

Case No. \_\_\_\_\_

**In the Supreme Court of Nevada**

ELAINE P. WYNN, an individual,  
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,

Respondent,

and

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Real Party in  
Interest.

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No. A-12-656710-B

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**PETITIONER'S APPENDIX  
VOLUME 2**

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1 -- I wrote request a new motion, because this one I think  
2 we're done with, okay.

3 MR. PEEK: Understood.

4 THE COURT: So now you tell me why you think 60 days  
5 is wrong.

6 MS. SPINELLI: Can I ask two points of  
7 clarification? Because you might have questions of them, too,  
8 Your Honor. It's just --

9 THE COURT: Sure.

10 MS. SPINELLI: -- when you mentioned documents for a  
11 business purpose, that they have to be produced, and then you  
12 said we didn't have to produce documents with Okada's name on  
13 it, if there's an overlap, does it fall into the first or the  
14 second category?

15 THE COURT: You may redact Mr. Okada's name, but not  
16 redact the other information.

17 MS. SPINELLI: Okay. So anybody else's name but Mr.  
18 Okada's.

19 THE COURT: If it falls within my constraint that it  
20 was a -- was forwarded, sent, or authored by a non-Macau  
21 citizen as part of the business.

22 MS. SPINELLI: Okay. And one other question. When  
23 you said within 10 days we must provide --

24 THE COURT: Within 10 days of the entry of the  
25 order.

1 MS. SPINELLI: -- thank you -- must provide the  
2 consent list, but also who we contacted but did not consent,  
3 and you said those who we had not contacted.

4 THE COURT: Any you were not able to contact.  
5 Because you told me you had some people you contacted that did  
6 not consent and others that you were unable to reach, I think  
7 is what you said.

8 MS. SPINELLI: Right. That's right. Thank you,  
9 Your Honor.

10 THE COURT: And so I want the identification of  
11 those categories of people so if a further outreach needs to  
12 occur I can identify and make that determination.

13 MS. SPINELLI: And we can produce that to Your Honor  
14 and the other parties highly confidential?

15 THE COURT: Yes.

16 MS. SPINELLI: Okay.

17 THE COURT: All right. Now, Mr. Peek, tell me why  
18 60 days is too long?

19 MR. PEEK: Well, I guess I can only go back to  
20 December 18th of 2012. The Court may recall December 18th of  
21 2012.

22 THE COURT: What was that guy's name who went  
23 gardening?

24 MR. PEEK: Mr. Fleming.

25 THE COURT: Mr. Fleming.

1           MR. PEEK: But he wasn't implicated in December 18th  
2 of 2012. Mr. Lackey was here that day, Your Honor. But the  
3 Court will recall that it ordered Sands China Limited to  
4 produce a similar collection, in fact probably even more than  
5 Wynn Resorts is required to produce under this order on or  
6 before January 4th.

7           THE COURT: Yeah. But that was the --

8           MR. PEEK: During a --

9           THE COURT: That was the third time I'd order them  
10 to produce.

11           MR. PEEK: I understand, Your Honor. We're dealing  
12 -- we're dealing really with a third time here, as well, Your  
13 Honor. But, be that as it may, we know that it is an effort  
14 that can be undertaken and can be done in a very -- in a much  
15 shorter period of time than 60 days.

16           THE COURT: Yes. She gave me her wish list.

17           MR. PEEK: She gave you her wish list. So that's  
18 point number one. So I just want to remind the Court that we  
19 did it during a Christmas holiday in Macau, so that was, let's  
20 see, 13 business days -- or 13 days plus 4 is 17 days. We did  
21 it in 17 days --

22           THE COURT: And it still wasn't very good.

23           MR. PEEK: -- with two holidays, New Years Eve --

24           THE COURT: And remember it still wasn't very good.

25           MR. PEEK: Respectfully, Your Honor --

1 MR. PISANELLI: That was because the citizens did  
2 the review.

3 MR. PEEK: They may all think that is humorous  
4 behind me, but we did, we produced documents.

5 MR. PISANELLI: A secretary review.

6 THE COURT: And they did produce documents --

7 MR. PEEK: We did produce documents.

8 THE COURT: -- and I understand that there was a lot  
9 of work that went into that, and I'm not here to readdress the  
10 reasons as to why I gave that short time.

11 MR. PEEK: I'm not, either. I just point out that  
12 it's --

13 THE COURT: I am trying to find a reasonable time  
14 frame to permit Wynn to do what I have just tasked them with,  
15 which shouldn't take that much time.

16 MR. PEEK: Thank you.

17 THE COURT: All right.

18 MR. PEEK: So that's part one of my concern, Your  
19 Honor.

20 The other one that is of concern to me is, if I  
21 understand the Court, it said, if Wynn reasonably believes  
22 that a production of a document unredacted might somehow  
23 provide Mr. Okada with an opportunity to seek or pursue  
24 litigation in Macau --

25 THE COURT: Let me stop you so there's no



1 misunderstanding.

2 MR. PEEK: Thank you. That's why I'm trying to --

3 THE COURT: Okay. Wait. Because apparently I  
4 misspoke. Given Mr. Okada's lawsuit in Macau and the fact he  
5 is not a plaintiff in this action seeking affirmative relief  
6 from the Court, I have not made a ruling that he has waived  
7 the protections of the Macau Data Privacy Act, which he has  
8 apparently raised even though he is not a citizen of Macau.  
9 For that reason to the extent that the personal information  
10 being redacted by Wynn is Mr. Okada --

11 MR. PEEK: Of Mr. Okada.

12 THE COURT: -- they maintain the redaction of Mr.  
13 Okada.

14 MR. PEEK: Okay.

15 THE COURT: So the information may still be utterly  
16 worthless, but --

17 MR. PEEK: But it is only of Mr. Okada.

18 THE COURT: Correct.

19 MR. PEEK: So all other names would have to be  
20 produced in an unredacted form.

21 THE COURT: Or if it does not have a non-Macanese  
22 recipient on the email. To the extent that the email is  
23 between a Macanese citizen and another Macanese citizen I have  
24 not at this time decided to go beyond the ruling I've made  
25 about outside of Macau people.

1           So what my intention is, I'm going to get the  
2 supplement from Ms. Spinelli, you're going to look at it,  
3 you're still going to have a number of documents that you  
4 think are problematic. I am then going to go through the  
5 laborious process of comparing the partial and total  
6 duplicates that have been provided by Wynn to make a  
7 determination as to whether under the facts of this case and  
8 the document that has been submitted you necessarily need that  
9 document for your claims and defenses and whether I'm going to  
10 order that it be produced in spite of the Macau Data Privacy  
11 Act.

12           MR. PEEK: So let me see if I understand that  
13 correctly, Your Honor, because I'm -- if I'm hearing you.  
14 That you're going to conduct a review of these 18 boxes --

15           THE COURT: No. Not yet. I'm going to wait till  
16 Ms. --

17           MR. PEEK: Okay. Well, at some time after the  
18 supplement occurs --

19           THE COURT: It's not going to be 18 anymore.

20           MR. PEEK: Okay. Well, that's my concern, is that  
21 what you're going to receive is a supplement, and that  
22 supplement should provide the following category of documents,  
23 all documents that went to a non-Macanese individual.

24           THE COURT: Those are going to be out of the boxes.  
25 Those are going to be produced in an unredacted form --

1 MR. PEEK: Out of the boxes.

2 THE COURT: -- even if there are Macanese --

3 MR. PEEK: Ms. Spinelli --

4 THE COURT: -- wait -- even if there are Macanese  
5 citizens that are on that email.

6 MR. PEEK: I understand.

7 THE COURT: Okay.

8 MR. PEEK: Ms. Spinelli asked for some clarification  
9 about whether it was for a business purpose. It doesn't have  
10 to be for a business purpose. If there was an email that went  
11 outside of Macau to Hong Kong, the United States of a personal  
12 nature, not necessarily a business nature, it has lost any  
13 protection. For example, for Alan Zieman, whom we know to be  
14 a Hong Kong resident, whom we know to be, as we identified --  
15 I can't remember the name of his company, Your Honor, but it's  
16 identified.

17 THE COURT: No. It's in your briefs, though.

18 MR. PEEK: It's identified. You know what I'm  
19 talking about.

20 THE COURT: I do.

21 MR. PEEK: There may have been something that was  
22 non business. That still has lost any protection and must be  
23 produced.

24 MS. SPINELLI: Mr. Zieman consented, Your Honor.

25 MR. PEEK: So --

1 THE COURT: Arguably it is an example. It would  
2 have. However, as I have said with Ms. Wynn and I said with  
3 Mr. Jacobs in the other case, to the extent there is personal  
4 information of a medical nature, about the kids --

5 MR. PEEK: That's different.

6 THE COURT: -- about the education I'm not going to  
7 order that be produced.

8 MR. PEEK: That's different.

9 THE COURT: And I do not know that at this point.

10 MR. PEEK: That's different. Okay. So --

11 THE COURT: Which is why I used the "business."  
12 Because arranging a dinner for other people that are going to  
13 be visiting is a business purpose.

14 MR. PEEK: Understood.

15 THE COURT: That's not a personal purpose.

16 MR. PEEK: I now understand, Your Honor.

17 THE COURT: Okay.

18 MR. PEEK: So I'm a little bit clearer on that. So,  
19 again, getting sort of back to that category -- because I know  
20 that of the 2,000-plus documents that have been redacted, if I  
21 understand the Court, some universe of that may exist in the  
22 U.S., we'll get those in the supplement.

23 THE COURT: Some universe of it does --

24 MR. PEEK: Some universe may exist in Hong Kong.  
25 We'll get that.

1 THE COURT: -- it does exist in the U.S.

2 MR. PEEK: We know. Okay. We'll get that. What  
3 I'm concerned about is so then I -- once that supplement  
4 occurs that will leave a universe of redacted documents still  
5 existing that they're not producing. Is that -- is what the  
6 Court is --

7 THE COURT: There may be some documents that remain  
8 as redacted because they either have Mr. Okada's name on them  
9 or because they are exclusively between Macanese citizens.

10 MR. PEEK: Understood. May just be some internal  
11 emails.

12 THE COURT: And at that point in time, after I get  
13 down to that group which I hope is a much smaller group, I  
14 will then go through the boxes, once I get the identification  
15 of what they are, and not have all 18 to review.

16 MR. PEEK: And you will determine whether or not, as  
17 I suggested, the reason why you want to see them in camera is  
18 whether they have any evidentiary value because of their  
19 redactions.

20 THE COURT: Correct.

21 MR. PEEK: Okay.

22 THE COURT: That's the general plan. But I need Ms.  
23 Spinelli to do her part so I can then hopefully limit half or  
24 so of the documents that are in the boxes I've got.

25 MR. PEEK: And you understand that you will only get

1 redacted documents. You will not get unredacted documents to  
2 review?

3 THE COURT: We'll see.

4 MR. PEEK: Because their position is you can't take  
5 any of that out of Macau.

6 THE COURT: They have given me -- and the reason I  
7 made the statement about it appears that they are acting at  
8 least in this point in good faith because of the partial and  
9 total duplicates they have provided gives me a great ability  
10 to look beyond some of the redactions. How's that?

11 MR. PEEK: I understand that you haven't found yet  
12 that they have not acted in good faith, but --

13 THE COURT: Correct.

14 MR. PEEK: -- I would disagree.

15 THE COURT: I may find that some day --

16 MR. PEEK: Yeah.

17 THE COURT: -- but I haven't found it yet.

18 MR. PEEK: Given what I have seen today, Your Honor,  
19 I wouldn't share the Court's belief of that. But we'll --

20 THE COURT: Okay.

21 MR. PEEK: There'll be another -- visit you on  
22 another day on that.

23 THE COURT: Yes. With new briefing.

24 MR. PEEK: With new briefing.

25 THE COURT: Yes.

1 MR. PEEK: Understood. New briefing.

2 THE COURT: We're not going to --

3 MR. PEEK: Understood, Your Honor. Thank you.

4 THE COURT: Okay. Ms. Spinelli, you've got 30 days.  
5 While you tell me why that's impossible let me step out of the  
6 room to see what Dan needs.

7 (Pause in the proceedings)

8 THE COURT: Now you can tell me why it's impossible.

9 MS. SPINELLI: The last three times, Your Honor,  
10 that we went to Macau -- we work, as you know, with our  
11 vendor, FTI. In order to get their people to Macau to set up  
12 all the equipment it took two to three weeks to do that. And  
13 with all -- being candid, it also involved our review team.  
14 So that might not be necessary here. But I know the IT to go  
15 set it up, we actually set up a whole review room. So I think  
16 I need at least two to three weeks to get that process started  
17 before my team can travel to Macau to go through the  
18 documents. If that happens, I'm sure that there is something  
19 we could do with FTI. I'm not sure, but I could try to narrow  
20 down in order to respond to Your Honor's order. But I do  
21 think -- when I was saying 60 days I actually thought that I  
22 was being quite good, having been there several times myself,  
23 unlike some of the other people. So I do know that it takes a  
24 little bit of time and then the documents need to be produced  
25 here -- brought to the United States, produced here. And it

1 does take time even though everybody wants it to happen  
2 quickly. But the rest of the case is stayed anyway, so there  
3 really no harm to the Okada parties at this point in time. I  
4 think 60 days is actually perfect.

5 THE COURT: Thirty days after the entry of the  
6 order.

7 Okay. Anything else on these issues?

8 MS. SPINELLI: Your Honor, I think we're going to  
9 seek a stay. Can I at least have 10 days to decide whether  
10 we're going to seek a stay on some of the issues with my team?

11 THE COURT: How about we get the order, because you  
12 can't go up till I have a written order, and then you ask me  
13 for the stay then.

14 MS. SPINELLI: We'll do that.

15 THE COURT: But I've got to have an order before you  
16 go up.

17 MS. SPINELLI: Okay. Perfect, Your Honor. Thank  
18 you.

19 THE COURT: All right. Anything else that involves  
20 Mr. Peek here? These are the issues I think arguably involve  
21 Mr. Peek, so while he's still here in his advocate role let me  
22 go through what I think the other items on the agenda are.

23 I have a motion to redact Wynn Resorts Limited's  
24 motion to compel Elaine Wynn's answer to deposition questions,  
25 to extend deposition time, for sanctions on an OST, and to



1 seal Exhibit 1; I have a motion to redact Wynn Resorts  
2 Limited's motion to preserve highly confidential designation  
3 of testimony, application for OST, and seal Exhibits 1  
4 through 4; motion to seal Wynn Resorts Limited's response  
5 memorandum to Wynn Resorts waiver arguments and opposition to  
6 Elaine Wynn's motion requiring Wynn Resorts reciprocal  
7 compliance with protocol and for orders requiring turnover of  
8 privileged matter, injunctive relief, production, and other  
9 appropriate relief and appendix thereto; Elaine Wynn's motion  
10 to seal her status report regarding proposed ESI protocol for  
11 July 21st hearing; Elaine Wynn's motion to seal her reply in  
12 support of memorandum for Wynn Resorts' waiver arguments and  
13 motion requiring Wynn Resorts' reciprocal compliance with  
14 protocol, blah, blah, blah; motion to redact certain portions  
15 of Wynn Resorts Limited's ex parte application for a TRO;  
16 motion for preliminary injunction; motion for sanctions for  
17 violation of protective order; Elaine Wynn's motion to seal  
18 her opposition to Wynn's Limited ex parte application for TRO;  
19 motion for preliminary injunction and motion for sanctions;  
20 and the motion to redact certain portions of Wynn Resorts  
21 Limited's motion for limited and specific relief related to  
22 the protective order with respect to confidentiality and seal  
23 Exhibit 1.

24 I received no oppositions to any of those motions to  
25 seal. They generally appeared to me to be narrowly tailored

1 to protect only the information that was confidential. And  
2 for those that relate to the Elaine Wynn issues of privilege  
3 and disqualification of the Quinn Emanuel firm they've not  
4 been served on the Okada parties. So I haven't received  
5 objections. Does anybody object to the sealing of those  
6 documents?

7 Mr. Peek.

8 MR. PEEK: I do, Your Honor.

9 THE COURT: All right.

10 MR. PEEK: But I guess because I haven't the  
11 document it's a difficult task for me to be able to really  
12 articulate reasons.

13 THE COURT: Can you go to the mike. Because while  
14 we can generally hear you, it's better if you're at --

15 MR. PEEK: I'm coming to the microphone, Your Honor.

16 THE COURT: Thank you.

17 MR. PEEK: So some of the documents I didn't -- I  
18 was in fact served, so I have seen of the requests for  
19 redaction, and they seem to comport to the standard of the  
20 rule. But others, of course, since I haven't seen them, I  
21 don't know what it is they seek to redact. So that's  
22 troubling to me, and I -- so I'm opposing it. But I -- when  
23 you say, what is the basis, well, the basis is I cannot see  
24 the document to be able to formulate a proper argument to the  
25 Court.

1 I know that the Court seems to be of the view that  
2 the Aruze parties are not entitled to be present in the  
3 courtroom when arguments of disqualification occur.

4 THE COURT: I didn't say you weren't allowed to be  
5 in the courtroom when those arguments occurred.

6 MR. PEEK: Okay. So -- because I -- because I'm  
7 going to --

8 THE COURT: I said as an advocate.

9 MR. PEEK: As -- okay.

10 THE COURT: Which means I might move you behind the  
11 bar to a more comfy chair with Mr. Malley and let him sit up  
12 where you were.

13 MR. PEEK: I can appreciate that, Your Honor. But I  
14 may have something to say in that process, and I'll -- if I'm  
15 behind the bar, I can still come before the bar. So that's  
16 part one.

17 Part two, what troubles me -- and you saw this in a  
18 notice of submission that the Court received from Ms. Spinelli  
19 of the motion for protective order that Elaine Wynn filed  
20 about four weeks ago. You remember we had a hearing on  
21 August 11th and you remember --

22 THE COURT: She said August 8th.

23 MR. PEEK: About four weeks ago. And you remember  
24 that on August 11th we had a hearing, and at that hearing what  
25 the Court said was, you, Wynn Resorts, may make redactions,

1 how long will it take you; we'll have it by Friday. We got --  
2 we still haven't received it. What Ms. Spinelli did is ignore  
3 the Court's order and submit to the Court the redactions that  
4 she wants the Court to approve. She's seeking the imprimatur  
5 of the Court, as opposed to complying with what the Court  
6 said, which was, give this -- make your redactions, give them  
7 to Mr. Peek and then Mr. Peek can address me if he feels that  
8 you have been improper in your redactions. I want that  
9 motion.

10 THE COURT: Okay. So you still don't have it?

11 MR. PEEK: I still don't have it. And the Court  
12 will recall -- and I guess I'll have to do this, and that may  
13 -- that's the subject of another motion, which is Elaine  
14 Wynn's deposition was taken, we certainly weren't provided a  
15 copy. I think the Court said I needed to make a motion for  
16 that purpose.

17 There are a number of other pleadings that have now  
18 been submitted or filed by Elaine Wynn and the Wynn parties on  
19 which we're still not yet served. One of them we sequestered  
20 yesterday after having some dialogue with the Court. But I --

21 THE COURT: Dialogue being conference call?

22 MR. PEEK: That was the conference call we had at  
23 4:10, Your Honor.

24 THE COURT: Not that I was speaking to you guys in  
25 other fashion.

1 MR. PEEK: But my point is, Your Honor, I'm trying  
2 to -- I'm trying go get to being served with all these  
3 documents, as opposed to having them withheld from me.

4 MR. POLSENBERG: The record should reflect he nodded  
5 in the affirmative.

6 MR. PEEK: I don't know what's going on, Your Honor,  
7 so my apologies.

8 THE COURT: I have some cases, not this one, where  
9 sometimes people think that conversations occur that all the  
10 people are not involved in. And so when you say, Judge, we  
11 had dialogue with you, I need to clarify that that dialogue we  
12 were having yesterday was part of the conference call we had  
13 at about 4:10 yesterday afternoon.

14 MR. PEEK: Right.

15 THE COURT: That was on the record.

16 MR. PEEK: With all the parties.

17 THE COURT: Well, with everybody --

18 MR. PEEK: Yes.

19 THE COURT: -- who wanted to call in.

20 MR. PEEK: So my point is, Your Honor, this needs to  
21 stop. This notion that the Aruze parties are not a party in  
22 this proceeding and are not entitled to receive pleadings  
23 related to the disqualification, that has to stop. Because  
24 those motions, if they are disclosing privileged information,  
25 which I don't believe they are, because I cannot believe that

1 Wynn Resorts has been filing a motion with respect to  
2 disqualification in which they reveal to the Elaine Wynn  
3 parties or Elaine Wynn is now revealing its privileged  
4 information. So we are entitled to receive that, Your Honor.  
5 And that practice ought to stop now.

6 THE COURT: Okay. Ms. Spinelli.

7 MS. SPINELLI: Your Honor, we submitted a notice of  
8 submission on August 23rd, and it had the documents that Your  
9 Honor directed us to produce in redacted form for the Okada  
10 parties. It was Elaine Wynn's motion for protective order  
11 filed August 8th and our opposition filed August 11th. And  
12 what we did was, because it contained information related to  
13 Ms. Wynn's whistleblower allegations, I contacted Ms. Wynn's  
14 counsel with my proposed redactions because one of the briefs  
15 was hers. This is information she's claiming a  
16 confidentiality protection over. And I was told, you guys  
17 have put all this information out in the public that's  
18 attached to my in-camera submission, Your Honor, and therefore  
19 we disagree that if you put these pleadings to Mr. Okada or  
20 other third parties you're violating her whistleblower rights  
21 yet again to the extent they exist. And so what we did to  
22 protect our rights from this argument was to provide it to  
23 Your Honor and completely candid with the Okada parties on  
24 what we did. No one violated your order, Your Honor. We're  
25 just making sure that if Ms. Wynn believes she has this

1 whistleblower protection that is protected until decided by  
2 the Court, which the Court has said she will decide in the  
3 future. So that is why we submitted them to Your Honor and  
4 didn't give them to --

5 THE COURT: Probably the nearer future than the  
6 later, given what I've seen from the deposition stuff.

7 MR. PEEK: I can't hear you, Your Honor.

8 THE COURT: I said probably the nearer future,  
9 rather than later, given what's happening in the depositions.

10 MS. SPINELLI: And so, Your Honor, that's why we  
11 wanted to give it to you, as opposed to giving it to Okada  
12 right off. And you'll see we were actually very narrow in our  
13 descriptions -- in our redactions of what was already in the  
14 public record from the hearings that the Court had not sealed  
15 because Elaine Wynn didn't ask it to be sealed. So it was  
16 information that was already in the public record. Happy to  
17 give it to the Okada parties. We just didn't want to run a  
18 risk of being accused again of violating Ms. Wynn's rights.  
19 So that is what we did, Your Honor. It wasn't a purposeful  
20 violation of your order, and it wasn't an affront to Mr. Peek.

21 I was told yesterday that there was going to be a  
22 motion filed related to the demand that Mr. Peek keeps orally  
23 making to this Court for the unredacted documents, and at that  
24 point in time we'll be able to explain to him how Ms. Wynn was  
25 at one point in time in our privilege and therefore the

1 information that we're exchanging in some of these briefs  
2 relates to a joint defense agreement that Mr. Okada is not  
3 privy to and his counsel is not privy to. And that's kind of  
4 where we are.

5 THE COURT: Okay. So I am going to continue all of  
6 the motions to redact or seal for two weeks to what I believe  
7 is our next regularly scheduled hearing, which would be on  
8 September 15th.

9 Right?

10 THE CLERK: Yes, Your Honor.

11 MR. PEEK: You mean the status hearing, Your Honor?

12 THE COURT: Is that okay?

13 MR. PEEK: Yes, Your Honor. That's fine.

14 THE COURT: All right.

15 MR. PEEK: That'll give us time.

16 THE COURT: And if you're going to file a motion,  
17 you need to file it soon so I can get on this.

18 MR. PEEK: A motion with respect to certainly the  
19 Elaine Wynn deposition?

20 THE COURT: To a modification of the position I've  
21 taken to try and protect the privilege issues that are alleged  
22 to have been seen by Quinn Emanuel and now result in their  
23 arguable disqualification, which I'm trying to get through  
24 some day.

25 MR. PEEK: Okay. So I haven't seen an order, Your



1 Honor, that says I'm not entitled to that.

2 THE COURT: No. Nobody ever did an order.

3 MR. PEEK: Nobody -- well, there'd been no order  
4 from the Court that I have seen, either, allowing --

5 THE COURT: I've been waiting for somebody to give  
6 it to me.

7 MR. PEEK: -- allowing them to engage in this  
8 process of not serving us. I've objected to it. There's been  
9 no order by the Court.

10 THE COURT: So, Ms. Spinelli, you'll get that order  
11 over today or tomorrow; right?

12 MS. SPINELLI: I will.

13 MR. PEEK: And what's the order --

14 THE COURT: Not tomorrow.

15 MR. PEEK: What's the order, Your Honor? What is  
16 the Court's order so that I can --

17 THE COURT: I have previously said, Mr. Peek, that  
18 for issues which solely relate to the disqualification of the  
19 Quinn Emanuel firm because they reviewed privileged  
20 information of Wynn that was provided to them by --

21 MR. PEEK: That they claim they did.

22 THE COURT: -- Elaine Wynn. It's an allegation.  
23 It's only an allegation at this point. That to the extent  
24 that it relates to those issues I have tried to limit the  
25 further dissemination of that privileged information and in a

1 conference call we had I think it was in June I made an order  
2 that you not be -- your side not be served with that material  
3 in the interim. I have not, to the best of my knowledge, seen  
4 a written order.

