

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

ELAINE P. WYNN, an individual,

Petitioner,

v.

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

Respondents,

and

WYNN RESORTS, LIMITED, KAZUO  
OKADA, UNIVERSAL  
ENTERTAINMENT CORP. AND  
ARUZE USA, INC.,

Real Parties in Interest.

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Dist. Court Case No. A-12-656710-B

**ARUZE PARTIES' RESPONSE TO  
PETITIONER ELAINE WYNN'S  
MOTION TO EXTEND DISTRICT  
COURT'S STAY OF DISCOVERY  
PENDING DISPOSITION OF THIS  
WRIT PETITION**

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Universal Entertainment Corp. and  
Aruze USA, Inc.*

Aruze USA, Inc., Universal Entertainment Corp., and Kazuo Okada (the “Aruze Parties”) respectfully submit this Opposition to the Motion to Extend District Court’s Stay Pending Writ Petition filed by Petitioner Elaine P. Wynn (“Ms. Wynn”) on October 20, 2016. The District Court refused to further extend the stay entered on September 20, 2016, because Ms. Wynn’s whistleblower claims, which are collateral to the merits of the dispute that gave rise to this lawsuit, have brought the entire case to a halt. This Court should not disturb the District Court’s thoughtfully reasoned case management determination that this sideshow controversy should not thwart all efforts to move this litigation forward on the merits.

The Aruze Parties contend that in February 2012, the Board of Directors of Wynn Resorts, Limited (“WRL”) executed an unfair and illegal “redemption” of \$2.7 billion in WRL stock held by Aruze USA, a company controlled by Mr. Okada. As they have explained in previous writ proceedings in this Court, the stock redemption was, in fact, a pretext designed to remove Mr. Okada from the company because he had begun challenging the Chairman and CEO, Stephen Wynn. *See* Real Parties’ Answer to Petition for Writ of Prohibition or Alternatively, Mandamus, Docket No. 68439, at 4-7 (Oct. 15, 2015).

The day after the redemption, WRL filed the underlying action seeking judicial ratification of its unlawful actions. A month later, the Aruze Parties filed

counter-claims against the company and all members of its Board, including both Mr. Wynn and his ex-wife, Ms. Wynn. Thereafter, in June 2012, Ms. Wynn filed cross-claims against Mr. Wynn relating to the interpretation of a shareholders' agreement between Mr. Wynn, Ms. Wynn, and Aruze USA.

For most of the history of this case, Ms. Wynn's cross-claim against Mr. Wynn has played a minor role in these proceedings. Recently, however, this collateral dispute between Ms. Wynn and her former husband has metastasized into a disruptive grudge match that threatens the District Court's efforts to efficiently manage and dispose of this case. Earlier this year, Ms. Wynn hired new lawyers, Quinn Emanuel, who filed amended pleadings greatly enlarging her claims against Mr. Wynn and adding new claims against WRL unrelated to any dispute with the Aruze Parties. WRL responded to this attack in June with a motion to disqualify Ms. Wynn's new lawyers, alleging that they had improperly gained access to the company's privileged information. As a result, the District Court stayed all discovery for what she thought would be a brief period of time.<sup>1</sup> Shortly thereafter, Ms. Wynn claimed that WRL's litigation conduct constituted illegal "retaliation" for her whistleblowing activities, and WRL responded by

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<sup>1</sup> The District Court stayed discovery at a hearing on June 23, 2016. At the time, she suggested that the evidentiary hearing to resolve the disqualification motions might take place "the week of July 5th." *See* Exhibit A, at 48 (June 23, 2016 Hearing Transcript).

alleging that Ms. Wynn's activities violated a protective order relating to confidentiality.

To resolve this tangle of issues, the District Court ordered WRL and Ms. Wynn to engage in certain limited discovery, including a deposition of Ms. Wynn. However, that discovery was disrupted by various subsidiary disputes between Ms. Wynn and WRL that involve claims of privilege and the scope of federal whistleblower protections, including the dispute that gives rise to the present writ petition.

At a hearing on September 20, 2016, the District Court resolved several of these collateral issues against Ms. Wynn and made clear that it was time for this diversionary dispute to be brought to a close so that the principal claims and this case can proceed to trial. Accordingly, the District Court granted Ms. Wynn a 30-day stay to allow her to file her current writ petition, but stated clearly that the stay would not be extended. *See* 2 PA 366, 370.<sup>2</sup> The District Court then denied Ms. Wynn's motion to extend the stay at a hearing on October 20, 2016. *See* 7 PA 1312, 1317.

The District Court was correct to deny a further stay of discovery. This case is now four and a half years old, and the parties have not reached the finish line for

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<sup>2</sup> Ms. Wynn did not file her writ petition until October 6, 2016, two weeks after the hearing at which the District Court stated that the stay would not be extended beyond 30 days.

discovery. It must move forward if the policy underlying NRCP 1 and NRAP 1(c) is to be implemented: that civil litigation should be managed to achieve “the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts.” NRAP 1(c) The seemingly endless collateral disputes between Ms. Wynn and WRL have become the tail wagging the dog.

The Aruze Parties take no position on the merits of Ms. Wynn’s whistleblower claims, but this Court should not disrupt the District Court’s management of the case or otherwise facilitate further delay without a compelling reason to do so, which Ms. Wynn has not provided. The proceedings before Judge Gonzalez should be resumed as soon as possible.

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## CONCLUSION

For the foregoing reasons, in the event that this Court is inclined to grant a stay, the Aruze Parties respectfully request that it consider the impact of the length of the stay on the underlying proceedings consistent with the policy underlying NRCP 1 and NRAP 1(c).<sup>3</sup>

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<sup>3</sup> The Aruze Parties also respectfully note that there are two other fully briefed writ petitions relating to the same underlying case. *See* Docket Nos. 70050 (petition filed Mar. 30, 2016), 70452 (petition filed May 25, 2016). For purposes of judicial efficiency, the Aruze Parties respectfully request that this Court consider consolidating the hearing and decision of all of these matters.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November 2016, a true and correct copy of the foregoing **ARUZE PARTIES' RESPONSE TO PETITIONER ELAINE WYNN'S MOTION TO EXTEND DISTRICT COURT'S STAY OF DISCOVERY PENDING DISPOSITION OF THIS WRIT PETITION** was electronically filed with the Nevada Supreme Court. Electronic Service of the foregoing document shall be made in accordance with the Master Service List to the persons and email addresses listed below:

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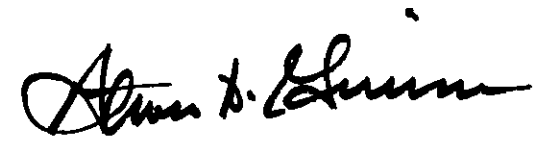
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**EXHIBIT A**

**EXHIBIT A**



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 MOTION FOR DISQUALIFICATION**

THURSDAY, JUNE 23, 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:

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MICHAEL T. ZELLER, ESQ.  
JOHN QUINN, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 23, 2016, 10:12 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 Were you successful on your motion for  
5 reconsideration? Really? We were giving you slim and none.

6 MR. PISANELLI: I was opposing it.

7 THE COURT: Oh. Okay. So this is Wynn Resorts  
8 versus Okada. After spending several hours last night  
9 reviewing things I've decided I want to start -- despite the  
10 fact we have a lot of things on calendar, I want to start with  
11 the disqualification issues because it has fingers that run  
12 into all of the other issues. So, while I understand there's  
13 a number of things that we're doing today, that's where I want  
14 to start.

15 MR. PISANELLI: Thank you, Your Honor.

16 MR. BICE: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. BICE: Your Honor, when Ms. Wynn and Quinn  
19 Emanuel were here in the past in response to the motion for  
20 disqualification a number of representations were made to the  
21 Court about how this was not -- there's no debate here, this  
22 isn't -- to use their words, this isn't even a close case  
23 because they received no information from her that could  
24 remotely be deemed privileged, and in fact they went on to  
25 represent to the Court how they'd only had a couple of

1 communications with her and they only had two emails from her,  
2 essentially.

3           Now, we had, of course, our doubts how could that be  
4 true, they're taking all these depositions, they I'm sure  
5 pride themselves on being well prepared for a case before  
6 taking depositions. It seemed really incredible that they  
7 could be making those sorts of representations while they're  
8 proceeding with all this discovery. Well, lo and behold --  
9 and the Court will recall they tried to get past the Court  
10 with those representations and saying that there was no need,  
11 no need, no one needed to dig any further into this. It was  
12 the grand Wizard of Oz argument, pay no attention to what was  
13 behind the curtain.

