

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. _____
District Court Case No. A-18-772761-C

Electronically Filed
Jan 22 2020 02:28 p.m.

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

Elizabeth A. Brown
Clerk of Supreme Court

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING PROCEEDING BEFORE
THE DISTRICT COURT TO ALLOW PETITIONERS AN OPPORTUNITY TO
HAVE A JURISDICTIONAL ISSUE REVIEWED

ACTION IS NEEDED BY FEBRUARY 5, 2020 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

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AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR STAY AND
NRAP 27(E) CERTIFICATE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this EMERGENCY MOTION UNDER NRAP 8 STAYING PROCEEDING BEFORE THE DISTRICT COURT TO ALLOW PETITIONERS AN OPPORTUNITY TO HAVE A JURISDICTIONAL ISSUE REVIEWED.

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

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Sean K. Claggett, Esq.
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3. The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on September 13, 2019 denying Petitioners'

motion for summary judgment on the issue of statutory immunity under the Nevada Industrial Insurance Act (“NIIA”). The motion was denied with prejudice, the district court finding that no genuine issues of material fact. Venetian’s motion for stay by the district court to allow for filing of a writ of mandamus and/or writ of prohibition was denied. Therefore, immediate action is required to prevent Venetian from suffering irreparable harm.

4. Counsel for Real Party in Interest was served with Petitioners’ Petition and this Motion via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Emergency Motion and Petitioners’ Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

5. Petitioners will be required to expend hundreds of thousands of dollars to defend this litigation through trial when they contend that the district court has no jurisdiction based on Petitioners’ statutory immunity under the NIIA. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the

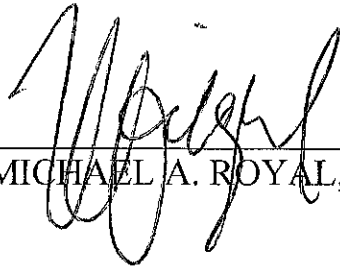
emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available by the District Court. Petitioners requested a stay of all proceedings when this matter was before the District Court on August 13, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained from the appellate court pursuant to NRAP, Rule 8. It is imperative this matter be heard at the Court's earliest possible convenience.

7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
22 day of January, 2020.



NOTARY PUBLIC in and for said
County and State



TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	3
I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT	3
II. BASIS FOR RELIEF	3
III. STATEMENT OF FACTS	4
IV. LEGAL ARGUMENT	5
A. The District Court’s Denial of Venetian’s Motion for Summary Judgment under the NIIA is Forcing Petitioners to Litigate a Lawsuit over which the Court has No Jurisdiction.	5
B. A Stay is Required to Preserve Judicial Resources and Protect Petitioners from Needless and Costly Litigation.....	9
V. CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases

<i>Bruttomesso v. Las Vegas Met. Police</i> , 95 Nev. 151 (1979)	9
<i>Haertel v. Sonshine Carpet Co.</i> , 104 Nev. 331, 757 P.2d 364 (1988)	9
<i>Hook v. Giuricich</i> , 108 Nev. 296, 823 P.2d 294 (1992)	9
<i>Howard v. District Court</i> 98 Nev. 87, 640 P.2d 1320 (1982)	6
<i>Meers v. Haughton Elevator, a Div. of Reliance Elec. Co.</i> , 101 Nev. 283, 701 P.2d 1006 (1985)	6, 8
<i>Radaker v. Scott</i> , 109 Nev. 653 (1993)	9
<i>Stolte, Inc. v. Eighth Judicial Dist. Court</i> 89 Nev. 257, 510 P.2d 870 (1973)	6
<i>Tucker v. Action Equip. & Scaffold Co.</i> 113 Nev. 1349, 951 P.2d 1027 (1997)	7

Statutes

NRS § 616A.020	6
NRS § 616A.210	6
NRS § 616B.603(1)	6

Rules

NRAP, Rule 8(a)	9
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MOTION

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C (“Case A772761”), JOYCE SEKERA (“Sekera”) v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Venetian”):

1. That this Court issue an order for the immediate stay of all proceedings before the district court to allow for appellate review of the September 13, 2019 order by the district court denying summary judgment on a jurisdictional issue.
2. That this Court issue a stay of all further discovery in this matter until Petitioners’ Petition for Writ of Mandate and/or Prohibition can be heard.

