

*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,

Respondents,

and

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Real Party in Interest.

Electronically Filed  
Jul 12 2017 04:04 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

District Court  
No. A-12-656710-B

**NRAP 27(e) REQUEST TO HAVE PETITIONER'S  
EMERGENCY "MOTION TO VOLUNTARILY VACATE  
PARTIAL STAY" HEARD BY JULY 21, 2017**

This Court already docketed Ms. Wynn motion to vacate the stay of discovery as an emergency, although Ms. Wynn had not yet indicated a specific date by which she needed relief. Now the district court has said it will take up the issues that require this Court's guidance at 8:00 a.m. on Monday, July 24, so Ms. Wynn asks this Court to decide her motion by the end of Friday, July 21.

**A.    This Court should Vacate the Stay to Allow  
the Case to Go Forward in the District Court**

In the district court, Wynn Resorts’ moved to stay discovery and to sever Ms. Wynn’s claims. The district court indicated that this Court’s partial stay pending Ms. Wynn’s writ petition barred further discovery, but that if Ms. Wynn withdrew her petition and the stay from this Court “evaporates, then I have absolutely no reason to grant [Wynn Resorts’] motion.” (Ex. 1 to Response, Hr’g Tr. 6/26/17, at 13:23–14:1.)

Because Ms. Wynn wants to go forward with discovery and not be severed from the claims that are going to trial, she did what the district court asked. She first moved this Court to dismiss her petition and later filed this separate motion to vacate the stay pending the petition.

**B.    The District Court’s Hearing Date  
Creates a Rule 27(e) Emergency**

The district court now says it will address the issues in Wynn Resorts’ motion on Monday, July 24, at 8:00 a.m. (Ex. A, Hr’g Tr. 7/10/17, at 58:24–59:3), so Ms. Wynn asks this Court to dissolve the stay she requested by the end of **Friday, July 21** so that the case in the district court can move forward.

**C. This Court Should Grant Emergency Relief**

Emergency relief is appropriate here. The issue is simple because Ms. Wynn no longer seeks the protection of this Court's stay, making it moot. This Court can take whatever time it needs to resolve Ms. Wynn's separate motion to dismiss the petition, but in the meantime the Court should vacate the stay and allow the district-court proceedings to go forward.

**CONCLUSION**

This Court should grant Ms. Wynn's motion to vacate the partial stay on or before July 21, 2017.

Dated this 12th day of July, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

DANIEL F. POLSENBERG (SBN 2376)

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## **NRAP 27(e) CERTIFICATE**

### **A. Contact information**

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### **B. Nature of emergency**

On July 10, 2017, the district court said that it will address a motion Wynn Resorts filed to stay discovery and sever Ms. Wynn's claims on Monday, July 24, at 8:00 a.m. The direction from this Court whether the stay in Ms. Wynn's favor is lifted is critical to the district court's determination of the issues in Wynn Resorts' motion.

**C. Notice and service**

Today, a representative from my office called the offices of Pisanelli Bice and left a message notifying them of this emergency request. Upon filing, I will e-mail copies of the request and this certificate to each of the listed attorneys for real party in interest.

Dated this 12th day of July, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg  
DANIEL F. POLSENBERG (SBN 2376)  
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**CERTIFICATE OF SERVICE**

I certify that on July 12, 2017, I submitted the foregoing REQUEST TO HAVE PETITIONER'S EMERGENCY "MOTION TO VOLUNTARILY VACATE-PARTIAL STAY" HEARD BY JULY 21, 2017 for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

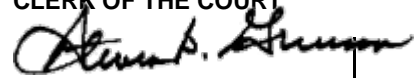
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Honorable Elizabeth Gonzalez  
Department 11  
Eighth Judicial District Court  
200 Lewis Avenue  
Las Vegas, Nevada 89155

/s/ Yolanda Griffin  
An Employee of Lewis Roca Rothgerber Christie LLP

**EXHIBIT A**

**EXHIBIT A**



TRAN

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

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-12-656710-B
	.	
vs.	.	
	.	
KAZUO OKADA, et al.	.	DEPT. NO. XI
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

MONDAY, JULY 10, 2017

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:

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TODD L. BICE, ESQ.  
DEBRA L. SPINELLI, ESQ.