14           Well, fortunately, the Court didn't buy into that  
15 and required some disclosures. So we know at least a little  
16 bit more of the truth, but I would submit that those  
17 declarations are so carefully worded I had to read them -- and  
18 maybe it's just because I'm slow, but I had to read them about  
19 six or seven times to try and piece them all together about  
20 what the story really is. And once you do so it's very  
21 disturbing, the story. Because here's what the story now is.  
22 Apparently they have a lot of documents from Ms. Wynn, not the  
23 two emails that they've previously represented, because  
24 someone, without the company's consent and certainly without  
25 the knowledge of the lawyers for Wynn Resorts, somebody copied

1 a company computer that Ms. Wynn was using, imaged it, without  
2 any authorization from anyone even though they knew -- and  
3 apparently her lawyers at MTO were the ones facilitating this  
4 -- even though they knew that the company was represented by  
5 counsel, they never sought any authorization to do that. They  
6 then apparently have taken that device -- now, this is where  
7 the declarations -- you've got to really try and piece them  
8 together. Because one declaration suggests that, oh, Ms. Wynn  
9 has just maintained possession of that, no one's ever copied  
10 it, no one's ever looked at it.

11 But then you've got to look at Mr. Shelton's  
12 declaration.

13 THE COURT: Which one?

14 MR. BICE: The first one.

15 THE COURT: Okay.

16 MR. BICE: Which is -- the first one he submitted in  
17 the in camera. And he gives two completely contradictory  
18 representations. The beginning of paragraph 3 he says, "Quinn  
19 Emanuel is not in possession, has never been in possession of  
20 Ms. Wynn's computers, hard drives, or any copies or images of  
21 those hard drives, including her hard drives that contain  
22 company documents."

23 But then you go on to paragraph -- I believe it is  
24 paragraph 15. He now admits that, oh, on this drive that they  
25 got from MTO someone imaged -- there's an image on that of her

1 Wynn Resorts office computer, the same drive that they  
2 previously represented no one had but Ms. Wynn under lock and  
3 key. They have never disclosed that to anyone. To claim that  
4 -- as they have done, that a board member of Ms. Wynn's  
5 stature didn't have privileged information in her role as a  
6 board member for many years is laughable. It is absolutely  
7 laughable for them to be suggesting that.

8           So once we got these declarations, Your Honor, and  
9 we realized that this was literally the tip of the iceberg we  
10 started trying to investigate ourselves to try and figure out  
11 -- perhaps we could get our arms around just how big the  
12 iceberg is. One of the things that had come up earlier in the  
13 case -- and we didn't bring it to the Court's attention  
14 because we unaware that there were any issues with this, but  
15 when we -- when Wynn Resorts was in the process of preserving  
16 evidence one of the things we uncovered -- because we had  
17 imaged the company drives, which included Ms. Wynn's drive.  
18 One of the things we realized is that Ms. Wynn had been using  
19 her company computer and company email to communicate with her  
20 own lawyers. Now, we disputed that that would be privileged,  
21 and there is -- courts have addressed this issue about whether  
22 or not an officer and director can claim that they had a  
23 reasonable expectation of privacy when they're using company  
24 devices to communicate with their lawyers on -- you know,  
25 their personal lawyers. But we agreed with MTO that we would

1 sequester all of those communications that they had with her.  
2 We reserved our rights, but we agreed to follow what they  
3 asked us to do, which was sequester those. They gave us a  
4 list of names of lawyers, which included not only people at  
5 MTO, but other law firms, as well, including I believe her  
6 personal divorce counsel. Those are all -- FTI set those  
7 aside and has locked them up.

8           So once we received these declarations revealing  
9 that, oh, they have a lot more data than they had let on and  
10 that Mr. Zeller represented to the Court, I asked FTI -- and I  
11 don't remember -- it was not yesterday, but the day before I  
12 asked FTI to do a little snooping for me on those emails. So  
13 here's what FTI did. We did not want -- we agreed that we  
14 would not look at the emails with MTO, and so we did not. But  
15 I was able to ask FTI to do the following, find out for me who  
16 are all of the recipients on these documents. So FTI gave me  
17 a report that spells out, here are the communications that  
18 were all segregated. There were 67 of them, actually, 67.  
19 But one of them -- I don't even know how it got put into that  
20 bundle, because it had nothing to do with this issue. So  
21 there were 66 in reality. Then we asked FTI, tell us of those  
22 66 how many of them look like she was potentially forwarding  
23 information. And they reported back 35 of them.

24           So they told us, here's -- again, we don't know the  
25 substance. These could be benign. But there are some of them



1 that just leap out at us of serious concern. Some of the  
2 emails it looks like she was forwarding were email  
3 communications that Ms. Sinatra was having with the board  
4 members and copying the litigation team over here. And it  
5 looks like she was forwarding those to lawyers at MTO, as well  
6 as a lawyer by the name of -- he claims to be a lawyer, a guy  
7 by the name of Mark Faviani. And we'll get into that a little  
8 bit later. But she is forwarding it looks like company  
9 emails, company documents. And this -- by the way, Your  
10 Honor, these are just the ones to her lawyers.

11           What we've also now, part of our investigation, but  
12 we don't have our arms around the full breadth of it yet, she  
13 was also blind copying her lawyers on communications that she  
14 was having with other board members which, again, we didn't  
15 know about, she had not disclosed any of that to anyone. And  
16 so when those lawyers -- when those board members or Ms.  
17 Sinatra respond to Ms. Wynn, they hit "reply all," guess who's  
18 involved in those communications that none of them knew about.  
19 Her lawyers. And never disclosing that to anyone that they  
20 were essentially, for lack of a better term, eavesdropping on  
21 the communications between board members, as well as the  
22 company's general counsel.

23           Now, we have to assume that all that stuff made it  
24 onto this drive that we're now -- we only learned about as a  
25 result of these disclosures, that drive from MTO to them. And

1 now they're saying, well, we only -- you know, we only  
2 uploaded some of it, they only uploaded this C10 database, and  
3 trying to pretend like, well, that's just not significant.  
4 Well, one of the suspect emails they now admit was in that  
5 database, and they uploaded it. And I don't know if the Court  
6 has picked up on these declarations about how carefully worded  
7 they are, but the constant theme is no, quote, "lawyers" from  
8 Quinn Emanuel looked at these documents, no, quote, "lawyers"  
9 have searched the database. I don't know about Your Honor. I  
10 don't search databases in my office, I don't look in the  
11 databases in my office. Paralegals and other --

12 THE COURT: You've have the technical people who do  
13 that for you.

14 MR. BICE: Exactly. Guess what. They looked  
15 through all the documents, and then they flag what they think  
16 is important, and they give it to the lawyers.

17 THE COURT: So have you been able to identify what  
18 LTAS is?

19 MR. BICE: Well, they claim -- as I understand it,  
20 they claim that is a Quinn Emanuel internal department.

21 THE COURT: So they'd be employees of the law firm?

22 MR. BICE: Yes.

23 THE COURT: Okay.

24 MR. BICE: So our point is this, Your Honor. At the  
25 end of the day the representations that were made to the Court

1 about the data that Quinn Emanuel has was not remotely  
2 accurate. Couldn't have been accurate. They knew they had a  
3 drive, they knew there was company documents on that drive,  
4 and they never disclosed that to us or to you despite the fact  
5 that they knew that the Court was concerned about this issue.  
6 Then they tell us, well, we have an email -- we also have  
7 another -- on that drive there's an account about EPD, they  
8 call it essentially Elaine Personal Documents. That's what  
9 they're characterizing it. But here's what else we now know.  
10 She was forwarding documents, it appears, and blind copying  
11 herself on documents to her personal email address that they  
12 now claim, you know, there's no need for anybody to be  
13 concerned about those, because those are just her personal  
14 documents. She has infected that file by this conduct.

15           So that's why we have set out, Your Honor, there  
16 just isn't I think any choice under the Sands-Jacobs decision,  
17 Your Honor, at this point. They are not the judge of our  
18 privileges. The suggestion that they have represented that  
19 they do not possess privileged documents and privileged  
20 information does not pass the laughter test. They imaged a  
21 company computer without counsel's permission despite the fact  
22 that they knew that the company was represented by legal  
23 counsel. They then took that information, and they have  
24 uploaded at least significant portions of it onto their own  
25 system.

1           We need an order -- essentially we need an  
2 injunction from the Court that compels that device to be  
3 deposited with a third-party administrator. We've been  
4 through this process before. We now know the rules from the  
5 Supreme Court. One of the problems, obviously, that we had in  
6 the prior case was that the rules are very -- subject to  
7 debate. I don't think that they're subject to debate any  
8 longer, and we need that device and anything else she gave  
9 them. Because I don't want to hear this -- they've lost the  
10 credibility argument to come in and represent to the Court,  
11 well, trust us, this is all that we have. They've lost the  
12 credibility argument to say trust us. Everything that they  
13 have received from her, directly or indirectly, needs to be  
14 deposited with a third-party administrator so that it can be  
15 searched and we can find out what they really have. And then  
16 we need to get this issue resolved, this question of privilege  
17 about her forwarding information. Again, I don't know what's  
18 in there, because we agreed with MTO we would not look. But  
19 we need to get that issue resolved. She's going to claim  
20 privilege even though she was using company equipment and  
21 devices on her personal legal affairs. We need to get that  
22 issue resolved so then we can figure out what did she forward  
23 to them and is it really privileged information or not.

