

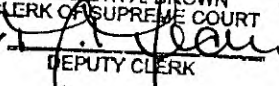
IN THE SUPREME COURT OF THE STATE OF NEVADA

ASPEN SPECIALTY INSURANCE
COMPANY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
GLORIA STURMAN, DISTRICT
JUDGE,
Respondents,
and
ST. PAUL FIRE & MARINE
INSURANCE COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.; ROOF DECK
ENTERTAINMENT, LLC, D/B/A
MARQUEE NIGHTCLUB,
Real Parties in Interest.

No. 83794

FILED

APR 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion for summary judgment in an insurance subrogation matter.¹

Real party in interest Roof Deck Entertainment, L.L.C., which does business as Marquee Nightclub (collectively, Marquee), operates and manages the Marquee Nightclub, which is located inside nonparty The

¹Petitioner Aspen Specialty Insurance Company alternatively seeks a writ of prohibition. Because we conclude that Aspen is entitled to a writ of mandamus, we need not address Aspen's alternative request for relief.

Cosmopolitan Hotel & Casino (Cosmopolitan). Marquee and Cosmopolitan each have primary and excess liability insurance. Marquee's primary insurer is petitioner Aspen Specialty Insurance Company (Aspen), and its excess insurer is real party in interest National Union Fire Insurance Company (National Union). Cosmopolitan's primary insurer is nonparty Zurich Insurance Company (Zurich), and its excess insurer is real party in interest St. Paul Fire & Marine Insurance Company (St. Paul), as depicted in this diagram:

MARQUEE'S INSURERS	COSMOPOLITAN'S INSURERS
National Union excess coverage	St. Paul excess coverage
Aspen primary coverage	Zurich primary coverage

Both Aspen's and National Union's respective policies named Marquee as the insured and Cosmopolitan as an additional insured.

In 2014, a patron of Marquee sued Cosmopolitan and Marquee for personal injuries sustained when security members employed by Marquee attempted to oust him from the nightclub. Marquee and Cosmopolitan tendered the action to Aspen and National Union, both of whom agreed to jointly defend the parties. The case ultimately proceeded to trial, and the jury returned a verdict in favor of the patron for \$160.5 million in compensatory damages, for which Cosmopolitan and Marquee were jointly and severally liable, and in favor of the patron's request for punitive damages. However, before the punitive-damages stage, Aspen, National Union, Zurich, and St. Paul settled the matter with the patron for the full amount of their four collective policies.

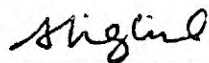
Following the settlement, St. Paul brought the underlying lawsuit and asserted equitable and contractual subrogation claims against

both Aspen and National Union. Aspen and National Union separately moved for summary judgment on St. Paul's claims. The district court first denied Aspen's motion but subsequently granted National Union's motion. Aspen then filed a renewed motion for summary judgment, arguing that the district court's bases for granting summary judgment for National Union applied equally to St. Paul's claims against Aspen. The district court denied Aspen's renewed motion. St. Paul appealed the district court's order *granting* summary judgment for National Union. *See St. Paul Fire & Marine Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA.*, No. 81344 (Notice of Appeal, June 18, 2020). And in this writ petition, Aspen challenges the district court's order *denying* its renewed motion for summary judgment.

In Docket No. 81344, we recently affirmed the district court's summary judgment in favor of National Union and against St. Paul. In doing so, we concluded that St. Paul's contractual and equitable subrogation claims failed as a matter of law. *See St. Paul*, No. 81344, 2022 WL 17543613 (Nev. Dec. 8, 2022) (Order of Affirmance). In particular, we reasoned that "in either situation [of contractual or equitable subrogation], the subrogee acquires no greater rights than the subrogor." *Id.* at *2. (citing *Houston v. Bank of Am. Fed. Sav. Bank*, 119 Nev. 485, 488, 78 P.3d 71, 73 (2003)). Because the four insurers settled that patron's claims against Cosmopolitan (the subrogor) for the collective policy limits *and nothing beyond*, we concluded that Cosmopolitan did not suffer any damages that St. Paul (the subrogee) could succeed to. *Id.* at *2. We therefore concluded that St. Paul's contractual and equitable subrogation claims failed as a matter of law. *Id.* at *3.

In this case, we elect to entertain Aspen's writ petition because it will promote judicial economy and, in light of our disposition in Docket No. 81344, the district court is required by clearly controlling law to grant summary judgment in favor of Aspen.² See *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997) (setting forth the situations in which this court will entertain writ petitions denying motions for summary judgment). Here, as in Docket No. 81344, the four insurers settled the litigation against the patron without exceeding the collective policy limits, including Aspen's policy limit. Thus, Cosmopolitan suffered no damages which St. Paul can acquire. Therefore, St. Paul's claims against Aspen fail for the same reason they failed against National Union, and summary judgment in favor of Aspen is appropriate. Accordingly, we

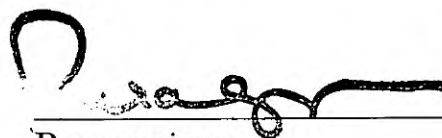
ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its October 9, 2020, order denying Aspen's renewed motion for summary judgment and to enter an order granting summary judgment in favor of Aspen and against St. Paul.



_____, C.J.
Stiglich



_____, J.
Herndon



_____, J.
Parraguirre

²We appreciate that the district court did not have our disposition in Docket No. 81344 at its disposal when it denied Aspen's renewed motion for summary judgment.

cc: Hon. Gloria Sturman, District Judge
Messner Reeves LLP
Herold & Sager/Las Vegas
Hutchison & Steffen, LLC/Las Vegas
Keller/Anderle LLP/Irvine
Eighth District Court Clerk