

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Case No. _____

Petitioners,

Electronically Filed
Mar 30 2016 09:30 a.m.

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
DEPT. XI,

Tracie K. Lindeman
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
WYNN RESORTS, LIMITED'S
PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

Respondent,

VOLUME VI OF VI

and

KAZUO OKADA, UNIVERSAL
ENTERTAINMENT CORP.
AND ARUZE USA, INC.,

Real Parties in Interest.

DATED this 29th day of March, 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 29th day of March, 2016, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

1 supposed to do? By Counsel's recommendation, we were supposed
2 to hide the fact that we got legal advice. Do not say that
3 you got legal advice, the Okada team says, otherwise it's
4 waived. And that's just not a tenable position, it's not
5 supported by any caselaw.

6 And finally, Your Honor, these requests, I have to
7 characterize them as wildly, wildly overbroad. They're not
8 simply saying that there is an at-issue waiver on what David
9 Arrajj or Jeff Silver may have said at the board of directors
10 meeting. They're saying not only is there an at-issue waiver
11 for redemption and for suitability, but they want to go into
12 the law firm of Brownstein and talk about the execution of
13 redemption, the analysis of redemption, the analysis of the
14 articles of incorporation, and every bit of legal advice that
15 they can put on a microscope and say whether it was right,
16 wrong, or somewhere in between, and have a sideshow in this
17 trial about a law firm's advice, rather than an analysis of
18 simply what does the article say and did this board exercise
19 its discretion granted under the articles, absolute
20 discretion, did they exercise it in good faith and fully
21 inform themselves. That's what the case is about. It's not
22 about unfairly tying someone's hands to have to live with the
23 fact that we said we relied upon counsel but then not hear
24 what that counsel's advice was. That's not what we're doing,
25 that's not what this case is.

1 THE COURT: Thank you, Mr. Pisanelli.

2 The motion is granted in part. To the extent that
3 information was provided to the members of the board of
4 directors for their consideration in the decision-making
5 process and their defense related to the business judgment
6 rule the Okada parties are entitled to test whether the
7 director or officer had knowledge concerning the matter in
8 question that would cause reliance thereon to be unwarranted.
9 The only way that they can get to that part of the statute is
10 by having the information that was provided to the board
11 members.

12 Now, in looking at the privilege log, which has been
13 attached as Exhibit 2 to the motion, it does not appear that
14 all of the information on there would fall within that limited
15 scope that I've given. There may be additional information
16 that is appropriate under different standards for you to
17 obtain off of the privilege log, but I'm not ordering that
18 produced at this time.

19 Can somebody tell me why the privilege log needs to
20 be sealed.

21 You didn't file it, Mr. Pisanelli, they did. And
22 they asked for it to be under seal.

23 MR. PEEK: I think it was designated, Your Honor.
24 So because it's designated --

25 THE COURT: Okay.

1 MR. PEEK: -- we're obligated -- it doesn't
2 necessarily mean --

3 THE COURT: Why does the privilege log need to be
4 under seal?

5 MR. PISANELLI: May I have a moment?

6 THE COURT: Yes.

7 (Pause in the proceedings)

8 THE COURT: And I was reading from NRS 78.138(2) at
9 the end. But I know you guys knew that.

10 MR. PISANELLI: Your Honor, other than protection of
11 third parties' identities or people who were involved in --
12 remember, we had witness protection issues in this case from
13 the beginning. I would have to go through the privilege log
14 and review it to give you a better, more complete answer of
15 whether it should remain under seal or not. If it's
16 problematic to Your Honor, I'll get you an answer today.

17 THE COURT: Well, usually I don't seal privilege
18 logs, I mean, unless there's something really special about
19 it.

20 MR. PISANELLI: If, you know --

21 THE COURT: Okay. So you're going to look at that.

22 MR. PISANELLI: I will look into it.

23 THE COURT: And I'm going to continue the motion to
24 seal the appendix to a week from Friday on my chambers
25 calendar, and Laura will keep the complete copy.