FOR THE DEFENDANTS:

ROBERT J. CASSITY, ESQ.  
DAVID KRAKOFF, ESQ.  
WILLIAM R. URGAS, ESQ.  
DANIEL POLSENBERG, ESQ.  
MARK E. FERRARIO, ESQ.  
DONALD JUDE CAMPBELL, ESQ.  
J. COLBY WILLIAMS, ESQ.  
JAMES COLE, ESQ.

ALSO PRESENT:

DENNIS KENNEDY, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JULY 10, 2017, 8:08 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Let's talk about the  
4 elephant in the room, which is the motion to withdraw.

5 MR. KRAKOFF: Thank you, Your Honor. I was  
6 hoping --

7 THE COURT: Wow. Mr. Kennedy's here, too.

8 MR. KRAKOFF: He is.

9 MR. KENNEDY: Good morning, Your Honor.

10 MR. KRAKOFF: I believe, Your Honor, I need adult  
11 supervision, as everyone in my family will tell you.

12 THE COURT: Did you get a chance to read the brief  
13 and the affidavit that they provided?

14 MR. KRAKOFF: I did.

15 THE COURT: Okay.

16 MR. KRAKOFF: I did, Your Honor. I'd like -- before  
17 I start I'd like to pass up to the Court an affidavit, as the  
18 Court directed us, of service by Federal Express to Mr. Okada.

19 (Pause in the proceedings)

20 THE COURT: Can you file that in open court.

21 MR. KRAKOFF: Your Honor, as I said in my affidavit  
22 and in our motion, BuckleySandler moves respectfully to  
23 withdraw as counsel for Mr. Okada. But, with the Court's  
24 permission, we would stay in to represent Universal and Aruze.  
25 And I want to at the outset assure the Court that we bring

1 this motion only after very careful and extensive  
2 consideration by my firm in consultation with our ethics  
3 counsel in Washington and now with our -- in consultation with  
4 Mr. Kennedy, our ethics counsel in Nevada.

5 THE COURT: Does Mr. Kennedy have a conflict because  
6 a couple weeks ago he was Elaine Wynn's consultant?

7 MR. KENNEDY: I can address that, if you'd like me  
8 to. I was not Elaine Wynn's expert.

9 THE COURT: Okay.

10 MR. KENNEDY: That was -- I was the expert for her  
11 law firm.

12 THE COURT: Her former law firm.

13 MR. KENNEDY: Her former law firm.

14 THE COURT: Okay. Thank you, Mr. Kennedy. I just  
15 thought we should address all the conflicts at one time.

16 MR. KRAKOFF: Absolutely. There are complexities on  
17 complexities, as the Court I know is aware.

18 THE COURT: Well, I've got something interest in the  
19 declaration from Mr. Rotunda. He says I should disqualify the  
20 lawyers sua sponte in paragraph 28. I've never heard that  
21 from any source, even in criminal cases.

22 MR. KRAKOFF: Your Honor, nor have I. I was, to say  
23 the least, puzzled by Mr. Rotunda's affidavit. I think that,  
24 Your Honor, there's absolutely no grounds for that assertion.  
25 He makes other inaccurate statements. He's ill -- he's

1 misinformed. Paragraph 26 he says, "Well, a lawyer who argues  
2 that Okada is not corrupt is in conflict with Universal."  
3 Presumably he's talking about me. But, as the Court knows but  
4 apparently Mr. Rotunda didn't know, no such argument has been  
5 made in this case. So I can -- I have more to address about  
6 Mr. Rotunda and his affidavit and the filing this weekend. If  
7 the Court would like me to address that, I'm happy to get  
8 right into it.

9 THE COURT: Absolutely.

10 MR. KRAKOFF: Okay. I make a number of different  
11 comments, Your Honor. First, respectfully, Wynn Resorts has  
12 no standing to assert that I or my law firm have a conflict.  
13 The Nevada Supreme Court addressed that in the Lapis case in  
14 2012. Only where a client -- only a client or a former client  
15 can make such a claim.