24           And then lastly, Your Honor, again, they've lost --  
25 they've lost the credibility to come and say, trust us, she

1 didn't share any privileged information with us in our  
2 interviews and discussions with her. The declaration from Ms.  
3 Wynn is very troubling. This is a board member of the company  
4 who has been on the board for a number of years, and her  
5 assertion is, I never had any -- it's contradictory. On the  
6 one bus she says, I'm very careful, but in the very next  
7 paragraph she says, I never did -- I never get legal advice or  
8 legal input so therefore there's nothing I have that's  
9 privileged, an assertion that simply cannot be reconciled with  
10 a board member's duties. How was she fulfilling her fiduciary  
11 duties to the shareholders if she wasn't getting legal counsel  
12 on matters that pertained to the company? That's simply not  
13 credible. And it essentially a confession that she is no  
14 position to be the arbiter of the company's privileges. Which  
15 is exactly the Sands-Jacobs case establishes, Your Honor.

16           So we need -- again, they've lost the argument.  
17 They've lost the ability to come in and say, trust us. We  
18 need the Court to compel them to deposit their communications  
19 with her, whether electronic or any documents that memorialize  
20 any communications with her, with another third party so that  
21 that process can be vetted by we would suggest a special  
22 master. And then once those three steps are taken, Your  
23 Honor, that's why we set out our proposed protocol in the  
24 brief, once that process is done we are entitled, Your Honor,  
25 to an evidentiary hearing. Because these self-serving

1 declarations that have gigantic gaps in them and are  
2 completely contradictory do not provide a basis to ignore our  
3 privileges. Thank you.

4 THE COURT: Thank you. Before you go -- wait, Mr.  
5 Bice. Before you go, your FTI report that you were able to  
6 generate yesterday or the day before --

7 MR. BICE: Yes.

8 THE COURT: -- have you shared a copy of that with  
9 Ms. Wynn's counsel?

10 MR. BICE: Let me tell the Court why I haven't. Not  
11 because -- my worry is about our work product. That's my only  
12 -- my only concern, Your Honor. Let me -- could I confer with  
13 my team just very briefly?

14 THE COURT: Sure.

15 MR. BICE: Thank you.

16 (Pause in the proceedings)

17 MR. BICE: Your Honor, we will give them a copy.  
18 Ms. Spinelli is seeing if she has a clean copy.

19 THE COURT: Okay. It looks like ledger-size paper  
20 to me.

21 MR. BICE: It is.

22 THE COURT: I don't think I have ledger-size paper  
23 in our copy room, plus I'm told the copier's broken.

24 MR. BICE: I don't even have a complete set, Your  
25 Honor. I only have Documents 28 through 67.

1 THE COURT: Okay.

2 MR. BICE: I haven't written on them. I will give  
3 them to Mr. Urga's team, and I will get them the remainder of  
4 them while we are here. Oh. We may have it.

5 Yep, that's it. Go ahead.

6 THE COURT: Do you want Laura to go make a copy  
7 downstairs where they think they have ledger paper on the  
8 second floor so that I can have a copy for my records even if  
9 I don't look at it? Somebody's nodding their head.

10 Ms. Spinelli, would it be possible for you to hand  
11 that here?

12 MS. SPINELLI: Yeah.

13 THE COURT: Thanks.

14 MS. SPINELLI: I wanted to make sure I haven't  
15 written on the back.

16 THE COURT: Oh. All right. Good luck, Laura.

17 THE LAW CLERK: How many copies?

18 THE COURT: How about six.

19 All right. Anything else before I go to Ms. Wynn's  
20 team?

21 MR. BICE: No, Your Honor. Thank you.

22 THE COURT: Okay. Good morning.

23 MR. QUINN: Good morning, Your Honor. John Quinn,  
24 Quinn Emanuel, here with Mike Zeller. Elaine Wynn is with us  
25 here this morning.

1           We've heard a lot of new things within the last  
2 actually less than 24 hours from the other side, and I want to  
3 try to address all the new issues that have been raised,  
4 including their filing that came in yesterday afternoon.

5           But I'd like to begin with where this motion began,  
6 this motion to disqualify. They came into court accusing our  
7 firm, accusing Ms. Wynn of having used privileged information.  
8 They cited two examples of that as the only instances they  
9 had. One was an email, and I think they're sensitive about  
10 Mr. Okada's counsel hearing this, so I won't go into it in  
11 detail. The Court has the email.

12           THE COURT: You guys discussed it in a deposition.  
13 They were there.

14           MR. QUINN: Well, if there's no objection, I --

15           THE COURT: You discussed it in a deposition. They  
16 were there. It sort of looks like the harm was done if there  
17 was harm.

18           MR. QUINN: Your Honor, they cited two things, one,  
19 the email string July 31, they cited also questions that I  
20 asked of Ms. Sinatra at her deposition that related to whether  
21 she knew about allegations of illegal conduct, anybody  
22 reported that to her, and payoffs. Those were the only  
23 things.

24           Now, Your Honor, with their moving papers they  
25 submitted no evidence. Remember, their contention is that we



1 have and have used their privileged information. So they're  
2 claiming privilege. It's their burden to prove that these are  
3 privileged. To this day, even after the filings at the end of  
4 the day yesterday, they have submitted no evidence, no  
5 evidence at all, Your Honor, that either of those things that  
6 kicked off this process was privileged. The only evidence the  
7 Court has before it are the acknowledgements by Ms. Sinatra in  
8 her deposition that Ms. Wynn was not seeking legal advice and  
9 she did not give legal advice.

10 THE COURT: So do you think that's the standard,  
11 whether a board member is seeking legal advice for themselves,  
12 as opposed to whether corporate counsel is gaining information  
13 in an attempt to do their job?

14 MR. QUINN: I think under the Henderson case, it's a  
15 Nevada case, if the principal purpose of the communication is  
16 not to give legal advice, whether it's a director, employee,  
17 doesn't matter who it is, it cannot be privileged. The  
18 principal purpose of the communication has to be in order to  
19 obtain or give legal advice. Just because an attorney has a  
20 communication doesn't make it privileged. The only evidence  
21 the Court has, Your Honor, Ms. Wynn's deposition -- or her  
22 declarations, she goes through the Virtue email in detail.  
23 Here's someone who had been a candidate -- somebody stop me if  
24 they have an objection to my going into the substance of this.

25 MR. PISANELLI: Your Honor, during that deposition

1 we attempted to claw back the privileged email. We don't want  
2 to sit here on our hands and be accused of having waived our  
3 rights. They've prejudiced --

4 THE COURT: So we won't talk about it anymore even  
5 though it was discussed in the deposition.

6 So let's go back to my philosophical question, Mr.  
7 Quinn.

8 MR. QUINN: Yes, Your Honor.

9 THE COURT: This is where I think the flaw in your  
10 argument is. And that's what I need to focus on today,  
11 because I have to make a decision.

12 MR. QUINN: Yes, Your Honor.

13 THE COURT: It appears to me that one of the flaws  
14 in your argument is you believe that Ms. Wynn's communications  
15 with Ms. Sinatra cannot in and of themselves be privileged  
16 because Ms. Wynn was not asking Ms. Sinatra for legal advice.

17 MR. QUINN: That plus one other thing. Ms. Sinatra  
18 said she wasn't giving legal advice.

19 THE COURT: To Ms. Wynn.

20 MR. QUINN: To Ms. Wynn. So --

21 THE COURT: Right.

22 MR. QUINN: -- if a communication -- and this is my  
23 understanding of the law. If a communication is not made for  
24 the principal purpose of obtaining or giving legal advice, it  
25 cannot be privileged. And I'd cite the Court to the Henderson

1 case, which basically states that standard. It's 2011 WL  
2 13001439, Nevada -- District Court Nevada 2011. Conversation  
3 just between directors and corporate lawyers, even in-house  
4 lawyers, outside lawyers, are not by definition privileged.

