2013, the probative value of the proposed May 8, 2018, Jury view is greatly outweighed by the prejudice to Petitioners. A 2018 Jury View will lead confusion, assumption and speculation since the scene has little, if anything, in common with the scene of Mr. Cox's fall in 2013.

The outdoor portion of the "runaround" has been so substantially changed that a Jury View will only serve to confuse the jury as to the condition of the area on November 12, 2013. Nevada law does not support permitting a Jury View in this case. As such, Petitioners request this Court grant their Emergency Writ and reverse the Court's May 4, 2018, Order permitting a Jury View.

B. The District Court Abused Its Discretion by Ordering a Jury View of Indoor "Stage" Location

The District Court abused its Discretion in permitting a Jury View of the indoor portion of the "runaround" as well as the "stage" area because it no longer represents the condition of the Thirteen Illusion in November 2013. The District Court heard undisputed testimony from Mr. Copperfield himself that he no longer performs the Thirteen Illusion and has not done so since 2014 or 2015. Now, approximately three (3) years later, the Copperfield stage bears no resemblance to the area of the Thirteen Illusion in 2013. A Jury View of the altered indoor stage area will not assist the Jury in rendering a decision and will ultimately lead to confusion and speculation as to the condition of the stage in 2013. Moreover, it is undisputed that Mr. Cox's slip and fall occurred during

the outdoor portion of the "runaround" rendering a Jury View of the indoor stage area of limited probative value as well.

A Jury View must bear some resemblance to the property at issue. *See Eikelberger, Supra.* In this case, Mr. Copperfield removed the Thirteen Illusion from his show years ago. As a result, the area of the illusion is in no way similar to the condition on November 12, 2013. In addition, recent developments raise concerns that the area is being "staged" for the Jury View solely to benefit the Real Parties in Interest. Specifically, it is apparent from social media posts by Executive Producer, Chris Kenner that changes are being made to the property in anticipation of the Jury View. *See Petitioners' Appendix, Exhibit "3."* Such unilateral actions by the Copperfield Parties, without any direction from the District Court or participation by the Petitioners, are entirely inappropriate and raise serious concerns about the conditions of all portions of the Thirteen Illusion that would be presented during a Jury View and the prejudice that will be suffered by the Petitioners as a result.

As the District Court is aware, there is no evidence of the condition of the stage area on November 12, 2013. The Copperfield Parties did not produce any photographs or video showing the stage area or indoor portion of the

"runaround" on the night of the accident. Without such evidence, it will be impossible for the Petitioners or the Court to determine if the indoor portion of the premises during the Jury View bears any similarity whatsoever to the condition of the premises on the night of the subject accident. For the Copperfield Parties to be able to unilaterally recreate the "obstacles" in 2018 as some representation of the conditions in 2013 is contrary to the basic premises of the rules of evidence that evidence must be authentic and relevant. By way of comparison, if the Copperfield Parties were to offer photographs of the "re-created" version of the stage in 2018, those photographs would be irrelevant and inadmissible. The 2018 photographs of the prop with the unilateral addition of cables, lights or other stage equipment could not be objectively determined to be a representation of the condition of the stage and props on November 12, 2013. *NRS 52.025.* Further, the 2018 photographs with unilateral staging would not have a tendency to make the existence of any fact of consequence to the determination of the action more or less probable than without the 2018 photographs. *NRS 48.015.* Since Photographs of the 2018 premises would not be relevant or admissible in this matter, it stands to reason that a 2018 Jury View would not assist this Jury in evaluating relevant evidence and reaching a verdict in this matter.

The Copperfield Parties made permanent modifications to the stage premises several years ago. As a result, viewing the 2018 indoor premises will not assist the jury in making its decision with regard to the safety of the premises in 2013. Alternatively, permitting the Copperfield Parties to unilaterally alter the stage to reflect their version of its condition in 2013, would be misrepresentative of the evidence in this case. Given these two possibilities, the only possible outcomes of a Jury View are confusion and injustice. As such, Petitioners request this Court grant their Writ and reverse the Court's May 4, 2018, Order permitting a Jury View.

IV. CONCLUSION

Neither the outdoor portion of the premises previously used for the "runaround" nor the indoor "stage" and route bear any resemblance to the route taken by Petitioner GAVIN COX on November 12, 2013. The "runaround" route has been subject to changes that effect the lighting, ramp angle and surface. The Thirteen Illusion is no longer part of Mr. Copperfield's Show. As such, any props or obstructions will be re-created by staff for the Copperfield and MGM parties without input from the Court or Petitioners.

Each change made or portion of the illusion to be recreated involves an area which Petitioners allege was unsafe or inadequate on November 12, 2013.

MGM's decision to modify the outdoor or "runaround" portion of the Thirteen Illusion changed the lighting, concrete, ramp angle and general overall appearance of the outdoor route. As such, jurors will be left to imagine the condition of the route in 2013.

Likewise the area around the prop used in the Illusion has been removed. As such, items such as lights or cables on the floor near the prop as described by Mr. Copperfield in his sworn testimony will need to be imagined by jurors or, more troubling, will be re-created by Copperfield, and or his agents or employees prior to the Jury View. This is akin to leaving the proverbial Rooster in charge of the Hen House. There is no objective evidence to support the condition of the stage, much less the Copperfield and MGM parties' representation of the condition of the stage on that fateful night.