5 MR. PEEK: I have not, Your Honor. So that's why --

6 THE COURT: That was where it came from.

7 MR. PEEK: So if I'm going to seek relief, I guess,  
8 from that order, I need to see the order. And if I need to do  
9 it in the next two weeks --

10 THE COURT: And so the information that related to  
11 the TROs I do not think falls within the scope of what I had  
12 said, which is why I'm continuing these motions, rather than  
13 granting any of them at this point.

14 MR. PEEK: So --

15 MS. SPINELLI: Your Honor, it might very well be  
16 that the information on the TROs is not -- has been given to  
17 him.

18 THE COURT: I don't know.

19 MS. SPINELLI: Yeah. They're like 10 motions. Not  
20 all of them -- or filings. Not all of them relate to this  
21 issue. Some of them --

22 MR. PEEK: Is there some that have --

23 MS. SPINELLI: He can't even articulate which ones.  
24 So I think continuing it is perfect and we'll be able to  
25 narrow it down in a meet and confer.

1 THE COURT: Maybe the two of you could talk or at  
2 least email each other back and forth.

3 MR. PEEK: We'd be happy to talk, Your Honor.  
4 That's what -- we have a meet and confer.

5 So let me see if I can understand -- I don't know if  
6 you can hear me.

7 THE COURT: Ms. Winn, can you hear him?

8 THE COURT RECORDER: Go over there, please.

9 MR. PEEK: Thank you.

10 THE COURT: Thank you, Mr. Peek. Because Jill would  
11 have just told you to move.

12 MR. PEEK: Yeah. I understand. And I know there's  
13 no microphone over there where I was seated.

14 So with respect to at least the issues related to  
15 the letter and the violation and the TRO Ms. Spinelli is  
16 right. We have some, but not all of those, because there  
17 certainly is the issue that we dealt with yesterday in the  
18 4:10 p.m. conference call. There's some issues -- some other  
19 pleadings that we did not receive. We'll deal with those, as  
20 well, Your Honor, as the disqualification issues, as well.

21 But what I want to understand, though, is do I get  
22 the motion that sought protective order relief that Elaine  
23 Wynn filed on or about August 8th and that Ms. Spinelli says  
24 that she out of an abundance of caution submitted to the Court  
25 to protect concerns that she had that Elaine Wynn may somehow

1 use it against her.

2 THE COURT: Does Elaine Wynn's counsel object to  
3 providing Elaine Wynn's motion to modify the protective order  
4 to the Aruze parties?

5 MR. ZELLER: We do, Your Honor.

6 THE COURT: Okay. So we're going to deal with --

7 MR. PEEK: So they objected. Is there an  
8 articulated basis, Your Honor, for that? There has to be an  
9 articulated basis, and there has to be a reason, Your Honor,  
10 that the Court should even grant that relief at all, as  
11 opposed to just, oh, we don't think they should have it.

12 THE COURT: Okay.

13 MR. PEEK: We dealt with this on August 11th. They  
14 didn't say anything then.

15 THE COURT: I've been dealing with it since June.

16 MR. PEEK: This is a different issue. This is the  
17 audit.

18 THE COURT: It's slightly overlapping.

19 MR. POLSENBERG: Judge, I think you already granted  
20 us the relief. If he wants to lift it, I think he needs to  
21 make a motion. We can take it up in two weeks.

22 THE COURT: But here's the problem. I don't have an  
23 order.

24 MR. POLSENBERG: Yeah.

25 THE COURT: And I usually get orders. Sometimes I

1 don't get orders right away, but I usually get orders. I  
2 don't have an order from this. I need an order from this. I  
3 intend it to originally relate only to the issues of the  
4 disqualification, not to the other issues. And so I am not  
5 able necessarily to discern what is and is not being served on  
6 the Aurze parties, which is why I am in this quandary.

7 Because I have granted you certain relief, Mr. Polsenberg --

8 MR. POLSENBERG: Yeah.

9 THE COURT: -- but the issues related to the TRO and  
10 sanctions was not part of that. I did limit, though, Mr.  
11 Peek's participation in the deposition of Ms. Wynn related to  
12 those particular issues because of the overlapping privilege  
13 issues that I perceived might occur in the deposition. But  
14 after reading portions of the transcript, I was clearly  
15 mistaken.

16 MR. PEEK: Not surprised, Your Honor.

17 Your Honor, it seems to me that --

18 MR. POLSENBERG: Which we can take up in a minute.  
19 But the -- if we have a minute left when we're done with this.

20 But I think -- and you know what, two weeks ago I  
21 probably could have argued it, but I can't argue it right now,  
22 because --

23 THE COURT: I'm not trying to make you argue it  
24 right now. What I'm trying to say is I need an order.

25 MS. SPINELLI: You'll get it, Your Honor.

1 MR. PEEK: Don't you need a motion, Your Honor?

2 THE COURT: No. I made the order already in June.

3 MR. PEEK: That has to do with the disqualification.  
4 Now we're dealing with a separate issue.

5 THE COURT: I made an order on that, as well, when  
6 we were all here in open court.

7 MR. POLSENBERG: Yes.

8 MS. SPINELLI: Before the deposition, yes.

9 THE COURT: I did for the deposition, Mr. Peek.

10 MR. PEEK: For the deposition, yes. But not the  
11 motion.

12 THE COURT: That is correct. So --

13 MR. POLSENBERG: I raised at the time that I did not  
14 serve Mr. Peek because I thought there were privilege issues  
15 involved.

16 MR. PISANELLI: He just complained that we violated  
17 the order that he says now doesn't exist.

18 MS. SPINELLI: And there's a motion to seal, Your  
19 Honor. So it is pending. There's a motion pending that  
20 hasn't been granted yet.

21 THE COURT: Well, but motions to seal do not  
22 preclude the parties in the action from receiving service.

23 MS. SPINELLI: Understood. And that's why --

24 THE COURT: Okay.

25 MS. SPINELLI: -- some of the motions say it's under

1 the protective order, and some say it relates to the  
2 whistleblower protection that there hasn't been a written  
3 opposition to.

4 THE COURT: Okay.

5 MR. PEEK: Your Honor, there's been no motion that  
6 I've seen that says motion to prohibit service or motion to  
7 deny service, or whatever you want to call it, on the Aruze  
8 parties. There's been no motion to that effect. I agree that  
9 in a conference call with respect to disqualification the  
10 Court did say that we would not be involved in that. And  
11 you're going to get that order.

12 THE COURT: Maybe.

13 MR. PEEK: Maybe. And I need to seek relief, I  
14 guess, from that order, and I will. Now we're dealing with a  
15 separate issue which has to do with the so-called  
16 whistleblower motion that they sought -- from which they  
17 sought relief on August 8th, the Court heard it on August --  
18 I've not seen that. Yes, there was a motion to redact, a  
19 motion to seal, but I can't respond to a motion to redact and  
20 a motion to seal on a motion that I haven't seen.

21 MR. POLSENBERG: Your Honor, if we haven't moved, I  
22 so move. And we can --

23 THE COURT: So, Mr. Polsenberg, after our  
24 conversation at the last hearing I granted you certain relief  
25 related to the TRO/preliminary injunction, deposition issue.

1 MR. POLSENBERG: Indeed.

2 THE COURT: I need you to as closely as you can  
3 parrot what I said during that hearing in an order --

4 MR. POLSENBERG: Very good.

5 THE COURT: -- so that I can sign it.

6 Once that is signed, Mr. Peek, I will have more  
7 clarification on this issue. I do not recall saying the  
8 briefing would not be served upon you, but Mr. Polsenberg may  
9 be able to refresh my memory.

10 MR. PEEK: Your Honor, at that hearing you said to  
11 the Wynn parties, tell me what you want to redact and then I'm  
12 ordering you to give it to Mr. Peek. That's what you said on  
13 August 11th.

14 THE COURT: And I'm waiting to give it to you. I  
15 don't know what --

16 MR. PEEK: But now you're getting -- now you're  
17 saying that --

18 THE COURT: No. Mr. Polsenberg has said he thinks  
19 something that was in the motion was privileged. You're  
20 referring to attorney-client privilege or some other  
21 protection?

22 MR. POLSENBERG: Let me point out that while some  
23 state law protections may substantively be different from some  
24 privileges, I am using privilege procedurally to mean all of  
25 them.



1 THE COURT: Okay.

2 MR. POLSENBERG: Now, I realize when we actually  
3 address --

4 MR. PEEK: They need to make the motion.

5 MR. POLSENBERG: Mr. Peek.

6 THE COURT: Hold on.

7 MR. POLSENBERG: When we actually address the issues  
8 and you said we go through certain steps, they'll move to  
9 compel, we'll oppose it, we can address the substantive  
10 application of all those various laws. But when I say  
11 privilege I mean all of it.

12 THE COURT: So you're including in your term  
13 "privilege" --

14 MR. POLSENBERG: Sarbanes-Oxley.

15 THE COURT: -- just the whistleblower stuff, too?

16 MR. POLSENBERG: No. We've got some issues that are  
17 attorney-client, we've got some that are work product, we have  
18 some that are state law gaming protections.

19 THE COURT: Okay.

20 MR. POLSENBERG: I also think that there is a public  
21 policy state law privilege that applies, but I don't really  
22 think it's much different from my Sarbanes-Oxley argument.

23 MR. PEEK: Your Honor, I've not seen that motion,  
24 and it is their burden when they claim privilege --

25 THE COURT: Mr. Polsenberg --

1 MR. PEEK: -- to make that motion.

2 MR. POLSENBERG: That was --

3 THE COURT: Wait. Mr. Polsenberg, can you tell me  
4 which of the motions to seal that is?

5 MR. POLSENBERG: No.

6 THE COURT: Mr. Malley?

7 MR. PEEK: Your Honor, there is a motion to seal  
8 that -- the brief, and it did just say generally gaming law  
9 privilege, Sarbanes-Oxley, and Dodd-Frank. That was submitted  
10 on or about August 8th with that brief of the motion for  
11 protective order.

12 THE COURT: It may be the motion to seal that is on  
13 for September 9th. I am going to move the motions to seal  
14 that are on September 2, September 9, and September 16 to the  
15 oral calendar on September 15th so that we can try and resolve  
16 all of these issues when we come back. Because, Mr. Peek, I  
17 am not trying to exclude you from any of the discussions other  
18 than the attorney-client privilege issues related to the Quinn  
19 Emanuel firm. And the reason I excluded you from the  
20 deposition of Ms. Wynn in preparation for my preliminary  
21 injunction hearing and potential contempt proceedings is  
22 because I mistakenly believed attorney-client would be at  
23 issue in those depositions.

24 MR. PEEK: Thank you, Your Honor.

25 THE COURT: So I need an order.

1 MR. POLSENBURG: Very good. And as long as we all  
2 understand my objection is a little broader than your --

3 THE COURT: It is.

4 MR. POLSENBURG: Yes.

5 THE COURT: And so we're going to address what  
6 apparently is hopefully briefed in your motion to seal.

7 MR. POLSENBURG: Or we may have to --

8 MR. ZELLER: Supplement.

9 THE COURT: Which is why I moved it to the oral  
10 calendar so you all now can look on September 16th and see how  
11 many they are to figure out which ones you've got a concern  
12 with.

13 MR. POLSENBURG: I caught that one.

14 THE COURT: Yeah, you caught that part. I shifted  
15 the responsibility of that.

16 MR. POLSENBURG: Thank you.

17 THE COURT: Mr. Peek, anything else?

18 (Pause in the proceedings)

19 THE COURT: Okay. Next motion. Who wants to get  
20 up? I've got a pile.

21 MR. PISANELLI: Your Honor, we have 14 minutes of  
22 the 90 left for about six motions.

23 THE COURT: Yeah. But they're not nearly as  
24 complex.

25 MS. SPINELLI: They gave me the hard one.

1           THE COURT: Ms. Spinelli had the very difficult one  
2 for the day, which is why I started with that one, because I  
3 really needed to get [inaudible]. The rest of you are just  
4 fighting over what's happening between two people who getting  
5 along so they're divorced and now they can't get along  
6 anymore, and it's flowing over into my discovery process. And  
7 if it didn't involve attorney-client privilege issues, I would  
8 be conducting the deposition in open court and ruling on the  
9 conduct on a question-by-question basis. However, given the  
10 nature of some of the information, I can't do that. So I'm  
11 looking for solutions, and I'm happy to talk to you guys  
12 today.

13           MR. PISANELLI: Before we get to that, because we  
14 are so limited time, Your Honor, it makes sense to me that we  
15 deal with the motion concerning the appointment of a special  
16 master. With each passing day we are very concerned that  
17 Quinn Emanuel is continuing to violate our rights, and we  
18 don't want to just wait and have then disqualified 10 times  
19 over.

20           THE COURT: I didn't require a special master be  
21 appointed. I had certain conditions --

22           MR. PISANELLI: That's what our motion --

23           THE COURT: -- under which it was. So your request  
24 for an appointment of special master is different than what  
25 we'd talked about before. And so let me ask a question of

1 this side of the room before you start arguing, Mr. Bice.

2 MR. BICE: All right. Thank you.

3 THE COURT: Have you identified who the third party  
4 is who's going to do the review for you so you do not receive  
5 further tainting?

6 MR. ZELLER: We have, Your Honor.

7 THE COURT: Who is that third party?

8 MR. ZELLER: That is Justice Rose. And we are  
9 finalizing hopefully today --

10 THE COURT: Bob Rose?

11 MR. ZELLER: Yes.

12 THE COURT: Can I see you guys in my office.

13 (Court recessed at 11:16 a.m., until 11:19 a.m.)

14 THE COURT: I'm on my criminal case. I'm  
15 multitasking.

16 MR. BICE: Your Honor --

17 THE COURT: Mr. Bice, good morning. How are you  
18 today?

19 MR. BICE: Well, I'm fine. Obviously frustrated  
20 with the amount of time to address this issue. Your Honor --

21 THE COURT: You can always come back after lunch.

22 MR. BICE: I'm going to be quick as I can, Your  
23 Honor.

24 Here's the disconnect. The disconnect is that their  
25 definition of a third party is somebody who is an agent of

1 Elaine Wynn. That's the problem here. And the other  
2 disconnect is -- I mean, with all due respect, Mr. Polsenberg  
3 is a third party under their definition, as is Mr. Urga and as  
4 is Mr. Zeller and their firms. They're third parties, because  
5 they have a contract with Elaine Wynn, Elaine Wynn's paying  
6 them. This definition of -- their definition of a third party  
7 is --

8 THE COURT: I'm going to stop you.

9 (Pause in the proceedings)

10 THE COURT: Are we ready? Mr. Bice, sorry for the  
11 interruption, but I had to deal with that issue.

12 MR. BICE: Understood, Your Honor. My point --

13 MR. POLSENBERG: Do you have time?

14 THE COURT: I've got to go twist arms of pro bono  
15 lawyers at noon at McDonald Carano, which is still on the  
16 corner of Sahara and Rancho, so I've got 15 minutes, and then  
17 we can start back up at 1:15, if you want.

18 MR. BICE: Our point, Your Honor, is this definition  
19 of what they are claiming as a third party to review documents  
20 is not a third party at all, it is simply a different set of  
21 agents for Elaine Wynn notwithstanding the reference to former  
22 retired Justice Rose. They're still going to have Elaine  
23 Wynn's lawyers, whether they're admitted in this case or not,  
24 they're going to be Elaine Wynn's lawyers, looking at  
25 potentially our privileged documents. That is a problem.

1           We have proposed that a special master be appointed,  
2 and, as I understand it, they have declined that. And then  
3 one has to ask the fair question of why would you decline that  
4 if you're claiming that you're going to appoint a retired  
5 judge to do it yourself, why are you declining to have a  
6 special master appointed. And I think that their obvious  
7 reason is because they want it to be someone who is answerable  
8 to and not answerable to the Court. And that is a fundamental  
9 problem.

10           This is completely different than what we did in  
11 Jacobs and Sands. Recall what we did in Jacobs versus Sands  
12 is we deposited all the documents. We agreed because it was  
13 our privilege --

14           THE COURT: Well, actually it was Mr. Campbell who  
15 agreed.

16           MR. BICE: No. This was -- Mr. Campbell was out  
17 long before this process was implemented, Your Honor. This is  
18 something that we had set up, and we negotiated this agreement  
19 with Munger Tolles & Olson at that point, who was representing  
20 Sands. And what ultimately we did there, the documents got  
21 deposited, Your Honor, we then used search terms to cull out  
22 Mr. Jacobs's potentially privileged and confidential and  
23 private information. Those search terms were agreed to, and  
24 in fact that was the process that happened.

25           Once those documents were culled, Your Honor, they

1 were not reviewed. They were simply set aside, they were  
2 sequestered by Advance Discovery, they were not reviewed. And  
3 then Sands' counsel was allowed to review all the remaining  
4 documents, everything else on the system.

5 THE COURT: And that was Ms. Glaser; right?

6 MR. BICE: And they -- well, I believe she was out  
7 by that point in time, as well, because MTO had come in and  
8 replaced them. And then MTO had handled that process until  
9 they departed, and then Mr. Jones and Mr. Peek were involved  
10 thereafter. But --

11 THE COURT: I remember the process occurring earlier  
12 than your firm being involved, but it may have occurred in a  
13 two-step process.

14 MR. BICE: Certainly this process of the review of  
15 Mr. Jacobs's documents that were deposited with Advance  
16 Discovery was the process that we handled, because we  
17 negotiated that process with MTO at the time.

18 THE COURT: Okay.

19 MR. BICE: Obviously pursuant to a Court order.

20 What they are proposing is fundamentally different.  
21 They're saying, well, we're not going to pull out Ms. Wynn's  
22 alleged privileged communications by the use of search terms  
23 and only look at those, we're going to look at everything that  
24 Elaine Wynn took from Wynn Resorts. That includes,  
25 apparently, drives that she copied during the litigation when



1 she signed written acknowledgements that wasn't allowed and  
2 another -- at a minimum one other employee that they  
3 surreptitiously copied without ever disclosing to anyone.

4           There is no debate that within those documents are  
5 going to be information that is privileged to Wynn Resorts.  
6 And under the law Ms. Wynn and Ms. Wynn's agents -- I don't  
7 care what title she slaps on them, who it is she wants to  
8 appoint as her agent to review company records, there is no  
9 law that allows her to do that. This is unquestionably  
10 nothing but -- whatever the labels they want to slap on it, it  
11 is unquestionably what amounts to a private so-called taint  
12 team that is answerable to Ms. Wynn.

13           THE COURT: So what you're really asking me to do,  
14 Mr. Bice, if I can cut to the chase --

15           MR. BICE: Yep.

16           THE COURT: -- not that I won't give you more time  
17 if you need it -- is that I appoint whoever the third party is  
18 that Ms. Wynn selects to do this review as a special master  
19 subject to the Court's order.

20           MR. BICE: No.

21           THE COURT: Why not?

22           MR. BICE: I'm asking you to appoint a special  
23 master, and it's not someone who they've already been having  
24 ex parte communications with, because parties are not allowed  
25 to ex parte communications with a special master.

1 THE COURT: Parties have ex parte communications  
2 with special masters all the time.

3 MR. BICE: Only pursuant -- with the Court's  
4 permission on scheduling issues and the like. They have been  
5 having communications about what they want to claim privilege  
6 over, what they're going to review, et cetera. If it's a  
7 special master, Your Honor, it's a special master, it's  
8 somebody answerable to the Court, not somebody selected by Ms.  
9 Wynn. It's somebody selected by the Court. So that's our  
10 problem.

11 Yes, does a special master have to be appointed?  
12 Because of her commingling -- according to her at least, her  
13 commingling of documents into the process, into our data, and  
14 she says, I need to cull that out but I want to cull it not by  
15 using search terms, I want to cull it out by reviewing all of  
16 the documents, including all of the otherwise privileged  
17 information that my counsel isn't allowed to review, so I'm  
18 going to just hire a separate set of lawyers and I'm going to  
19 call them somebody different and claim that they're allowed to  
20 do it. There is no law anywhere that allows that process. As  
21 we have pointed out to you, the only time it has been allowed  
22 is in the rare circumstances of criminal prosecutions where  
23 the government has seized large volumes of data pursuant to a  
24 lawful search warrant or a seizure order court approved, and  
25 then the government has to figure out some way to cull the

1 process. And even the Federal Courts have said that process  
2 of allowing these taint teams is very, very, problematic and  
3 very suspect. And in fact every case we cite cites the most  
4 common example where it broke down, and that was the Manuel  
5 Noreaga prosecution. And the courts have pointed out that the  
6 so-called taint team violated the rules because they're  
7 answerable to the very same people that are involved in the  
8 case. And who is this supposed private taint team answerable  
9 to? It's answerable to Elaine Wynn because it's not a special  
10 master of the Court, it's her own agents.

11 And so with that, Your Honor, I will turn it over,  
12 because I think the appointment of a true special master, not  
13 somebody who Elaine Wynn has already been in communications  
14 with, will also address this deposition question, which I will  
15 turn over to Mr. Pisanelli.

16 THE COURT: Well, and that was sort of my hope  
17 today, was to discuss the two things together if we were going  
18 to get to that point.

19 MR. BICE: And I think that if the special master,  
20 which is what we are asking the Court to ultimately do, I  
21 think that will address that issue.

22 MR. PISANELLI: Would you like me to address that  
23 now so that they can have one response?

24 THE COURT: No, I don't want you to address. I want  
25 to go to Mr. Zeller.

1 MR. PISANELLI: All right.

2 MR. ZELLER: The problem, Your Honor, is this is not  
3 a proposal that we have made. This is a Court order. The  
4 Court has already entered the order of the protocol. Going  
5 back to the June hearing, we have been discussing this, and  
6 they had plenty of time to argue, object, make any of these  
7 kinds of concerns. They weeks and months to raise it. They  
8 did not do so. The protocol that was entered by the Court  
9 with Wynn Resorts, and it was their own language, makes it  
10 very clear we can have a third-party designee do the review.  
11 That's going to be walled off. The idea somehow -- I mean,  
12 you know, it would be one thing if they had proposed a special  
13 master at the very beginning. But what now this threatens to  
14 do is basically now prolong the process even longer, because  
15 we'll undoubtedly have weeks of argument over who this -- who  
16 this special master is supposed to be. They're going to  
17 object -- I understand in the Jacobs case it took forever for  
18 the parties even to agree on who the vendor was. At least we  
19 didn't have that disagreement here. But I --

20 THE COURT: Okay. Anything else you want to tell  
21 me?

22 MR. ZELLER: -- think the Court should stick with  
23 its order.

24 THE COURT: So assume you don't go with Justice Rose  
25 and you pick a different person. Is there anybody else who

1 works in the same office with him, like Larry Leavitt, Phil  
2 Pro, those kind of guys, that you've talked to, Mr. Urga?

3 MR. URGa: Your Honor, we have talked to them. And,  
4 contrary to the speculation by Mr. Bice, I have not talked to  
5 anybody and told them what they're supposed to be doing. I'm  
6 just trying to find somebody to make sure they don't have a  
7 conflict. So I -- Judge Pro probably can't do it, because he  
8 sits on the Gaming Commission.

9 THE COURT: Gaming Commission, yeah.

10 MR. URGa: So we've talked to Judge -- to the  
11 handler, to the special -- we haven't even talked to them.

12 THE COURT: So you're just talking to the admin  
13 people at JAMS?

14 MR. URGa: Yes.

15 THE COURT: Okay. I mean, that's how bad that it  
16 is.

17 THE COURT: So let me just make a suggestion.

18 MR. URGa: Judge -- I'm sorry, Your Honor. Go  
19 ahead.

20 THE COURT: My suggestion would be that we might be  
21 better served to have a special master related to these issues  
22 given the problems that came at the deposition. And I want  
23 you to think about over the lunch hour if we are better served  
24 having the same person handle those deposition issues and sit  
25 and monitor your deposition as is going to do the privilege

1 review.

2 MR. URGAS: That will take us a lot longer to find,  
3 because everybody that is good and independent has a very busy  
4 schedule. So that is one of the issues. But we will talk  
5 about it over the lunch hour.

6 THE COURT: So I want you to talk about it over the  
7 lunch time, because I'm going to break now to go over to twist  
8 arms. By the way, thank you all of you, except Mr. Campbell,  
9 who's let me come twist arms at his firm.

10 MR. CAMPBELL: Your Honor --

11 THE COURT: I haven't gotten to do pro bono at your  
12 firm because you don't have enough people for me to come over  
13 and twist arms.

14 MR. CAMPBELL: We just give you a ton of money.

15 MR. URGAS: I tried that before, and it didn't work.

16 THE COURT: Yeah.

17 MR. URGAS: Your Honor, I know we have to set it up  
18 with you, too, and --

19 THE COURT: It's all right. You're on it. You're  
20 on the schedule.

21 MR. URGAS: I know.

22 THE COURT: So I want you to think about that  
23 process, because that may solve problems. And that was why  
24 when I was reading this together I did Mr. Peek first, because  
25 he was a discrete issue, and all of your other issues here

1 this afternoon interrelate, okay. And it also keeps me from  
2 having to worry about an open courtroom issue while those  
3 proceedings are occurring. Okay?

4 MR. POLSENBERG: Thank you.

5 THE COURT: So I'll see you guys at 1:15?

6 MR. PEEK: Yes, Your Honor.

7 THE COURT: All right. And then you'll answer my  
8 question, and then I'll go back to them, okay.

9 (Court recessed at 11:42 a.m., until 1:19 p.m.)