5 THE COURT: So you're skipping the prong that is in  
6 connection with the provision of legal services?

7 MR. QUINN: No. Connection with the provision of  
8 giving legal advice.

9 THE COURT: No, Counsel. I asked a different  
10 question.

11 MR. QUINN: Okay. I --

12 THE COURT: Don't reframe my question, please.

13 MR. QUINN: Yes, Your Honor.

14 THE COURT: So are you skipping it, or not?

15 MR. QUINN: No, I'm not intentionally skipping it,  
16 Your Honor.

17 THE COURT: Okay.

18 MR. QUINN: She wasn't -- there was no legal  
19 services being provided. There were no legal services being  
20 provided. In fact, Ms. Wynn's account, Ms. Sinatra said, this  
21 was a personal matter handled by Mr. Wynn's personal attorney,  
22 did not involve the company. She's the company counsel.  
23 They're claiming an attorney-client privilege on behalf of  
24 Wynn Resorts. Ms. Sinatra in that communication disclaims  
25 that. It's not a company matter.

1 I mean, I do want to understand and engage with the  
2 Court's concern on this. I don't think -- an attorney-client  
3 communication has to be a communication, one; and it has to  
4 involve in one way or another either getting legal advice or  
5 collecting information in order to give legal advice or  
6 somebody asking for legal advice. And that is my -- that is  
7 my understanding of the law, Your Honor. And, you know, I'm  
8 happy to -- if the Court believes I'm missing something on  
9 that, I'd very much like to address it.

10 THE COURT: I've already asked you the question  
11 twice. So I'll let you move on to something else.

12 MR. QUINN: All right. So there is no evidence  
13 before the Court, Your Honor, that either of those two things  
14 that kicked this off, the email or Ms. Wynn's conversations  
15 with Ms. Sinatra where she says, you know, I've learned this  
16 -- A, I've learned this information; two, did the company do  
17 anything about it. And I told you what the response to that  
18 was. I submit, Your Honor, based upon the moving papers here  
19 this is all they were talking about. That should be the end  
20 of the matter, because they didn't come forward with any  
21 evidence that there was anything here that was privileged  
22 whatsoever. No declaration, no showing that anybody was  
23 acting as a lawyer. Instead, yesterday we got an opposition,  
24 a response that goes back to events four years ago when Munger  
25 Tolles & Olson was involved in this case, which I submit is

1 really an effort just to change the subject and not talk about  
2 the things that kicked this off. They make the assertion, and  
3 we just heard it again multiple times this morning, Your  
4 Honor, that Mr. Zeller made a misrepresentation to this Court  
5 when he said, you know, the only arguably privileged  
6 communications that we have received from Ms. Wynn are this  
7 email, and then they referred to another conversation. It's  
8 my understanding -- I wasn't here, but I think the record is  
9 pretty clear that what the Court was asking of Mr. Zeller is  
10 just to identify all arguably privileged communications which  
11 Ms. Wynn had provided to us, any communications which by any  
12 stretch of the imagination might be privileged. The Court  
13 wasn't asking, tell us everything that you ever got from Ms.  
14 Wynn or that you got from the Munger Tolles firm. That wasn't  
15 the question. Mr. Zeller said, there are only these two  
16 things, he's amplified on that in his declaration and  
17 specified what it is that by any stretch of the imagination  
18 anybody could argue as privileged. And we've shown why those  
19 communications did not disclose any privileged information.

20           There's a statement made that it's incredible that  
21 Ms. Wynn says she never ever received any legal advice. Your  
22 Honor, that's a misstatement of her declaration. In her  
23 declaration she acknowledged that she did receive legal  
24 advice. She said that from time to time on specific occasions  
25 in the context of board meetings she would get legal advice.

1 The statement that she claimed she never got any legal advice  
2 is simply -- is simply incorrect.

3           So then they bring up an issue which they knew about  
4 four years ago relating to these communications that they had  
5 identified that she had from her computer at Wynn Resorts.  
6 And they say, well, we've now looked at that and it looks like  
7 she was forwarding information. Your Honor, we're getting  
8 pretty far afield here. This all started with an application  
9 that Quinn Emanuel should be disqualified because we've had  
10 access to -- we've received from her privileged information.  
11 Whatever is in there, there's been no showing to contradict  
12 our statements that we have never received anything except  
13 what we've identified to the Court. We've identified all of  
14 it. They say there's some reason to think this was private  
15 information.

16           THE COURT: So, sir, when you say "we" what do you  
17 mean?

18           MR. QUINN: Your Honor, we say in our declaration  
19 not just lawyers, we say Quinn Emanuel has not reviewed. That  
20 is in Mr. Shelton's declaration, paragraph 3.

21           THE COURT: So who is LTAS?

22           MR. QUINN: That is an internal data management  
23 technical group that we have. They do the technical things to  
24 manage the data. They are our employees.

25           THE COURT: And they've uploaded the data and done

1 searches on the data?

2 MR. QUINN: They have uploaded one portion of the  
3 data, the C10 database. They performed two searches, one at  
4 Mr. Zeller's request to see if that July 31 email had been  
5 produced, they did that search --

6 THE COURT: On the entire drive?

7 MR. QUINN: Just on that C10 database.

8 THE COURT: That's not what Ms. Yanez's declaration  
9 says. Is Ms. Yanez here?

10 MR. QUINN: She is not here, Your Honor. But the  
11 query was very specific.

12 THE COURT: Well, I'm not worried about the query.  
13 I'm worried about the data that was searched.

14 MR. QUINN: Right.

15 MR. ZELLER: What did she say she searched?

16 THE COURT: She says the MTO hard drive.

17 MR. QUINN: All right. So if that's true, the MTO  
18 hard drive included more than the C10 database. But she was  
19 asked a specific question, Your Honor, is this email, which we  
20 already had a hard copy of, we already had it --

21 THE COURT: From Ms. Wynn?

22 MR. QUINN: From Ms. Wynn, yes. Which on the face  
23 of it our judgment was and is does not reflect a privileged  
24 communication. The search was done to see if it was there, to  
25 see if it had been produced. The second time was she received

1 a very specific document request, we did, for communications  
2 between Ms. Wynn and the Okada parties. We searched to see if  
3 there was anything on that database that was responsive to  
4 that.

5 THE COURT: When you say database do you mean the  
6 C10, or the Munger Tolles hard drive?

7 MR. QUINN: The C10 is on that hard drive.

8 THE COURT: I know that, Counsel.

9 MR. QUINN: Your Honor, and -- Your Honor, my memory  
10 fails me on that.

11 THE COURT: That's why I asked if Ms. Yanez was  
12 here, because she was the person who actually did the searches  
13 for your firm; right?

14 MR. QUINN: Yes. But I'm prepared to assume for the  
15 purpose of this argument, Your Honor, that she searched the  
16 entire database and that's all it was for. Now, by  
17 definition, Your Honor, if you're looking for communications  
18 between Ms. Wynn -- Ms. Wynn and the Okada parties, you're not  
19 looking for privileged communications.

20 THE COURT: Hold on a second, Counsel. We're going  
21 to make a record real quick.

22 So the ledger-size sheet that Ms. Spinelli was kind  
23 enough to give me we've marked as Court's Exhibit 1.

24 Mr. Quinn, if you'll come on up, I have a couple for  
25 your team. I have a bunch for your team.



1 Does anyone else at the Wynn table need one?

2 MR. BICE: We would take -- just so that we have an  
3 exact copy, Your Honor, we would take one. Thank you.

4 THE COURT: And can you give this to Mr. Pisanelli  
5 when you walk by. And I'm keeping one for me that I can write  
6 on.

7 MR. BICE: Thank you.

8 THE COURT: And, unfortunately, when Laura blew it  
9 up it's like in two fonts. So if anybody needs my magnifying  
10 glass, it's up here.

11 But thank you, Laura, for handling that.

12 What, Dulce?

13 THE CLERK: [Inaudible].

14 THE COURT: Does this need to be sealed? Does this  
15 need to be sealed?

16 MR. BICE: No.

17 THE COURT: Okay. Sorry for the interruption.

18 MR. QUINN: All right. So, Your Honor, by  
19 definition if you are doing a search for communications  
20 between Ms. Wynn and the Okada parties, you're not going to  
21 get anything that's privileged.

22 THE COURT: Well, but Mr. Okada used to be a board  
23 member; right?

24 MR. QUINN: It was in a specific time frame.

25 THE COURT: Okay.

1 MR. QUINN: It was in a specific time frame.

2 THE COURT: So after he was a board member?

3 MR. QUINN: It was after.

4 THE COURT: All right.

5 MR. QUINN: So they're looking to see is he still  
6 communicating with them.

7 So the record on this, Your Honor, is that no one at  
8 Quinn Emanuel has accessed this other than these two searches  
9 which I've described.

10 THE COURT: And your people from your LTAS  
11 department.

12 MR. QUINN: Well, they're the ones that did those  
13 searches. I mean, that is the department that does this sort  
14 of thing. They maintain -- these are technical people.

15 THE COURT: No, I understand. Usually in my  
16 experience at least here it's outsourced. I've not had  
17 somebody who does it in house before, which is why I'm asking  
18 the questions that I am.