A Jury View is improper due to substantial changes made to both the indoor and outdoor potions of the Thirteen Illusion. Both areas have substantially "changed in general appearance." As such a Jury View will only lead to confusion, prejudice to Petitioners, and will certainly raise more questions than it answers.

A Writ of Mandamus is warranted to prevent the injustice which will certainly result from a Jury View of the premises in 2018. The premises are in

no way similar to their condition in 2013. Petitioners will suffer irreparable harm should the jury be asked to imagine the condition of the premise in 2013. A 2018 Jury View will not assist the Jury in making their decisions about the condition of the premises in 2013. Instead, a Jury View will only lead to confusion and speculation. As such, for the reasons set forth herein, Petitioners' request their Writ of Mandamus be granted, the District Court's May 4, 2018, Order reversed and this matter allowed to continue with trial based on the evidence presented in the Courtroom.

Respectfully submitted this 7 day of May, 2018.

HARRIS & HARRIS

By: _____

BRIAN K. HARRIS, ESQ.
Nevada Bar No. 7737
HEATHER E. HARRIS, ESQ.
Nevada Bar No. 7666
CHRISTIAN N. GRIFFIN, ESQ.
Nevada Bar No. 10601
2029 Alta Drive
Las Vegas, Nevada 89106
702.880.4529 - Telephone
702.880.4528 - Facsimile
BENEDICT P. MORELLI, ESQ.
New York Bar No. BM6597
MORELLI LAW FIRM PLLC
777 Third Avenue, 31st Floor
New York, New York 10017
212.751.9800 - Telephone
212.751.0096 - Facsimile

ROUTING STATEMENT

This Petition pertains to a Writ proceedings that does not challenge a discovery order or orders resolving Motions in Limine but challenges the District Court's Order granting the Motion of Real Parties in Interest to a May 8, 2018, Jury View. Pursuant to *NRAP 17(b)(8)*, this matter is not presumptively assigned to the Court of Appeals.

DATED this 7 day of May, 2018.

HARRIS & HARRIS

By: _____

BRIAN K. HARRIS, ESQ.
Nevada Bar No. 7737
HEATHER E. HARRIS, ESQ.
Nevada Bar No. 7666
CHRISTIAN N. GRIFFIN, ESQ.
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2029 Alta Drive
Las Vegas, Nevada 89106
702.880.4529 - Telephone
702.880.4528 - Facsimile
BENEDICT P. MORELLI, ESQ.
New York Bar No. BM6597
ADAM E. DEUTSCH, ESQ.
New York Bar No. AD8836
MORELLI LAW FIRM PLLC
777 Third Avenue, 31st Floor
New York, New York 10017
212.751.9800 - Telephone
212.751.0096 - Facsimile

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of ***NRAP 32(a)(4)***, the typeface requirements of ***NRAP 32(a)(5)*** and the type style requirements of ***NRAP 32(a)(6)*** because this brief has been prepared in a proportionally spaced typeface using Corel WordPerfect X4 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of ***NRAP 32(a)(7)*** because, excluding the parts of the brief exempted by ***NRAP 32(a)(7)(c)***, it is either:

□ proportionally spaced, has a typeface of 14 points or more and contains _____ words; or

☑ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular ***NRAP 28(e)(1)***, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7 day of May, 2018.

HARRIS & HARRIS

By: _____

BRIAN K. HARRIS, ESQ.
Nevada Bar No. 7737
HEATHER E. HARRIS, ESQ.
Nevada Bar No. 7666
CHRISTIAN N. GRIFFIN, ESQ.
Nevada Bar No. 10601
2029 Alta Drive
Las Vegas, Nevada 89106
702.880.4529 - Telephone
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ADAM E. DEUTSCH, ESQ.
New York Bar No. AD8836
MORELLI LAW FIRM PLLC
777 Third Avenue, 31st Floor
New York, New York 10017
212.751.9800 - Telephone
212.751.0096 - Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of May, 2018, I served a true and correct copy of the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(E), IMMEDIATE ACTION IS NECESSARY AS TRIAL IS ALREADY IN PROGRESS,** at the following address(es):

Lee Roberts, Esq.
Howard J. Russell, Esq.
WEINBERG WHEELER HUDGINS GUNN & DIAL, LLC
6385 S. Rainbow Boulevard, Suite 400
Las Vegas, Nevada 89118
702.938.3838 - Telephone
702.938.3864 - Facsimile
Attorneys for Defendant ***BACKSTAGE EMPLOYMENT & REFERRAL, INC.***

Elaine Fresch, Esq.
Eric O. Freeman, Esq.
SELMAN BREITMAN, LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
702.228.7717 - Telephone
702.228.8824 - Facsimile
Attorneys for Defendant ***DAVID COPPERFIELD'S DISAPPEARING, INC. / DAVID COPPERFIELD, aka DAVID A. KOTKIN and MGM GRAND HOTEL, LLC***

Roger Strassberg, Esq.
Gary W. Call, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
702.997.3800 - Telephone / Facsimile
Attorneys for Defendants ***TEAM CONSTRUCTION MANAGEMENT, INC.*** and *Third-Party Defendant* ***BEACHER'S LV, LLC***

Peggy Frenhart

HARRIS & HARRIS Employee