10 THE COURT: Good afternoon, counsel.

11 We were on Elaine Wynn's thinking about what I'd  
12 said before we left for lunch. Unless you want to tell me you  
13 settled the case while I was gone.

14 MR. POLSENBERG: Your Honor, I think a master  
15 sounds like a great idea. Of course, the details would be  
16 in how we --

17 THE COURT: Devil's always in the details, Mr.  
18 Polsenberg.

19 MR. POLSENBERG: We'll have to figure out the scope,  
20 we'll have to figure out who.

21 THE COURT: Absolutely. Okay.

22 MR. POLSENBERG: And Mr. Peek might actually be  
23 involved.

24 THE COURT: I know.

25 So it sounds like we have a preliminary agreement

1 that a special master may be the appropriate mechanism to make  
2 sure that everybody's protected and nobody gets further  
3 tainted and we don't have any additional problems with  
4 disclosure of the potentially privileged material either from  
5 Ms. Wynn or from Wynn Resorts.

6 MR. PEEK: I'm sorry, I --

7 THE COURT: Can you not hear me? Is it selective  
8 hearing today?

9 MR. PEEK: I'm not hearing you. I apologize, Your  
10 Honor.

11 THE COURT: It's okay.

12 THE COURT RECORDER: Maybe I should give him  
13 headsets.

14 THE COURT: No, don't.

15 MR. POLSENBERG: We did that with Allen  
16 Liechtenstein the other day.

17 (Off-record colloquy re headphones)

18 MR. POLSENBERG: So I imagine a lot of the issues  
19 we've talked about today and even other issues in the case we  
20 can -- the Court nods.

21 THE COURT: So who's doing the first draft?

22 MR. PISANELLI: Of?

23 THE COURT: An order for the appointment of a  
24 special master.

25 MR. POLSENBERG: I think we ought to have a meet and



1 confer and figure it out.

2 MR. BICE: That would be fine, Your Honor. I mean,  
3 it seems like at least our motion -- our current motion is  
4 being granted in part.

5 MR. POLSENBERG: Well, I'm not agreeing to that.

6 MR. BICE: Okay. Well --

7 THE COURT: Well --

8 MR. POLSENBERG: I'll agree to a special master or a  
9 hearing --

10 THE COURT: So wait. Remember, one at a time.

11 MR. POLSENBERG: Oh. I'm sorry.

12 THE COURT: One at a time.

13 MR. POLSENBERG: Mr. Bice, I apologize.

14 THE COURT: Mr. Bice, would you finish, please.

15 MR. BICE: WE have a current motion pending. I  
16 understand they want to resolve that motion by the appointment  
17 of a special master. We will be happy to meet and confer with  
18 them, and if we can't agree on who that would be, typically my  
19 experience -- I'm not sure I've had any with this particular  
20 Court, but if the parties can't agree, they submit a list of  
21 three names --

22 THE COURT: Three names.

23 MR. BICE: -- and the Court picks who it's going to  
24 be.

25 THE COURT: I need CVs and rates that come with

1 three names.

2 MR. BICE: Understood.

3 MR. POLSENBERG: Exactly what we were thinking.

4 MR. BICE: Yeah. So we'll sit down and we will do  
5 that process promptly.

6 THE COURT: Yeah. We have done this before.

7 MR. BICE: Now I'll turn it over to Mr. Pisanelli to  
8 address the depo, since I think that's related to the special  
9 master issue.

10 MR. URGAS: There's a miscommunication.

11 MR. POLSENBERG: Yeah. Your Honor --

12 THE COURT: What is the miscommunication?

13 MR. POLSENBERG: -- I had just suggested that Mr.  
14 Peek would be involved because I think it would -- that this  
15 could extend to discovery issues throughout the case.

16 THE COURT: If you guys agree to that scope.

17 MR. POLSENBERG: Yeah.

18 THE COURT: I'm not ordering that, though.

19 MR. PEEK: Yeah. That's what I just -- just  
20 wondering if that's what Mr. Polsenberg is suggesting is that  
21 the special master be somebody appointed for all depositions  
22 that would occur after the resolution of the disqualification  
23 and the recommencement of the proceedings.

24 MR. POLSENBERG: Yes.

25 THE COURT: I am waiting to hear exactly what the

1 scope is, because I made the suggestion because I saw two  
2 intersecting areas, the issue with the Elaine Wynn deposition  
3 that if it wasn't about privilege she'd be sitting in there  
4 and watching everything we do and we'd be moving on. And the  
5 other issue has to do with the ESI issues with the documents.  
6 ESI. You're familiar with that? Yeah?

7 MR. PEEK: I heard that, Your Honor, yes.

8 MR. PEEK: Heard that before. The ESI issues with  
9 the review and retrievable and sequestering of any potentially  
10 privileged or personal information of Ms. Wynn on that  
11 information before we begin the process of have a review done  
12 by Wynn for their privilege [inaudible]. So that was my  
13 intent. If you want to expand it, that's fine. I think  
14 it's --

15 MR. POLSENBERG: I'm suggesting it also go to review  
16 of confidential and highly confidential information. And  
17 we've had trouble in other depositions, as well.

18 THE COURT: I'm not saying what the scope is.

19 MR. POLSENBERG: Right.

20 THE COURT: What I'm saying is you should meet and  
21 confer. And it sounds like you'd like Mr. Peek to join you.  
22 And you should talk. And if you can reach an agreement on  
23 scope, that's lovely. If you can't reach an agreement on  
24 scope, I'll fix it for ya.

25 MR. POLSENBERG: Right. Right. As long as I'm

1 clear I think Mr. Peek has to be involved, it's not that I  
2 want him to join us.

3 MR. PEEK: I won't take that as a left-handed  
4 insult, Your Honor, but I appreciate Mr. Polsenberg's concern  
5 about my welfare and well being.

6 I don't know if Mr. Bice was actually desirous of  
7 having a special master for the entire proceeding, or just for  
8 the limited purpose of Elaine Wynn. So I would prefer that  
9 they go forward for their limited purpose of Elaine Wynn's  
10 issues -- or, excuse me, Wynn Resorts' issues related to  
11 Elaine Wynn and Quinn Emanuel. If we want to address the  
12 issue of a special master at a later time, I'm happy to  
13 address it at a later time. But I think right now it's  
14 premature to do that.

15 MR. BICE: We actually -- as much as it pains me --

16 MR. POLSENBERG: He doesn't even --

17 THE COURT: We're going to mark down he agrees with  
18 Steve Peek.

19 MR. POLSENBERG: He doesn't even have to finish the  
20 sentence.

21 MR. BICE: I don't even have to finish the sentence.

22 We have two -- we have two issues pending before the  
23 Court today that we want to get resolved. I do not want this  
24 process to become all bogged down in trying to anticipate  
25 future issues and future disputes and who should be handling

1 them. We're seeking a special master on this issue about  
2 Elaine Wynn, and we'll include the deposition of Elaine Wynn  
3 in that. And if somebody wants to later seek additional  
4 appointments of a special master over other issues, they have  
5 the right to do that at any point in time.

6 THE COURT: So what I'm going to tell you to do is  
7 what I said already, is you guys are going to talk, you're  
8 either going to reach an agreement or you're not. If you  
9 don't reach an agreement, I'm going to resolve the issue for  
10 you. I understand your position. Anything else?

11 MR. PEEK: I'm not going to be involved, Your Honor.

12 THE COURT: Did you want to talk --

13 MR. POLSENBERG: And I understand your position.  
14 And as long as Mr. Peek realizes the nature of momentum, if we  
15 agree and he doesn't want to have input, the Court's probably  
16 not going to appoint a different hearing master for other  
17 things.

18 THE COURT: I have in other cases appointed more  
19 than one special master.

20 MS. SPINELLI: You have into s case. There is a  
21 special master with the Okada parties in the validation set.

22 THE COURT: What?

23 MS. SPINELLI: We already have --

24 MR. PEEK: On the validation set.

25 THE COURT: Yeah. That's on ESI.

1 MR. PEEK: So maybe we should use that one, Your  
2 Honor.

3 MR. POLSENBERG: Maybe.

4 MR. PEEK: So Mr. Polsenberg's suggesting that  
5 you've already done it once?

6 MR. POLSENBERG: I'm just simply stating the laws of  
7 physics.

8 THE COURT: I'm sitting down now.

9 MR. BICE: Yes. Your Honor, our only issue is we  
10 want to make clear that the Court's order is being modified,  
11 because --

12 THE COURT: Which order?

13 MR. BICE: The order that they claim allows them to  
14 engage this third -- what they're characterizing as a third-  
15 party taint team that is answerable to them. We want to make  
16 sure that that order is modified to reflect the fact that it  
17 is being substituted with a special master to oversee that  
18 process.

19 MR. POLSENBERG: No.

20 THE COURT: That's incorrect, Mr. Bice.

21 MR. POLSENBERG: Yeah.

22 THE COURT: On my order of August 10th, 2016, I have  
23 a provision that if the parties agree they want to have a  
24 special master, that we're going to have a special master. It  
25 sounds like you've reached an agreement on that issue, so

1 there's going to be a supplementation to this order and  
2 modification of it to some extent to reflect this special  
3 master will coordinate the review instead of a third party.  
4 But the order contemplated that it was possible -- possible --  
5 I don't -- highly unlikely, but possible that you would reach  
6 an agreement.

7 MR. BICE: Except I guess that raises an additional  
8 question with us. Has a third party already been reviewing my  
9 client's privileged information?

10 THE COURT: They told me when I asked the question  
11 the person they selected had been Justice Rose and that  
12 Justice Rose had not yet begun the review.

13 Is that right?

14 MR. ZELLER: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. BICE: So there has been no other third parties  
17 that they have given our documents to? See, this is -- this  
18 is the problem, Your Honor. They don't want this order  
19 modified because they want the order to stand that it somehow  
20 authorized them to engage in that process.

21 THE COURT: Okay.

22 MR. BICE: We disagree with that, and we don't  
23 accept -- again --

24 THE COURT: Mr. Bice, if you want to argue later  
25 about any conduct they've done between the date I entered the

1 order on August 10th and the day I've said we'll have a  
2 special master perform those functions as the third-party  
3 reviewer and perhaps other scope issues because there has  
4 been an agreement of the parties, I will be happy to address  
5 those issues that occurred in the three-week period between  
6 August 10 and September 2.

7 MR. BICE: Or anything that preceded that point in  
8 time.

9 THE COURT: Sure.

10 MR. BICE: Yes. All right. Thank you.

11 MS. SPINELLI: So, Your Honor, just so that -- the  
12 reason why Mr. Bice is asking is because we did with Advance  
13 Discovery do the imaging of the electronic devices on Monday,  
14 and the next step after the file listings were given to our  
15 respective experts is the search of the review. And we want  
16 to make sure that the review by Ms. Wynn's team does not  
17 happen. Instead, it'll be by the special master, which I  
18 think is what you're saying at this point, because --

19 MR. ZELLER: Your Honor --

20 THE COURT: Mr. Zeller.

21 MR. ZELLER: -- Ms. Spinelli and I discussed this.  
22 Pending resolution of this motion, which apparently now is  
23 going to be resolved because, as the Court pointed out, this  
24 which contemplated that if the parties agreed to a special  
25 master -- this is -- there's been nothing that's been



1 reviewed, nothing has been provided by Advance Discovery to  
2 anybody. So I think it goes back to the Court's point about  
3 we should meet and confer to determine what the next steps  
4 are, how we're going to handle it, and then the appointment of  
5 the special master.

6 MS. SPINELLI: Perfect. That was [inaudible] status  
7 quo remain.

8 THE COURT: I'm so glad you guys were able to have  
9 an intelligent conversation.

10 MR. POLSENBERG: You know, I thought -- I thought we  
11 resolved it. I didn't realize it would take so long.

12 THE COURT: Welcome to Business Court, Mr.  
13 Polsenberg.

14 MR. POLSENBERG: Thank you, Your Honor.

15 THE COURT: Are we going to talk further about the  
16 deposition, or are you going to include the description as  
17 part of the scope of this issue for the special master?

18 MR. PISANELLI: Well, both. Right?

19 THE COURT: I'm listening.

20 MR. POLSENBERG: Yeah, we are.

21 THE COURT: Yeah, we are what?

22 MR. POLSENBERG: Including the deposition as part  
23 of --

24 MR. PISANELLI: But also has his motion. He wants  
25 to talk to me about his motion.

1 MR. POLSENBERG: I have somewhere I need to be on  
2 Sunday. Just as long as we realize that.

3 THE COURT: Yeah. Get you there.

4 MR. POLSENBERG: Your Honor, forgive me, but I don't  
5 understand why we're hearing the motion?

6 THE COURT: I'm waiting for Mr. Pisanelli to tell me  
7 what he thinks we haven't covered, and then I'm going to tell  
8 him whether I think we've covered it already or whether I need  
9 to hear from your side.

10 MR. POLSENBERG: Okay.

11 THE COURT: But I want to let him tell me he thinks  
12 we've missed, because there may be something that was really  
13 obvious that I missed because that's how life is sometimes.

14 MR. PISANELLI: And, of course, maybe it's really  
15 obvious and I'm the only one who's missed it. But as I'm  
16 hearing the debate, we have a process put in place for the  
17 continuation of the deposition, hopefully with a better  
18 product and result than we got the first time. That does now,  
19 however, address what the rules will be on a going-forward  
20 basis for this deposition. In other words, it would seem to  
21 me if I'm the special master first thing I would want to do as  
22 it relates to this deposition is read this briefing, read the  
23 transcript, and hear what Your Honor had to say about it,  
24 rather than say that we're starting --

25 THE COURT: Generally when I appoint a special

1 master, Mr. Pisanelli, I expect them to be bound by the order  
2 that I enter that gives them specific guidance as to what is  
3 expected of them. If what you're asking me is is there some  
4 rules related to the whistleblower status and Ms. Wynn's  
5 refusal to participate in the deposition to some degree, I'm  
6 not characterizing how big it is, I am not making that  
7 decision today.

8 MR. PISANELLI: No. That's not what I'm asking at  
9 all, Your Honor.

10 THE COURT: Okay.

11 MR. PISANELLI: So our motion was based upon the  
12 simple concept -- let me put this up just so you can see.

13 THE COURT: You have the easel? I know you wanted  
14 an easel. I can't read that.

15 MR. PISANELLI: I know that. You wouldn't read it  
16 on an easel, either. May I approach? That's what it is.

17 THE COURT: Counsel, you're welcome to all move over  
18 and look, if you want. This is Court's Exhibit 1. This is a  
19 list of Elaine Wynn's refusal to and instructions not to  
20 answer at the deposition.

21 MR. PISANELLI: It's a demonstrative, Your Honor.  
22 It's not actual evidence.

23 THE COURT: Dulce's going to mark it as Court's  
24 Exhibit 1 so if anybody ever wants to know what Mr. Pisanelli  
25 handed me and I've now handed to Dulce --

1 MR. POLSENBERG: Your Honor, before Mr. Peek looks  
2 at it I need to make sure that it's something Mr. Peek can  
3 see.

4 MR. PEEK: Your Honor, he doesn't have a right --  
5 this is an open court.

6 THE COURT: It is open court.

7 MR. PEEK: It's an open court, Your Honor. Mr.  
8 Polsenberg doesn't have the right to do that, respectfully.

9 MR. POLSENBERG: I have the right to object.

10 MR. PEEK: He can object, but this is open court.

11 THE COURT: It is an open court. Anybody in the  
12 world can come sit in my courtroom anytime they want and watch  
13 whatever they want.

14 MR. PEEK: So may I have the Court's exhibit, Your  
15 Honor, to look at?

16 THE COURT: Yeah.

17 MR. PEEK: Thank you.

18 THE COURT: You're welcome to borrow mine.

19 MR. PEEK: Thank you.

20 (Pause in the proceedings)

21 THE COURT: This is part of why people frequently  
22 agree to go to arbitration, so that their dirty laundry does  
23 not get aired in courts of law. This is not necessarily  
24 privileged. I understand you think it's confidential or  
25 highly confidential, but this is a listing of instances where

1 a question was asked and the witness didn't answer for one of  
2 many reasons.

3 MR. ZELLER: Yes, Your Honor. But the Court is  
4 aware that there is an automatic 20-day provision where it's  
5 highly confidential. You'll also recall on occasions which I  
6 even attempted to say what occurred, what was asked even when  
7 there was no answer at say Kim Sinatra's deposition --

8 THE COURT: So do you want me to seal the court  
9 exhibit? Is that what you're asking me to --

10 MR. ZELLER: I think it should be taken down.

11 THE COURT: No.

12 MR. ZELLER: It's a violation of the protective  
13 order.

14 THE COURT: Mr. Zeller, no. So if you'd like me to  
15 seal Court's Exhibit 1, which is going to stay here after that  
16 board leaves, then I will seal Court's Exhibit 1 if they're  
17 asking me, because you haven't yet had a chance to review and  
18 make a confidential or highly confidential designation.

19 MR. ZELLER: Yes.

20 THE COURT: Okay. So, Dulce, can you seal Court's  
21 Exhibit 1 pending the parties' decision as to whether under  
22 their stipulated protective order they're going to identify  
23 anything as confidential or highly confidential.

24 MR. PEEK: It's only sealed from the public --

25 THE COURT: Right.

1 MR. PEEK: -- not from the parties.

2 THE COURT: Well, that's going to go in a sealed  
3 envelope in the vault. That's how --

4 MR. PEEK: Parties are entitled to have it, though?

5 THE COURT: I haven't said that yet. But haven't  
6 not said that yet.

7 MR. PEEK: Thank you.

8 THE COURT: So I have a chart that's being used for  
9 illustrative purposes; right?

10 MR. PISANELLI: Yes.

11 THE COURT: Okay.

12 MR. PISANELLI: And so you know, on the highly  
13 confidential issue the mandatory period expired already. They  
14 haven't designated anything.

15 MR. ZELLER: That's not correct. It expires on  
16 Tuesday.

17 MR. PISANELLI: It expired two days ago. But  
18 whatever.

19 THE COURT: You guys can fight over how to count  
20 days, and if you want to hire somebody, Tom Beatty is the one  
21 who counts days best in town.

22 MR. PISANELLI: We used to have an associate who  
23 wrote his paper in law school on counting days in a rule, an  
24 entire thesis on that. Can you imagine? He should have been  
25 discovery commissioner.

1           So, in any event, on this debate of whether it's  
2 highly confidential or whether Mr. Peek gets to insert his  
3 discovery requests into this debate, these are a list of  
4 subject matters just like we would be looking at in a  
5 privilege log and giving you our frustration of what happened  
6 in this deposition. That's what we're talking about here.

7           THE COURT: Okay.

8           MR. PISANELLI: So the long and short of it is, Your  
9 Honor --

10          THE COURT: I gathered the frustration by the tone  
11 of your brief.

12          MR. PISANELLI: Yeah. She -- Ms. Wynn intentionally  
13 and unilaterally obfuscated many, many of these topics by  
14 appointing herself as the judge of what she would testify to  
15 or not. And counsel participated in that obfuscation, both  
16 actively and passively. The active part was the coaching,  
17 which we pointed out to you, and the assertion of privilege.  
18 We've heard some argument and debate about privilege, how that  
19 was supposed to be a full brief before you, and that's not  
20 what we're complaining about, Judge. We're not talking about  
21 the privilege of whether she has one because she used the  
22 company computers, we're talking about assertion of a  
23 privilege as a way to obfuscate a deposition on questions  
24 like, did you tell a third party; objection, attorney-client  
25 privilege if you told the government. We know that there's no

1 good-faith foundation for an assertion of that sort, so that's  
2 part of our frustration.

3           The other part of the frustration, of course, was  
4 the passive participation of Quinn Emanuel in this type of  
5 obfuscation. We know from the Luinguisa [phonetic] case, Your  
6 Honor, that that under Nevada law, even though this was the  
7 United States District Court interpreting Nevada law is very,  
8 very clear of what the obligation of an attorney in Nevada is  
9 when they are representing a client who is violating discovery  
10 rules. Court there said, quote, "It is not enough for an  
11 attorney to refrain from instructing a client not to answer.  
12 In fulfilling his or her duties the attorney as an officer of  
13 the court must take some affirmative step to ensure the  
14 deponent complies with the deposition rules."

15           You saw, if you had the opportunity to read through  
16 the transcript, Your Honor, not only did counsel sit there  
17 silently as Ms. Wynn acted like the judge and her own special  
18 master, I even prompted, Mr. Zeller, are you going to do  
19 something about this, please, Mr. Zeller, are you going to  
20 instruct her that she has to answer my questions. And it was  
21 either, you have her answer, or silence, or, I'm not going to  
22 talk about during this deposition.

23           So I don't know what the motivation was. I don't  
24 know. There's a lot of different theories we can come up  
25 with. But what is clear is that we had counsel in the room



1 witnessing their client abusing the rules of discovery and  
2 nothing happened about it.

3           So, Your Honor, we see in the opposition some  
4 arguments about scope. Let me take a few minutes to talk  
5 about that. Recall that this Court denied Elaine Wynn's  
6 motion for a protective order. She came in here saying that  
7 she shouldn't be deposed because she's being outed, their  
8 word, as a whistleblower. And the Court said that that was an  
9 issue for another day, full briefing not on order shortening  
10 time and we're going to talk about Sarbanes-Oxley, et cetera.  
11 But Your Honor was very clear that what we needed was the  
12 factual background of the nature of the information and what  
13 was done with the information, the sources of the information,  
14 et cetera. Mr. Zeller was none too happy when Your Honor was  
15 describing what it was that was going to happen at the  
16 deposition, but you were very clear with it, and the record is  
17 very clear. You said, we're going to have this deposition and  
18 it's going to apply to all of the hearings that are coming up,  
19 the preliminary injunction hearing, the sanctions hearing, and  
20 the disqualification hearing, all three of them.

21           THE COURT: But that's all it's supposed to cover.

22           MR. PISANELLI: That's right. But now in connection  
23 with all three of those in order to find out, for instance, on  
24 the privilege issue for disqualification we needed to know  
25 what information she possessed, when -- what was the source of

1 that information, and what did she do with it, in other words,  
2 who did she tell. Same analysis goes for this Sarbanes-Oxley  
3 issue. Without addressing whether she gets that protection or  
4 not, whether there even is one for a nonemployee or not, we  
5 still needed the foundational questions of who she spoke to,  
6 what the source of her information was, what she did with the  
7 information, the timing of the information, the timing of her  
8 relationship with the company, all of those foundational  
9 questions. And you'll see from the chart that I've given you  
10 she was simply saying no to all of those foundational  
11 questions. Same on confidentiality. How can we possibly know  
12 whether she is giving away confidential information either in  
13 the letters to Ernst & Young or otherwise? How can we know if  
14 she was outed if we don't know what information she possesses,  
15 what the source of the information was, and what she did with  
16 it? Those were the three themes on the three different  
17 topics, basically the same filter for the three different  
18 hearings that we used in our applying our analysis and  
19 examination for Ms. Wynn.

20 Now, in the motion we have a lot of attention spent  
21 to pointing out what a jerk I am, how I conducted myself in  
22 other depositions, and how I conducted myself in this  
23 deposition. But the most important thing that I looked for in  
24 this opposition, this debate, was what are they really  
25 complaining about by way of scope in this deposition.

1 Because, recall, Your Honor, again, I don't know if you read  
2 the entire tsp, I can't recall -- and I read the transcript as  
3 recently again as last night. I can't recall more than two  
4 times Mr. Zeller saying that my question was beyond the scope.  
5 And whether it was or it wasn't is not my point here. But he  
6 objected twice, to two questions, and we are not even moving  
7 on those particular issues. We are moving predominantly on  
8 the misbehavior and the obfuscation of Ms. Wynn. You can, as  
9 Your Honor knows as well as anybody, sit in a deposition on  
10 your hands, have nothing to say, let the witness run wild or  
11 even answer the questions, and then come in here complaining  
12 that somehow Pisanelli was outside the bounds of what the  
13 scope was for determining her information, her sources of  
14 information, and her disclosure of information. So those  
15 really are, I would say, untimely and hollow complaints, since  
16 we didn't here anything during the deposition.

17           So the law is worthy of just a couple of highlights  
18 here in this debate. Ms. Wynn came in, as I said, and  
19 appointed herself as the authority in the room. We know, Your  
20 Honor, that -- and this is a quote from the GMAC case we have  
21 in our papers -- quote, "The rules do not permit a deponent to  
22 interpose objections himself. They do not permit evasive or  
23 uncooperative answers merely because a deponent is  
24 dissatisfied with a question." Isn't that the only issue we  
25 need to know of just how out of control Ms. Wynn was and how

1 silent her lawyer was when she was making thing choices on her  
2 own? That is part of our frustration that led to the tone of  
3 our brief.

4           The other issue of law that governs what we're doing  
5 here, of course, is Rule 30(d)(1), which says very clearly,  
6 and the key word is the first word, "Instructing a deponent  
7 not to answer shall only be allowed when necessary to preserve  
8 a privilege, to enforce a limitation directed by the court, or  
9 to file a motion at paragraph (3)." So instructing the  
10 witness is the first thing we look for. That didn't happen.  
11 She was doing it on her own. And then we would have looked,  
12 even if there was an instruction, was it an instruction on a  
13 privilege? Most of the time not, except for some frivolous  
14 ones in connection with third-party disclosures. And even  
15 then, as I just said, instructions to enforce a limitation,  
16 that's the scope debate, those came up in the opposition,  
17 those didn't come up in a deposition.

