

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 KAZUO OKADA,

3 Petitioner,

4 vs.

5 THE EIGHTH JUDICIAL DISTRICT
6 COURT OF THE STATE OF
7 NEVADA, IN AND FOR CLARK
8 COUNTY; THE HONORABLE
9 ELIZABETH GONZALEZ,
10 DISTRICT JUDGE, DEPT. 11,

11 Respondent,

12 and

13 WYNN RESORTS, LIMITED.

14 Real Party in Interest.

Case No. 68310

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Tracie K. Lindeman
Clerk of Supreme Court

**RESPONSE TO OBJECTION TO
SUGGESTION OF RECUSAL**

15 Wynn Resorts, Limited ("Wynn Resorts") appreciates the aggressive
16 advocacy by Petitioner Kazuo Okada ("Okada") in his Objection to its simple notice
17 to Justices Parraguirre and Pickering. It underscores and proves Wynn Resorts'
18 point. Filed by the same counsel that represents Sands China, Ltd. and its director,
19 David Turnbull, in the writ proceeding, *Sands China, Ltd. v. Jacobs*,
20 Case No. 68275, it confirms that the cases involve the same issue that will be
21 argued on the same day. Nonetheless, the Objection urges the Justices to focus
22 upon and accept the dissimilar facts as the basis for decision – ignoring the common
23 and overlapping facts – so as to participate in this case while nonetheless
24 disqualified in *Jacobs*. And that is precisely the problem.

25 To avoid any appearance of impropriety and any suggestion of indirectly
26 participating in a disqualified case, any reasonable jurist would be encouraged –
27 just as Okada bluntly argues – to focus upon the facts that purportedly differentiate
28 the matters to the exclusion of those establishing their commonality. Deciding this

1 case based upon, or even focusing upon, the similar or overlapping facts would
2 create the appearance of impropriety.

3 That is precisely why Wynn Resorts believes it appropriate to bring this
4 matter to the Justices' attention, as they are not participating in the *Jacobs* case and
5 would not know its facts. But now, Okada has confirmed the interrelationship
6 between these cases, interjecting the heretofore unknown facts and advocates for an
7 emphasis on certain differentiating facts, while downplaying the overlap of others.
8 Okada thus confirms that to participate in this case, the Justices must walk the
9 intellectual tightrope of focusing exclusively on certain non-overlapping facts while
10 "ignoring" others, assuming that is conceptually even possible.

11 The fact of the matter is, there are many common facts involving the same
12 ultimate issue that is in front of the Court in the *Jacobs* matter.¹ Like Okada,
13 Turnbull claims to be extremely busy and to have minimal travel to the
14 United States. But at the same time, Turnbull knowingly volunteered to be a
15 director of an entity which, as the District Court has found, is controlled, directed
16 and operated in Nevada. In legal parlance, Nevada is that entity's true "home."
17 Merely incorporating in a different jurisdiction so as to access a foreign credit
18 market did not alter that long-standing reality. And like Okada, Turnbull
19 participated in Board meetings by teleconference and they personally attended
20 countless meetings with the people running their businesses with "boots on the
21 ground" in Nevada.

22 The desire of common counsel for Okada and Sands China to downplay those
23 facts is understandable, but confirms the problem of deemphasizing the common
24 facts, as to avoid appearance issues, which then necessarily influences the merits
25 decision. Ultimately, the issue to be decided in these two cases is the same – a

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27 ¹ The Court appears to recognize this reality, setting oral argument for the two
28 matters on the same day. Any suggestion by Okada or Sands China that these
matters will not as a practical matter be argued simultaneously – with reference to
each other, and the similar and dissimilar facts – is simply not serious.

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District Court's authority and discretion to compel a foreign-based director of a defendant corporation, one subject to jurisdiction in Nevada, to appear on United States soil and in a location where the court can actively supervise the deposition.

The briefing in these two matters confirms that they involve the same legal question with certain common-core facts. To be sure, there are factual differences, as there are in most any case. But arguing that the dissimilar facts should be accepted and elevated as the basis for decision – so as to avoid questions of appearances – only confirms the basis for Wynn Resorts' suggestion.

DATED this 5th day of August, 2015.

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