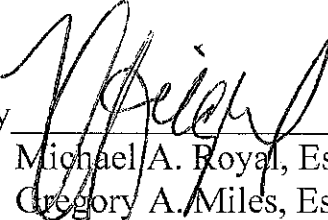
The September 13, 2019 order issued by the district court is based on Judge Delaney’s incorrect determination that there is no legal basis for granting Venetian’s motion for summary judgment under the Nevada Industrial Insurance Act (“NIIA”), affording it statutory immunity under circumstances where Venetian was the statutory employer of Sekera. Venetian will suffer irreparable harm if a stay is not granted. It has already expended many tens of thousands in defense of

this matter and will expend hundreds of thousands more through trial. Petitioners are seeking relief in the concurrently filed Petition for Writ of Mandamus and/or Prohibition on an emergency basis. If this Court grants this motion for a stay, then the emergency will be abated and the Petition for Writ of Mandate and/or Prohibition may be considered on a non-emergency basis.

This Motion is based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 22 day of January, 2020.

ROYAL & MILES LLP

By 
Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

Petitioners moved for a stay in district court, which was denied. Due to the exigent circumstances, and the heavy financial burden of defending this matter where Petitioners assert that the district court has no jurisdiction to proceed, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as this addresses a critical issue of law.

II. BASIS FOR RELIEF

Petitioners have submitted an emergency writ petition challenging the District Court's denial of a summary judgment motion based upon its status as a statutory employer. Petitioners will be irreparably harmed without the issuance of a stay of the underlying proceedings following the denial of Venetian's motion for summary judgment. This litigation arises from a slip and fall allegedly occurring from the alleged presence of a foreign substance on the floor. Sekera's employment required her to come upon Venetian property multiple times daily from December 26, 2015 through November 4, 2016. She walked across the fall area many hundreds of times in the course of her employment prior to her fall. It is undisputed that Sekera was injured in the course and scope of her employment on

November 4, 2016. She filed a claim for workers' compensation and has been receiving all benefits associated therewith. Petitioners assert that they are immune from third party liability as a statutory employer under the NIIA.

During the August 13, 2019 hearing on Venetian's motion for summary judgment, District Judge Kathleen Delaney observed that the issue presented was "a close call," while denying the motion with prejudice and further denying Venetian's motion for a stay to allow for a writ to be filed. Under the circumstances of the accident at issue in this matter, Petitioners are presently forced to litigate a matter where they contend the district court has no jurisdiction in light of prevailing Nevada law. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the proceedings before the district court** until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.

III. STATEMENT OF FACTS

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA ("Sekera"). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries. (See Petitioners' Appendix, Vol. 3, Tab 4 at VCR 699 (ln. 11-13).)

Petitioners filed a motion for summary judgment on July 9, 2019. (See Petitioners' Appendix, Vol. 1, Tab 1 at VCR 001.) Hearing on the motion was held on August 13, 2019. (Petitioners' Appendix, Vol. 3, Tab 4 at VCR 694.) The Findings of Fact, Conclusions of Law and Order denying Petitioners' motion was filed on September 13, 2019. (*Id.*) Although Judge Delaney acknowledged that the issue of statutory immunity under the NIIA presented before her is "a very close call," she denied Petitioners' motion with prejudice and further denied Venetian's motion for a stay to allow for this issue to be presented to the higher court in the form of a writ. (See Petitioners' Appendix, Vol. 3, Tab 4 at VCR 700 – VCR 701; see also Petitioners' Appendix, Vol. 3, Tab 5 at VCR 734 (23:6-25; VCR 735 (24:1-4).)