16 Secondly, Your Honor, there must be an actual, not a  
17 potential, conflict, as the Settlemeyer case says from the  
18 Nevada Supreme Court. Their position is totally speculation,  
19 and indeed, Your Honor, what we have is a business dispute  
20 between Universal and Mr. Okada about events that have nothing  
21 to do with their complaint. Their complaint is about conduct  
22 in 2009 and 2010 that addresses -- and their allegation is  
23 that Mr. Okada breached his duties, his fiduciary duties to  
24 the shareholders of Wynn Resorts. That's their lawsuit.  
25 Fundamentally, Your Honor, these clients, Mr. Okada and

1 Universal, their interests remain aligned against Wynn. There  
2 may be a business dispute. It's unrelated, but there is a  
3 business dispute. I cannot stand here, Your Honor, and tell  
4 the Court there isn't. Obviously there is. And  
5 fundamentally, Your Honor, Wynn's position does not address  
6 what we are trying to do. We are trying to avoid these issues  
7 by withdrawing as Mr. Okada's counsel.

8 I make another point, Your Honor. I see their  
9 submission as a thinly veiled attempt to try to force me to  
10 violate Rule 1.6 on maintaining the confidences of my client,  
11 and I will not do so.

12 Fourth, the process that they request for Mr. Okada  
13 to come to Court is used in criminal cases, as the Court  
14 pointed out, not in civil cases. If the Court is concerned  
15 about that or is inclined in that direction, we would ask the  
16 Court respectfully to have time to brief this issue, because  
17 we have just received it.

18 Fifth, with all due respect to Mr. Rotunda, as I  
19 said, he's totally, misinformed. I suggest, Your Honor, that  
20 what is really going on here is that Wynn is trying to use our  
21 motion to withdraw, it's a valid motion to withdraw, we've  
22 submitted it pursuant to Rule 1.16(b)(5) and (b)(6) in  
23 particular where a client makes it difficult to represent him  
24 as we advised the Court in our motion. What Wynn is trying to  
25 do is to use our motion to make a case -- make this case about

1 Mr. Okada's being generally corrupt. But their complaint, as  
2 I said, alleges no such thing. It's about his breach of  
3 fiduciary duty for conduct in 2009 and 2010. He even says the  
4 parties are in conflict right now. He's wrong. What they're  
5 trying to do is to use an ill-informed, so-called expert  
6 witness to try to help Wynn gain a tactical advantage, to try  
7 to expand this case beyond the complaint to matters long after  
8 the complaint -- the conduct alleged in the complaint. And  
9 obviously, as I said, Universal and Okada have a business  
10 dispute. It has nothing to do with the lawsuit. But they are  
11 speculating potential issues getting in front of this long  
12 before we've briefed anything to try to say -- to get the --  
13 to argue that the evidence must come into their lawsuit about  
14 a post hoc business dispute.

15 So, Your Honor, I'm happy to answer any other  
16 questions with regard to the --

17 THE COURT: After serving the motion on Mr. Okada  
18 did you hear further from him?

19 MR. KRAKOFF: No, I did not, Your Honor.

20 THE COURT: Okay. And Holland & Hart is going to  
21 continue to represent Mr. Okada?

22 MR. KRAKOFF: They are, Your Honor, considering what  
23 their position is. They are, yes, Your Honor, currently  
24 representing him.

25 THE COURT: Well, Mr. Peek negotiated with me on

1 Friday a deposition date based on the fact he was going to  
2 continue to represent --

3 MR. KRAKOFF: Yes. And all that I can say is,  
4 making the same observation that the Court is making, that  
5 they are and they continue to represent him. I cannot tell  
6 you what their position might be, but I will say this to the  
7 Court, because I am sensitive to and I appreciate the concerns  
8 that were raised on the call and which the Court may have, as  
9 well. We do not bring this motion to delay or disrupt this  
10 litigation. What we are doing right now, Your Honor, and I  
11 commit this to the Court, is trying to fashion with Holland &  
12 Hart, we're working extensively with them to fashion a  
13 solution that will address all of these issues. And what that  
14 means, Your Honor, is that I'm leaving here tomorrow, I'm  
15 flying to Tokyo, I'm going to be meeting with the clients, and  
16 I'm going to -- I'm trying to -- and I would ask the Court if  
17 I could report back to the Court on those meetings by the end  
18 of the week. Because with the travel I can't get there until  
19 Thursday, and I think we have a solution that will address any  
20 potential questions or issues, recognizing that there is in  
21 our view no conflict right now, the interests are aligned, but  
22 I am mindful of the Court's -- and I don't want to read your  
23 mind, but I would say that I want to be sensitive and  
24 appreciative of the appropriate concern about what does this  
25 mean to this lawsuit. And so I advise the Court that I am