19 MR. QUINN: Yeah. For better or for worse we do so  
20 much of this that we actually hired a bunch of technical  
21 people and have these people as our employees.

22 THE COURT: I understand.

23 MR. QUINN: So when we say that Quinn Emanuel hasn't  
24 reviewed this, except as we've disclosed to the Court, we  
25 include them.

1           Now, they raise an issue about these communications  
2 which they knew about four years ago that Ms. Wynn was doing  
3 from -- had from her Wynn Resorts computer, and they raise an  
4 issue, looks like she's forwarding things, looks like she  
5 might be forwarding things from counsel for Wynn Resorts. As  
6 they know, there were -- she was in fact getting  
7 communications from counsel for Wynn Resorts at the time on  
8 issues relating to sales of stock that she wanted to do. She  
9 was communicating with them, there were discussions should she  
10 -- could she sell stock under the shareholders agreement,  
11 could she get a waiver. They know this because they produced  
12 these documents to us. So she's getting communications on  
13 this very live issue about stock sales. And if she was  
14 forwarding it to her lawyers in that connection, that wouldn't  
15 be any surprise. But, again, you know, I think we're on a bit  
16 of a hunting now to try to find something to raise an issue.  
17 Now Munger Tolles is involved, that Munger Tolles imaged her  
18 computer. Frankly, it would be very surprising to me if Wynn  
19 Resorts did not know that Munger Tolles was imaging her  
20 computer. I don't know how they could have done that if they  
21 didn't know it.

22           But what this whole proceeding is about is should  
23 Quinn Emanuel be sidelined in this case because we have  
24 received privileged communications. And there is no evidence  
25 of it. No evidence of it. They came into court, said, these

1 folks cannot be trusted, they need to be disqualified because  
2 of two things. And those have been abandoned. They're not  
3 here making the case that that Ted Virtue email is privileged.  
4 They submitted no evidence on that. They're not here trying  
5 to claim that her communication -- Ms. Wynn's communications  
6 with Ms. Sinatra are privileged. They've submitted no  
7 evidence on that, either.

8           In order for there to be a disqualification, Your  
9 Honor, there has to be a showing of a reason to believe of a  
10 very specific instance, some specifically identifiable  
11 impropriety. And, you know, we've cited the case -- the  
12 Nevada case that those are the exact words. There is no  
13 specific impropriety that they've identified anything that we  
14 have done, any access to any type of privileged information.

15           If there are questions that they have about what's  
16 on hard drives that the undisputed evidence shows we have not  
17 looked at, that's something that can be addressed. That's not  
18 a basis for disqualifying us and continuing to sideline us  
19 from participating in this case.

20           They say -- they make an issue, Your Honor, that  
21 we're asking the Court to take our word for things. Your  
22 Honor, we are officers of the court, as are they. Officers of  
23 the court ask the courts all the time to take their word for  
24 things. All the time we make judgments as to what's  
25 privileged, what's not privileged, and use our best judgment.

1 We have not done anything to cause -- that would give this  
2 Court reason to think that we have abused the trust that the  
3 court placed in us in granting our pro hac vice admissions  
4 here. The only issues they have identified of things that we  
5 have supposedly had access to and used it turns out are not  
6 privileged. And I'm eager to respond to any questions the  
7 Court may have on this issue.

8 THE COURT: Anything else you want to tell me, sir?

9 MR. QUINN: Nothing. No, Your Honor.

10 THE COURT: Thank you.

11 Anybody else from this side of the room want to say  
12 anything?

13 MR. KUNIMOTO: Nothing here, Your Honor.

14 THE COURT: Thank you.

15 Next?

16 MR. BICE: Your Honor, Mr. Quinn's terms prove our  
17 point. Their judgment. It's not their judgment, and that is  
18 the problem. He says he should be the arbiter, he and Ms.  
19 Wynn should be the arbiter of the company's privilege. Which  
20 is exactly what Sands versus Jacobs says they are not the  
21 arbiter.

22 The bigger problem is, as he just told you, they  
23 have done nothing, they've done nothing to suggest that they  
24 cannot be trusted in this regard. Let's remember exactly,  
25 because I want to quote him. Let me make sure I got this

1 exactly right. What Mr. Zeller told the Court when this issue  
2 first arose and the Court pressed him and the Court even said,  
3 I think you're dodging my question, Mr. Zeller went on to  
4 affirmatively represent the following. "This is not the  
5 Jacobs case, Your Honor. This is not an instance where  
6 there's all sorts of documents that she took and has." We now  
7 know that statement wasn't true, because they had imaged a  
8 drive, a company drive which was not her property to be  
9 imaging, was not her property to be taking, and they have that  
10 device, and that device by the very acknowledgement of Mr.  
11 Shelton is on the MTO drive that was given to them in this C10  
12 database. And this is in paragraph 15 of his declaration.  
13 "It was uploaded onto the Quinn Emanuel system." If they made  
14 an image of her office computer, they unquestionably have  
15 taken tons of company data.

16 This goes on, Your Honor, to be a serious problem.  
17 They never disclosed that to us. Mr. Quinn's only response  
18 is, well, I just can't imagine that they didn't know that.  
19 Well, isn't that convenient? Again, this comes back to the  
20 dodge. Mr. Zeller tried the dodge when he was here to just  
21 have the Court, well, let's -- you know, there's only two and  
22 they're not significant so there's no need to worry here so  
23 let's just -- let's just ignore, and led everyone to believe  
24 that was it, there were no other communications, there's no  
25 other documents, she doesn't have a whole bunch of documents

1 from the company like in Jacobs. Now we know the truth. She  
2 has a copy of a company drive that she never disclosed to us.  
3 And how it was that she was making that even though she knew  
4 the company was represented by legal counsel, of course, is  
5 not explained.

6           Mr. Quinn does the same dodge -- attempted dodge.  
7 He says, well, we're raising new things now. We're raising  
8 things, Your Honor, that we only learned about because the  
9 Court forced them to make some disclosures, things that they  
10 never revealed to anyone, in fact, things that, if Mr. Zeller  
11 is taken at his word, were contrary to what the true facts  
12 were. Because he told the Court, well, she doesn't have a  
13 bunch of -- this is not like Jacobs where there was a drive  
14 involved and that she possessed a copy of essentially her  
15 entire company electronic database.

16           Then the next dodge is, well, let's ignore the word  
17 "legal services" and let's talk about, well, it's just legal  
18 advice. And then there's yet another dodge in there, too,  
19 that it's, well, legal advice on personal issues. Now she  
20 wants to acknowledge, well, I received legal advice as well as  
21 information about legal services with respect to my role as a  
22 board member. Well, where do you think that data is likely  
23 at, Your Honor? It's likely in that -- to the extent that  
24 it's in writing it's likely on that drive that they have been  
25 holding onto and not telling us that they had.

1           Then we get to this point, Your Honor, about the  
2 documents she was forwarding. And essentially Mr. Quinn's  
3 criticism of us is that we didn't figure this out before we  
4 found out that she had lots of documents and that she  
5 apparently was transmitting a lot more information than we had  
6 reason to believe. No one at MTO had told us about this  
7 drive, no one at Quinn Emanuel told us about this drive. So  
8 once we found out about it that's when we started  
9 investigating more, and that's when we figured out this  
10 forwarding practice that she was apparently engaged in.

11           Now, Mr. Quinn says, well, you know, there are going  
12 to be emails where she was forwarding or she was communicating  
13 with her counsel and those had to do with stock and things  
14 like that. Some of them may very well, Your Honor. We don't  
15 dispute that. But there are several of these emails -- and  
16 I'll just -- I'm going to show the Court an example. There  
17 are several of these emails where internal company counsel or  
18 the entire legal team on our side of the table is copied on  
19 them that she is forwarding.

20           THE COURT: And if you'll give us a document number,  
21 since you're referring to Court's Exhibit 1, that would assist  
22 everyone.

23           MR. BICE: Item Number 40, Your Honor, would be one  
24 example.

25           THE COURT: Thank you.



1 MR. BICE: I think that's one example. Let me  
2 double check that. But, again, Your Honor, there are several  
3 of these. And this one's much smaller than what I knew, so --

4 And Number 42, Your Honor, would be another example.  
5 It looks like to us what's going on here is that Ms. Sinatra  
6 is reporting to the -- but, again, we can't see these  
7 documents yet. The Court's going to have to resolve this  
8 issue. So we don't know exactly --

9 THE COURT: 42 has Mr. Okada on the people that it's  
10 sent to.

11 MR. BICE: Yes, it does, Your Honor. It does look  
12 like that was a board -- a board transmittal. I see -- you're  
13 right, 42. But 41 would be yet another example, Your Honor,  
14 where there are information that is sent it looks like to us.  
15 It's the board members and then copied on the legal team.  
16 That would just be an example. And she's apparently  
17 forwarding that on. And we don't know when and we don't know  
18 how and we don't know why, but she's forwarding it on to her  
19 own personal counsel.