18           So, Your Honor, the consequences are simple, all  
19 right. We're not asking to strike her answer at this point,  
20 we're not asking for anything that's draconian. We're asking  
21 Your Honor to take a look at these all foundational questions  
22 so that we can have a fulsome debate on this Dodd-Frank,  
23 Sarbanes-Oxley issue and so we can have a fulsome debate on  
24 whether she obtains any privilege for the information she  
25 wrongfully copied when she was in the offices, both her hard

1 drives and at least one other employee, to see if there is any  
2 privilege that she can assert from using the company computers  
3 for her own personal information, including communicating with  
4 her lawyers. I can't have that fulsome debate with you unless  
5 and until I get all of the foundational questions from her,  
6 including who her lawyers are. And just because someone has  
7 the Esquire at the end of their business card doesn't mean  
8 they're acting as a lawyer. I need to know all the members of  
9 this team so that when I finally do get a privilege log I can  
10 challenge it with some level of education and information.  
11 Saying no to the most basic foundational questions was  
12 abusive. She shouldn't have been saying no in the first  
13 place. Her lawyers should have been speaking up.

14           And so we're asking for the very simple order as we  
15 go in with the special master is to say that the topics like  
16 the ones in your hand right now are to be answered because  
17 they are foundational, they are not going to the heart of any  
18 particular privilege or statutory right not to answer. And we  
19 ask Your Honor again to modify how much time we have left of  
20 the three and a half hours we used. An extraordinary amount  
21 of it was wasted on me doing an analysis, offering questions  
22 only to get this stonewall, trying to push her, trying to  
23 persuade her lawyer, trying to come at it another angle only  
24 to get stonewalled. My valuable time, only seven hours, was  
25 eaten up by obfuscation, and it shouldn't count against me.

1 We should start this deposition anew, and it should be on Ms.  
2 Wynn's dime that we have to start anew, not on our clients.  
3 And so we'd ask for an award of attorneys' fees, as well.

4 THE COURT: Okay. Mr. Polsenberg, did you want to  
5 say anything?

6 MR. POLSENBERG: Yes. Thank you, Your Honor. I  
7 think one of the -- before I get to the substantive, let's go  
8 over form in a deposition. I think what Mr. Pisanelli is  
9 arguing is that Mr. Zeller should have instructed her not to  
10 answer. At one point --

11 THE COURT: Or instructed her it's not appropriate  
12 to not answer at this stage.

13 MR. POLSENBERG: I understand. But I think the  
14 places where she -- look, where she didn't answer where she  
15 was talking about fear of retaliation, that's my Sarbanes-  
16 Oxley, Dodd-Franks argument. And they may disagree with it,  
17 but that doesn't mean --

18 THE COURT: The attorney who referred her to Quinn  
19 Emanuel is our Sarbanes-Oxley?

20 MR. POLSENBERG: No. The column that says for fear  
21 of retaliation.

22 THE COURT: No. I've got -- that one's in the for  
23 fear of retaliation column.

24 MR. POLSENBERG: Well, I --

25 THE COURT: Who the attorney was that referred her

1 to Quinn Emanuel.

2 MR. POLSENBERG: Yeah. Well, that -- no. The  
3 privilege that was asserted there, there was a privilege  
4 asserted there, and that was attorney-client privilege. And I  
5 agree. That is attorney-client privilege. I don't think they  
6 get to know the role of each lawyer on the team. I don't  
7 think -- and this is the debate I've had a lot of times with  
8 Judge Herndon. You don't get to know the circumstances where  
9 somebody referred you to a lawyer, because then you find out  
10 what the legal problem is that the person had. You don't get  
11 to know what every lawyer is doing, because maybe what that  
12 lawyer is doing is something even lawyers unrelated to this  
13 case they don't get to know the role of those lawyers. But  
14 this is my -- these are my privilege arguments. And for them  
15 -- they're coming in here now in the middle of the deposition  
16 and saying, okay, overrule all of Dan's legal arguments about  
17 attorney-client and about Sarbanes-Oxley and Dodd-Franks.

18 THE COURT: So how am I going to ultimately be able  
19 to evaluate your claim that testimony related to her  
20 investigation, communications, and then her subsequent  
21 comments to either Ernst & Young or some other entity -- how  
22 am I going to ever find out the factual basis if I let her  
23 tell me she's not going to tell them anything because she's  
24 afraid somebody will retaliate against those people?

25 MR. POLSENBERG: Well, she -- yeah. She has said --

1           THE COURT: So how am I ever going to get it? So  
2 I'm never going to get it, so I should just skip ahead and do  
3 your motion and say, Ms. Wynn, you're not entitled to any  
4 protection, or, Ms. Wynn, you are entitled to some protection  
5 and this is the limit?

6           MR. POLSENBERG: Two parts.

7           THE COURT: Because if she's going to be this  
8 noncooperative --

9           MR. POLSENBERG: Well, if you want us to assert the  
10 privilege -- if she's saying, look, I fear retaliation, and at  
11 one point Jim turns to Mike and says, are you going to  
12 instruct her to answer. And in fact what we're thinking is we  
13 don't need to instruct her to answer. The question is whether  
14 we need to instruct her not to answer when she has already  
15 said she's not going to answer. These are issues that we  
16 think the privilege applies to.

17           Now, Mr. Pisanelli says that I had frivolous  
18 objections on third-party disclosure. That is my Sarbanes-  
19 Oxley argument. I mean, I've said that before when we were in  
20 here. Ms. Wynn is saying that she didn't get this information  
21 that she turned over to the audit committee and to Ernst &  
22 Young from highly confidential discovery material in this  
23 case.

24           THE COURT: Correct.

25           MR. POLSENBERG: She's said that she --



1 THE COURT: That's what she's saying.

2 MR. POLSENBERG: Right. And she's saying she got it  
3 from the Gaming Control Board testimony and she got it from  
4 talking with people. And that was -- and she even explained  
5 that that was the new development, that she had read this  
6 testimony. Even though the testimony wasn't new, it was new  
7 to her. So that's --

8 THE COURT: And that was Mr. Poster's testimony  
9 before Gaming Control.

10 MR. POLSENBERG: Yes. And so now -- so what they  
11 want to know is who the people are that she talked to. And I  
12 think that's privileged, first point.

13 THE COURT: So basically you believe that it's  
14 appropriate for her not to have to answer most of the  
15 questions that were posed by Mr. Pisanelli that she chose not  
16 to answer because of your legal assertion that you are making  
17 that that is protected communication or information?

18 MR. POLSENBERG: Right.

19 THE COURT: Okay.

20 MR. POLSENBERG: And I talked to Counsel before -- I  
21 couldn't make the depo, because I was in Dallas. But I talked  
22 to Counsel before this, and we went over what things we were  
23 going to object to and instruct her not to answer. And she  
24 chose not to answer. The fact that we didn't say, okay -- and  
25 we're going on and also saying --

1 THE COURT: So then the deposition is a waste of  
2 time, and I just need to have a hearing without a factual  
3 basis and make a determination as to whether it applies or  
4 not.

5 MR. POLSENBERG: That is kind of what I said last  
6 time.

7 THE COURT: I know. But I didn't realize we would  
8 have a witness who took upon themselves.

9 MR. POLSENBERG: Look, if I were there, I'd have  
10 objected. She wouldn't have even got the chance to say, I'm  
11 not answering because I fear retaliation; because I would have  
12 said, no, this is privileged stuff. There are my -- yes, my  
13 assertions are broad, which is why I think even before the  
14 depo takes place we should address my legal assertions as to  
15 what is privileged/protected/not subject to discovery.

16 THE COURT: Okay. So you forced my hand.

17 MR. POLSENBERG: And I don't --

18 THE COURT: It's okay.

19 MR. POLSENBERG: I don't mean it as forcing --

20 THE COURT: It's okay, Mr. Polsenberg.

21 MR. POLSENBERG: I know. But I don't mean it as  
22 forcing your hand. I honestly --

23 THE COURT: It's okay. I --

24 MR. POLSENBERG: -- said before --

25 THE COURT: My preference is because of the way the

1 Nevada Supreme Court deals with issues related to privilege  
2 that you guys take writs on, to make sure the record they have  
3 before them is a good record.

4 MR. POLSENBERG: Yeah.

5 THE COURT: I'm not going to get a good record here  
6 from the witness in the deposition.

7 MR. POLSENBERG: No. Because my argument is all  
8 these predicate questions -- and I understand why Counsel's  
9 asking them and I understand his argument, but I think even  
10 those questions are subject --

11 THE COURT: All right. I understand what you're  
12 saying.

13 MR. POLSENBERG: Yeah.

14 THE COURT: So are you going to file another brief,  
15 or are we going to rely on what you filed already?

16 MR. POLSENBERG: I think I have to file another  
17 brief.

18 THE COURT: And when are you going to do that?  
19 Because this has got to be decided soon, and I am not going to  
20 do it on an OST, which means I'm going to set it today before  
21 you leave out of this room.

22 MR. POLSENBERG: Okay.

23 MR. PISANELLI: So here's our issue.

24 THE COURT: I'm not going to make you waste your  
25 time anymore. Sorry.

1 MR. PISANELLI: What do you mean?

2 THE COURT: I'm not going to make you go back to the  
3 deposition and waste your time until I rule on this issue.

4 MR. PISANELLI: On whether she has protections under  
5 Sarbanes-Oxley, et cetera?

6 THE COURT: And was [inaudible] and  
7 [unintelligible].

8 MR. PISANELLI: Okay. You know, I do think,  
9 however, Your Honor, as we move forward in this case and on  
10 this process that we have a Court order that she's obligated  
11 to answer these foundational questions. Because you know how  
12 this is going to become circular, that there can't be a  
13 sanction against her, there can't be any adverse rulings  
14 against her because she never violated a Court order. That  
15 was the point of bringing this to you now, so that the next  
16 session of the deposition would not be wasteful. But if I  
17 can --

18 THE COURT: I've decided that the next session of  
19 deposition is going to be wasteful, so I'm going to do the  
20 determination on the scope, and then I'm going to let you do  
21 that deposition, and we're going to do it fairly quickly.

22 So how many days do you need on Swarovski?

23 MR. PISANELLI: Three.

24 THE COURT: And which three days did you want?

25 MR. PISANELLI: I thought we sent that already.

1 Did we send that?

2 THE COURT: I know. This is why I'm asking you. I  
3 set you to start on September 26th at 1:00 o'clock. If you're  
4 telling me you're going to be done on September 28, then I'm  
5 going to see Ms. Wynn in a hearing for the preliminary  
6 injunction and disqualification issues on 9/29 and 9/30.

7 MR. POLSENBERG: Judge, I'm sorry. I hate to sound  
8 like Mr. Peek, but I'm having trouble hearing.

9 THE COURT: 9/29 and 9/30.

10 MR. POLSENBERG: And that's on what?

11 THE COURT: I haven't decided yet. I'm trying to  
12 negotiate with him on dates on another case.

13 MR. POLSENBERG: Very good. Thank you, Your Honor.

14 MR. PISANELLI: I'm fine with that. I have learned  
15 a long time ago you tell a lawyer be done by this time and the  
16 lawyer's going to be done by that time, so --

17 THE COURT: Well, you and Mr. Bailey are pretty good  
18 about doing it. I'm not worried about you guys.

19 So then I'm going to pencil in.

20 All right. Mr. Polsenberg, my goal is to have these  
21 issues decided and Ms. Wynn complete her deposition in the  
22 near term. I have three weeks plus a few to get everything  
23 ready. So you want to file a supplement to the brief you've  
24 already filed and characterize it a new brief, or are you just  
25 going to call it a supplement? It was your motion for

1 protective order I think we called it before.

2 MR. POLSENBERG: I'd rather do a new one.

3 THE COURT: And when are you going to file it? I  
4 have my 2016 calendar here, and I've got a date I'm shooting  
5 for to have everything done. You don't get holidays.

6 MR. POLSENBERG: I only work on days that end in Y.  
7 How much time do you want to give me, Your Honor?

8 THE COURT: None.

9 MR. POLSENBERG: Okay. Can we compromise on the  
10 12th, then?

11 THE COURT: No. That's too late. Because if you do  
12 that, then I don't get full briefing on the opposition. And  
13 while I'm willing to give you less time on your reply brief, I  
14 am not willing to sacrifice the time Mr. Bice and Mr. Pisanelli  
15 are going to take on the opposition.

16 MR. POLSENBERG: I understand that, you know. But  
17 I'm juggling you and Judge Sturman at the same time, Judge.  
18 And I really apologize. It's not your problem, but --

19 THE COURT: Well, we both know that my issue's going  
20 to Carson City, so you want to make sure that mine gets done.

21 MR. POLSENBERG: I'm pretty sure about the other  
22 one, too.

23 (Pause in the proceedings)

24 MR. POLSENBERG: Judge, just --

25 THE COURT: Can you hit the 8th?

1 MR. POLSENBERG: Oh, no. I'm in trial on a motion  
2 to strike my answer in another case. And we're in that day.

3 THE COURT: Can we go with your brief you've already  
4 filed?

5 MR. POLSENBERG: Not that we fine-tuned this issue.

6 THE COURT: I don't know that we have fine-tuned it,  
7 Mr. Polsenberg.

8 Mr. Bice.

9 MR. BICE: What additional evidence is there? There  
10 is --

11 THE COURT: Well, there -- I don't know that there  
12 is any additional evidence, because she's not answered the  
13 questions.

14 MR. BICE: Exactly.

15 THE COURT: Which means I don't get to any evidence.

16 MR. BICE: So why do we need to have extra briefs  
17 filed? There is nothing else to address. We know what the  
18 state of her answers are. She's not willing to answer even  
19 whether she spoke to her gardener or not. So we know what her  
20 position is. We've briefed you on what the law is.

21 MR. POLSENBERG: Do you want me to go just with the  
22 reply that I asked for last time?

23 THE COURT: Sure.

24 MR. POLSENBERG: But then I -- and then when do you  
25 want to have the hearing?

1 THE COURT: So if that's -- are you going to need a  
2 supplemental opposition?

3 MR. PISANELLI: If the reply's going to raise  
4 something new.

5 THE COURT: No, no. This comes before the reply.

6 MR. BICE: We want to file a supplemental  
7 opposition, because we essentially got I think a day or two  
8 the last time, yes.

9 THE COURT: Okay. And can you do that --

10 MR. POLSENBERG: Wait. Wait.

11 THE COURT: Can you do that by the 7th?

12 MR. BICE: By the 7th? Yes.

13 THE COURT: And, Mr. Polsenberg, can you give me a  
14 reply by the 14th? It's after your 12th you asked for.

15 MR. POLSENBERG: So we're not going to actually  
16 address these issues, we're going to address my broader-based  
17 issues? I'm good with that, Judge.

18 THE COURT: I've decided to give up on trying to  
19 have a good factual-based record for the Nevada Supreme Court.

20 MR. POLSENBERG: Honestly? I think that's  
21 appropriate.

22 MR. PISANELLI: There's a lot of good stuff.

23 THE COURT: I am sure they will send it back for me  
24 to make an additional factual inquiry like they did in  
25 CityCenter and like they did in Jacobs. But that's okay.



1 So you're going to get me a reply brief on the 14th?

2 MR. POLSENBERG: Yes, Your Honor.

3 THE COURT: Okay. Can we have an argument on the  
4 20th?

5 MR. BICE: Looks like we could. Anybody else have a  
6 problem with that date?

7 MR. CAMPBELL: I just want to say something before  
8 it's all done. That's the one thing I want to do.

9 MR. PISANELLI: What time on the 20th?

10 THE COURT: 8:30.

11 MR. POLSENBERG: I have a motion for new trial at  
12 8:30.

13 THE COURT: Is that that Alverson Taylor case you're  
14 trying to straighten out?

15 MR. POLSENBERG: I already had that one. This is  
16 another one.

17 If we could do it later in the day, I can do it.

18 THE COURT: Can you do it at 1:00?

19 MR. POLSENBERG: Yeah.

20 THE COURT: Okay.

21 MR. POLSENBERG: Thank you, Your Honor.

22 THE COURT: All right. Wait. I'm not done. Can  
23 Ms. Wynn agree to make herself available for deposition if I  
24 order the deposition to be taken at the time of the September  
25 20th hearing on either September 22 or September 23rd?

1 MR. POLSENBERG: With the understanding that if --

2 THE COURT: I may not order her to have her  
3 deposition taken. If I order it, I may order some  
4 restrictions to the scope of her testimony.

5 MR. POLSENBERG: Got it.

6 THE COURT: I may order that there is no  
7 restriction. But I won't know till we have the hearing on  
8 September 20th at 1:00 o'clock.

9 MR. POLSENBERG: I understand that. But also  
10 realize if I disagree I'll probably be asking for --

11 THE COURT: I know what you're going to ask me.  
12 You're going to ask me if you can have a stay, and I'm going  
13 to say, give me an order, and you're going to say, it'll be  
14 here in about an hour, and I'll say then ask me for a stay  
15 when you give me the order.

16 MR. POLSENBERG: Except for the in here within an  
17 hour stuff. I'm not sure --

18 MR. PISANELLI: So here's my problem.

19 THE COURT: You've got lots of problems today.

20 MR. PISANELLI: I do. I do.

21 THE COURT: And I'm trying to get you to take the  
22 deposition before you start the Swarovski thing so that I can  
23 then have time for you to have taken the deposition and  
24 someone on your team to have digested it and decided whether  
25 additional briefing is due before I see you for the hearing on

1 the injunctive relief issue and sanction issues on September  
2 29 and 30th. I do have a plan.

3 MR. PISANELLI: Yeah. I can tell. And you are  
4 addressing, you know, what's in my head about completing my  
5 deposition on these topics that touch on all of those  
6 hearings. Because even if they're correct that Sarbanes-Oxley  
7 gives them some protection --

8 THE COURT: Right.

9 MR. PISANELLI: -- this is from a person who openly  
10 testified she's not an employee. But that's a debate for  
11 another day. I still have topics on the privilege.

12 THE COURT: Right. So we're not fighting about  
13 that. So the question is --

14 MR. POLSENBERG: But she just testified she is.

15 THE COURT: Wait. Stop.

16 MR. POLSENBERG: Thank you, Your Honor.

17 THE COURT: So what's going to happen is I'm going  
18 to either tell you get to take her depo before our hearing on  
19 the 29th and 30th, you get to take her depo and there is no  
20 restriction except your time limit --

21 MR. PISANELLI: Yeah.

22 THE COURT: -- or you get to take her depo but you  
23 are not permitted to ask in the following categories.

24 MR. PISANELLI: Okay. I was more concerned --

25 THE COURT: And then you're going to show up, and

1 she's going to be available one of those two days, and you're  
2 going to take a depo for a day, and then you're going to be  
3 done, and then I'm going to have an evidentiary hearing the  
4 next week.

5 MR. PISANELLI: Okay.

6 MR. POLSENBERG: On?

7 MR. URGAS: That day, is that seven hours?

8 THE COURT: I have -- yes, it is seven hours.

9 I am going to have an evidentiary hearing on the  
10 injunctive relief issues that have already been raised for the  
11 violation of the protective order and on issues related to the  
12 extent we're ready, and I don't know that we will be, to the  
13 disqualification. Because I'm going to break them up because  
14 of the way we've postured this. I don't think we're going to  
15 be ready on the disqualification, but if it is, we'll have the  
16 hearing then, too. But I don't think we'll be ready.

17 MR. POLSENBERG: There's a chance. We'll give it a  
18 shot.

19 THE COURT: Okay.

20 MR. POLSENBERG: I agree, but I see where you're  
21 going.

22 THE COURT: So I've got a couple other motions on.  
23 Let me go through them and see if we've covered them.

24 Somebody wants me to modify the protective order so  
25 that it is clear that Ms. Wynn is not being precluded from

1 discussing information that is not confidential, highly  
2 confidential, or may be marked as confidential. My intention  
3 was never to exclude her from discussing anything that is not  
4 confidential, highly confidential, or in a deposition which  
5 may be designated as confidential or highly confidential.  
6 That was the reason I specifically included depositions in my  
7 language. You're right, it may be inartful. But because of  
8 the mechanism that has been set up under this stipulated  
9 protective order for the designation of confidential and  
10 highly confidential testimony there is a lag period between  
11 the time the deposition is taken and that designation has to  
12 be made. So that was why I specifically said that if you want  
13 to talk about some specific language changes, I'm happy to,  
14 but I don't really think it needs it.

15 MR. PISANELLI: Then I'll sit down.

16 MR. PEEK: Your Honor, that raises the question is  
17 that we submitted a proposed order to you shortening all of  
18 those time frames.

19 MR. PISANELLI: That's a different issue.

20 MR. POLSENBERG: Different issue.

21 MR. PEEK: Well, not entirely different.

22 THE COURT: It's a corollary issue. But --

23 MR. PEEK: Corollary issues.

24 MR. POLSENBERG: Yeah. Let me stick to this issue.

25 MR. PEEK: So, Your Honor, I just --

1 THE COURT: We'll come back to that in a minute. I  
2 will write down "Peek depo time issues."

3 Okay. Mr. Polsenberg, you were talking.

4 MR. POLSENBERG: Thank you, Your Honor. Is this the  
5 motion regarding the TRO, or the protective =

6 THE COURT: Elaine Wynn's motion for protective  
7 order, in the alternative for preliminary injunction to  
8 prevent -- oh, no. That's -- no. It's a different one.

9 I'm on Elaine Wynn's motion to modify, clarify, or,  
10 in the alternative, stay the Court's TRO dated August 12th.

11 MR. POLSENBERG: Yeah. So this is the one having to  
12 do with paragraph 4 with the release of any information.

13 THE COURT: And I did not mean all.

14 MR. POLSENBERG: Okay. And I figured you didn't,  
15 and I've made motions to clarify in front of you before where  
16 you've said, no, here's what I mean, and the problem goes  
17 away.

18 THE COURT: I just told you what I mean. Yeah.

19 MR. POLSENBERG: Thank you, Your Honor.

20 THE COURT: Did what I say make sense?

21 MR. POLSENBERG: Yes.

22 THE COURT: And my problem is and the way I worded  
23 it the way I did is because of this lag time on the  
24 depositions.

25 MR. POLSENBERG: That's cool. Your Honor, I have a

1 really long argument on that. Can I make it anyway?

2 THE COURT: No.

3 MR. POLSENBERG: Oh. If I give it to Mr. Pisanelli,  
4 can he read it?

5 THE COURT: Yes. I'm sure he would enjoy that.

6 MR. PISANELLI: I'm not the reader in the group.

7 THE COURT: Okay. Let's go to your one that you  
8 have a concern about the Wynn parties reviewing the computer  
9 information that Ms. Wynn had on her computers at the office.

10 MR. ZELLER: Right. And just briefly, Your Honor.

11 THE COURT: Can't we have this be part of what the  
12 special master does?

13 MR. ZELLER: As long as everyone agrees the status  
14 quo will be maintained. They've said that they've sequestered  
15 this information.

16 THE COURT: That's what they've told us.

17 MR. ZELLER: Well, but then we sent letters after  
18 the Court's waiver ruling asking them to confirm, and we  
19 didn't get a response. Which is what prompted the motion.

20 THE COURT: Because you guys don't talk to each  
21 other.

22 MR. ZELLER: We tried, Your Honor. We tried.

23 THE COURT: You know, I'm going to make a special  
24 sessions where you guys are going to come in and I'm going to  
25 fix you brownies and root beer floats and you're going to have

1 to do what my DAs and my PDs do, and you're going to act like  
2 you care about each other for a couple hours, and then you're  
3 going to go away and fight again the next day. Because it's  
4 just --

5 MR. ZELLER: I understand, Your Honor. We felt like  
6 we had to protect our client because we were not getting a  
7 response. If it is --

8 THE COURT: I have not currently said that  
9 information is required to be deposited for Advance Discovery,  
10 but I have been advised that that information is being  
11 maintained. Is that still correct, Mr. Pisanelli?

12 MR. BICE: That is --

13 MR. ZELLER: So they're not reviewing it or using it  
14 in the interim. That was our concern.

15 THE COURT: I've already had that commitment from  
16 them, and I don't need any more once they commit to me.

17 MR. ZELLER: Well --

18 MR. BICE: We had this agreement with MTO three  
19 years ago, Your Honor.

20 MR. ZELLER: Well, the concern was is that because  
21 the Court had made the ruling on waiver and said it was going  
22 to wait, however, to determine the scope of that ruling on a  
23 case-by-case -- on a document-by-document basis. So we wanted  
24 to make sure that Wynn Resorts did not interpret as  
25 authorization for them to review Elaine Wynn's potentially



1 privileged information. That's what prompted our question.  
2 We just unfortunately did not get answered, and that's what  
3 prompted our motion.

4 THE COURT: Well, you know, if you guys would ask  
5 more than the afternoon before you filed a motion, we'd  
6 probably get more answers. But it's not just you. It's you  
7 and you and you and you.

8 Okay. So if we could go to what I believe -- is  
9 that your last motion that was on today, or do we have a  
10 preserve highly confidential designation of testimony?

11 MR. PISANELLI: We do.

12 THE COURT: Maddox, Turik, and Poster.

13 MR. PISANELLI: Your Honor, this is a strange motion  
14 to us. We told you a long time ago that it was our  
15 expectations to do two things to the best of our ability. One  
16 is to provide complete transparency to our auditors in light  
17 of the investigation that Elaine Wynn has instigated, and the  
18 second is to follow your orders. And so when we have  
19 information that is designated as highly confidential we came  
20 to you asking for permission to do it without being prejudiced  
21 by having any of the protections afforded by that designation  
22 waived or lost, et cetera.

