

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

2
3 WYNN RESORTS LIMITED,

4 Petitioner,
5 vs.

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

13 Respondent,

14 KAZUO OKADA; UNIVERSAL
15 ENTERTAINMENT CORP. AND
16 ARUZE USA, INC.,

17 Real Parties in Interest.

Case Nos. 70050 and 70452

Electronically Filed
May 08 2017 08:04 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION TO EXTEND THE
DISTRICT COURT'S STAY
PENDING WRIT PETITION
AND RULE 27(e) EMERGENCY
MOTION FOR INTERIM
EXTENSION OF STAY**

(Action Requested By May 17, 2017)

18 **I. INTRODUCTION**

19 Currently pending before this Court is Wynn Resorts, Limited's
20 ("Wynn Resorts") petition for Writ of Prohibition or Alternatively Mandamus filed
21 with this Court on March 30, 2016. (Case No. 70050). That petition challenges the
22 District Court's March 24, 2016 Order requiring Wynn Resorts to turn over
23 information that is subject to the attorney-client privilege merely because the
24 members of the Company's Board of Directors asserted the Business Judgement Rule
25 as a defense to certain claims in this case (the "BHFS Order.")

26 Also pending before this Court is Wynn Resorts' Petition for Writ of
27 Prohibition or Alternatively Mandamus filed with this Court on May 25, 2016.
28 (Case No. 70452). This Wynn Resorts' petition challenges the District Court's May 3,
2016 Order requiring Wynn Resorts to turn over information subject to both the

1 attorney-client and work product doctrine related to the investigation conducted by
2 the law firm Freeh Sporkin & Sullivan, LLP (the "Freeh Order").¹

3 Both Petitions have been fully briefed and were argued to the full Court on
4 February 6, 2017. (Ex. 1, Order Changing Start Time for Oral Arg., Jan. 11, 2017.)
5 These matters have been submitted, and the parties are merely awaiting this Court's
6 decisions.

7 The District Court had previously stayed these matters, but on a request to
8 extend the stay, at a hearing on April 17, 2017, the District Court entered only a
9 temporary 30-day stay of both the BHFS Order and the Freeh Order associated with
10 the Petitions, and that stay is due to expire on May 17, 2017. (Ex. 2, Order Granting
11 in Part and Denying in Part Wynn Resorts, Ltd.'s Mot. to Extend Stays of (1) the
12 March 24, 2016 Order and (2) the May 3, 2016 Order Pending Pet. for Writ of
13 Prohibition, May 4, 2017, at 2.) The District Court stated that *if the Supreme Court*
14 *had not issued a decision on the two Petitions by May 17, 2017, Wynn Resorts*
15 *should seek any further stay from this Court.* (*Id.* at 3.) With the expiration of the
16 stay looming, and unable to foretell when this Court may issue decisions on the
17 important issues raised in the Petitions, Wynn Resorts submits this motion for a stay
18 of the subject orders until this Court rules on these fully briefed and argued matters.
19 The NRAP 27(e) Certificate is attached hereto.

20 **II. ANALYSIS**

21 The grounds for a stay are well known to this Court and form the basis for the
22 District Court's original stay. When considering a stay, courts consider four factors:
23 (1) whether the object of the writ petition will be defeated if the stay is denied;
24 (2) whether petitioner will suffer irreparable injury if the stay is denied; (3) whether
25 the real property in interest will suffer irreparable harm if a stay is granted; and
26 (4) whether petitioner is likely to prevail on the merits of the writ petition.

27
28 ¹ The two writ petitions hereinafter are collectively referred to as the "Petitions."

1 NRAP 8(c). No single factor is dispositive and, "if one or two factors are especially
2 strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v.*
3 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

4 **A. The Purpose of the Petitions Would Be Defeated.**

5 The Petitions seek to enjoin the District Court's BHFS Order and Freeh Order
6 because both compel Wynn Resorts to produce privileged documents. If
7 Wynn Resorts is forced to produce privileged BHFS documents prior to the decision
8 by this Court, Wynn Resorts will be irreparably harmed because the object of the
9 Petition – to protect the attorney-client privilege – will be defeated, and the
10 protections of the Business Judgment Rule for the Board members and the Company
11 will be eviscerated. Likewise, if Wynn Resorts is required to release privileged and
12 protected Freeh documents before this Court renders its decision on the pending
13 petition, Wynn Resorts' efforts to protect its attorney-client privilege and work
14 product protection also will be defeated. Inasmuch as the issues brought to the
15 forefront involve critical issues of first impression, as this Court recognized during
16 oral argument, Wynn Resorts' privileges and protections afforded under Nevada law
17 should be maintained until this Court renders its decision on the important issues of
18 law raised in the Petitions. There is no basis to prematurely eviscerate Wynn Resorts'
19 protections.