20 But there are others, Your Honor, that bother us  
21 even more -- I shouldn't say even more, but there are some  
22 that bother us quite a bit. Look at Number 55, Your Honor.  
23 Ms. Sinatra and Robert Miller, copied to Ms. Wynn, Ray Irani,  
24 Mr. Moran, et cetera, right, blind copied to Mark Helm at MTO,  
25 and blind copied to Ms. Wynn's personal email account, and

1 then forwarded. So the point being she's looping in these  
2 other people without any disclosure to the company's general  
3 counsel about their involvement in this. Again, Your Honor,  
4 could be benign. Our point is we don't know. And we are  
5 entitled to know now that this issue has been elevated by  
6 these disclosures by them. They're criticizing us that we're  
7 raising this stuff now. But, of course, we only learned about  
8 it now because they had previously tried to convince the Court  
9 that they didn't have anything from Ms. Wynn, there's no --  
10 there's no cache of electronically stored information from  
11 her, we're talking about a couple of emails. Your Honor,  
12 we're talking about a couple of emails because that's what  
13 they disclosed, that's what we found out about. They had no  
14 intention, according to them, of looking at the rest of that  
15 data. But I'm not sure how they claim to have satisfied their  
16 16.1 obligations if nobody has looked at it. They're in  
17 possession of it. And this is company data, and the  
18 suggestion that, oh, there isn't going to be any privileged  
19 information on there is simply not credible.

20           So this puts us back, Your Honor, where there really  
21 aren't a lot of options. And let's remember something. Mr.  
22 Keker, at Quinn Emanuel's insistence, was disqualified for  
23 accessing just a few facts, and they made a great deal of  
24 noise about that fact, all the while in possession of a  
25 company drive that they never disclosed, all the while in

1 possession of emails that they didn't disclose. They  
2 disclosed -- remember, Your Honor, the one that they are  
3 claiming, yeah, there's no -- we made a judgment, it's our  
4 judgment that it's not privileged, but they only disclosed it  
5 essentially two days before or the day before Ms. Sinatra's  
6 deposition. They have lost any ability to come to the Court  
7 and say, we should be trusted to make assessments about  
8 privilege. We should be the guardians of Wynn Resorts'  
9 privilege. They don't have that right, and they have  
10 certainly, to the extent that they ever had it, forfeited it  
11 when they said to the Court, we don't have a bunch of  
12 documents like in Jacobs, we have two emails, when we now know  
13 they have an entire drive of company documents that were not  
14 disclosed.

15           There isn't really any choice at this point, Your  
16 Honor, but to implement the protocol that we have outlined so  
17 that we can assess what they actually possess contrary to the  
18 representations that were made trying to give this issue the  
19 slip early on. I thank the Court.

20           THE COURT: Thank you, Mr. Bice.

21           Given the search that was done by the LTAS  
22 department of the MTO hard drive I need to set an evidentiary  
23 hearing. There has been some spadework, as I will call it,  
24 that has been suggested by Mr. Bice prior to that hearing  
25 which is consistent with the direction we have from the Nevada

1 Supreme Court from the Jacobs versus Sands case and some of  
2 the processes we filed in that case. Most of that is detailed  
3 on pages 8 and 9 of the response that you got yesterday.

4 Do you want to tell me anything related to that  
5 process before I come up with a process that I'm going to  
6 follow before I set the evidentiary hearing?

7 MR. QUINN: The process meaning the protocol for  
8 handling this database, or --

9 THE COURT: Yes. And for privilege review. Because  
10 the privilege review is not just on their side. You need to  
11 make a privilege review, as well, or do a privilege search or,  
12 alternatively, have a third-party vendor assist you with that  
13 search for any personal information that may be private and  
14 confidential of Ms. Wynn that is on that information that  
15 would not be company so that that can be identified and the  
16 third-party vendor can make sure that that's segregated and  
17 doesn't go to the Wynn folks and they don't review it. I  
18 mean, it's a multistep process, unfortunately. And as I went  
19 through it in the Jacobs case, I'm unfortunately painfully  
20 familiar with it.

21 So if you want to comment on the outline that Mr.  
22 Bice provided on pages 8 and 9 of his response and if you want  
23 a minute to talk to Mr. Urga about that and, you know, some of  
24 the history related to how we have to do these things, I'm  
25 happy to give you a short break to do it. If you guys need a

1 longer break to do it, I'm happy to reconvene with you this  
2 afternoon if it takes that long. But I need an evidentiary  
3 hearing.

4 MR. QUINN: I think a short break would suffice,  
5 Your Honor.

6 THE COURT: All right. So why don't we take  
7 10 minutes.

8 MR. QUINN: Thank you, Your Honor.

9 (Court recessed at 11:02 a.m., until 11:14 a.m.)

10 THE COURT: So, Mr. Quinn, I let you have a few  
11 minutes to consult with your team about the protocol that has  
12 been outlined on pages 8 and 9 of the response that was filed  
13 yesterday by the Wynn parties. Did you get a chance to talk  
14 to your team?

15 MR. QUINN: Yes, we have, Your Honor.

16 THE COURT: Do you have any suggestions related to a  
17 protocol?

18 MR. QUINN: I mean, the suggestions I have -- of  
19 course, there's kind of a puzzle here in that both sides need  
20 to review this material for privileged documents, but neither  
21 side wants the other side to see what they might claim as  
22 privileged. So, I mean, what I would suggest is that each  
23 side identify the lawyers involved who -- that we submit this  
24 to this third party, they be given names of lawyers, and they  
25 screen for privilege based on that, and then, you know, they

1 would look at their materials involving lawyers --

2 THE COURT: It's a little more involved than that.  
3 So let me step back for a minute. We have some devices. The  
4 devices need to be placed with the third party so that we can  
5 begin a review. In order for your side to do your review,  
6 which has to go first, which is whether there is an protected  
7 information of Ms. Wynn's on there, you have to identify and I  
8 recommend you identify search terms for you to identify for  
9 that third party to assist you in evaluating that without  
10 reviewing all the information, which would really annoy them.

11 After you've done your review you can decide if  
12 there's things that are health related, personal related to  
13 the divorce action, things like that that are on the drives or  
14 electronic devices that have been reviewed. You can review  
15 them, you can identify them, you can mark them to be  
16 segregated from any additional review by the Wynn parties.

17 After you do that then we turn to the Wynn parties,  
18 and the Wynn parties do the same thing, they identify their  
19 custodians and information, they do their search, they do  
20 their privilege review, and then at some point in time I'm  
21 going to have to rule on whether the information on the  
22 electronically stored devices gets released to anybody. Or I  
23 may have a special master, as suggested, do it this time  
24 rather than me doing it myself, because it's not a fun job.

25 MR. QUINN: Understood, Your Honor.

1           THE COURT: But, I mean, it's a more involved  
2 process because of my experience is that even when somebody  
3 has a company computer that sometimes they have personal  
4 health information, scheduling of doctor appointments, things  
5 like that that appear on that, you know, we really need to  
6 keep private.

7           MR. QUINN: All right. Your Honor, should we have  
8 some understanding about how far back this will go? I mean,  
9 we have no -- we have literally -- this is something that was  
10 created by -- that Munger Tolles got, and except for the two  
11 instances identified --

12          THE COURT: No. We have at least two devices.  
13 That's different. I have a laptop computer that's been  
14 imaged, and I have the Munger Tolles. So I've got two  
15 different devices that I'm talking about, not just one device.

16          MR. QUINN: I think that image is on the Munger  
17 Tolles drive. I don't think -- I don't think there are two  
18 memory devices at all, Your Honor.

19          THE COURT: I thought that in Ms. Wynn's affidavit  
20 or some -- I don't remember which one, it said that the only  
21 person who has had the image of the laptop computer is Ms.  
22 Wynn and it's been under lock and key by her.

23          MR. QUINN: That is correct, Your Honor.

24          THE COURT: All right. I just want to make sure  
25 that I'm -- because I did -- I read a lot of stuff, guys.

1 MR. QUINN: I understand, Your Honor. I understand.

2 So I --

3 THE COURT: And I'm happy to let you guys consult on  
4 the details of a protocol, but I think the protocol's a little  
5 more involved than what you're talking about.

6 MR. QUINN: Right.

7 THE COURT: So I've got two devices. They need to  
8 go to a third party. You guys need to pick a third party,  
9 agree on a third party, or, if you can't agree, give me names,  
10 I'll pick the third party. Then we need your side to run  
11 search terms and do a privilege and confidentiality review,  
12 and then you guys have got to go through the same thing.