23 Elaine Wynn on the one hand says she wants to  
24 instigate investigations and claims that we are somehow  
25 inhibiting them, and then complains that we've actually come

1 to you to ask for permission to do so. We've seen an opposite  
2 strategy at play in this case, and that is wreak havoc and ask  
3 for forgiveness later. That's not our style, and that's not  
4 what we're going to do.

5 So we've come to you. We've shown you -- Your Honor  
6 has even said, if it's confidential give it to EY, no  
7 problems, nothing's lost -- that's what I understood -- but if  
8 it's highly confidential --

9 THE COURT: But they're going to disclose. If they  
10 have to disclose, they'll disclose, because they have  
11 different responsibilities than we do, and we cannot force  
12 them to abide by our protective order.

13 MR. PISANELLI: And I understand that. But I want  
14 to make sure that I'm doing everything -- you know, basically  
15 serving these two masters, you being one of them and our  
16 obligation to cooperate with our auditors being the other.  
17 And so the was the point of this. Elaine Wynn coming in and  
18 complaining that we want to give them highly confidential  
19 information doesn't make any sense unless the real strategy  
20 here is to strip the highly confidential information of its  
21 protections because we gave it to the auditor and then the  
22 press release will start cranking up again from her team. So  
23 I can't understand why in the world they'd be objecting to it.

24 THE COURT: So why would I treat this differently  
25 than the last time, which is it maintains whatever protection

1 that it has but Ernst & Young gets to do whatever they're  
2 going to do with it?

3 MR. PISANELLI: Because they have to.

4 THE COURT: Because they're the independent auditors  
5 and that's their job.

6 MR. PISANELLI: And that's what our expectation was.  
7 We just wanted to make sure, as I said, two things, I was  
8 complying with your order and that there would be no argument  
9 that by giving them the highly confidential information that  
10 somehow we are violating an order or that it loses its  
11 designation. Remember, Your Honor, there's been -- here's a  
12 fundamental disagreement I think we have in this debate.  
13 Again I'm having a hard time following Elaine Wynn's position.  
14 But they seem to take the position that. we can do whatever we  
15 want with deposition testimony that we've designated highly  
16 confidential. I don't know that that's true. We don't own  
17 deposition testimony. No party owns deposition testimony.  
18 It's created as a byproduct of this litigation. And so when  
19 information is out there that we think is harmful to us that  
20 we have some rights under the protective order, then we  
21 designate it. That's how it works. But we don't get to just  
22 do whatever we want, just like she doesn't get to do whatever  
23 she wants. So all we've done is come to you for permission to  
24 cooperate with EY and not be prejudiced by that cooperation.  
25 That's it.

1           THE COURT: All right. So my ruling's the same as  
2 it was the last time, unless you have something else to say,  
3 Mr. Zeller.

4           MR. ZELLER: Yes. That's right. This is just a  
5 rehash of what it was before.

6           THE COURT: Isn't it nice that you can anticipate I  
7 will be consistent?

8           MR. ZELLER: Yeah. Exactly. And just to be clear,  
9 however, there is a secondary issue here, which is that they  
10 have asked the Court to designate and approve as highly  
11 confidential examine excerpts of depositions that clearly do  
12 not deserve that treatment. The Court has already expressed  
13 concern about overdesignation previously. When the Court  
14 looks -- and I'm not going to talk about them, because they're  
15 claiming that they're highly confidential. If the Court looks  
16 at, for example, what they're trying to designate from Poster,  
17 it doesn't even remotely meet the standards. And it's just  
18 another example of overdesignation. There is absolutely no  
19 reason why that should be designated as confidential, let  
20 alone highly confidential.

21           THE COURT: Okay. Well, today's not the day to  
22 resolve whether it's confidential or highly confidential. I  
23 understand your position.

24           Is there anything else on your stuff, or can I just  
25 give you a time to report back to me on the special master

1 issue?

2 MR. PISANELLI: That motion granted?

3 THE COURT: Yes, but not the way you wanted. It's  
4 motion granted, but I can't preclude Ernst & Young from  
5 whatever use they're going to make of the materials.

6 MR. PISANELLI: I understand that. I just want to  
7 make sure, as I said --

8 THE COURT: So let's track the language of whatever  
9 the order was I gave last time.

10 MR. PISANELLI: In other words, giving it to Ernst &  
11 Young still maintains all protections?

12 THE COURT: Does not strip it of the protections.

13 MR. PISANELLI: Right.

14 THE COURT: But that doesn't mean Ernst & Young  
15 can't disclose it wherever it goes.

16 MR. PISANELLI: Understood.

17 THE COURT: Just like the special master reviewing  
18 Elaine Wynn's arguably privileged material will not strip it  
19 of privilege.

20 Okay. Mr. Peek.

21 MR. PEEK: Your Honor, I just have a question. The  
22 hearing on the 20th is on Elaine Wynn's motion for protective  
23 order that was filed but not served on the Aruze parties on  
24 August 8th to which there will now be a supplemental  
25 opposition to which there will be a reply. Am I understanding

1 that correctly that's at 1:00 o'clock?

2 THE COURT: It is. Because I'm in a trial. So I'm  
3 going to go late with my jury, and then I'm going to do it at  
4 1:00 o'clock, and they're going to have a half hour total.

5 MR. PEEK: The reason I'm asking is I have a  
6 deposition that day. I understand that I don't have a dog in  
7 that fight, but I certainly want to be part of it. So I just  
8 want to make sure whether if I can't cover it somebody else --

9 THE COURT: Break your deposition to go back at  
10 1:30.

11 MR. PEEK: Thank you, Your Honor.

12 THE COURT: Okay. When are you going to meet and  
13 confer about the special master issues?

14 MR. URGAS: It'll have to be next week.

15 MR. PISANELLI: We'll be ready as early as Tuesday.

16 THE COURT: So here's what I would suggest, because  
17 sometimes this works with you guys. It's only worked once. I  
18 have this really cool room in the back hallway that I can have  
19 you go adjourn to for a half hour or so to see if, given the  
20 experience that all of you have had over the years in having  
21 special masters appointed, you can get the deal points down,  
22 not agree who the special master is, but see if you can reach  
23 an agreement on scope, see if you can reach agreement on  
24 timing.

25 Why are you looking at me that way?

1 MR. BICE: You gave us 10 minutes?

2 MR. POLSENBERG: They have a really nice room.

3 THE COURT: You can have as many minutes as you  
4 want.

5 MR. BICE: Sure, we can do that. We can do that  
6 now.

7 THE COURT: Do you want to do it now?

8 MR. POLSENBERG: Judge, you mean do it now?

9 THE COURT: Yes, Mr. Polsenberg, now.

10 MR. BICE: Yeah. Why not?

11 MR. POLSENBERG: No.

12 MS. SPINELLI: He said he didn't have to go anywhere  
13 until Sunday.

14 MR. POLSENBERG: Yeah, but --

15 MR. PEEK: We all heard that, Your Honor.

16 MS. SPINELLI: [Inaudible].

17 MR. POLSENBERG: I know that. I know that. You  
18 admit that. But there are people I have to talk to before  
19 this.

20 THE COURT: So why don't you take a 10-minute break,  
21 talk to your team members to make sure nothing you're going to  
22 say is --

23 MR. POLSENBERG: Judge, you really don't trust me to  
24 meet with them next week?

25 THE COURT: It's not you.

1 MR. URGAS: It's going to be the two of us.

2 MR. POLSENBERG: The two of us.

3 THE COURT: You've got a whole team.

4 MR. POLSENBERG: Okay.

5 THE COURT: You've got a whole team.

6 MR. URGAS: It's the two of us that are going to be  
7 meeting.

8 THE COURT: And if I wait to let you meet on  
9 Tuesday, I lose three days, three and a half days in a very  
10 tight time frame that I currently have with a hearing I'm  
11 going to do on 9/29 and 9/30.

12 MR. POLSENBERG: If you think you don't trust me,  
13 you can trust Bill Urgas.

14 THE COURT: Do you know how slow -- okay, wait. Do  
15 you know how hard it was to get Dan to bill anybody and the  
16 process that the managing partner had to go through to get Dan  
17 to --

18 MR. POLSENBERG: This is privileged information,  
19 Your Honor.

20 THE COURT: -- actually bill a client?

21 MR. POLSENBERG: But I've been in therapy.

22 THE COURT: And you're better?

23 MR. POLSENBERG: Better at that.

24 THE COURT: So he's got lots of issues. And, no, I  
25 don't trust him to be quick. Although he's better than he



1 used to be, I think.

2 MR. POLSENBERG: I'm way better. No. I'll make  
3 arrangements with them right now for what day we're going to  
4 meet.

5 THE COURT: I'd really rather you sooner, rather  
6 than later, because of the hearing I've got set September 29th  
7 and September 30th.

8 (Off-record colloquy)

9 THE COURT: All right. Do you guys want to take  
10 advantage of my little room, you want to meet in the hallway?

11 MR. POLSENBERG: I have to talk to some people.

12 THE COURT: Then go take a 10-minute break.

13 MR. POLSENBERG: But I'll be happy to meet with them  
14 right now and pick a time next week to meet.

15 (Off-record colloquy)

16 THE COURT: Mr. Campbell, you said there was  
17 something you wanted to say before you all left.

18 MR. CAMPBELL: Your Honor, it's already been  
19 resolved.

20 THE COURT: Isn't that nice.

21 MR. CAMPBELL: No need to trouble the Court with it.

22 MR. URGAS: We took care of Don's problem.

23 THE COURT: Okay. Have a good Labor Day weekend.

24 Goodbye.

25 THE PROCEEDINGS CONCLUDED AT 2:18 P.M.

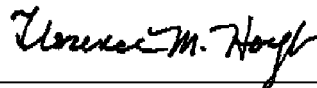
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

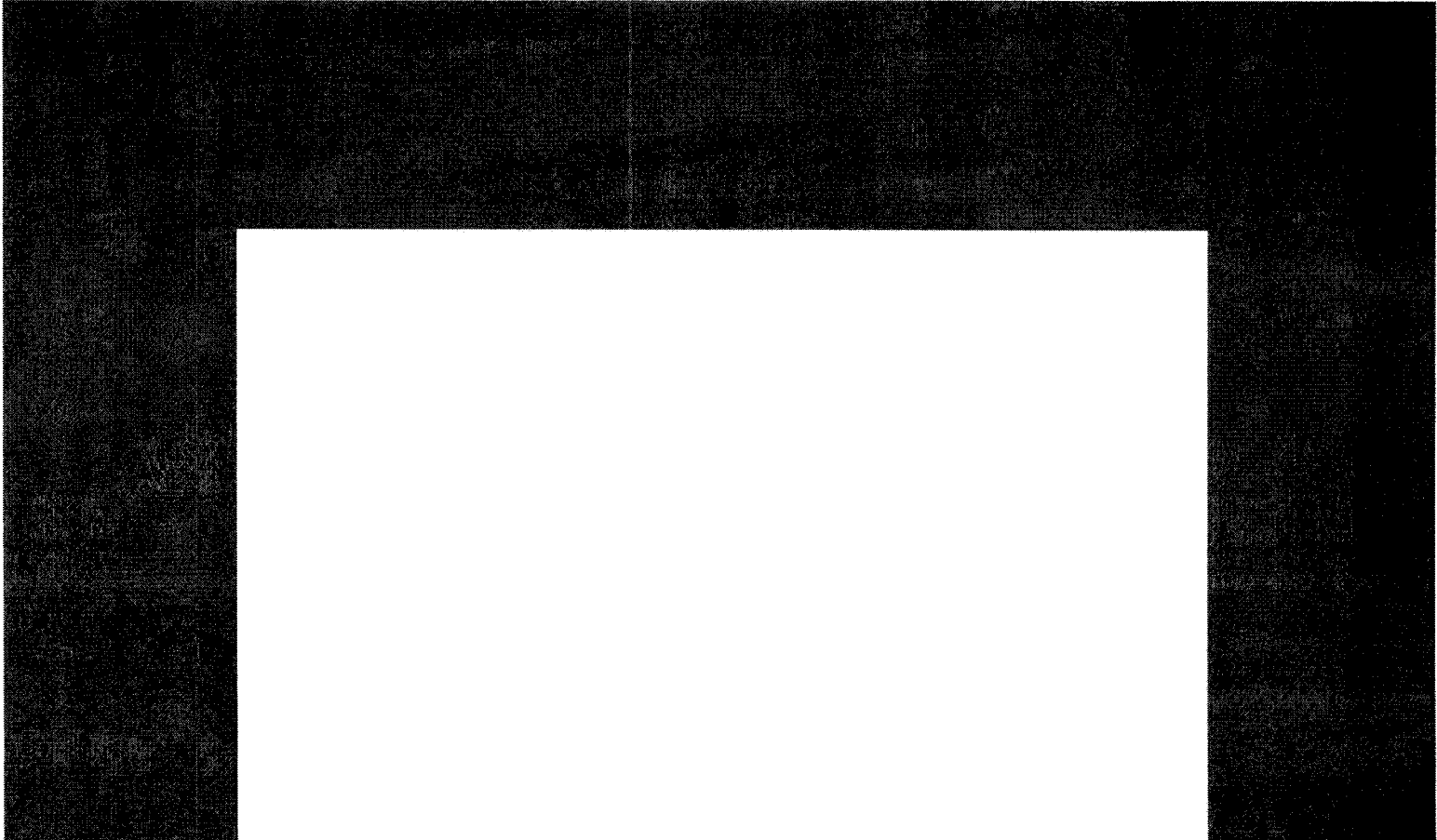
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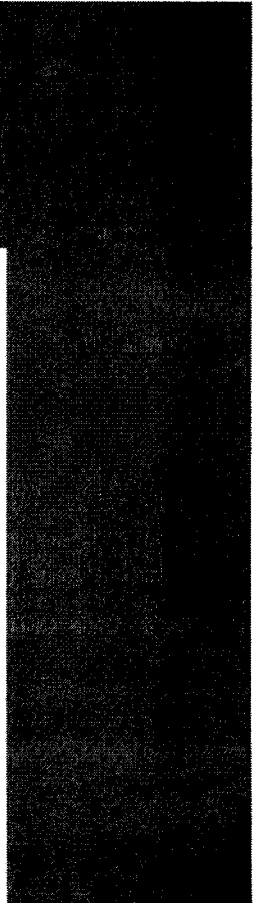
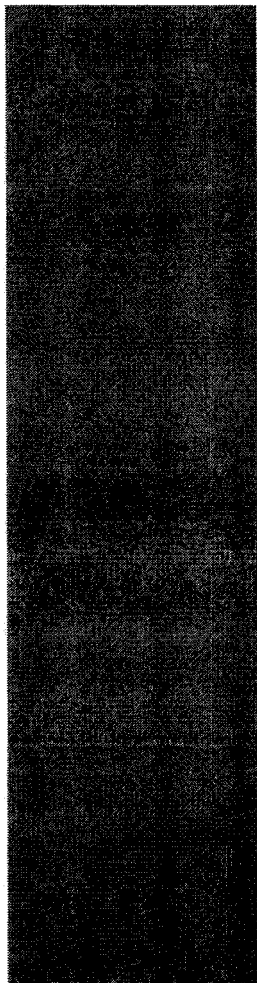
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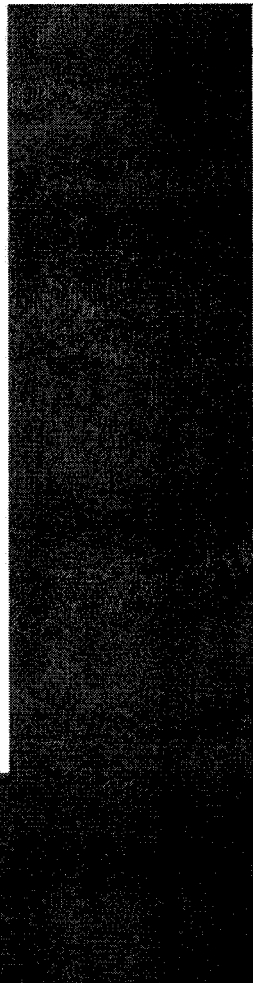
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

. . . . .

CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTION TO LIMIT DISCOVERY**

TUESDAY, SEPTEMBER 20, 2016

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

## APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD L. BICE, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT CASSITY, ESQ.  
WILLIAM R. URGAS, ESQ.  
DAVID MALLEY, ESQ.  
MICHAEL T. ZELLER, ESQ.  
DAN R. POLSENBERG, ESQ.  
COLBY WILLIAMS, ESQ.  
DONALD JUDE CAMPBELL, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 20, 2016, 1:03 P.M.

2 (Court was called to order)

3 THE COURT: All right. So, Mr. Polsenberg, it's  
4 your motion.

5 MR. POLSENBERG: Thank you, Your Honor. This is --  
6 this is our motion essentially to limit what discovery can be  
7 engaged in while we're addressing the issue -- I suppose the  
8 issue of the violation of the protective order primarily. And  
9 I suggest that there's a lot of discovery, and especially  
10 what's already tried to be initiated, that we can't go into.

11 Now, I'm going to be imprecise on my terms. As I've  
12 already explained, when I say privilege I include protections  
13 under Sarbanes-Oxley and Dodd-Frank. And I think those are  
14 appropriate protections.

15 THE COURT: Can we move the electronic device, Mr.  
16 Polsenberg, to the back table. I know you're using it as a  
17 counter. Or, if you want, come put it on the -- someplace  
18 else.

19 MR. POLSENBERG: I'll just put it on the chair.

20 THE COURT: Or you can hand it to Mr. Cassity, who's  
21 sitting in the first row, who would love to tell you the time,  
22 or Mr. Malley, who's on your team.

23 MR. POLSENBERG: I'm good, Judge.

24 So, and as we pointed out in the beginning of our  
25 reply brief, there's actually even been a court that has

1 addressed issuing protective orders based on Sarbanes-Oxley  
2 and Dodd-Frank. And that makes sense. Because the purpose of  
3 these Acts, first with Sarbanes-Oxley, was to eliminate the  
4 culture of silence that exists even in publicly traded  
5 corporations and to allow an environment where -- and not  
6 anything directed to parties in this case -- where fraud can  
7 not only be engaged in, but be hidden and people are afraid to  
8 raise anything about it.

9           And I reject the idea that these acts only give a  
10 monetary, a legal remedy. I'm not going so far as to say that  
11 they empower courts to issue equitable remedies, but I think  
12 that that would be so. Because courts have talked about, yes,  
13 you -- corporations have to be prevented from keeping  
14 whistleblowing from taking place. But this is even more so.  
15 This is a court sanctioning, ordering, empowering, giving its  
16 imprimatur to parties engaging in discovery on that.

17           Their main argument is that Elaine Wynn is not an  
18 employee. Well, I think, first of all, Dodd-Frank is even  
19 further -- although I group them together under Sarbanes-  
20 Oxley, Dodd-Frank goes even further in whist whistleblower  
21 protection than Sarbanes-Oxley does. And I think that we  
22 would meet the qualifications there. But even if we were only  
23 looking at an employee standard, we still meet that, and we've  
24 made a showing on that with -- the involvement that Elaine  
25 Wynn had in the operation of Wynn Resorts says that she's more

1 than an ordinary director. Now, directors aren't  
2 automatically excluded from whistleblower protection. And  
3 here the employee is much more than the ordinary -- the  
4 ordinary director.

5           And I think I've already addressed what they're  
6 saying about whether the remedy can be limited to just  
7 reinstatement and issues like that. I think that would make  
8 the statute unworkable. And here I think we are looking at a  
9 number of retaliatory activities that could be involved, and  
10 especially we're looking at and I want to direct my attention  
11 to in the few seconds I have left to the idea that what  
12 they're asking is for Elaine Wynn to tell -- to disclose the  
13 confidential sources she has in the rough sense, the trusted  
14 colleagues who gave her that information.

15           I think that's a Sarbanes-Oxley issue on two levels.  
16 First of all, it's harassment for Elaine Wynn, and it's also  
17 going to the people who gave her that information. I mean,  
18 that's got to have a chilling effect on people giving  
19 information on whistleblowing. And I reject the notion that  
20 they're entitled to the names, that you can't have anonymous  
21 whistleblowing. These statutes actually provide for anonymous  
22 whistleblowing in the regulations where they talk about how  
23 you can have anonymous complaints. Now, we don't fit the  
24 exact statutory requirement of that, but it does show that  
25 their assumption that you can't have any anonymous



1 whistleblowing is ill conceived.

2           And let me also get to the avoidance issue. I don't  
3 think you have to address all this, because I think this is  
4 beyond the scope of discovery that you have ordered or even  
5 need to order; because Elaine Wynn was clear what the sources  
6 are of her saying new developments, they weren't acts or  
7 materials that would violate your prior protective order, that  
8 she wasn't using confidential or, more particularly, highly  
9 confidential information when she talked to the outside  
10 auditors. So I don't think there is a need to go into  
11 discovery on the whistleblowing issue.

12           And I'd like to save the balance of my time for  
13 rebuttal.

14           THE COURT: Okay. Mr. Bice.

15           MR. BICE: Thank you, Your Honor.

16           THE COURT: You've got 30 seconds left, Mr.  
17 Polsenberg, when you stand back up.

18           Mr. Bice.

19           MR. BICE: Thank you, Your Honor.

20           Your Honor, the purpose of trial, as you well know,  
21 is to determine the truth. That's Jury Instruction Number 1  
22 in the state of Nevada under the Model Jury Instructions. And  
23 under the law every party and every court is entitled to every  
24 man's evidence.

25           THE COURT: And that's only in civil; right?

1 MR. BICE: Well, it's Civil Jury Instruction  
2 Number 1 --

3 THE COURT: Right.

4 MR. BICE: -- under the Nevada model rules. The  
5 point here being, Your Honor, is that the Court is entitled to  
6 every man's evidence in a case or every woman's evidence in a  
7 case, depending on which it is. NRS 49, as we cite -- .015,  
8 as we cite in our brief, makes a point that privileges, which  
9 is the ability to conceal information, to withhold your  
10 evidence are very narrowly limited and that unless it is  
11 spelled out in the statute, in the Nevada statutes or the  
12 Constitution, no one has a right to refuse to be a witness, no  
13 one has a right to refuse to disclose matters, no one has a  
14 right to refuse to produce an object or a writing, and no one  
15 has a right to prevent another person from being a witness or  
16 disclosing any matters. And not only is that the law that is  
17 not addressed by Ms. Wynn, that law has been carried into  
18 effect long ago by the requirement that you are required to  
19 affirmatively disclose someone that has material information  
20 that is discoverable in the case. That has always been the  
21 law.

22 Now, Ms. Wynn says, well, I want a special rule  
23 where I'm going to turn that fundamental premise, no ambushes,  
24 no surprises, no concealment, I want to turn that premise on  
25 its head, I want to file claims, I want to make allegations in

1 a lawsuit, but I want to conceal my alleged source of  
2 information for that.

3           And there's really two reasons why people do that,  
4 Your Honor, I would submit. The reason that they do it is,  
5 number one, when they claim that they got this information  
6 from some trusted colleague, some confidential source they may  
7 very well be fabricating that that's where they got it. They  
8 don't want to disclose, they don't want to have to give a  
9 name, because then that person, whoever they identify, might  
10 come back in and say, you know what, that's not true, I never  
11 had those discussions with her, she didn't get any such  
12 information from me, so she must have gotten it from somewhere  
13 else. That's problem number one with this story that I get to  
14 conceal the identity of people that I claim that I have spoken  
15 with and then I've gone around and made allegations.

16           The other point, Your Honor, is as I said, not only  
17 are these people sometimes just made up, i.e., the person  
18 doesn't exist. Even if she did actually talk to somebody,  
19 they may very well, as I just made the point, come and  
20 completely contradict her and say, that's not true, she did  
21 not get that information from me, she must have gotten it, as  
22 Wynn Resorts has pointed out already, through misuse of the  
23 discovery process that the Court has already entered a TRO  
24 about. The entire judicial process, Your Honor, breaks down  
25 in the approach that Ms. Wynn is asking this Court to adopt.

1 And there is no case -- and Mr. Polsenberg misspeaks, I  
2 assume, when he claims that there's cases that have invoked  
3 Sarbanes-Oxley and/or Dodd-Frank in saying that, oh, well, you  
4 can enter a protective order. Because that isn't what the  
5 case actually says.

6 But let me just remind the Court exactly why we're  
7 here to begin with. The Court has already entered a TRO  
8 because the Court has already recognized and the Court I'm  
9 sure will recall when we were here about the letter to Ernst &  
10 Young that this letter contained this assertion about, you  
11 know, new developments in the case, Your Honor. And the Court  
12 will recall Mr. Zeller's dancing around, I would submit, when  
13 the Court asked him, well, tell us, Mr. Zeller, what that new  
14 developments -- what those new developments are since you're  
15 claiming that you weren't using information that you acquired  
16 in the discovery process. And, with all due respect, the  
17 Court can go back and look at the transcript, and I think that  
18 the Court got a lot of maneuvering around what that meant.

19 But what we have also learned is that this letter --  
20 of course, the composition of this letter began on the very  
21 same day that this Court entered its protective order or its  
22 stay order because of Wynn Resorts uncovering the possession  
23 of its confidential and privileged information by Quinn  
24 Emanuel, improperly in possession of it, I might add.