1 MR. PISANELLI: Your Honor, can you help me
2 understand the scope of your ruling?

3 THE COURT: Information that was provided to the
4 board members or a subcommittee of board members that was
5 appointed to assist the other board members in making their
6 determination on what action to take, whether it came from the
7 law firm directly or went to a subcommittee of the directors,
8 is fair game.

9 MR. PISANELLI: So the decision on what action to
10 take. All right. So you have a gaming lawyer come in and
11 give legal advice on your responsibilities as a licensee.
12 That seems to fall squarely within what you're saying.

13 THE COURT: Absolutely.

14 MR. PISANELLI: The mechanics and execution of a
15 process for redemption at the corporate level, corporate
16 governance --

17 THE COURT: If it's advice --

18 MR. PISANELLI: -- doesn't seem to say -- that
19 doesn't seem to advise them of what to do, that's how to get
20 where they need to be on their decision-making process.

21 THE COURT: Well, I don't know, because I wasn't in
22 the board meeting. But to the extent it is information
23 provided to the board on which the board considered it -- I'm
24 not even using the word "rely," that the board members
25 considered it in performing their respective duties that they

1 need to have that produced. That does not mean that the
2 emails between Ms. Sinatra and Brownstein Hyatt saying, hi, I
3 need you to look at A, B, C, D, and E; but the product that
4 then goes back to the board members for them to consider needs
5 to be provided.

6 MR. PISANELLI: All right. So in a totality of this
7 process the legal advice when a director or a board as a body
8 considered legal advice in their deliberation, that is the
9 advice you want disclosed?

10 THE COURT: That's not what I said. I said the
11 information that was provided to the board members, because I
12 can't draw the distinction of what they did or did not
13 consider. So if legal advice or advice from accountants,
14 financial advisors --

15 MR. PISANELLI: Sure.

16 THE COURT: -- valuation advisors, investment
17 bankers, or other persons to matters reasonably believed to be
18 within the preparer or presenter's professional or expert
19 competence.

20 MR. PISANELLI: So we're talking about the board
21 meeting. Are you talking about something broader than the
22 board meeting?

23 THE COURT: I'm also talking about the materials
24 that board members get before the meeting, the package that
25 board members typically get before a board meeting --

1 MR. PISANELLI: Okay.

2 THE COURT: -- communications to subcommittees of
3 the board, because that is also a part of the statute. So if
4 this subcommittee gets the legal advice and the subcommittee
5 tells the other board members what they should do, the other
6 board members are entitled to under the business judgment rule
7 rely upon those other committee members in forming their
8 decisions.

9 MR. PISANELLI: That's right.

10 THE COURT: So, I mean, I'm not trying to tell you
11 we're going all the way into what Brownstein Hyatt did. But
12 those communications of information that was provided by the
13 professionals indicated in NRS 78.138 to the board for the
14 board's consideration to assist them in providing the
15 information. So if it's provided to the members of the board,
16 then you need to produce it.

17 MR. PISANELLI: Okay. So we're talking about
18 privilege here, an important issue.

19 THE COURT: You're welcome to ask me to say it and
20 do some other thing.

21 MR. PISANELLI: And you --

22 THE COURT: But in order for you to do that, then
23 I've got to get an order fast. Mr. Peek.

24 MR. PEEK: I understand that, Your Honor.

25 THE COURT: All right. Because you guys both know

1 the drill, and I'm not going to go through it, do you want
2 10 days until I get the order and then once we have the
3 written order we can talk about how long your stay is?

4 MR. PISANELLI: Okay.

5 THE COURT: How's that? It's the same courtesy I
6 would give you if we were on a different case, Mr. Peek.

7 MR. PEEK: Thank you, Your Honor. I was trying to
8 think of getting the transcript and getting it right. But
9 10 days should work.

10 MR. PISANELLI: So, Your Honor, one last
11 clarification. I'm sorry to belabor the issue, but I want to
12 make sure I'm getting this right. The board members
13 considered we'll call it three different categories of things
14 throughout the course of this process, suitability,
15 redemption, and then ultimately the litigation strategy.
16 You're not asking them -- or us to disclose things related to
17 litigation strategy after the decision of redemption?

18 THE COURT: The first litigation? The first
19 litigation, or this other litigation? Because, remember, I've
20 had two sets of litigation with these parties.