1 sensitive to that, I am trying to deal with that very  
2 directly. I have been over the last week, I will continue to,  
3 and I hope the Court appreciates that these issues are  
4 complicated. There's complexities to all of them, and it  
5 really requires me to be on the ground, meeting face to face  
6 to try to get the result that I think everyone in this  
7 courtroom desires.

8 So that's our position, Your Honor. I can say more  
9 about our papers, but you have them and you can see them.

10 THE COURT: I read them. Anything else?

11 MR. KRAKOFF: No, unless the Court has questions.

12 THE COURT: No.

13 Mr. Bice, are you speaking? Mr. Pisanelli, Mr.  
14 Campbell? Who on the team today?

15 MR. BICE: I am, Your Honor.

16 THE COURT: Mr. Campbell wants to talk.

17 MR. CAMPBELL: After Mr. Bice.

18 MR. BICE: Is Mr. Cassity --

19 THE COURT: Mr. Cassity is here. He told me on the  
20 phone Friday they were going to continue to work with Mr.  
21 Okada, and I moved the depo because of that.

22 Right, Mr. Cassity?

23 MR. CASSITY: Yes, Your Honor.

24 MR. BICE: Your Honor, Wynn Resorts and the Wynn  
25 parties, we don't care who represents the defendants as long



1 as whoever --

2 THE COURT: Well, but you do. But --

3 MR. BICE: -- as long as whoever is representing the  
4 defendants does not impact our rights. And this is where Mr.  
5 Krakoff and our side have a fundamental disagreement about  
6 this standing issue. Contrary to his argument, and the  
7 caselaw we actually cited to you makes this point, is that  
8 Wynn Resorts and the Wynn parties have the right to a judicial  
9 proceeding that is free of conflicted lawyers so that the  
10 Court's rulings cannot be later subject to some form of  
11 collateral attack by Mr. Okada, Universal, or Aruze, who have  
12 already established their propensity for coming into the court  
13 and claiming, we didn't understand, we're from a foreign  
14 country, we're not used to the U.S. legal process, we don't  
15 understand documents, thus we didn't understand.

16 Your Honor, I would submit that the elephant in the  
17 room is no one is telling the Court that they have a conflict  
18 waiver. I mean, the one thing that would have happened in  
19 response to us raising this point, Mr. Pisanelli raising it I  
20 think more than 10 days ago, is the Court would have been  
21 presented with a conflict waiver. I think the Court can infer  
22 from that there isn't one. And that is a fundamental problem  
23 here, and that's exactly what our concern is.

24 Wynn Resorts, Your Honor, has spent tens upon tens  
25 of millions of dollars in this litigation, and this case is

1   barrelling towards a trial date with expedited discovery,  
2   expedited process on our experts. All of that stuff is right  
3   around the corner, and now we're hearing, well -- it's  
4   interesting. We seem to almost have had a confession from  
5   them towards the end of the argument that now this is very  
6   complicated and they're trying to work through it after they  
7   attack Professor Rotunda that, you know, oh, this -- you know,  
8   he just doesn't know what he's talking about. Obviously he  
9   does know what he's talking about. They have a conflict.  
10  They can pretend like they don't for right now, but that  
11  doesn't change the facts. This information about Mr. Okada  
12  and his own company saying that he is unfit and that he is  
13  corrupt is directly relevant, and it's after-acquired evidence  
14  that you're darn right we're going to be pursuing, because it  
15  shows -- and, by the way, it also shows how these companies,  
16  Aruze and Universal, will look the other way about his  
17  corruption when it serves their ends, because they've publicly  
18  told a shareholder, Your Honor, at least Reuter's is reporting  
19  they told a shareholder they're only going to look back five  
20  years about Mr. Okada's corruption, of course, because that  
21  just happens to coincide with cutting off, having to look back  
22  at what he was doing when he was affiliated with Wynn Resorts.  
23  We don't think that's going to hold up to anyone's serious  
24  scrutiny, particularly with regulators. But we are going to  
25  point out that this story that they are advancing that somehow

1 they don't have to look into Mr. Okada's corruption is in and  
2 of itself an admission that they were aware of his corruption.  
3 And they have now publicly declared that he is corrupt.