25 So that then takes us, Your Honor, to -- that letter

1 started its process that very same day, as their own privilege  
2 log reveals to us. Now, there are many reasons to discount  
3 Ms. Wynn's version now, which is, I would submit, an argument  
4 not actually backed up by any evidence, that you should just  
5 trust her that she acquired this information that she then  
6 started using outside of the discovery process. That's what  
7 she has now said, you should just trust me that that's true.  
8 There's a lot of reasons to trust why that isn't true, Your  
9 Honor. And I would submit this errata that she submitted  
10 yesterday and filed with the Court is just one example of it.

11 As we have pointed out in our motion to compel her  
12 answers, Your Honor, to the depositions, Ms. Wynn had given  
13 the Court a lot of, I would submit, contradictory statements.  
14 At her deposition she was specifically asked about her  
15 knowledge of Mr. Poster's testimony. Of course, she was asked  
16 both about his testimony before the Gaming Control Board and  
17 Mr. Poster's testimony in this case. And she said that she  
18 had reviewed them. Now, yesterday, we get an errata. And  
19 it's interesting, I think, it's somewhat telling when a party  
20 actually files an errata in a court proceeding of a  
21 deposition; because the errata, obviously, is designed to just  
22 change her testimony. It's not exactly changes yeses to noes  
23 or noes to yeses, but it's pretty darn close to that's what  
24 she was doing in this errata, which they, again, filed  
25 yesterday with the Court. And so what she's doing now is

1 she's now trying to say, well, I didn't see his deposition  
2 testimony, I saw his Gaming Control Board testimony only.  
3 And, of course, you can't really reconcile that with the fact  
4 about her -- all the noise she has made about this Fifth  
5 Amendment issue, Your Honor, because that only came up in the  
6 context of his deposition in this case, the same deposition  
7 she originally said she saw but now, after meeting with her  
8 counsel after her deposition, she has changed it to say she  
9 didn't see it.

10 But that's not the only problem, obviously, Your  
11 Honor, we have with Ms. Wynn's testimony. We also have many  
12 representations that have been made to the Court about how she  
13 didn't have documents, et cetera. The point being this, Your  
14 Honor. There is substantial reason, and the Court has already  
15 recognized that entering its TRO, that Ms. Wynn was in fact  
16 disseminating confidential information in violation of this  
17 Court's protective order in her attempt to gin up a dispute  
18 with the auditors after this Court entered the stay, the very  
19 day that this Court entered the stay, as I remind the Court.

20 So that takes us to what is the device that Ms. Wynn  
21 claims this unprecedented authority to conceal the identity.  
22 And conceal -- when I mean that, Your Honor, is this is, I  
23 would submit, an attempted coverup, I don't want to have to  
24 disclose people who I claim gave me this information because  
25 they -- one, they may not exist, and, two, they might

1 contradict me. Your Honor, we submit we know the source of  
2 her information. The source of her information is Quinn  
3 Emanuel. And the authors of that letter were Quinn Emanuel.  
4 The privilege log proves that that is true. This story that,  
5 oh, meant through these words "new developments," this is what  
6 she meant, we would submit, Your Honor, Ms. Wynn had no  
7 understanding of the new developments, because she didn't  
8 draft that. That was drafted by the attorneys sitting right  
9 here on behalf of Ms. Wynn and then improperly disseminated in  
10 violation of the Court's order.

11           So now Ms. Wynn says, well, you know what, you need  
12 to allow me to just claim I got that information from some  
13 third party who I'm not -- you shouldn't ask me to tell who  
14 that is, because it'll, of course, contradict her  
15 representations to the Court that she acquired it from anybody  
16 other than Quinn Emanuel themselves. And that's all this  
17 dispute is about, Your Honor.

18           I was trying to think of just real-world examples  
19 where this would come up, and the one that just dawned on me,  
20 Your Honor, Ms. Wynn is like Gordon Liddy coming in -- we all  
21 remember G. Gordon Liddy -- coming in and saying, trust me, I  
22 didn't acquire that information from the break-in at the  
23 Democratic Headquarters, I acquired all that information from  
24 a confidential source of mine, a good colleague of mine so I  
25 shouldn't be required to disclose who that is, because those

1 people might come in and contradict me. And that's all that  
2 she's trying to do is conceal any source of information that  
3 will expose her as not telling the truth. And there is no law  
4 anywhere that allows that.

5 Now, so let's turn to this grand argument that she  
6 has now provided at the last minute, I'm a whistleblower and  
7 under SOX and Dodd-Frank I'm allowed -- those statutes,  
8 although they can't cite to any authority that says these  
9 statutes are a privilege, because, of course, they're not --  
10 and they allow me to conceal the identity of information that  
11 I'm of course raising in the litigation, they allow me to  
12 conceal that. No authority for that proposition at all  
13 anywhere. But more fundamentally, Your Honor, those statutes  
14 are designed to deal with real-world employees, and those  
15 statutes provide a remedy to those real-world employees if  
16 someone actually retaliates against them for doing something  
17 that is protected by the statute, not for doing something and  
18 trying to violate and circumvent court orders because the  
19 Court's stay has become an obstacle to your agenda.

20 I'm reminded -- first of all, this story -- Mr.  
21 Polsenberg says, well, Ms. Wynn is an employee, and he says  
22 that's what this case really turns on. It really doesn't turn  
23 on that in any way, shape, or form. If Ms. Wynn wants to  
24 claim that Dodd-Frank and Sarbanes-Oxley apply to her and  
25 avail her of a remedy, she's free to do so. She can bring her



1 Dodd-Frank and her Sarbanes-Oxley claims, and we will deal  
2 with them in the due course, Your Honor, because they don't  
3 have any merit.

4 But I would point out to the Court just on this  
5 point this is what Ms. Wynn represented to the Court  
6 previously about her being an employee. On June 7 -- or  
7 July 7 she submitted a declaration. Notice what the  
8 declaration says. Doesn't say anything about being an  
9 employee. In fact, it says she was a director. Makes no  
10 representation about being an employee. And built on that  
11 declaration she then argued to the Court, I am not an employee  
12 of the company. She made that representation repeatedly, I am  
13 not an employee of the company. She said it on page 22, she  
14 said it on page 24, and in fact throughout all those pages of  
15 that brief that she submitted on July 7 her position and her  
16 position based on a sworn statement from her was, I'm not an  
17 employee of the company, these policies don't apply to me  
18 because I'm only a director and I'm not an employee. That was  
19 her first version of the purported truth.

20 Now, of course, her version, Your Honor, is -- her  
21 latest declaration is -- this completely revises the story --  
22 oh, now I'm an employee and now I'm covered by Dodd-Frank and  
23 the like. And we submit all the caselaw to the Court that  
24 points out the absurdity of this, and in fact the principal  
25 authority that we cite they don't even address, because the

1 court there -- I'm sorry, the administrative law judge there  
2 pointed out that, no, no, no, you're a director, you're not an  
3 employee, and claiming that these provisions apply to you as a  
4 retaliation remedy or as a remedy for retaliation is just  
5 simply not true, you're not compensated as an employee. Ms.  
6 Wynn wasn't compensated as an employee. And, as I would  
7 remind the Court, her letter to EY, to Ernst & Young, Your  
8 Honor, says, "As a director." She affirmatively wrote that  
9 she was writing to them as a former director. She made no  
10 claims about anywhere being an employee until -- and the first  
11 time we heard this story about Dodd-Frank and Sarbanes-Oxley  
12 was when? It was when this Court said that we were entitled  
13 to take her deposition. Then we received this motion for a  
14 protective order asserting for the first time, oh, I'm an  
15 employee and requiring me to tell the truth about my sources  
16 of information that I have been disseminating somehow violates  
17 the law -- because they're not entitled to know the truth.  
18 They should be required -- they, Wynn Resorts should somehow  
19 be required to simply accept her representation, trust me,  
20 Your Honor, I got this information from some source other than  
21 Quinn Emanuel in violation of the Court's order. So when that  
22 letter written by Quinn Emanuel talks about new developments  
23 you should just trust me, Your Honor, I got that information  
24 from some source other than Quinn Emanuel. And I would submit  
25 to the Court that there is no requirements under any law

1 anywhere that we are required to trust someone, let alone  
2 someone who has played so fast and loose with the facts as she  
3 has done repeatedly in this case.

4 And our point here again, Your Honor, being  
5 straightforward, I hope. Ms. Wynn violated the terms of the  
6 Court's protective order. That scheme happened the very same  
7 day that this Court entered its stay. Her attorneys drafted  
8 that letter that she in fact signed, trying to gin up that  
9 dispute. The source of the information for that letter was  
10 the discovery in this case in violation of the protective  
11 order, and all of the facts point in that direction.

12 THE COURT: Thank you, Mr. Bice.

13 Mr. Polsenberg.

14 MR. POLSENBERG: Thank you, Your Honor.

15 Counsel starts with a soliloquy about being entitled  
16 to every man's evidence on the merits. Not to put too fine a  
17 point on it, but we're not talking about the merits. We're  
18 talking about an ancillary, a collateral issue having to do  
19 with the violation of a protective order. Now, I don't mean  
20 to seem like I'm minimizing that, but I think that goes into  
21 the balancing of the interests here. They say that we assert  
22 for the first time the objections on Sarbanes-Oxley when you  
23 ordered us to do discovery. Well, no, and who cares? No, we  
24 did assert Sarbanes-Oxley before to the opposing side when  
25 they made some discovery requests. We did raise it to you

1 when you ordered depositions to go forward. So that's an  
2 appropriate time to raise that.

3           They make great hay about the errata. You know,  
4 that errata says that that deposition says what I said the  
5 deposition says the two times we were in court here before.  
6 I'm saying -- I mean, I read the depo the same way that that  
7 errata simply makes sense on, simply makes clearer about. Did  
8 the errata -- did we file it in court or that's an unusual  
9 thing? Yeah, of course we did. You know why. We're going to  
10 the Supreme Court and it has to be in the record. It's a big  
11 surprise to everybody.

12           They've put up here that we were -- that we had  
13 asserted before that we were the employee. Well, a couple of  
14 things -- that we weren't the employee. They said we were the  
15 employee.

16           MR. PISANELLI: That's not what we said.

17           MR. POLSENBERG: A couple of things on that.

18           I'm sorry. I don't mean to mischaracterize. I  
19 don't.

20           THE COURT: Guys. Guys. And you've only got a few  
21 seconds left, Mr. Polsenberg.

22           MR. POLSENBERG: Thank you. Well, first of all, we  
23 lost that. Secondly, this is a different standard. It's not  
24 judicial estoppel to raise a position that is both different  
25 and on which we didn't prevail, okay. They say we didn't

1 address the authority that they raised. Yes, Cunnhingham --  
2 we addressed Cunningham in the reply brief. And Cunningham,  
3 while saying that that director was not an employee, also sets  
4 out standards for why directors can be employees.

5 Am I out of time, Your Honor?

6 THE COURT: You were a while ago.

7 MR. POLSENBERG: Oh. Thank you, Your Honor.

8 THE COURT: All right. So Elaine Wynn is not an  
9 employee, therefore there's no potential retaliation.

10 Therefore there's no protection under Sarbanes-Oxley.

11 And with respect to Dodd-Frank she is not providing  
12 information to agencies that would fall within the Dodd-Frank.  
13 Therefore there is no protection for her at this time.

14 So I need to also move the hearings on October 18th  
15 and October 21st to October 20th at 8:30.

16 Mr. Polsenberg, is there anything you want to say  
17 before I sign the orders that were delivered to me by Mr.  
18 Pisanelli and Mr. Peek? There's three orders.

19 MR. POLSENBERG: Sure. Let me do this one first.  
20 I've asked for a stay so I can --

21 THE COURT: I want to do the orders first so they're  
22 part of your record.

23 MR. POLSENBERG: Okay. Very good, Your Honor. We  
24 object to the order that requires us to serve Mr. Peek. Is  
25 that in your group?

1 THE COURT: It is in my group.

2 MR. POLSENBERG: It is. And --

3 THE COURT: It's the order from the conference call  
4 in June. It's the order saying how we're going to serve Mr.  
5 Peek, and it's the order on how Mr. Peek's going to seek  
6 de-designation.

7 MR. POLSENBERG: Right. We have -- the things that  
8 we filed oppositions to, we filed oppositions, we filed an  
9 objection yesterday --

10 THE COURT: Read it.

11 MR. POLSENBERG: -- or today because we had not  
12 taken a position before because, as I explained last time we  
13 were here, we were under the impression Wynn was going to be  
14 ordered to serve them. So we have now raised and made clear  
15 that we object to that, as well.

16 THE COURT: Okay. So, Mr. Peek, all of these say,  
17 "Call Valerie." Do you want Dan to call Valerie, or do you  
18 want him to hand them to you?

19 MR. PEEK: He can hand them to me or to Mr. Cassity,  
20 Your Honor. One or the other.

21 THE COURT: Why don't you give them to Mr. Cassity.  
22 That's probably a more reliable to get them back to Valerie.

23 MR. PEEK: Well, I'm going back to the deposition.  
24 And it's also more reliable.

25 THE COURT: Okay. Now, Mr. Polsenberg, you had

1 another agenda item.

2 MR. POLSENBERG: Yes. I'd like to move for a stay,  
3 as we did in our motion and our reply.

4 THE COURT: A stay of what?

5 MR. POLSENBERG: A stay of your order denying us  
6 Sarbanes-Oxley and Dodd-Frank relief and ordering the  
7 deposition to go forward so that I can seek appellate review.

8 THE COURT: So you're basically asking me to stay  
9 all of the discovery related to the disqualification issues?

10 MR. POLSENBERG: I'm not sure I'm asking for  
11 everything having to do with disqualification. I think there  
12 are some issues -- there's some discovery that could go  
13 forward that isn't related to Sarbanes-Oxley and may not be  
14 related to privilege. It may be impracticable to do that and  
15 then do the bulk of the discovery later, but I would leave  
16 that up to the Court.

17 THE COURT: Does anyone want to speak on Mr.  
18 Polsenberg's request for a stay that is not very definite?

19 MR. PISANELLI: Yes. We oppose the stay, Your  
20 Honor. We think the stay is ahead of the game. What we need  
21 in order to establish an appropriate record here is an order  
22 from the Court doing a few things. You've just done one of  
23 them, and that is denied this application for a protective  
24 order on Sarbanes-Oxley, et cetera. We also need our order  
25 compelling Ms. Wynn to testify to the questions that I pose to

1 her. We don't have that yet. Ms. Wynn will then be at her  
2 own crossroads. The deposition can go forward, she can decide  
3 whether to follow your order or to say, no, I am not going to,  
4 and then bring that issue, that she has decided not to follow  
5 your order, to the Supreme Court or back to you for purposes  
6 of sanctions. Without following that procedure Your Honor has  
7 really been handcuffed by Ms. Wynn and her counsel on what you  
8 can do about it. Once she violates your actual order you will  
9 have the entire spectrum of sanctions available to you, from  
10 the most drastic of striking her answer to the figurative slap  
11 on the wrist if you think that it was okay to do whatever it  
12 is that she does in the future. Until that time you have no  
13 ability to do anything about her refusal to participate in  
14 discovery. So we'd ask that the process move forward, we go  
15 back to her deposition, I pose my questions, they make their  
16 decisions on a question-by-question basis. I don't think  
17 they're going to say no or instruct her not to answer every  
18 question. We're going to achieve a lot by moving forward.  
19 And that's what we ask that you do.

20 MR. CAMPBELL: Your Honor, Mr. Wynn joins in that,  
21 and we believe that it certainly provides the opportunity to  
22 do what Mr. Polsenberg always like to have done, develop and  
23 accurate, full record.

24 THE COURT: He's been fighting that in this case,  
25 though.



1 Mr. Peek.

2 MR. PEEK: Your Honor, let the record also reflect  
3 that the Aruze parties also oppose any request for a stay.  
4 And as I understand the stay that he's asking for me is the  
5 September 6 minute order, which is now part of the order that  
6 the Court signs.

7 THE COURT: Okay. I'm going to grant the stay, but  
8 only in a very limited respect. It will only be with respect  
9 to the deposition of Ms. Wynn related to the issues on the  
10 disqualification and Sarbanes-Oxley. That means the Wynn  
11 Resorts team now needs to make a judgment call as to whether  
12 based on the information you currently have you want to  
13 proceed with the contempt hearing and the disqualification  
14 hearing that we had scheduled next week, or if we want to wait  
15 to see if the Supreme Court does anything. Because my typical  
16 practice, Mr. Polsenberg, is to only give you 30 days to see  
17 if the Supreme Court does anything.

18 MR. PISANELLI: So our hearing initially was on  
19 three issues. It was disqualification --

20 THE COURT: The hearing next week?

21 MR. PISANELLI: Yes. Disqualification, contempt,  
22 and preliminary injunction. Your Honor indicated that she  
23 might split out the disqualification because the document  
24 production, et cetera, is taking some time.

25 We still have lots of progress to be made in this

1 deposition. I just cannot predict just how broadly Ms. Wynn  
2 or her counsel may interpret their rights as it relates to  
3 refusing to answer questions. So, again, I would prefer that  
4 we move forward with her deposition. And if they take a  
5 position that my question touches upon this order or an order  
6 that's been stayed, they can say so, and they can do as they  
7 did last time and remain quiet and not object as to scope, and  
8 we'll move forward and see if Ms. Wynn decides to be judge and  
9 jury and executioner herself. But I'm not interested in  
10 sitting back and doing nothing. I'm also a little --

11 THE COURT: Okay. So let me say it a different way.  
12 Because I think you misunderstood what I said. I am staying  
13 her deposition related to the disqualification and Sarbanes-  
14 Oxley issues. That deposition, to my understanding, was  
15 scheduled on either the 22nd or 23rd. That means Wynn Resorts  
16 now needs to make a judgment call. Do you want to go forward  
17 with the hearing we have scheduled on September 29th and 30  
18 that in my recollection relates to a contempt issue, if we  
19 were up to it, the disqualification issue. But based on the  
20 special master order I signed today, I'm pretty sure we're not  
21 ready for that. And arguably another thing. My guess is you  
22 don't want to proceed with that hearing. But I may be wrong.

23 MR. PISANELLI: I did misunderstand you. You're  
24 saying, go forward with no deposition at all.

25 THE COURT: Yes, that's what I'm saying.

1 MR. PISANELLI: Okay. I didn't -- I read you to say  
2 just question by question. So may I have two minutes?

3 THE COURT: Yes. Please.

4 (Pause in the proceedings)

5 MR. URGAS: Are we back on the record?

6 THE COURT: Now we're on the record.

7 Now, what, Mr. Pisanelli? What'd you decide?

8 MR. PISANELLI: I've decided, Your Honor, that  
9 without the ability to fully develop the record in the  
10 deposition, including now what would be the violation of your  
11 order and their refusals to follow your directive, we would be  
12 severely prejudiced by moving forward with the hearing. And  
13 so we would prefer -- while we, I've already told you, prefer  
14 no stay at all, ask Your Honor to make the stay as short as  
15 possible, let the Supreme Court see if they're motivated to  
16 even hear this, and get back here as soon as possible to  
17 continue this process.

18 THE COURT: Okay. So I'm going to vacate the  
19 hearing that's scheduled for September 29th and September  
20 30th. I'm going to set a status check on October I believe  
21 20th is the day I moved the stuff to on rescheduling that  
22 hearing. If we've not heard from the Supreme Court or if Mr.  
23 Polsenberg doesn't file his brief, then we're going to move  
24 forward with both the deposition and the evidentiary hearing.

25 MR. PISANELLI: The stay is 30 days from today?

1 THE COURT: Thirty days from today.

2 MR. PISANELLI: Okay. Your Honor, in light of that  
3 stay does it make sense to you that we should be taking  
4 tomorrow's motion off calendar filed on order shortening time,  
5 no time to oppose it, and now with the very stay they've asked  
6 for.

7 THE COURT: Well, no. He wants to do discovery on  
8 it, and I've just told him, you know, I don't think so. But  
9 if he wants to ask me in the morning --

10 Do you want to ask me in the morning, or take it off  
11 calendar?

12 MR. POLSENBERG: I want to ask you in the morning.

13 THE COURT: Okay. He wants to ask me in morning.

14 MR. BICE: Well, then we would like --

15 THE COURT: So we'll talk about it in the morning.

16 8:30.

17 MR. PISANELLI: Well, all I'm saying, Your Honor, is  
18 we can either do it now if you're going to deny it --

19 THE COURT: I have a jury sitting in the hallway, so  
20 I'd really like to visit with the jury that I've got.

21 MR. POLSENBERG: What he's saying makes sense,  
22 though.

23 MR. PISANELLI: Everything I say makes sense.

24 THE COURT: Okay. But I still have a jury sitting  
25 in the hallway.

1 MR. PEEK: Your Honor, I --

2 MR. POLSENBERG: I wasn't limiting it -- I wasn't  
3 limiting it to this instance.

4 Okay. We'll come back. We'll come back.

5 MR. PEEK: I'd like to be heard on this so that the  
6 record is clear before the Supreme Court that the stay and the  
7 -- their not taking the disqualification or the other contempt  
8 issues up as early as possible is very prejudicial to my  
9 client, because my client now is not able to proceed with his  
10 claims for the return of his stock and/or for at least a  
11 proper valuation of his stock. And that's --

12 THE COURT: Right. Which is why I only gave Mr.  
13 Polsenberg --

14 MR. PEEK: And that prejudice, when you balance it  
15 against that of these parties, Your Honor, is frankly  
16 insurmountable.

17 THE COURT: Luckily, I only gave Mr. Polsenberg  
18 30 days. So if the Supreme Court does not order an answer  
19 within that period of time, we won't be having any additional  
20 time. Because your other claims are stayed.

21 MR. PISANELLI: Your Honor --

22 THE COURT: Yes.

23 MR. PISANELLI: Since we're going to come back  
24 tomorrow, can we come back on Thursday to give us an  
25 opportunity to at least oppose this thing?

1 THE COURT: No. I can't have you come back on  
2 Thursday, because I've got to get my jury trial finished.  
3 Unless you're willing to give up days next week and I can get  
4 jurors to stay. Because they are planning to leave on Friday,  
5 and I've lost a day and a half in this trial because of some  
6 other issues.

7 MR. BICE: Your Honor, I don't mean to interrupt,  
8 but can we address this motion, then, next Tuesday? Here's  
9 the problem. We got this motion late yesterday, and --

10 THE COURT: Yes, you can address the motion next  
11 Tuesday, because then the only person I will be disrupting is  
12 Swarovski. And I'm happy to disrupt Swarovski. So if you  
13 want to move it to Tuesday, that's good.

14 MR. BICE: So we can at least --

15 THE COURT: Because I don't have a jury on  
16 Swarovski. I've got a jury sitting in the hallway.

17 MR. BICE: Thank you, Your Honor.

18 MR. PEEK: Your Honor, I know that you said that  
19 these orders reflect my order -- my request for -- to compel  
20 Elaine Wynn to produce documents. That's going to be filed  
21 and submitted to the judge?

22 THE COURT: Yes, you're going to file it.

23 MR. PEEK: Okay.

24 THE COURT: The only thing I stayed was the  
25 deposition. And as a result of the consultation with Wynn's,

1 I vacated their evidentiary hearing.

2 MR. PEEK: And given the fact you don't want to hear  
3 things on Thursday, Tuesday -- next Tuesday is fine with us.

4 THE COURT: Yes.

5 MR. POLSENBERG: Judge, I can do next Tuesday, but I  
6 have to tell Judge Bell I'll be late over there because I'm  
7 over here.