Presently, Petitioners have no available remedy to address this jurisdictional issue other than to file a writ of mandamus and/or writ of prohibition with this Honorable Court. Accordingly, circumstances necessitate the filing of Petitioners' writ and the instant motion.

IV. LEGAL ARGUMENT

A. The District Court's Denial of Venetian's Motion for Summary Judgment under the NIIA is Forcing Petitioners to Litigate a Lawsuit over which the Court has No Jurisdiction.

Petitioners contend that the NIIA as set forth in Nevada Revised Statutes Chapters 616A to 616 D is Sekera's exclusive remedy for her work injury

occurring on November 4, 2016. Nevada law provides that district courts are **without jurisdiction** to entertain a third party lawsuit against entities subject to the exclusive remedy. (See *Howard v. District Court*, 98 Nev. 87, 640 P.2d 1320 (1982); *Stolte, Inc. v. Eighth Judicial Dist. Court*, 89 Nev. 257, 258, 510 P.2d 870, 870 (1973).) This exclusive remedy extends to all parties who qualify as “statutory employers.” (See NRS §§ 616A.020 (3), 616A.020(4) & 616A.210; *Stolte*, 89 Nev. at 260, 510 P.2d at 872.)

As set out in detail in the Petition for Writ of Mandamus and/or Prohibition filed with this motion to stay, Petitioners assert that they qualify as statutory employers under the circumstances based on the following.

1. Brand Vegas and Venetian are **independent enterprises** in the business of entertainment, which includes the marketing and selling of tickets to shows in Las Vegas; therefore, the factors set forth in NRS § 616B.603(1) support Petitioners’ claim for statutory immunity.

2. Under the “normal work” test set forth in *Meers v. Haughton Elevator, a Div. of Reliance Elec. Co.*, 101 Nev. 283, 286, 701 P.2d 1006, 1008 (1985), Venetian has established that Sekera, as a ticket salesperson coming upon Venetian property daily, regularly selling Venetian show tickets to Venetian guests and coordinating her sales efforts with Venetian box office personnel, was engaged in work normally performed by Venetian employees. Application of facts to the

“normal work” test here, especially in light of the “control” test referenced herein below, weighs in favor of Venetian as a statutory employer for Sekera.

3. Under the “control” test set forth in *Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 951 P.2d 1027 (1997) (used as a factor of consideration within the *Meers* “normal work” test), Venetian established that it exercised similar control over Sekera as its own employees. For example, pursuant to its Parking Policy, Venetian controlled how Sekera arrived onto Venetian property (*i.e.* prohibiting use of the Porte Cochere area, requiring use of Koval Lane to avoid congestion at guest entrances), it controlled where Sekera parked her vehicle (*i.e.* to be in the designated Venetian employee parking area, and issued her a Venetian parking pass for that purpose), and Venetian controlled how Sekera entered/exited the interior areas of the Venetian property (*i.e.* she was to use the designated Venetian employee entrance/exit, for which Sekera was issued an identification badge after completing a background check). Venetian further controlled Sekera by requiring her to submit to a Code of Conduct while working for Brand Vegas. Indeed, Sekera could not have worked for Brand Vegas at its Grand Canal Shops kiosk locations without Venetian’s approval and consent, as the Grand Canal Shops property is landlocked within Venetian. Had Sekera failed to follow Venetian’s given protocol, it could have prohibited her from coming onto the property altogether. Further, Venetian controlled how Plaintiff could sell

tickets to its events, setting forth a protocol that required Plaintiff to coordinate every sale of a Venetian event with the Venetian box office personnel. Plaintiff was subject to discipline for failing to follow Venetian's policies. (If, for example, Venetian expelled Plaintiff from its premises, Plaintiff would be entirely unable to work at her Brand Vegas kiosk in the Grand Canal Shops.) That is a significant amount of control that weighs heavily in favor of statutory immunity for Venetian.