4           So they said, Your Honor, this process, the process  
5 that we point out typically arises in criminal cases. That  
6 is absolutely true. But what's weird, Your Honor, is if they  
7 didn't have a conflict or if they had an actual waiver of this  
8 conflict, they would presumably be the first people to say Mr.  
9 Okada should come and confirm to the Court that he has waived  
10 this conflict and that he is giving a full and complete and  
11 knowledgeable waiver. This would protect the law firms. Why  
12 don't they want that process? I think that speaks volumes,  
13 Your Honor, because they don't have a waiver. And Mr. Okada  
14 is going to seize upon that whenever it is most opportune for  
15 him to do so and blow this case up. And all we are asking is  
16 let's fix it now, before it blows up. The fuse on the bomb  
17 has been lit. Let's just deal with it now, not later, not  
18 when we're in the middle of trial, not after we have spent  
19 millions and millions and millions of more money only to let  
20 Mr. Okada light -- you know, set the bomb off when it's most  
21 opportune for him to do so, which he has demonstrated  
22 throughout this case in discovery he is willing to do.

23           So Mr. Okada is going to be here, he has been  
24 ordered by the Court to be here. Who can possibly oppose  
25 having Mr. Okada come to the Court and acknowledge on the

1 record that he is aware of the circumstances and he has  
2 consented to the case moving forward with these lawyers in the  
3 role that they are playing in this case? Who could possibly  
4 oppose that? Thank you, Your Honor.

5 THE COURT: I have a question. I've never seen  
6 somebody tell me to do a sua sponte disqualification before.

7 MR. BICE: There's a lot of --

8 THE COURT: He also says I need to grant your motion  
9 to disqualify, which you haven't filed.

10 MR. BICE: Your Honor -- actually, Your Honor, there  
11 is a lot of federal caselaw on this issue involving courts  
12 ordering sua sponte disqualification of counsel. If the Court  
13 wants us to cite those cases --

14 THE COURT: Criminal cases.

15 MR. BICE: In criminal cases, that is true, Your  
16 Honor.

17 THE COURT: Right.

18 MR. BICE: Your Honor, there is actually -- and the  
19 caselaw makes this clear. There is no separate legal  
20 standard, ethical standard for criminal lawyers and civil  
21 lawyers.

22 THE COURT: No, there is no different ethical  
23 standard.

24 MR. BICE: The standard is exactly the same.  
25 What --

1           THE COURT: There's a different constitutional  
2 standard for a criminal defendant.

3           MR. BICE: That's right. Sixth Amendment concerns  
4 prompt a number of different steps by the Court, but that  
5 doesn't mean that those steps aren't appropriate in a civil  
6 case when in fact -- particularly when you've got a litigant  
7 who has testified repeatedly under oath in the proceedings he  
8 doesn't understand the U.S. legal process, he doesn't  
9 understand documents, he isn't bound because he didn't  
10 understand. Those -- the circumstances of this case, Your  
11 Honor, call for the Court, we would submit, to take special  
12 precautions to preclude a collateral attack after we have all  
13 spent millions and millions of dollars. And it's not just us  
14 as private parties, Your Honor. The public has spent  
15 countless resources over the last five years on this case. It  
16 would be completely unfair, completely unfair to allow someone  
17 to blow up all of that because he allowed these lawyers to  
18 move forward with a conflict so that he could later have a  
19 defense to attack the judgment if in fact it goes against him.

20           And, no, we haven't, we have not filed a formal  
21 motion for disqualification. We've raised the issue because  
22 we simply want the Court to resolve the conflict and resolve  
23 it on the record so that they are bound. If Mr. Okada wants  
24 these lawyers to be representing him, that's fine. We have no  
25 objection to that, provided that the waiver is clear and on

1 the record so that later on we won't hear this excuse or later  
2 on, right as we're beginning trial, Mr. Okada doesn't  
3 announce, I've got a conflict with these lawyers, I need this  
4 trial date vacated. We're going to spend too much money to  
5 allow that sort of gamesmanship to go on, Your Honor. Thank  
6 you.