21 MR. PISANELLI: Litigation -- yeah. The litigation
22 that we initiated.

23 THE COURT: Okay.

24 MR. PISANELLI: So, in other words, the board made a
25 decision about suitability, the board made a decision about

1 redemption. After that process that directly affected Mr.
2 Okada's resolved then there was, you know, the obvious issue
3 on the table, what do we do now strategically about the
4 inevitable litigation. I'm assuming the wall still goes up
5 and they don't get into the litigation strategy and anything
6 of that sort.

7 THE COURT: Unless there's something unusual that
8 occurred, yes, the wall goes up and they don't get into
9 litigation strategy.

10 MR. PISANELLI: Okay.

11 THE COURT: However, to the extent it is litigation
12 strategy related to the original writ that was filed by the
13 Okada parties in what I'll call the book and records case that
14 may be slightly different issue, and I'm not going to get
15 involved in that. Because, remember, Brownstein Hyatt was
16 counsel of record at that time, and I don't know what the
17 overlap is between the information that is being provided by
18 Brownstein Hyatt as part of that litigation and the decision
19 making and information that is provided to the board members.

20 MR. PISANELLI: Yeah. And as far as I know, there's
21 no connection there. So -- but I understand your point.

22 THE COURT: I'm just saying.

23 Mr. Peek.

24 MR. PEEK: Your Honor, I do have some comments and
25 clarifications just to -- thank you.

1 I certainly don't want to disturb the Court's
2 ruling, except in this regard. This is not business judgment.
3 This is the company's actions. The Court, however, seems to
4 be focused and give them some protection under the business
5 judgment rule in saying that their actions that they took in
6 the board on February 18, 2012, are somehow protected by the
7 business judgment rule and that we now need to prove fraud,
8 illegality, or intentional misconduct. That is not the rule
9 here.

10 THE COURT: For director liability, or for corporate
11 liability? Remember, you've sued both.

12 MR. PEEK: I agree.

13 THE COURT: And they're different standards, Mr.
14 Peek.

15 MR. PEEK: I agree, Your Honor. And it may. I'm
16 not even conceding that. It may --

17 THE COURT: Because if you asked me this and you
18 hadn't sued the directors, you might not be getting the same
19 answer from me today.

20 MR. PEEK: I understand. But this is the company
21 that filed the lawsuit, not the directors that filed the
22 lawsuit. It is the plaintiff who filed the lawsuit and upon
23 whose dec relief they seek Court sanction for their actions.

24 THE COURT: And you filed a counterclaim, Mr. Peek,
25 in which you named the officers and directors of the company,

1 remember?

2 MR. PEEK: No, no, I --

3 THE COURT: And that brings the business judgment
4 rule into play. The business judgment rule would not
5 otherwise have been in play, because the company doesn't --
6 and Mr. Pisanelli and I know we're going to have a discussion
7 about this later, but under the statute the company does not
8 get to rely upon the business judgment rule.

9 MR. PEEK: Right. So that's what we're saying, the
10 company does not get to rely on the business judgment rule -

11 THE COURT: I'm not making a determination on the
12 business judgment rule's application to the company today. I
13 am making a decision on whether the Brownstein Hyatt documents
14 are going to be produced to you. I have made -- on the
15 limited issue it relates to an at-issue waiver because the
16 officers and directors are -- considered advice, including
17 advice of attorneys in making their decisions to which their
18 defense of your counterclaim is, we exercised our business
19 judgment therefore we can't be individually liable.

20 MR. PEEK: I get all that, Your Honor, and I'm not
21 quarrelling with the Court on that concept. But a company can
22 only act by and through its board of directors, and so the
23 company -- and I don't want to debate this with the Court
24 today. This will have to be another day. But --

25 THE COURT: Absolutely. Which is why I used the

1 word "individual liability," because business judgment applies
2 to directors, officers and directors.

3 MR. PEEK: I appreciate that.

4 THE COURT: Individual liability versus corporate
5 liability.

6 MR. PEEK: We're talking here about the company's
7 actions. So I'm not going to quarrel, because I don't want to
8 disturb the Court's ruling, Your Honor.