20 **B. Wynn Resorts Faces the Potential for Irreparable Harm.**

21 Similarly, denying a stay of the BHFS Order and the Freeh Order exposes
22 Wynn Resorts to serious and irreparable harm. The March 24, 2016 BHFS Order and
23 the Freeh Order both require Wynn Resorts to turn over privileged and protected
24 information to its adversaries in a highly contested litigation. If a stay does not issue
25 to maintain the status quo and protections until this Court rules on the Petitions, Wynn
26 Resorts will be irreparably harmed because (1) its privileges and protections will be
27 handed to its adversaries, and cannot be undone; and (2) the presumption afforded
28 by Nevada's Business Judgment Rule – a basic protection afforded under Nevada law

1 – will be rendered entirely unavailable and useless to the Company and its directors.
2 Absent a stay, and if this Court ultimately overrules the District Court's Orders *after*
3 Wynn Resorts is compelled to comply with the Orders, Wynn Resorts will
4 unquestionably be harmed, and irreparably so.

5 **C. A Stay Will Not Harm the Real Party in Interest.**

6 The Okada Parties face no harm from a continued stay. This matter is not set
7 for trial until April 16, 2018, and fact discovery does not close until September 8,
8 2017. Further, discovery in this case was stayed from June 23, 2016 up to and until
9 March 27, 2017. During the stay, the Okada Parties did not seek the production of
10 the documents associated with either the BHFS Order or the Freeh Order, presented
11 oral argument on the Petitions to this Court, and heard the Court's statements and
12 concerns about the important issues of law, first impression, and intersection of
13 privilege and the business judgment rule that were raised in the Petitions. As such,
14 no real harm comes to the Okada Parties in awaiting this Court's ruling on the
15 Petitions, and the law discussed therein.

16 **D. The Petition has Substantial Merit.**

17 The Petitions have substantial merit as recognized by this Court requesting
18 briefing on both Petitions, hearing oral argument on both Petitions, and expressly
19 stating that the Petitions and related briefing discuss very critical issues of first
20 impression related to the application and use of the business judgment rule, and its
21 intersection with privilege. As such, both Petitions have merit.

22 **III. CONCLUSION.**

23 The District Court agreed to a temporary, 30-day stay to await this Court's
24 ruling on both Petitions, and required Wynn Resorts to seek any further stay from
25 this Court. As this Court has yet to rule on the pending Petitions, the temporary stay
26 will expire on May 17, 2017. Wynn Resorts accordingly requests a stay from this
27
28

1 Court until it rules on the Petitions related to the March 24, 2016 BHFS Order and
2 the May 3, 2016 Freeh Order.

3 DATED this 5th day of May, 2017.

4 PISANELLI BICE PLLC

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6 By: /s/ Todd L. Bice
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1 **NRAP 27(e) CERTIFICATE**

2 **A. Contact Information**

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B. Nature of Emergency

On April 17, 2017, the District Court entered a 30-day stay of the underlying orders that are the subject of two pending writ petitions. Both writ petitions challenge orders that compel the production of privileged and otherwise protected information, and implicate the intersection of privilege and the business judgment rule. When it issued the short stay, the District Court stated that if the Supreme Court had not issued

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a decision on the pending petitions by the May 17, 2017 stay expiration, Wynn Resorts must seek any further stay from this Court. Inasmuch as the stay expires in less than 2 weeks, and because this Court has not yet issued decisions on the pending Petitions, and Wynn Resorts cannot foretell if decisions will issue before the expiration, Wynn Resorts files its emergency motion for a stay with this Court.

C. Notice and Service

I, Todd L. Bice, personally called the offices of Holland & Hart, notifying them of this motion. On filing, I will email copies to each of the attorneys for Real Party in Interest.

DATED this 5th day of May, 2017.

PISANELLI BICE PLLC

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*Attorneys for Petitioner
Wynn Resorts, Limited*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 5th day of May, 2017, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **MOTION TO EXTEND THE DISTRICT COURT'S STAY PENDING WRIT PETITION AND RULE 27(E) EMERGENCY MOTION FOR INTERIM EXTENSION OF STAY** properly addressed to the following:

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5 **SERVED VIA HAND-DELIVERY**

6 The Honorable Elizabeth Gonzalez
7 Eighth Judicial District court, Dept. XI
Regional Justice Center
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9
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11 /s/ Shannon Dinkel
12 An employee of PISANELLI BICE PLLC

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EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
KAZUO OKADA; UNIVERSAL
ENTERTAINMENT CORP.; AND
ARUZE USA, INC.,
Real Parties in Interest.