8 THE COURT: I start at 8:30. She starts at 9:00.

9 MR. POLSENBERG: I know.

10 THE COURT: Be here.

11 MR. POLSENBERG: And I can see what promptness the  
12 lawyers exhibit.

13 THE COURT: Be here on time.

14 MR. URGAS: Okay.

15 THE COURT: Goodbye.

16 THE CLERK: September 27th, 8:30.

17 THE PROCEEDINGS CONCLUDED AT 1:43 P.M.

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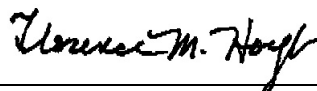
**CERTIFICATION**

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**

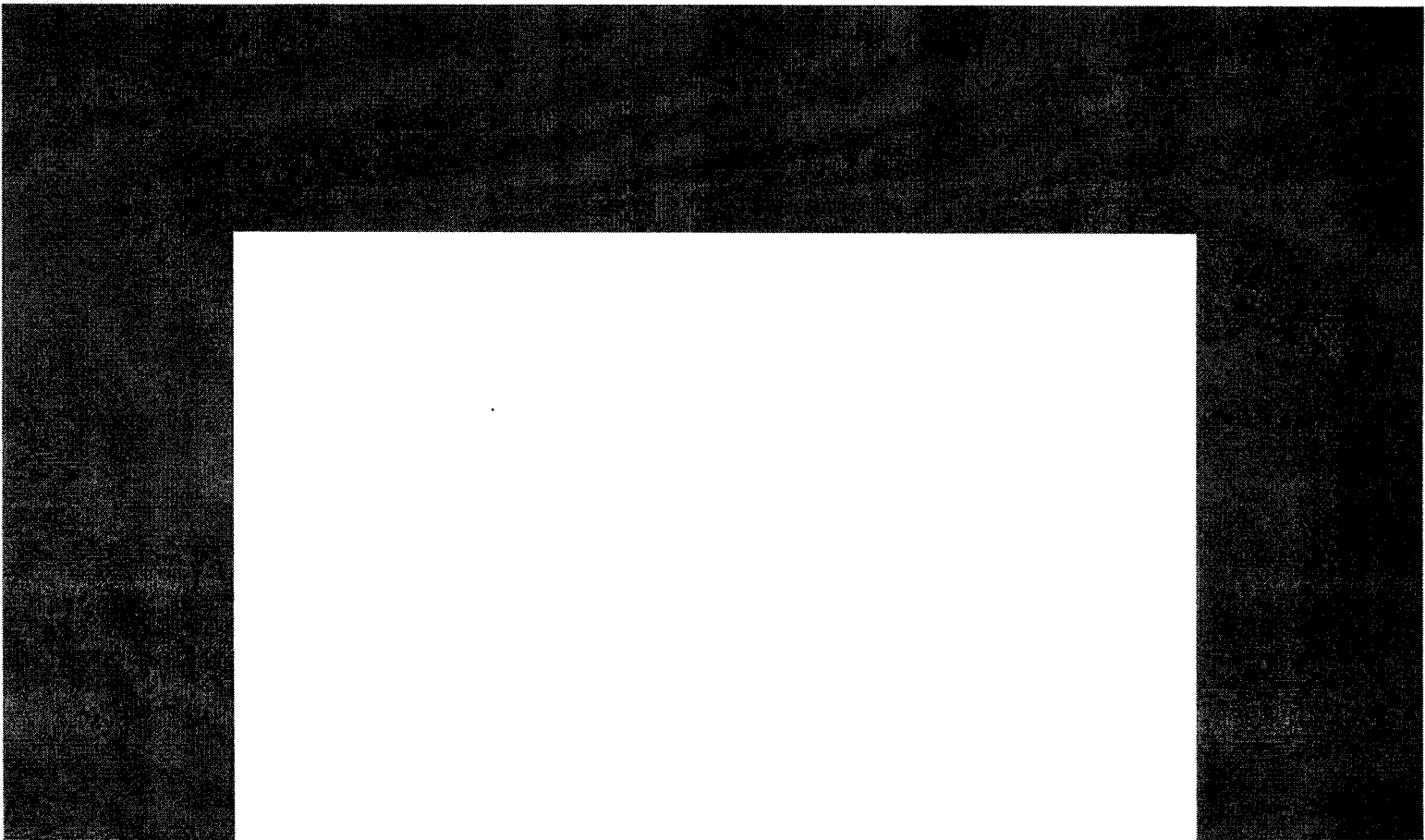


FLORENCE M. HOYT, TRANSCRIBER

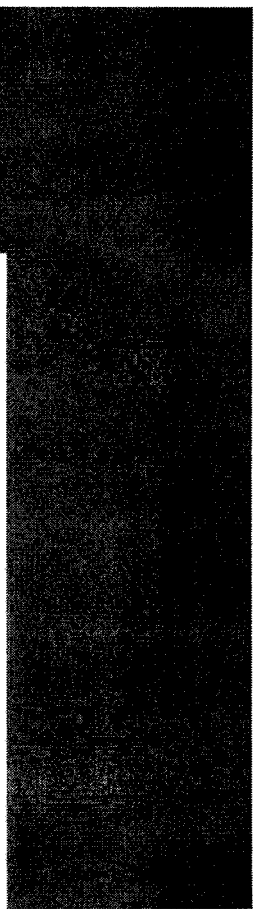
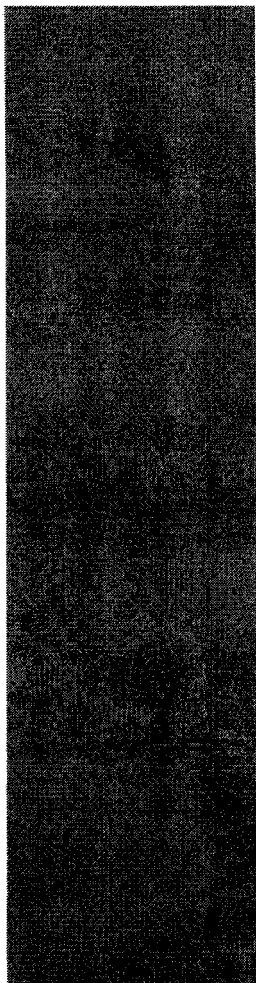
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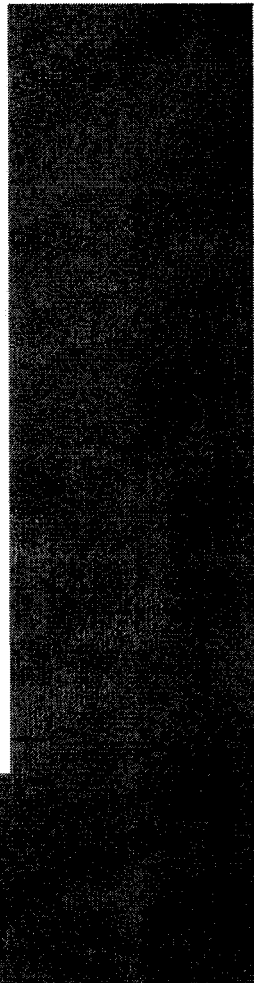


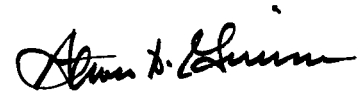


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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

. . . . .

CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

TUESDAY, SEPTEMBER 27, 2016

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

## APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD L. BICE, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
WILLIAM R. URGAS, ESQ.  
DAVID MALLEY, ESQ.  
MICHAEL T. ZELLER, ESQ.  
DAN R. POLSENBERG, ESQ.  
COLBY WILLIAMS, ESQ.  
DONALD JUDE CAMPBELL, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 27, 2016, 8:46 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to what I hope is the last  
4 thing on my morning calendar, which is Wynn.

5 Those of you who are here on Swarovski, I'm sorry  
6 I'm running late. But Mr. Pisanelli's going to cause the  
7 delay now.

8 All right. I would like to start with the Elaine  
9 Wynn motion to do discovery.

10 MR. POLSENBERG: Right. Thank you, Your Honor. Dan  
11 Polsenberg for Elaine Wynn.

12 We've made this motion so that we could --

13 THE COURT: Hold on. Before you start, Jonathan has  
14 asked me if you would like me to advance the motion to seal  
15 Wynn Resorts Limited's motion to adopt its confidentiality  
16 designations for Elaine Wynn's -- no. Where's the motion that  
17 we were advancing to today? This is it. Okay. Hold on a  
18 second. Somebody wanted this motion heard today. I didn't  
19 have enough time to get it set for today, so I set it  
20 Thursday. It is called Motion to Seal Wynn Resorts Limited's  
21 Motion to Adopt Its Confidentiality Designations for Elaine P.  
22 Wynn's Deposition Testimony and Application for OST.

23 Who wanted it set for today?

24 MS. SPINELLI: We try, Your Honor, to do --

25 THE COURT: Yeah. But I've got to give one judicial

1 day's notice, unless everybody stipulates.

2 MS. SPINELLI: I know. Which is why -- exactly.

3 THE COURT: Does everybody stipulate to advance it,  
4 or do you have concerns and want to have it on Thursday?

5 MR. URGAS: I have no idea.

6 THE COURT: Do you want to look at it?

7 MR. POLSENBERG: Yes. Thank you, Your Honor.

8 MS. SPINELLI: It's just a motion to seal. It's  
9 routine.

10 THE COURT: Well --

11 MS. SPINELLI: Understood. Understood. I'm just --

12 THE COURT: Remember, Mr. Peek hasn't brought any of  
13 the motions to seal.

14 MR. PEEK: Your Honor, I --

15 THE COURT: I know. That's why I --

16 MR. PEEK: I would like to have it --

17 THE COURT: I want you to look at it real quick to  
18 tell me if you want it on Thursday or Tuesday. But I sent it  
19 over to the table so you and Mr. Urgas and --

20 MR. PEEK: This Thursday, or --

21 THE COURT: No. Today -- if I can advance it today  
22 or have it heard on Thursday. It's a motion to seal.

23 MR. URGAS: Is he supposed to look at it?

24 MR. PEEK: Yeah.

25 THE COURT: Yes.

1 MS. SPINELLI: So I think you get served on our  
2 motions to seal. I think you're served on our motions to  
3 seal.

4 THE COURT: So I'm going to leave it on Thursday,  
5 since apparently it's more complicated. But I need that back,  
6 because that's my copy.

7 MR. POLSENBERG: I'm ready to give it back to you.  
8 I don't think it's complicated.

9 THE COURT: So?

10 MR. POLSENBERG: Do you want to see it? I asked you  
11 if you wanted to see it, and you walked around the room.

12 MR. PEEK: I was waiting.

13 MR. POLSENBERG: Your Honor, want me to argue while  
14 we're --

15 THE COURT: No. I want Mr. Peek to read first.

16 MR. POLSENBERG: Okay.

17 THE COURT: Thank you.

18 MR. PEEK: He can go ahead and make his other  
19 argument, Your Honor, while I read it.

20 THE COURT: You're sure?

21 MR. PEEK: Yeah. I'm okay.

22 THE COURT: It won't distract you?

23 MR. PEEK: No. Dan doesn't distract me, Your Honor.

24 THE COURT: Mr. Polsenberg, this is your motion to  
25 do discovery.

1           MR. POLSENBERG: It is, Your Honor. We've made a  
2 motion to do additional discovery having to do with Elaine  
3 Wynn's protected status and the pattern of retaliatory  
4 conduct. In their opposition -- and in each of these three  
5 motions I'll just focus on one thing real fast. In their  
6 opposition they say that I didn't want this. Well, no.  
7 Here's what happened. I had suggested that we brief the  
8 privilege issues before the deposition because I thought there  
9 were entire areas of the deposition that I wouldn't allow  
10 questions to be asked about and they should bring the subject  
11 matters up and we could discuss those. And eventually we  
12 wound up with something close to that.

13           I still think that this would be a good thing to go  
14 into. It's not that I didn't think that it's appropriate not  
15 to have any fact-based record. I just didn't think it would  
16 be appropriate to have a fact-based record on two whom Elaine  
17 Wynn spoke. So I think that these are appropriate issues, and  
18 I think they can come up.

19           THE COURT: Okay. Is there anything else you want  
20 to tell me on this motion?

21           MR. POLSENBERG: No. But my timer apparently didn't  
22 work, and I apologize.

23           THE COURT: It's okay.

24           MR. POLSENBERG: Thank you, Your Honor.

25           THE COURT: Jonathan's tracking you.

1           Mr. Bice.

2           MR. BICE: Your Honor, I mean, I think that the  
3 record speaks for itself as to the number of times we've been  
4 here and the insistence by Ms. Wynn that -- and in fact I  
5 recall the Court multiple times saying that it's odd that Ms.  
6 Wynn doesn't want a factual record and in fact repeatedly  
7 observed it was Ms. Wynn insisting that she did not want any  
8 form of a factual record.

9           So the Court ruled upon this claim by Ms. Wynn that  
10 she has some sort of protected status and that that somehow  
11 entitles her to refuse to answer discovery about with whom she  
12 has been disseminating information in violation of the Court's  
13 order. There's nothing in this motion that in any way  
14 addresses that. Instead, what we've got now is an after-the-  
15 fact pitch of, well, now that we have frustrated the discovery  
16 that the Court actually did order in this case and we didn't  
17 comply with the Court's order and we didn't take the discovery  
18 -- the only discovery we requested, being Ms. Wynn, she didn't  
19 actually take that discovery. Now, after the fact that she  
20 has obtained a stay of our discovery, she would like to do  
21 discovery herself on issues that, by the way, aren't driven  
22 towards this case or driven towards a lawsuit that she has  
23 been threatening for months that she's now seeking to do  
24 discovery on and to use this court process in which to do  
25 that.



1           There is nothing -- if Ms. Wynn is a, quote,  
2 unquote, protected employee under SOX or Dodd-Frank, Ms. Wynn  
3 would be the one that would know those facts. And if Ms. Wynn  
4 is the one who claims she has been retaliated against, Ms.  
5 Wynn would again be the one who would know those facts. And  
6 this is her excuse for not answering questions and not  
7 disclosing the identity of witnesses which claims have direct  
8 knowledge of the issues in this case. And there is nothing in  
9 any of what she is saying that somehow would permit her to  
10 refuse to answer those questions.

11           So, yes, we have opposed her request. Now, after  
12 the fact, after she has obtained a stay, after she has  
13 frustrated the entire discovery process, we do oppose her  
14 request now to let her conduct one-way discovery on an issue  
15 that the Court has already decided.

16           THE COURT: Thank you.

17           Mr. Polsenberg, anything else?

18           MR. POLSENBERG: Very briefly. I think I made a  
19 prima facie case, for example, on the issue of employee. The  
20 Court has disagreed with me. I think if I have made a prima  
21 facie case there's a factual finding that needs to be done,  
22 and the discovery would be relevant for that. Thank you, Your  
23 Honor.

24           THE COURT: Okay. The motion's denied.

25           Now if I could go --

1 MR. POLSENBERG: May I approach the bench, Your  
2 Honor?

3 THE COURT: Yes.

4 Now, Mr. Peek, it's your motion.

5 MR. PEEK: Your Honor, I don't think there's a lot  
6 to be said on this motion, either. And I'd just call the  
7 Court's attention to what Mr. Bice has already pointed out,  
8 which is that on September 20th -- I guess that's what, last  
9 Thursday -- last Tuesday --

10 THE COURT: I was in a multi-week jury trial.

11 MR. PEEK: Yeah, you were in the multi -- yes, Your  
12 Honor.

13 Page 18, lines 8 through 13, the Court held, "So  
14 Elaine Wynn is not an employee. Therefore there's no  
15 potential retaliation, therefore there's no protection under  
16 Sarbanes-Oxley. And with respect to Dodd-Frank she is not  
17 providing -- she is not providing information to agencies that  
18 would fall within the Dodd-Frank. Therefore there is no  
19 protection for her at this time."

20 So I think, Your Honor, that finding from last week,  
21 together with the Court's minute order of September 6, which I  
22 think has been further memorialized in a formal order, I think  
23 addresses the opposition that Elaine Wynn has filed. Her  
24 citation to a separate statutory and regulatory scheme of the  
25 Office of the Comptroller of the Currency with respect to SARs

1 and FinCEN is inapposite, does not apply here. Her citation  
2 to other authority is also, Your Honor, not one that is  
3 controlling here, because, again, it does not deal with a  
4 person who is not an employee, nor does it deal with a person  
5 who is not providing information to agencies that would fall  
6 within the Dodd-Frank. So, therefore, Your Honor, the motion  
7 should be granted.

8 THE COURT: Thank you.

9 Mr. Polsenberg.

10 MR. POLSENBERG: Thank you, Your Honor. Let me  
11 downshift into my stay argument. I would ask that as long as  
12 we have the stay on the discovery going and to preserve my  
13 argument that I'm not able to allow dissemination of this  
14 information I would ask that you simply include in the stay  
15 any order compelling us to serve Mr. Peek.

16 THE COURT: So I'm going to grant it, and then you  
17 want me to stay it.

18 MR. POLSENBERG: I knew you were going to grant it.  
19 So, yeah, I'm going to ask you to stay it.

20 THE COURT: All right.

21 MR. PEEK: I'd like to be heard on the stay, Your  
22 Honor.

23 THE COURT: Okay. So let me ask you a question, Mr.  
24 Polsenberg. How are you doing on your petitions?

25 MR. POLSENBERG: It's fun. But we've got --

1 THE COURT: No. Have they been prepared for this  
2 issue so they can go up?

3 MR. POLSENBERG: I can -- I can include this issue  
4 in that writ petition.

5 THE COURT: So it's not finished and up there yet.

6 MR. POLSENBERG: Oh, no.

7 THE COURT: Okay. So we still have to talk about  
8 the stay.

9 Mr. Peek, you said you wanted to say something  
10 before I hear from Ms. Spinelli.

11 MS. SPINELLI: It's not about the stay issue, Your  
12 Honor, the final stay issue. It's about the substance of the  
13 briefs he wants served. So --

14 THE COURT: Do you want to say something?

15 MS. SPINELLI: We do, yes.

16 THE COURT: I'm listening.

17 MS. SPINELLI: Okay. So I understood -- it's  
18 actually -- this motion seeks competing orders, in our  
19 opinion, because we had a -- on whistleblower briefs we've  
20 already articulated our position in our status memorandum and  
21 in an email exchange I had with Mr. Peek. I have it here  
22 again for Your Honor if you'd like it.

23 But the issue that we addressed -- that the Wynn  
24 parties addressed with the Okada parties was that some of  
25 those motions and briefs contained attorney-client privilege

1 information. They were being briefed on the separate  
2 disqualification issue.

3 THE COURT: I know that.

4 MS. SPINELLI: Okay. So --

5 THE COURT: So you want me to make sure the  
6 attorney-client privileged information remains protected.

7 MS. SPINELLI: That's right, consistent with the  
8 protocol you entered last week.

9 THE COURT: I knew that. I knew that. Okay.

10 MR. PEEK: And I get you, Your Honor.

11 THE COURT: We all knew that.

12 MR. PEEK: Yeah. I wasn't trying --

13 MS. SPINELLI: It wasn't clear in the motion, and we  
14 didn't submit an opposition because I understood that  
15 originally was the intent, but we wanted to make sure the  
16 record was clear on the privilege.

17 THE COURT: We all are on that page.

18 MR. PEEK: Yes.

19 THE COURT: We're trying not to --

20 MR. PEEK: I'm sorry, Ms. Spinelli, if there was  
21 confusion. My apologies.

22 THE COURT: Okay. So let me go back to the stay  
23 issue. Mr. Polsenberg, do you want to say anything else on  
24 the stay before I hear from Mr. Peek?

25 MR. POLSENBERG: I just want to include this issue

1 in the stay you've already granted.

2 THE COURT: Mr. Peek.

3 MR. PEEK: Your Honor, I don't believe that the  
4 standard for a stay has been met. If I look at the four  
5 elements of the request for a stay, and, more importantly,  
6 Item 4, whether appellate petitioner is likely to prevail on  
7 the merits in the appeal or writ petition, I mean, given the  
8 overwhelming authority that we have seen and the lack of  
9 authority supporting the position of Mr. Polsenberg and Ms.  
10 Wynn, there is not a likelihood that it would -- that Ms. Wynn  
11 will prevail on the merits in the appeal or writ petition. We  
12 certainly, Your Honor, will suffer the irreparable harm of not  
13 -- of, one, a procedure under Rule 5 that has been honored for  
14 many, many years that is now being violated. And I think that  
15 interest alone is irreparable harm for us. And so I would ask  
16 that the stay be denied.

17 Given the inquiry of the Court, my sense is that the  
18 Court is to grant the stay. So if the Court is going to grant  
19 the stay, I would ask that it have the -- impose the same --

20 THE COURT: That I not grant more time, that it be  
21 part of what he's already got?

22 MR. PEEK: Yeah, that you not grant more time. But  
23 I'm concerned about, Your Honor, is that the issues in the  
24 stay with respect to the deposition of Elaine Wynn is still a  
25 little bit different than the issues related to service of

1 pleadings under NRCP Rule 5. What concerns me is that if the  
2 Supreme Court were to look at the singular issue of Elaine  
3 Wynn's deposition, which is I think part of that first  
4 petition, it might grant a stay -- or might grant a petition  
5 on that basis, and that would then allow that whole petition  
6 to go up. So I would ask that they be separate.

7 THE COURT: Without realizing that -- without  
8 realizing that it's part of this? Well, it's Mr. Polsenberg's  
9 decision as to whether he includes them as the same petition  
10 or not. But your concern is that if I stay this aspect, the  
11 Supreme Court might inadvertently stay the entire thing  
12 instead of addressing them separately.

13 MR. PEEK: Yes, Your Honor, that is my concern. And  
14 I don't -- certainly I agree it is his decision as to how to  
15 present the issue to the Supreme Court, but I think that this  
16 Court can say that it can -- request that he bring them in  
17 separate petitions.

18 THE COURT: Okay. Anything else, Mr. Polsenberg?

19 MR. POLSENBERG: Yes, on the way I'm bringing them  
20 in separate petitions.

21 THE COURT: You can do it however you want.

22 MR. POLSENBERG: Thank you, Your Honor. Under  
23 Rule 8 the fourth factor to consider is whether appellant is  
24 likely to prevail on the merits. I have argued this to you  
25 many times before. If I could only get a stay by convincing a

1 District Judge that she is wrong, I'd never get a stay.

2 THE COURT: Oh, I know.

3 MR. POLSENBERG: And the Federal Courts -- the  
4 Federal Courts don't interpret it way Mr. Peek does. Items 2  
5 and 3 have the weighing of the interests. I think the harm to  
6 me is much worse if you don't grant a stay than it is to them  
7 if you do. But the main factor is Number 1, whether the  
8 object of the appeal or writ petition would be defeated if a  
9 stay is denied. That's the Mikohn Gaming case. If you don't  
10 give me a stay and I'm claiming the equivalent of privilege  
11 and you make me ring the bell, I can't unring it. So a stay  
12 is appropriate.

13 THE COURT: Given what the Nevada Supreme Court did  
14 the other day in the Cotter case, I'm going to grant the stay  
15 even though I do not think it's an appropriate issue for stay,  
16 but because of what I got back from them on another unrelated  
17 issue solely based on communications between counsel in a case  
18 and the potential of risk of disclosure that I'm going to  
19 grant the stay.

20 MR. POLSENBERG: Thank you, Your Honor.

21 THE COURT: So if I could go to the last motion.  
22 Did you write that Cotter brief?

23 MR. POLSENBERG: No.

24 THE COURT: Okay.

25 MR. POLSENBERG: Thank you, Your Honor.



1 THE COURT: Now Ms. Spinelli.

2 MR. PEEK: Your Honor, I didn't hear the exact  
3 guidelines. So it's the same guidelines of the stay --

4 THE COURT: He doesn't get any more time.

5 MR. PEEK: As the September 20th --

6 MR. URGAS: October 20th.

7 MR. POLSENBERG: I didn't ask for more time.

8 THE COURT: Okay. It started September 20th.

9 Ms. Spinelli.

10 MS. SPINELLI: Your Honor, this motion asks for a  
11 bunch of different relief, but the major issue is this.  
12 Elaine Wynn started a process when she sent the letter to Wynn  
13 Resorts' audit committee back in July, copying Ernst & Young.  
14 Even though Ms. Wynn is seeking a stay related to your ruling  
15 that she's not entitled to Sarbanes-Oxley or DFA protection,  
16 there are issues that she started that she cannot stop. Ernst  
17 & Young is an independent auditor, and the audit committee is  
18 not playing a game of Simon Says with Ms. Wynn. If she says  
19 go and they don't just go, and if she says stop, they can't --  
20 they're not going to just stop. They have independent  
21 obligations. So the basic premise of this motion was to be  
22 able to do two things. Ms. Wynn gave testimony. She refuses  
23 to speak to the Wynn Resorts board, she refuses, at least in  
24 the month and a half or so, to actually meet with Ernst &  
25 Young because she claims to be too busy. But they have

1 obligations that can't just stop.

2           So would like to give her deposition in its entirety  
3 to Ernst & Young, and we would like to give her deposition in  
4 entirety to the audit committee or the committee of the board  
5 that was set up to address Ms. Wynn's concerns. Ms. Wynn  
6 doesn't want to get us to do that pending her stay. But, like  
7 we said, they have independent obligations that are  
8 independent of whether or not she is entitled to protection  
9 under Sarbanes-Oxley.

10           So there is some confusion in the opposition about  
11 why we keep coming to Your Honor for this relief. And I'm  
12 just going to reiterate it for the record. It is because  
13 Ernst & Young and the special committee or Ernst & Young is  
14 not an authorized person to receive discovery materials under  
15 the protective order. We understand, Your Honor, that you  
16 cannot control what Ernst & Young does, and none of our  
17 motions have asked for that. It is when we give these  
18 discovery materials under the protective order to someone not  
19 authorized they lose their confidentiality designation as to  
20 any other third party. We don't want that to happen. We want  
21 it to go to Ernst & Young. Whatever they want to do with it,  
22 okay, they're entitled to do with it. We understand your  
23 orders. But to the extent there's a confidential or a highly  
24 confidential designation we want those to be kept, which is  
25 why we submitted to Your Honor our, Wynn Resorts',

1 designations and why we disagree and ask the Court to adopt  
2 ours, as opposed to Ms. Wynn's designations.

3 Now, there is no brief before you about Wynn  
4 Resorts' designations. We are working them out with the Okada  
5 parties. I'm not sure why it's in the brief, quite frankly,  
6 Your Honor, since Quinn Emanuel isn't privy to the exchanges  
7 between us and the Okada parties because they're tainted, and  
8 until that gets resolve they're not entitled to participate.  
9 So perhaps they didn't know, if they're the ones that drafted  
10 that footnote. But Jolley Urga and Mr. Polsenberg's firm were  
11 on those letters, and there have been significant, significant  
12 downgrades by us because of Your Honor's guidance about  
13 testimony and the substance of documents that we think retain  
14 our confidentiality status.

15 THE COURT: You think my scolding is guidance?

16 MS. SPINELLI: I do, Your Honor. You can talk to my  
17 mother about that, too. Yes.

18 THE COURT: My kids -- my kids have never thought  
19 scolding was guidance.

20 MS. SPINELLI: It comes with age and wisdom, Your  
21 Honor.

22 THE COURT: Oh. Is that what that is?

23 MS. SPINELLI: Yes. For sure.

24 We do think that we're acting in good faith, and  
25 Jolley Urga and Mr. Polsenberg's firm can respond to that if

1 and when the Okada parties bring the motion when we've done  
2 our meet and confers on our downgrades.