9 THE COURT: You're not disturbing me or my ruling.
10 I have made a limited decision based upon the information
11 presented to the board members, who are -- have alleged they
12 exercised their business judgment and they relied upon
13 information in making that decision.

14 MR. PEEK: And I'm sure we'll be back, Your Honor,
15 on more issues related --

16 THE COURT: I know you're going to be back.

17 MR. PEEK: -- on this issue, because I am troubled
18 by Mr. Pisanelli's effort to protect what he calls the
19 litigation strategy, which we all know was part of that
20 presentation, because the dec relief action was filed I
21 think --

22 THE COURT: I don't know that.

23 MR. PISANELLI: I don't know it, and I was there.

24 MR. PEEK: And a complaint was filed about three
25 hours after the meeting.

1 THE COURT: Okay. So I don't know that, Mr. Peek,
2 which is why I didn't preclude from going to that step next.
3 But what I've said that -- I need an order.

4 MR. PEEK: We'll get you an order, Your Honor. And
5 the 10 days runs from today, not from the entry of the order?

6 THE COURT: There is a temporary stay of 10 days
7 now, and then once an order is entered Mr. Pisanelli's going
8 to ask me for a stay before he -- if he decides he's going to
9 pursue issues with the Supreme Court.

10 MR. PISANELLI: Your Honor, I'm trying to take into
11 consideration here that we leave for Japan for depositions in
12 this case on Friday. We'll be gone all next week.

13 THE COURT: Can you give me the order sooner?

14 MR. PEEK: We'll get you the order hopefully no
15 later than tomorrow, Your Honor. But it may have -- it may
16 have challenges associated with the approval.

17 THE COURT: Really? I'm sorry. That was sarcasm.

18 MR. PEEK: That's the second time in five days, Your
19 Honor.

20 THE COURT: I'm trying to remember the record,
21 because -- never mind.

22 MR. PEEK: I understand it, Your Honor, so I --

23 THE COURT: It doesn't matter. It doesn't always
24 appear when it's part of another brief.

25 So here's --

1 MR. PEEK: Your Honor --

2 THE COURT: Wait. Here's the issue. Do you want me
3 to schedule a conference on Friday to discuss your request for
4 a stay that you're going to make once the order's entered,
5 which will be before you leave for Japan?

6 MR. PISANELLI: I'll be leaving Friday morning for
7 Japan.

8 THE COURT: Well, then I won't do that.

9 MR. PISANELLI: So can we have this initial stay for
10 two weeks? That will give me two business days upon returning
11 to make sure that we get it cleaned up. Once the order's
12 before you, then I'll make an independent request for a stay
13 as we move forward into the Supreme Court process.

14 THE COURT: So are you saying you don't want me to
15 sign the order till you guys get back from Japan?

16 MR. PISANELLI: No. I'm just looking for the just-
17 in-case problem of something going on while we're away and
18 then we're out of time on the 10 days, that's all I'm saying.

19 MR. PEEK: Your Honor, we're not going to be able to
20 get the directors back right away, so I appreciate the request
21 by Mr. Pisanelli and I'm not going to object to his request to
22 make it two weeks as a professional courtesy.

23 THE COURT: I'm going with 15 days. Fifteen days.

24 MR. PEEK: So that would be Wednesday --

25 THE COURT: Fifteen days from today is when the

1 temporary stay expires. Fifteen business days -- no. Fifteen
2 calendar days.

3 MR. PEEK: Thank you, Your Honor.

4 THE COURT: Sorry.

5 MR. PEEK: Today is the 8th, so two weeks would be
6 the 22nd. Be the 23rd? Am I correct on my math?

7 THE COURT: Yes.

8 MR. PEEK: It expires on March 23rd. Because I'll
9 put the date in the order.

10 MR. PISANELLI: And before that time is when you'll
11 get an application for us to extend the stay. That's
12 expectation.