WYNN RESORTS, LIMITED,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
KAZUO OKADA; UNIVERSAL
ENTERTAINMENT CORP.; AND
ARUZE USA, INC.,
Real Parties in Interest.

✓ No. 70050

FILED

JAN 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 70452

ORDER CHANGING START TIME FOR ORAL ARGUMENT

These cases were previously scheduled for oral argument on Monday, February 6, 2017, at 10:00 a.m. in Docket No. 70500 and at 10:30 a.m. in Docket No. 70452. The time for argument is hereby changed, and



17-00988

oral argument before the en banc court will be held on Monday, February 6, 2017, at 9:30 a.m. for Docket No. 70500 and 10:00 a.m. in Docket No. 70452. As previously indicated in this court's order dated January 3, 2017, because these cases involve the same parties, it is the court's intent that the two cases be argued together. Petitioners and the real parties in interest shall each have 30 minutes for argument, during which they shall address both cases.

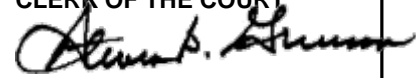
It is so ORDERED.

CLERK OF THE SUPREME COURT
ELIZABETH A. BROWN

BY: Elizabeth A. Brown

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Wachtell, Lipton, Rosen & Katz
Pisanelli Bice, PLLC
Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLC/Los Angeles
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EXHIBIT 2



ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

Case No.: A-12-656710-B

Dept. No.: XI

**ORDER GRANTING IN PART AND
DENYING IN PART WYNN RESORTS,
LIMITED'S MOTION TO EXTEND
STAYS OF (1) THE MARCH 24, 2016
ORDER AND (2) THE MAY 3, 2016
ORDER PENDING PETITION FOR
WRIT OF PROHIBITION**

Date of Hearing: April 17, 2017

Time of Hearing: 8:00 a.m.

AND ALL RELATED CLAIMS

04-28-17 11:17 AM RCV

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1 Wynn Resorts, Limited's Motion to Extend Stays of (1) the March 24, 2016 Order and
2 (2) the May 3, 2016 Order Pending Petition for Writ of Prohibition (the "Motion"), filed on
3 April 6, 2017, came before this Court in the above-captioned action on April 17, 2017. James J.
4 Pisanelli, Esq., and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of
5 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell
6 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
7 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively the "Wynn Parties").
8 Donald J. Campbell, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of
9 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William J. Urga, Esq., of
10 JOLLEY URG A WOODBURY & LITTLE and Mark E. Ferrario, Esq., of GREENBERG TRAUIG, LLP
11 appeared on behalf of Counderdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn
12 ("Ms. Wynn"). J. Stephen Peek, Esq., and Robert J. Cassity, Esq., of HOLLAND & HART LLP,
13 appeared on behalf of Defendant Kazuo Okada ("Okada") and
14 Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and Universal
15 Entertainment Corp. ("Universal") (collectively the "Okada Parties").

16 The Court having considered the Motion, the Okada Parties' Opposition filed on April 14,
17 2017, as well as the arguments of counsel presented at the hearing, and good cause appearing
18 therefor,

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is
20 GRANTED IN PART and DENIED IN PART, as follows:

- 21 1. A thirty (30) day stay until May 17, 2017 for both the March 24, 2016 Order
22 Granting in Part Defendants' Motion to Compel Wynn Resorts, Limited to Produce
23 Brownstein Hyatt Documents ("BHFS Order") and the May 3, 2016 Order
24 Regarding (1) Motions to Compel Freeh Documents and (2) In-Camera Review of
25 Freeh Group Documents ("Freeh Order") is GRANTED; and
- 26 2. A general stay of the BHFS Order and Freeh Order pending the ruling on the writ
27 petitions is DENIED.

28

1 IT IS FURTHER ORDERED that if the 30-day stay expires prior to the Nevada Supreme
2 Court's ruling on the writ petitions associated with the BFHS Order and Freeh Order, the
3 Wynn Parties will need to seek any further stay from the Nevada Supreme Court.

4 IT IS SO ORDERED.

5
6 DATED: 5/31/17

7 
8 THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT *JW*

9 Respectfully submitted by:

10 PISANELLI BICE PLLC

11 By:  #13513

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17 *Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman*

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