

In the Supreme Court 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 GONZALEZ, District Judge,

Respondents,

and

KAZUO OKADA; UNIVERSAL  
ENTERTAINMENT CORP.; and  
ARUZE USA, INC.,  
Real Parties in Interest.

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Elizabeth A. Brown  
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District Court  
No. A-12-656710-B

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

Elaine P. Wynn requests leave to file an *amicus curiae* brief, pursuant to NRAP 29(c), in support of the Okada Parties' Petition for Limited Rehearing to Clarify Scope of the Business Judgment Rule in Nevada.

Ms. Wynn is a counterclaimant and crossclaimant in the underlying litigation that gave rise to this Court's opinion in 133 Nev., Adv. 52 (July 27, 2017). Although Ms. Wynn was not a party to the writ peti-

tion, which dealt with a skirmish between two other parties on an issue of waiver of privilege, petitioner Wynn Resorts has now argued to the district court that this Court's opinion forecloses Ms. Wynn's claims against Wynn Resorts for contractual interference and aiding and abetting a breach of fiduciary—claims that do not ask the court to substitute its own judgment for any business decision of the Wynn Resorts' Board. Accordingly, Ms. Wynn has a direct interest in clarifying the ruling.

As Ms. Wynn will demonstrate as *amicus curiae*, this Court should clarify that its opinion should not be construed to eliminate independent claims against a corporation based on an act of a director or the board—a result that would have enormous implications for Nevada law and for those doing business with Nevada companies. Amicus briefs on rehearing are appropriate to point out aspects of the original opinion that require clarification. *See Powers v. United Services Auto. Ass'n*, 115 Nev. 38, 41 & n.2, 979 P.2d 1286, 1288 & n.2 (1999) (granting appearance of amici on rehearing); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 608, 245 P.3d 1182, 1184 (2010) (same).

While Ms. Wynn did not need to intervene in a writ petition that did not involve her claims, the potential for misinterpretation of the

Court's opinion now makes Ms. Wynn's appearance as *amicus* necessary. *See, e.g., Hairr v. First Judicial Dist. Ct.*, 132 Nev., Adv. Op. 16, 368 P.3d 1198, 1203 (2016) ("allowing a proposed intervenor to file an *amicus* brief is an adequate alternative to permissive intervention" (quoting *McHenry v. Comm'r*, 677 F.3d 214, 227 (4th Cir. 2012))); *Coquille Citizens for Responsible Growth v. City of Coquille*, 53 Or. LUBA 186, 189, 2006 WL 3897985, at \*2 (applicant for land-use permit was permitted to appear *amicus* in a citizen group's appeal from the city's grant of the permit even though the applicant did not intervene as a party to the appeal).

CONCLUSION

For these reasons, the Court should grant Ms. Wynn's motion for leave to file an *amicus curiae* brief in the above captioned case.

Dated this 8th day of September, 2017.

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**CERTIFICATE OF SERVICE**

I certify that on September 8, 2017, I submitted the foregoing MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF ELAINE P. WYNN for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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