13 THE COURT: That's correct.

14 MR. PISANELLI: Okay.

15 THE COURT: You will need to ask me to stay before
16 you go ask somebody else.

17 MR. PISANELLI: Right. Okay. Good. Thank you very
18 much.

19 MR. PEEK: Your Honor, did we need -- we were
20 supposed to have a status conference. I don't know whether
21 we --

22 MR. URGA: Yes, we have a status check.

23 MR. PEEK: I know folks may want to have a status
24 conference. I'm going to let Mr. Cassity address the issues.

25 THE COURT: Okay. Well, while you guys are doing

1 that let me ask the other people in the courtroom.

2 Is there anyone who has something that can be
3 handled in a summary fashion? That does not include Draybeck
4 [phonetic]. Anybody else who has something that could be
5 handled in a summary fashion?

6 MR. ZELLER: Yes, Your Honor. Mike Zeller.

7 MR. URGAS: Our status I not going to take long, Your
8 Honor.

9 THE COURT: All right. I'm listening.

10 MR. ZELLER: Mike Zeller for Elaine Wynn.

11 The Court may have noticed we filed a status report
12 yesterday. We're concerned because we're coming up on the
13 one-year anniversary of a number of document requests that we
14 have made and we still don't have documents. We've sent a
15 number of letters asking for meeting and confers --

16 THE COURT: So you're going to file a motion.

17 MR. ZELLER: Well, we -- unfortunately, we have not
18 heard in terms of the meet and confers.

19 THE COURT: So you've got to file a motion.

20 MR. ZELLER: If I may, Your Honor. I did speak with
21 Ms. Spinelli earlier today. She committed that we would have
22 the meet and confer this week.

23 THE COURT: Well, even if she doesn't and blows you
24 off, then you need to file the motion. Don't keep waiting.

25 MR. ZELLER: Yes.

1 THE COURT: Because you only have to make a certain
2 number of reasonable good-faith attempts to have your meet and
3 confer before you file the motion.

4 MR. ZELLER: Sure. I appreciate that, Your Honor.

5 THE COURT: okay.

6 MR. ZELLER: Thank you.

7 MR. URGAS: Your Honor, one last thing. And I talked
8 to counsel outside before we started. There's so many
9 depositions I'm going to be filing another pro hac for Mr. Ian
10 Sheldon, who is a Quinn Emanuel attorney. Nobody's objecting,
11 because he -- I'm not going to get it filed. He's got to be
12 in New York Friday for depositions.

13 THE COURT: Anybody object?

14 MR. CAMPBELL: No, Your Honor.

15 THE COURT: So when you get it filed I'll advance it
16 and sign it. When does it --

17 MR. URGAS: I'll do the best I can. But it's, you
18 know, it's not easy, because you've got to get approved from
19 other courts or other states to qualify.

20 THE COURT: And the State Bar has to approve it.

21 Anything else?

22 MR. CASSITY: We had two pro hac vice applications
23 that have been submitted, Your Honor. We'd ask the Court to
24 advance them to today. And these should be the last two that
25 we're going to be submitting.

1 THE COURT: And yours would be motion to associate
2 last name Madia and Meredith; correct?

3 MR. CASSITY: Leslie Meredith and Mehul Madia.

4 THE COURT: Any objection?

5 MR. CAMPBELL: None, Your Honor.

6 THE COURT: They're both advanced to today and
7 granted. Would you like me to sign the orders?

8 MR. CASSITY: We'll submit the orders, Your Honor.

9 THE COURT: Okay. So, Mr. Urga, it sounds like
10 everybody is stipulating to advance it. I'll put it on
11 Friday's chambers calendar. As long as you get it filed, I'll
12 sign the order. If I don't see the motion --

13 MR. URGA: I'll get it filed as fast as I can. But
14 it's -- today's Tuesday.

15 THE COURT: Who's the person's name?

16 MR. URGA: Ian Sheldon.

17 THE COURT: So status check, Sheldon motion to
18 associate Friday.

19 THE CLERK: Yes, Your Honor.

20 MR. URGA: I'll try to get it by Friday. I don't
21 know if I can get it through the process.

22 THE COURT: It's okay, Mr. Urga.

23 MR. URGA: Fast as I can.

24 THE COURT: If I don't have it, I'll continue it.

25 MR. URGA: Thank you.

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THE COURT: Anything else?