4. The parenthetical language set forth in the *Meers*' "normal work test" likewise weighs in favor of immunity for Venetian as Sekera's work was "obviously a subcontracted fraction of a main contract." (See *Meers*, supra, at 286, 701 P.2d at 1008.) Venetian established that it enters into contracts with entertainment entities to perform shows on Venetian property as a regular part of its business. Venetian further established that it uses various means of selling tickets to shows it hosts on its property, including entering into brokering agreements as it did with Sekera's employer, Brand Vegas. Sekera's efforts to sell tickets to Venetian events was a "subcontracted fraction" of the "main contract" between Venetian and the entertainment entity producing the show for which tickets were sold. Further, Sekera was injured in the workplace area shared by Venetian employees and Plaintiff's coworkers where Plaintiff had walked hundreds of times previously. On this basis alone, Petitioners respectfully submit that they qualify as a statutory employer and are therefore immune from liability.

5. The Venetian/Brand Vegas Agreement meets the criteria of a joint venture as set forth in *Hook v. Giuricich*, 108 Nev. 296, 823 P.2d 294, 295 (1992), *Haertel v. Sonshine Carpet Co.*, 104 Nev. 331, 335, 757 P.2d 364, 366 (1988), *Bruttomesso v. Las Vegas Met. Police*, 95 Nev. 151, 154 (1979), and *Radaker v. Scott*, 109 Nev. 653, 658 (1993).) Further, Brand Vegas carried workers compensation coverage for Sekera's injury. Venetian, as a contracting partner with Brand Vegas, is therefore entitled to immunity here based on Nevada case law.

B. A Stay is Required to Preserve Judicial Resources and Protect Petitioners from Needless and Costly Litigation.

Rule 8, Nevada Rules of Appellate Procedure, sets forth the conditions for a motion to stay pending appellate review. A stay is necessary under the circumstances because the issue presented is jurisdictional. It is potentially case ending. Petitioners already expended hundreds of thousands of dollars defending this matter prior to filing the motion for summary judgment. They anticipate expending hundreds for thousands through trial defending a case they believe is not properly before the district court.

As set forth in more detail above, Petitioners have met the requirements of NRAP, Rule 8(a) and have set forth the need for an emergency stay under the circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

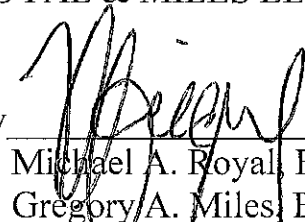
V. CONCLUSION

As earlier noted, the District Court found that the issue of statutory immunity is “a very close call.” Petitioners respectfully disagree. The evidence clearly provides that Venetian was a statutory employer of Sekera at the time of her November 4, 2016 work accident and is immune from third-party liability under the NIIA. Therefore, respectfully, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners’ Writ of Mandamus and/or Prohibition on a non-emergency basis.

DATED this 22 day of January, 2020.

ROYAL & MILES LLP

By



Michael A. Royal, Esq. (SBN 4370)

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Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, Michael A. Royal, hereby affirm, testify and declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and am a member of the law firm of Royal & Miles LLP, attorneys for Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC.

2. 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:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 27(d)(2) because the motion and supporting memorandum of points and authorities do not exceed 10-pages.

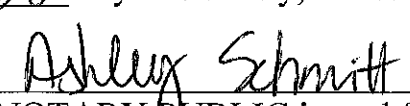
4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

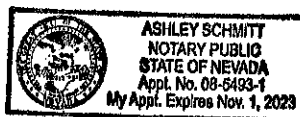
reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
22 day of January, 2020.


NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 22 day of January, 2020, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING PROCEEDING BEFORE THE DISTRICT COURT TO ALLOW PETITIONERS AN OPPORTUNITY TO HAVE A JURISDICTIONAL ISSUE REVIEWED, by delivering the same via U.S. Mail addressed to the following:

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Attorneys for Real Party in Interest



An employee of Royal & Miles LLP