3 I don't believe that an entire designation of a  
4 deposition without page and line references is in good faith.  
5 Even if you accept their argument that she's entitled to SOX  
6 protection, and I understand they're going to seek a --

7 THE COURT: I've not accepted that.

8 MS. SPINELLI: I know.

9 THE COURT: Okay.

10 MS. SPINELLI: I meant the outside world or even  
11 them. They admonitions that are the first 20 pages of the  
12 transcript are not even related to Sarbanes-Oxley. We  
13 proceeded with Court-permitted, and we sought leave,  
14 deposition. I understand they think it's retaliation. We do  
15 not. And the very least they would have to do page and line  
16 designations under the order. And if you have any questions,  
17 Your Honor, I'm happy to take them.

18 THE COURT: Mr. Polsenberg.

19 MR. POLSENBERG: Thank you, Your Honor. I  
20 appreciate Ms. Spinelli's reference to my good-faith  
21 positions. And let me say in reciprocity I'm not even going  
22 to address some of the things in the brief.

23 My simple position is that, yes, Ernst & Young  
24 should be given the deposition. We have no problem with that.  
25 What I do want is a designation where people inside the

1 company can't have access to it because of our position about  
2 Sarbanes-Oxley, Dodd-Frank, and retaliation.

3 THE COURT: Anything else?

4 MR. POLSENBERG: No. Thank you, Your Honor. We're  
5 probably running out of time.

6 THE COURT: Okay. Anything else?

7 MS. SPINELLI: Just that she sent the letter to the  
8 audit committee, Your Honor. And I understand that she  
9 doesn't like Mr. Hagenbuch, but he is one of the two  
10 independent directors on the committee, including Ms. Pat  
11 Mulroy, and we think that they, too, can continue their  
12 investigation and conclude it despite Ms. Wynn's efforts that  
13 she doesn't want to participate in that any longer.

14 THE COURT: Okay. The motion is granted in all  
15 respects.

16 Anything else?

17 MS. SPINELLI: No. Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. POLSENBERG: No. Thank you, Your Honor.

20 THE COURT: So you're going to get me a stay order?

21 MR. POLSENBERG: Yes.

22 THE COURT: Okay. Anything else?

23 MR. PEEK: We'll get you an order first so that the  
24 stay order can --

25 THE COURT: Well, I've been trying to balance orders

1 as they come in, to not sign them until I have everything  
2 together. But sometimes I get overwhelmed by the stuff you  
3 send.

4 'Bye.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE PROCEEDINGS CONCLUDED AT 9:07 A.M.

7 \* \* \* \* \*

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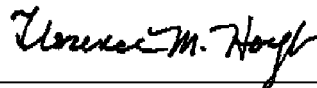
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

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

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**Las Vegas, Nevada 89146**



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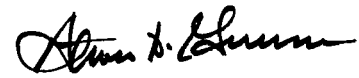
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8





CLERK OF THE COURT

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 and Universal Entertainment Corp.*

**DISTRICT COURT****CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
 corporation,

Plaintiff,  
 v.

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

Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-12-656710-B  
 DEPT. NO.: XI

**ORDER REGARDING DEFENDANTS'  
 MOTION TO MODIFY THE  
 PROTECTIVE ORDER**

Electronic Filing Case

Hearing Date: August 11, 2016  
 Hearing Time: 8:30 a.m.

**HOLLAND & HART LLP**  
 9555 Hillwood Drive, 2nd Floor  
 Las Vegas, NV 89134  
 Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

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Defendant Kazuo Okada and Defendants/Counterclaimants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("UEC," and collectively, the "Aruze Parties") filed their Motion to Modify the Protective Order (the "Motion") on August 1, 2016, which came before this Court for hearing on August 11, 2016. James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra Spinelli, Esq. of Pisanelli Bice PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited ("Wynn Resorts"). Donald J. Campbell, Esq. and Colby J. Williams, Esq. of Campbell & Williams appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn. Michael T. Zeller, Esq. of Quinn Emanuel Urquhart & Sullivan, LLP, Daniel F. Polsenberg, Esq. of Lewis Roca Rothgerber Christie LLP, and William R. Urga and David J. Malley, Esq. of Jolley Urga Woodbury & Little, appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). And, J. Stephen Peek, Esq. and Laura Z. Chester, Esq., of Holland & Hart LLP appeared on behalf of the Aruze Parties.

The Court having considered the Motion, the Opposition filed by Wynn Resorts, as well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

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

1. Effective as of the date of this Order, Sections 10 and 18 of the existing Protective Order, dated February 14, 2013, are modified to read as follows:

**10. Use of Confidential Information and Highly Confidential Information in Depositions.** (a) Counsel for any party shall have the right to disclose Confidential or Highly Confidential Information at depositions, provided that such disclosure is consistent with this Protective Order, including Sections 10 and 11. Any counsel of record may request that all persons not entitled under Sections 10 and 11 of this Protective Order to have access to Confidential Information or Highly Confidential Information leave the deposition room during the confidential portion of the deposition. Failure of such other persons to comply with a request to leave the deposition shall constitute substantial justification for counsel to advise the witness that the witness need not answer the question where the answer would disclose Confidential Information or Highly Confidential Information.

(b) Additionally, at any deposition session, (1) upon inquiry with regard to the content of any discovery material(s) designated or marked as "CONFIDENTIAL"

or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY;" (2) whenever counsel for a party deems that the answer to a question may result in the disclosure or revelation of Confidential or Highly Confidential Information; and/or (3) whenever counsel for a party deems that the answer to any question has resulted in the disclosure or revelation of Confidential or Highly Confidential Information, counsel to any party may designate portions of a deposition transcript and/or video of any deposition (or any other testimony) as containing Confidential or Highly Confidential Information in accordance with this Order by a statement on the record during the deposition or by notifying all other parties in writing, within twenty (20) calendar days of receiving the certified transcript that it contains Confidential or Highly Confidential Information and designating the specific pages, lines, and/or counter numbers as containing Confidential or Highly Confidential Information. If a designation is made via a statement on the record during a deposition, counsel must follow up in writing within twenty (20) calendar days of receiving the certified transcript, identifying the specific pages, lines, and/or counter numbers containing Confidential or Highly Confidential Information.

(c) Counsel must designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" within twenty (20) calendar days of receiving the certified transcript. If no confidentiality designations are made within the twenty (20) calendar day period, the entire transcript shall be considered nonconfidential. During the twenty (20) day period, the entire transcript and video shall be treated as Highly Confidential Information.

(d) All originals and copies of the deposition transcripts that contain Confidential Information or Highly Confidential Information shall be prominently marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the cover thereof and, if and when filed with the Court, the portions of such transcript so designated shall be filed under seal. Any DVD or other digital storage medium containing Confidential or Highly Confidential deposition testimony shall be labeled in accordance with the provisions of Section 6.

(e) For purposes of this Paragraph 10, the "certified transcript" is the version of the final transcript that is made available to the witness for review pursuant to NRCPC 30(e).

**18. Challenges to Designations.** Any party may object to the designation of Confidential Information or Highly Confidential Information on the ground that such information does not constitute Confidential Information or Highly Confidential Information by serving written notice upon counsel for the Producing Party **within twenty (20) calendar days of the date the item(s) was designated**, specifying the item(s) in question and the grounds for the objection. If a party objects to the designation of any materials as Confidential Information or Highly Confidential Information, the party challenging the designation shall arrange for an EDCR 2.34 conference to be held within ten (10) calendar days of service of a written objection to the designation to attempt to informally resolve the dispute. If the parties cannot resolve the matter, the party challenging the designation may file a motion with the Court to resolve the dispute. Such motions must be filed within ten (10) calendar days of the EDCR 2.34 conference. This Protective Order will not affect the burden of proof on any such motion, or impose any burdens upon any party that would not exist had the Protective Order not been entered; as a

1 general matter, the burden shall be on the person making the designation to  
 2 establish the propriety of the designation. Any contested information shall continue  
 3 to be treated as confidential and subject to this Protective Order until such time as  
 4 such motion has been ruled upon.

5 2. Section 5(a) of the Protective Order shall remain as stated therein, and the EDCR 2.34  
 6 conference shall remain a requirement prior to the filing of any motion to challenge designations  
 7 by any party.

8 **3. Designation and Challenge Process Continues During Stay Except for Motions.**

9 The time periods for written designations of Confidential Information or Highly Confidential  
 10 Information, objections to such designations, and EDCR 2.34 conferences regarding such  
 11 designations shall continue to run notwithstanding the stay of discovery entered by the Court on  
 12 June 23, 2016. However, motions challenging designations of Confidential Information or  
 13 Highly Confidential Information may not be brought during the stay of discovery without leave  
 14 of Court. During the stay, a party wishing to challenge such designations may file a motion for  
 15 leave at any time, and the time period for filing a motion to challenge designations, as defined in  
 16 Revised Section 18 of the Protective Order, shall begin to run only upon the Court granting  
 17 leave.

18 **4. Time Periods During Stay.** This Paragraph 4 applies only to depositions that have  
 19 been taken prior to the date of this Order.

- 20 a. For depositions as to which the transcript has been received but no written designations  
 21 of Confidential Information or Highly Confidential Information have been made, the  
 22 parties shall have twenty (20) calendar days from the date of this Order to make such  
 23 designations pursuant to Revised Section 10 of the Protective Order.
- 24 b. For depositions where designations of Confidential Information or Highly Confidential  
 25 Information have been made but no objections have been served, the other parties shall  
 26 have twenty (20) calendar days from the date of this Order to serve written objections to  
 27 those designations pursuant to Revised Section 18 of the Protective Order.
- 28 c. For depositions where designations of Confidential Information or Highly Confidential  
 Information have been made and written objections to such designations have been

1 served, the parties shall have ten (10) calendar days from the date of this Order to  
 2 conduct an EDCR 2.34 conference pursuant to Revised Section 18 of the Protective  
 3 Order.

4 DATED this 26 day of September 2016.

5  
 6 

7 THE HONORABLE ELIZABETH GONZALEZ  
 8 EIGHTH JUDICIAL DISTRICT COURT

*Jur*

9 Respectfully submitted by:

10 By: 

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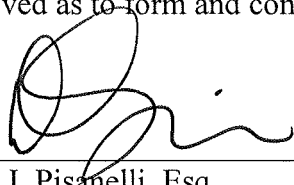
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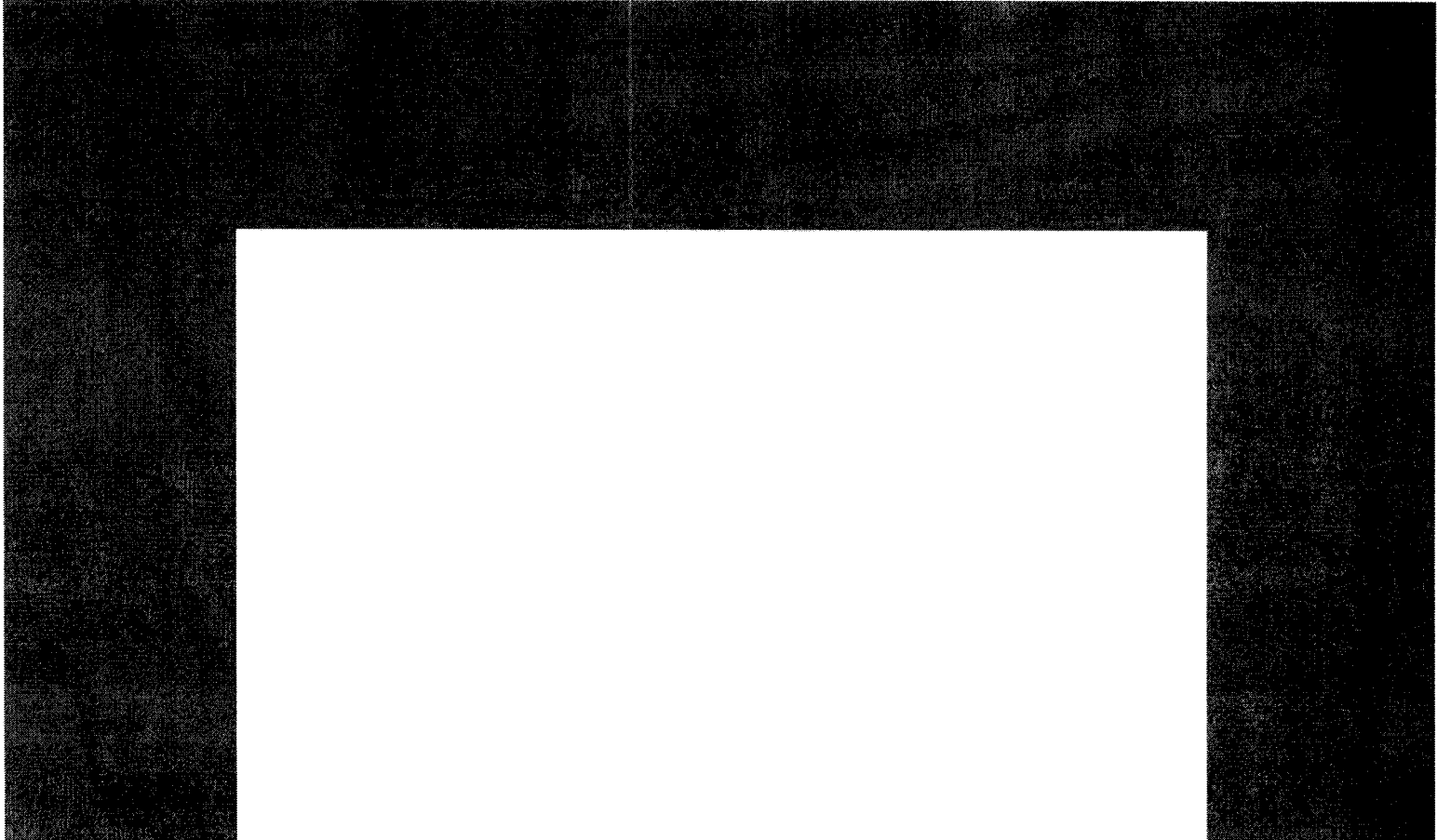
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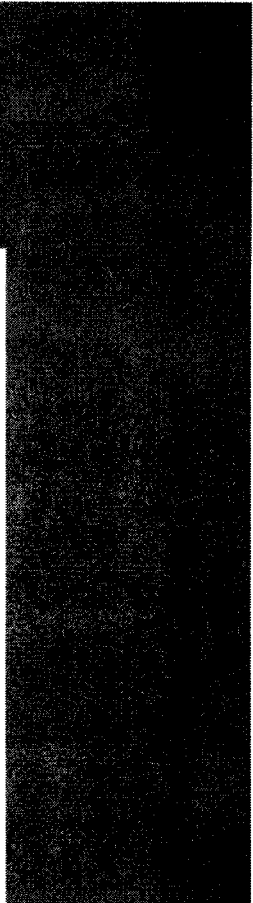
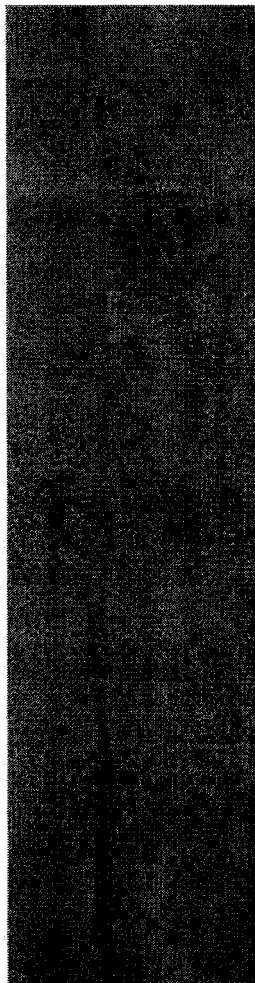
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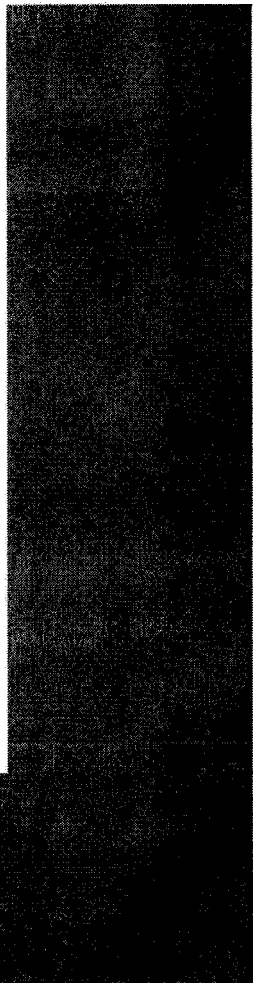


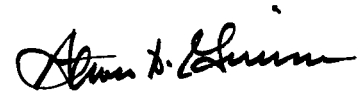


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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-656710
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS TO SEAL**

THURSDAY, SEPTEMBER 29, 2016

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ.
	DEBRA L. SPINELLI, ESQ.

FOR THE DEFENDANTS:	ROBERT J. CASSITY, ESQ.
	WILLIAM R. URGAS, ESQ.
	DAVID J. MALLEY, ESQ.
	PHILIP R. ERWIN, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 29, 2016, 8:46 A.M.

2 (Court was called to order)

3 THE COURT: Wynn versus Okada. Is everybody here  
4 now?

5 MR. CASSITY: Yes, Your Honor.

6 THE COURT: Since you were the one who called and  
7 said you were going to be late.

8 SPINELLI: Good morning, Your Honor. Debbie  
9 Spinelli on behalf of Wynn Resorts and the director  
10 defendants.

11 MR. ERWIN: Phil Erwin, Campbell & Williams, on  
12 behalf of Mr. Wynn.

13 MR. PISANELLI: James Pisanelli on behalf of the  
14 Wynn parties.

15 MR. URGAS: William Urgas on behalf of Elaine Wynn.

16 MR. MALLEY: David Malley on behalf of Elaine Wynn.

17 MR. CASSITY: Robert Cassity on behalf of the Aruze  
18 parties.

19 MS. SPINELLI: So I think --

20 THE COURT: What?

21 MS. SPINELLI: If you were going to go, I'm happy  
22 to --

23 THE COURT: I was going to ask Mr. Cassity to start,  
24 since they're his motions. Unless you want to tell me you  
25 resolved it.

1 MS. SPINELLI: They're our motions to seal.

2 THE COURT: I know. You're right. Thank you, Ms.  
3 Spinelli.

4 MS. SPINELLI: I think they're clear; but if you  
5 want to ask me some questions, I'm happy to answer them.

6 THE COURT: I have no questions for you.

7 MS. SPINELLI: Okay.

8 THE COURT: So --

9 MR. URGAS: Your Honor, may I kind of pipe up at this  
10 point before everybody starts arguing the other motions? When  
11 we had the hearing the other day on this particular motion  
12 there wasn't any request for a stay, and I'd like to ask for a  
13 stay of two of the three things that they were asking for to  
14 the period of October 20th.

15 THE COURT: I've got to enter an order before you  
16 can get a stay.

17 MR. URGAS: I'm sorry, what?

18 THE COURT: I've got to enter an order before you  
19 can get a stay.

20 MR. URGAS: All right. Then I -- we'll wait for you  
21 to enter your order, then I'll ask for the stay.

22 THE COURT: So let me go to Mr. Cassity.

23 MR. URGAS: Okay.

24 THE COURT: Mr. Cassity, Mr. Peek was the one who  
25 didn't want to advance them to Tuesday, or at least the one

1 that was on calendar. Remember?

2 MR. CASSITY: Well, I was under the impression at  
3 least one of them was ruled upon on Tuesday, Your Honor. But,  
4 if not, that's fine.

5 THE COURT: Mr. Peek wanted me to leave it here.

6 MR. CASSITY: Okay.

7 THE COURT: Admittedly, he hadn't read it before he  
8 got here.

9 MR. CASSITY: Sure.

10 THE COURT: I understand that.

11 MR. CASSITY: Yes.

12 THE COURT: But after reading it he said, can you  
13 leave it on Tuesday -- or Thursday, and I said, okay.

14 MR. CASSITY: Okay.

15 THE COURT: So now I have two motions to seal, and  
16 I've put them on oral calendar because Mr. Peek had indicated  
17 he had concerns about the motions to seal being on the  
18 chambers calendar.

19 MR. CASSITY: Certainly.

20 THE COURT: So you're him today.

21 MR. CASSITY: Yes, Your Honor. I am -- I'm here to  
22 present our position on these. And that certainly is that we  
23 don't have a copy, we haven't received the briefs, so we don't  
24 know whether the information that's within the briefs is  
25 appropriate for sealing and/or redaction. We understand the

1 Court's ruling on Tuesday with respect to the whistleblower  
2 pleadings that the Court has now ordered but has stayed until  
3 October 20th. Since we haven't received these, we don't know  
4 whether the information that's within the underlying briefs is  
5 appropriate for protection. With that being said, you know,  
6 we think that in the event that the Court does grant some  
7 protection that they should be redacted, as opposed to sealed  
8 in their entirety.

9 THE COURT: Ms. Spinelli.

10 MS. SPINELLI: And we don't disagree with that.  
11 Both of these underlying motions were actually served proposed  
12 redactions to Ms. Wynn's counsel under the protocol entered  
13 two weeks ago. They were served last night. So they have  
14 two, I think, judicial days to respond, and then the Okada  
15 parties will be served.

16 THE COURT: Okay. Anything else, Mr. Urga, before I  
17 grant the motion and you then ask me for a stay?

18 MR. URGA: No. I'm asking for the stay of what took  
19 place Tuesday. So you can go ahead and deal with the other  
20 issue.

21 THE COURT: Okay. So I am going to grant both of  
22 these motions. However, I am ordering those portions that do  
23 not relate to attorney-client communications, that are Wynn  
24 Resorts issue, to be redacted and served upon the Aruze  
25 parties; however, with the understanding that Mr. Malley's now

1 going to ask me to stay that order, too, with the same date.

2 MR. MALLEY: Yes, Your Honor.

3 THE COURT: Anything else?

4 So that means you're not going to respond to the  
5 proposed redactions under the protocol. So Ms. Spinelli can  
6 stop waiting. And because I stayed it, she's not going to do  
7 anything until October 20th. And if you don't respond to her  
8 by October 20th on proposed redactions, then she's going to go  
9 ahead and act in accordance with the protocol we established.

10 MR. URGAS: All right. So that's on the order that  
11 was entered two days ago on --

12 THE COURT: And today.

13 MR. MALLEY: And today.

14 MR. URGAS: And today.

15 THE COURT: Because they're all the --

16 MR. CASSITY: I just need --

17 MR. URGAS: Everything is stayed, as I understand it,  
18 so we can do it on --

19 THE COURT: They're all the same issue.

20 MR. URGAS: -- by the 20th.

21 MS. SPINELLI: No.

22 MR. CASSITY: Well, just to be clear, Your Honor.

23 The protocol addresses just the attorney-client and work  
24 product, not the whistleblower of issues.

25 THE COURT: And I've already denied the

1 whistleblower ones.

2 MR. CASSITY: Correct.

3 THE COURT: Which is why they're taking a writ.

4 MR. CASSITY: Correct.

5 MR. URGAS: Right.

6 MR. MALLEY: Right.

7 MS. SPINELLI: Okay. Okay. So this actually  
8 clarifies some things. Because the letters we sent last night  
9 because we knew that there was a stay related to Ms. Wynn's  
10 deposition as it relates to giving it to the Okada parties, we  
11 talked about whistleblower redactions, confidentiality  
12 redactions, and privilege redactions, and it was a whole host  
13 of mess and it took forever. So if it's stayed, that's going  
14 to make my team ridiculously happy. So thank you, Your Honor.

15 But we do have an objection to the stay request on  
16 our motion that you granted on --

17 THE COURT: Just now?

18 MS. SPINELLI: No. That you granted --

19 THE COURT: Tuesday?

20 MS. SPINELLI: -- on Tuesday related to our motion  
21 for -- nope -- our --

22 THE COURT: To send stuff to Ernst & Young?

23 MS. SPINELLI: Ernst & Young and our special  
24 committee, Your Honor.

25 MR. MALLEY: And on that, to be clear, there's -- I



1 think there were three requests. One was the confidentiality  
2 designations, one was to send the deposition to Ernst & Young,  
3 and one was other material to the special committee.

4 MS. SPINELLI: That's right.

5 THE COURT: I'm not staying the issue related to  
6 sending it to Ernst & Young.

7 MR. MALLEY: Thank you, Your Honor.

8 MS. SPINELLI: But are you --

9 MR. MALLEY: And we don't --

10 MS. SPINELLI: Are you staying it as it relates to  
11 the special committee? Because there was not --

12 THE COURT: No, I'm not staying it as to the special  
13 committee.

14 MS. SPINELLI: Thank you, Your Honor.

15 MR. MALLEY: We do -- I mean, for purposes of the  
16 record, we do request that that aspect be stayed, as well.

17 THE COURT: I understand.

18 MR. MALLEY: And that's denied?

19 THE COURT: I'm not treating the special committee  
20 any different than Ernst & Young. They have duties that are  
21 far and above what I have to do as a publicly traded company.

22 MR. MALLEY: Okay.

23 MS. SPINELLI: Thank you, Your Honor, for that  
24 clarity.

25 THE COURT: Anything else?

1 MS. SPINELLI: No, not with us.

2 THE COURT: 'Bye.

3 MR. CASSITY: Thank you, Your Honor.

4 (Court recessed at at 8:51 a.m.)

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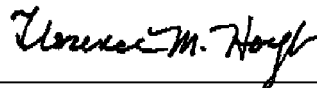
**CERTIFICATION**

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

9/30/16

\_\_\_\_\_  
DATE