13 MR. QUINN: I mean, there's one thing that I think  
14 is important for the Court to know. And it's a good thing  
15 that Ms. Wynn is here. We weren't involved when these images  
16 were taken. Ms. Wynn tells us that was done with the  
17 knowledge of Wynn Resorts, that Munger Tolles actually went to  
18 her office at Wynn Resorts, did the imaging there, and that  
19 those folks knew about it.

20 THE COURT: Well, that's a different issue. And I'm  
21 not there yet.

22 MR. QUINN: Right.

23 THE COURT: Right now I'm trying to make sure that  
24 the privileged information is protected, because the Nevada  
25 Supreme Court said it's not Ms. Wynn's to waive a privilege,



1 it is the company's.

2 MR. QUINN: No. I understand that, Your Honor. I  
3 think the suggestion that we confer on the further details, I  
4 think the Court has given us some good guidance on this, that  
5 we confer with counsel on the details and attempt to agree on  
6 some third party who can actually do this -- participate in  
7 this process with us.

8 THE COURT: So, Mr. Bice, your protocol as a general  
9 rule looks consistent with what we did in Jacobs-Sands, and it  
10 looks pretty good.

11 MR. BICE: Your Honor, once again, would it make  
12 more sense -- and I'm only now sort of realizing this as we  
13 were -- as you were talking. Would it make more sense for you  
14 to resolve Item Number 2 first? Because if the Court agrees  
15 with us that Ms. Wynn can have no privileges for any documents  
16 that were on the company drive because then there's really no  
17 need for them to run searches against --

18 THE COURT: I'm still not going to let you have her  
19 protected health information that's on there, period, end of  
20 story. Just like Mr. Jacobs didn't want his communications  
21 with his wife about the school for the kids provided to  
22 anybody else, okay?

23 MR. BICE: Fair. Yep.

24 THE COURT: So to the extent that there may have  
25 been a consent and a recognition that anything she sent may or

1 may not be protected, she's still going to get to protect  
2 anything that I think is truly personal.

3 MR. BICE: Yes. You know what, and I wasn't  
4 thinking about that. You're absolutely right, Your Honor.  
5 That is --

6 THE COURT: Aren't you glad that I have a long  
7 memory of what position you've taken before?

8 MR. BICE: You have a good memory.

9 And to remind the Court how we did this in Jacobs on  
10 the searches, the way we did it was once we deposited the  
11 drives we then agreed with MTO, because MTO was on the other  
12 side of us in that case, we agreed to search terms that we  
13 were then allowed to use to pull data off and have it  
14 segregated.

15 THE COURT: Yes.

16 MR. BICE: And then they used search terms to pull  
17 the data that they thought they needed to look at -- no, no,  
18 no. No. I take that back. They were allowed to look at  
19 everything other than that. That's right. I was wrong.

20 THE COURT: Correct. And if I remember, it wasn't  
21 -- wasn't it Ms. Glaser? Or had she already left the case by  
22 then?

23 MR. BICE: She'd already left the case by that  
24 point.

25 THE COURT: Okay.

1 MR. BICE: This was MTO.

2 MR. QUINN: And, Your Honor, in any event, we don't  
3 see any basis for paragraph 3, reviewing all communications  
4 between our firm and Ms. Wynn. There is no basis for ordering  
5 that type of extraordinary --

6 THE COURT: I'm not making an order on text messages  
7 yet.

8 MR. BICE: Your Honor -- sorry.

9 THE COURT: Anything else?

10 MR. BICE: Yes. We -- Your Honor, on this point we  
11 know from the exchanges that resulted in the Keker firm being  
12 disqualified that Ms. Wynn shares a lot of information. One  
13 of the things that we find odd and troubling in this case is  
14 that we're being -- it's being told to us how they have these  
15 drives but they didn't look at them, but yet they're able to  
16 proceed with all of this discovery and they know all of these  
17 facts. So they are representing to the Court they've never  
18 looked at any of these documents, but yet they have the  
19 knowledge to proceed with all these depositions, which  
20 strongly suggests to us that they have received quite a data  
21 dump from Ms. Wynn herself.

22 THE COURT: Okay. That's a different issue. So  
23 let's skip back. We're going to come up with a protocol.

24 MR. BICE: Okay.

25 THE COURT: Who wants to be the point person on each

1 team to be on the protocol drafting?

2 MR. QUINN: Mr. Zeller is --

3 THE COURT: Mr. Zeller got volunteered on his side.  
4 Ms. Spinelli got volunteered on her side.

5 So, team, this is what I want from you. Ms.  
6 Spinelli, this is what I want from you guys. I want you to  
7 come up with a written protocol. You have until -- can you do  
8 it by July 5th?

9 MS. SPINELLI: Hopefully we can do it earlier,  
10 because I leave for vacation on July 1st.

11 THE COURT: And when do you come back?

12 MS. SPINELLI: The 10th, I think. 11th. Somewhere  
13 in there.

14 THE COURT: Mr. Zeller, are you going on vacation?

15 MR. ZELLER: I am not, Your Honor.

16 THE COURT: Because remember, I try and accommodate  
17 everybody's vacation schedule.

18 MR. ZELLER: I am not, Your Honor. I'm freely  
19 available to work on t s.

20 MR. CAMPBELL: Your Honor, one thing that we're  
21 concerned about is that we're going to have get Gareth  
22 involved again, that nice English gentleman that appears every  
23 once in a while with respect to these ESI matters.

24 THE COURT: He's the Gibson Dunn guy.

25 MR. CAMPBELL: I don't even know what his status is.

1 THE COURT: I'm not there yet.

2 Okay. So I need a draft protocol. This is not the  
3 actual doing the searches. This is we picked a third-party  
4 vendor, or, we couldn't agree; we identified the devices and  
5 they're going to be deposited and here's where they're going  
6 to be deposited; we've agreed that Quinn Emanuel gets to do an  
7 initial review because of the Court's concerns related to  
8 personal information, here's how we're going to accomplish  
9 that; okay, then we skip that, segregate those documents; then  
10 what do we do, okay.

11 MR. BICE: Got it.

12 MR. QUINN: Understood, Your Honor.

13 THE COURT: I am concerned -- I'm not down to  
14 Number 3, just so you're clear, Mr. Quinn. I haven't done  
15 Number 3, nor have I done Number 4, although those items are  
16 in play. First I've got to get to the first couple of steps,  
17 is I've got to deposit the devices, you've got to do initial  
18 review.

19 MR. QUINN: Understood.

20 THE COURT: Okay. So that takes me to a broader  
21 topic.

22 Mr. Kunimoto, how are you doing today?

23 MR. KUNIMOTO: Very good, Your Honor.

24 THE COURT: Did you notice discovery's going to be  
25 all messed up?

1 MR. KUNIMOTO: Yes, I recognize that, Your Honor.

2 THE COURT: Okay. So I am inclined to stay  
3 discovery, including Okada discovery, for a period of time  
4 while we work this out. What do you think about that, Mr.  
5 Kunimoto?

6 MR. KUNIMOTO: Your Honor, I'm -- I'd like the  
7 opportunity to consult with our co-counsel, but I do recognize  
8 that there is a five year rule issue, but I assume that if in  
9 the event this were to happen that would be adjusted.

10 THE COURT: Anybody say anything else?

11 MR. QUINN: Yes, Your Honor. I, of course, was not  
12 involved in this earlier case that a lot of people in this  
13 courtroom, including Your Honor, is familiar with. My  
14 understanding is there actually was some evidence in that case  
15 that some lawyers had accessed arguably privileged  
16 information.

17 MR. BICE: No.

18 MR. CAMPBELL: No.

19 MR. QUINN: Well, Your Honor, there is no evidence  
20 -- I -- this process, as I understand it, could take months  
21 and this case will be put on ice.

22 THE COURT: That is correct, Counsel.

23 MR. QUINN: But, Your Honor, there is no evidence at  
24 all --

25 THE COURT: That's not true, Counsel. You and I

1 have a disagreement about what the scope of that privilege is.  
2 And to the extent the communications relate to the rendition  
3 of legal services the privilege arguably applies, and I have a  
4 lot of steps I've got to go through in Nevada.

5 So let's go back to Mr. Kunimoto.

6 MR. KUNIMOTO: Are you asking for my decision  
7 right --

8 THE COURT: I'm asking you object, need to consult,  
9 and if you want to do a written stay order.

10 MR. KUNIMOTO: Your Honor, that's an easy one, I  
11 think. I'd like to consult with my co-counsel first.

12 THE COURT: Okay. So, since we're going to have to  
13 probably have a written order while I go through this process  
14 on the extent of the stay and the scope of the stay and how it  
15 impacts Rule 41(e), I would like Mr. Kunimoto to first  
16 consult. And then, Mr. Bice, you are the drafter of such an  
17 order, as you've been through the process before.