MR. PISANELLI: No, Your Honor.

THE COURT: All right. 'Bye. Have a nice travel to
Japan.

MR. PISANELLI: Thank you.

THE PROCEEDINGS CONCLUDED AT 8:47 P.M.

* * * * *

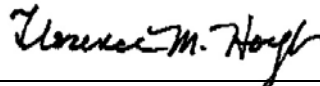
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

3/8/16

DATE

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16 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman
17

DISTRICT COURT

CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,

Plaintiff,

vs.

22 KAZUO OKADA, an individual, ARUZE
23 USA, INC., a Nevada corporation, and
UNIVERSAL ENTERTAINMENT CORP.,
24 a Japanese corporation,

Defendants.

26
27 AND ALL RELATED CLAIMS.

Case No.: A-12-656710-B
Dept. No.: XI

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO COMPEL
WYNN RESORTS, LIMITED TO
PRODUCE BROWNSTEIN HYATT
DOCUMENTS**

Date of Hearing: March 8, 2016

Time of Hearing 8:00 a.m.

28

1 Defendant Kazuo Okada and Defendants/Counterclaimants Aruze USA, Inc.
2 (“Aruze USA”) and Universal Entertainment Corp. (“UEC,” and collectively, the “Aruze
3 Parties”) filed its Motion to Compel Wynn Resorts, Limited to Produce Brownstein Hyatt
4 Documents (“Motion to Compel”) and its Motion to Redact Defendants’ Motion to Compel
5 Wynn Resorts, Limited to Produce Brownstein Hyatt Documents and to Seal Exhibits 2, 4-6,
6 10-12, 14, 15 and 17 (“Motion to Redact”) on March 3, 2016, which came before this Court for
7 hearing on March 8, 2016. James J. Pisanelli, Esq. and Debra L. Spinelli, Esq., of PISANELLI
8 BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited (“Wynn
9 Resorts”) and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,
10 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and
11 Allan Zeman (the “Wynn Parties”). J. Colby Williams, Esq. of Campbell & Williams, appeared
12 on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn (“Mr. Wynn”). William R.
13 Urga, of Jolley Urga Woodbury & Little, appeared on behalf of
14 Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn (“Ms. Wynn”). And, J.
15 Stephen Peek, Esq. and Robert J. Cassity, Esq., of Holland & Hart appeared on behalf of the
16 Aruze Parties. Adam Miller, Esq., of BuckleySandler LLP, appeared by telephone on behalf of
17 the Aruze Parties.

18 The Court having considered the Motions, the Opposition filed by the Wynn Parties, as
19 well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

20 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Compel
21 is GRANTED, IN PART. By asserting the Business Judgment Rule as a defense, the members of
22 the Board of Directors of Wynn Resorts have put at issue certain advice they received from
23 Brownstein Hyatt. Therefore, Wynn Resorts shall produce all Brownstein Hyatt documents or
24 other information provided by Brownstein Hyatt which was given to the Board of Directors (or
25 any subcommittee of its members) for consideration of the issues of: (1) whether the Aruze
26 Parties were unsuitable, (2) whether Aruze USA’s shares should be redeemed, (3) the steps to be
27 taken to redeem, and/or 4) the Board’s responsibilities as a gaming licensee with respect to the
28

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1 Aruze Parties. The Court does not make any determination regarding the application of the
2 business judgment rule for purposes of any claims or defenses in this case.

3 IT IS FURTHER ORDERED that this Order is STAYED for 15 days from the date of the
4 hearing, until March 23, 2016. Absent agreement of the parties or further order of this Court, the
5 documents and information described above must be produced no later than March 24, 2016.


6 IT IS FURTHER ORDERED that the hearing on the Defendants' Motion to Redact is
7 hereby continued until March 18, 2016, so that Plaintiff can provide an explanation regarding
8 whether Exhibit 2, the Brownstein Hyatt Privilege Log (Exhibit of the Defendant's Motion to
9 Compel), should be sealed.

10 IT IS SO ORDERED.

11 DATED this 24th day of March 2016.

12
13 
14 DISTRICT COURT JUDGE

15 PISANELLI BICE PLLC

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