18 MR. BICE: Understood.

19 THE COURT: I also believe that in conjunction with  
20 the evidentiary hearing that I'm setting that I may want to  
21 revisit the motion to sever, but not on the basis that Mr.  
22 Campbell originally argued, but based on the other issues,  
23 which is the privilege issues are so going to -- are going to  
24 be so invasive in this case that we can't have Mr. Okada  
25 involved in the same proceeding as Ms. Wynn. Which is a

1 slightly different concern than we discussed before, Mr.  
2 Campbell.

3 MR. BICE: All right. Your Honor --

4 THE COURT: And that motion was originally filed on  
5 April 25th, 2016, and argued sometime in May, and we've got to  
6 figure out how to get that back on calendar.

7 So my first step is, Mr. Zeller, Ms. Spinelli, your  
8 how are we depositing documents and getting the initial review  
9 done and who's your third-party vendor. When do you think  
10 you'll have that? You leave July 1st, you're not leaving.

11 MS. SPINELLI: I have a framework, I think, Your  
12 Honor, so it can probably be very simple. And I think we had  
13 the same process with three vendors, so I can float those  
14 three vendors to Mr. Zeller very quickly [inaudible].

15 THE COURT: Okay.

16 MR. ZELLER: That would be our objective, as well,  
17 Your Honor.

18 THE COURT: Okay. I leave for the State Bar  
19 Convention on Wednesday, and I will be back in the office on  
20 July 5th, which is the Tuesday. So I can either communicate  
21 with you before I leave on the 28th, or I can do a conference  
22 call from the State Bar Convention, because they have pretty  
23 good cell service, or we could wait till Ms. Spinelli gets  
24 back.

25 MR. ZELLER: I would prefer to do it beforehand,



1 Your Honor, to try and get that process going as quickly as  
2 possible.

3 THE COURT: So why don't we talk about 11:45 on  
4 Tuesday for an update on how we're doing.

5 Mr. Kunimoto, I'm excluding you from that call.

6 MR. KUNIMOTO: That's fine, Your Honor.

7 THE COURT: Okay.

8 MR. PISANELLI: So, Your Honor, on the evidentiary  
9 hearing does it make sense to you to wait and have a series of  
10 status checks, find out the progress first before we lock in  
11 when that hearing will take place, or do you want to lock that  
12 in now?

13 THE COURT: I'm not setting the evidentiary hearing  
14 yet, because in my experience it takes much longer than I  
15 anticipate.

16 MR. PISANELLI: That's okay.

17 THE COURT: Because I was going to schedule it for  
18 the week of July 5th, but there's no way you'll be ready.

19 Anything else before I let you all go?

20 MS. SPINELLI: Two things, Your Honor. But I think  
21 I know one. We have depositions scheduled. Are they off?

22 THE COURT: I just stayed discovery.

23 MS. SPINELLI: That's what I thought. I just wanted  
24 to make sure just [inaudible].

25 THE COURT: And I'm waiting for Mr. Kunimoto to tell

1 me if he's going to object. Because if he objects, then I'm  
2 going to talk about maybe fashioning a different remedy  
3 besides just a stay of discovery.

4 We have a bunch of motions on today, but they all  
5 relate to discovery, and I'm not ruling on any of them because  
6 of the issue related to the Quinn Emanuel firm, although I  
7 read them all and I really thank Mr. Malley for carrying over  
8 the Kim Sinatra deposition so I could read actual transcripts,  
9 not the entire ones last night, but portions of them.

10 MR. PISANELLI: Very good, Your Honor. Thank you  
11 very much.

12 MR. CAMPBELL: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. QUINN: There is a motion on relating to the  
15 amendment to the cross-claims. I don't think that relates --

16 THE COURT: I'm not going to rule on it right now.  
17 Because if I'm going to disqualify your firm, I'm probably  
18 going to start over.

19 Anything else?

20 MR. URGA: There's also a pro hac, Your Honor. Is  
21 that one going to be at least --

22 THE COURT: I'm not going to do the pro hac.  
23 Because what are you going to be doing?

24 MR. URGA: You're right. I'm just asking.

25 MR. KUNIMOTO: Your Honor, there is one more issue,

1 and that is you wanted me to remind you of a question.

2 THE COURT: I asked you the question. It had to do  
3 with the discovery stay.

4 MR. KUNIMOTO: Oh. Okay.

5 THE COURT: So I remembered to ask you, and I've  
6 checked your box off.

7 MR. CAMPBELL: One further thing, I think, Your  
8 Honor.

9 MS. SPINELLI: Obviously Quinn Emanuel can't look at  
10 the documents in their possession until this issue resolved.

11 THE COURT: Well, if they do look at the documents  
12 in their possession -- but, remember, they've already looked  
13 at them.

14 MS. SPINELLI: Right.

15 THE COURT: But the people who have looked at them  
16 are the people in the LTAS group. So --

17 MR. ZELLER: Just to be clear, Your Honor, they did  
18 not. They did a search.

19 THE COURT: I understand.

20 MR. ZELLER: But they did not review --

21 THE COURT: Mr. Zeller, I understand more about that  
22 than you think I do.

23 MR. ZELLER: Okay. No. I --

24 THE COURT: Anything else?

25 MR. ZELLER: I'm not questioning that, Your Honor.

1           THE COURT: That's why I was going to ask Ms. Yanez  
2 some questions if she was here.

3           MR. MALLEY: Your Honor, and I don't mean to put Mr.  
4 Kunimoto on the spot, but the issue about the stay and how  
5 we're doing that, do you think that that can be addressed on  
6 the 28th, as well?

7           THE COURT: No. Because Mr. Kunimoto is going to  
8 consult with his team, and when he has finished consulting  
9 with his team about how we feel about a stay of discovery for  
10 the whole case while I do this issue, then he's going to tell  
11 me, Judge, I need a conference call with you, or, the order  
12 that Mr. Bice has circulated is really good and we're signing  
13 off. Sound like a plan?

14           MR. MALLEY: Thank you, Your Honor.

15           THE COURT: Anything else?

16           MR. ZELLER: Yes, Your Honor.

17           THE COURT: Mr. Zeller, more.

18           MR. ZELLER: Just one thing to be clear about, Your  
19 Honor, because this is going to be part of the protocol. This  
20 is the reason why I raise it. We do not intend to have anyone  
21 at Quinn Emanuel actually review anything.

22           THE COURT: Including your LTACS [sic] people or  
23 whatever they're called; right?

24           MR. ZELLER: Correct. That's right. Because here's  
25 what we're -- here's what we're thinking in terms of the

1 protocol, and we will discuss it with the other side. But we  
2 think it should be a third party who is looking at these  
3 documents, because from our perspective again --

4 THE COURT: It is a third party. That's why you're  
5 picking a vendor. You're giving them search terms, they're  
6 identifying them, and then if they hit them -- if you get the  
7 hits on what you believe will solicit Ms. Wynn's personal  
8 information, then you guys, either you, her, or some third  
9 party, have to review those documents to make the  
10 determination as to whether they're going to be sequestered or  
11 segregated.

12 MR. ZELLER: Right. And what we would suggest, and  
13 we'll talk with the other side about that protocol, to be a  
14 third party, because we don't want to be tainted by whatever  
15 it is that's in there. They're going to then argue we've been  
16 tainted because of the search terms --

17 THE COURT: They're arguing you're already tainted.

18 MR. ZELLER: I understand that.

19 THE COURT: And I've been trying to communicate that  
20 to you, and you keep telling me no, no, no.

21 MR. ZELLER: But we haven't reviewed them. That's  
22 why. And I don't want to be in a process where we start  
23 reviewing them.

24 THE COURT: Okay. I'm not going to get in an  
25 argument with you, Mr. Zeller, about that. You and I have

1 been having this discussion now for a month.

2 Anything else?

3 MR. PISANELLI: Thank you.

4 THE COURT: All right. So we'll be in recess.

5 Mr. Kunimoto, you're going to look at the order that  
6 Ms. Bice gives you guys because he's in charge of drafting it.  
7 If you have concerns from your side about the stay, we're  
8 going to figure it out.

9 MR. KUNIMOTO: Thank you, Your Honor.

10 THE COURT: Which means you'll have to bring it to  
11 my attention that there's an issue.

12 Ms. Spinelli, you're setting up the conference call  
13 for Tuesday.

14 Anything else? Have a nice afternoon. Have a happy  
15 Fourth of July if I don't see you guys. For those of you  
16 going on vacation, enjoy your vacations.

17 THE PROCEEDINGS CONCLUDED AT 11:32 A.M.

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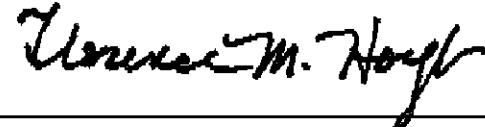
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT  
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/23/16

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