7 THE COURT: Okay. Mr. Campbell.

8 MR. CAMPBELL: Your Honor, I'd like to make two  
9 very, very quick points. Did Her Honor have an opportunity to  
10 read Professor Rotunda's Law Review that he cited in his  
11 affidavit?

12 THE COURT: No.

13 MR. CAMPBELL: Okay.

14 THE COURT: I read his declaration. I did not read  
15 his Law Review article.

16 MR. CAMPBELL: Your Honor, I would commend it to the  
17 Court. Given that, I'd just like to cite two things with  
18 respect to the standing issue. We absolutely have standing,  
19 but what we're saying is that independent of standing that we  
20 have the Court is required, most respectfully, sua sponte to  
21 hold a hearing on this matter.

22 With respect to the standing issue, as Professor  
23 Rotunda states in the -- there was a case States Theaters  
24 versus Columbia Motion Pictures, and Judge Weinfeld in that  
25 case said that, "Any attorney who has knowledge of the

1 impropriety with respect to a conflict before the court has  
2 standing to raise the issue, but, moreover, has the duty, the  
3 duty to bring the question of impropriety to the attention of  
4 the court." And that's in a specific conflict case almost  
5 identical to this one, Your Honor.

6           And in this Law Review article, the corporation Law  
7 Review article he starts -- Professor Rotunda starts out by  
8 saying the following. "To protect the interests of all  
9 parties," us, "to protect the interests of all parties and to  
10 preserve the integrity of the judicial system courts have  
11 refused to leave the question of attorney misconduct to simply  
12 bar associations. Instead, courts have assumed the  
13 responsibility of investigating the alleged impropriety,  
14 determining if the rule against an attorney's representation  
15 of adverse interests has been violated, and, if so, ordering  
16 disqualification. Even in cases involving only potentially  
17 differing interests or the possibility of divided loyalty  
18 courts have emphasized that all doubts should be resolved  
19 against the propriety of representation."

20           And the manner in which you do this is you hold a  
21 hearing, Your Honor. As Professor Rotunda went on in that  
22 same article, "Courts of appeals have reversed trial courts  
23 when they have improperly failed to disqualify, and they have  
24 remanded on the issue of apparent impropriety and attorney  
25 disqualification for the district court to consider in light

1 of plain duty to disqualify counsel if their conduct is or  
2 appears to be improper. In cases involving only potentially  
3 adverse interests or the possibility of divided loyalty courts  
4 have emphasized that all doubts should be resolved against the  
5 propriety of the representation."

6           You are most respectfully, Your Honor, advised by  
7 these appellate courts that have reviewed this over and over  
8 again that you have this independently because --

9           THE COURT: Well, with attorney misconduct  
10 absolutely. But this is not an attorney misconduct issue.

11           MR. CAMPBELL: Most respectfully, Your Honor, it  
12 doesn't relate to attorney so-called misconduct, because  
13 misconduct can be negligent, misconduct can be intentional.  
14 What it relates to is whether or not there's a conflict of  
15 interest, whether or not the parties have suddenly become  
16 adverse to one another in some manner, and whether or not  
17 their former counsel has a residual conflict as a result of  
18 that. Your Honor, this is not a close call. This is a  
19 requirement of the Court to independently evaluate for itself.

20           And how do you do that? Well, you have a hearing on  
21 that. And what you're going to have to do at an absolute  
22 minimum is determine whether or not there has been a waiver.  
23 And if there has not been a waiver, it's going to be very  
24 clear and apparent that you're going to have to engage in an  
25 analysis of whether or not you should disqualify. And they're



1 going to be hard pressed to demonstrate any showing whatsoever  
2 that they shouldn't be disqualified.

3           And finally, we've got a dog in this fight, as Mr.  
4 Bice has said. Mr. Okada can come in at a later point in  
5 time, bring this up to the Supreme Court, and say, I don't  
6 understand. This is the same individual that in depositions  
7 when we show him documents he says, that's forged. When we  
8 show him his affidavits or his statements he said, I never  
9 made them. Your Honor, you're going to have to bring Mr.  
10 Okada in at a minimum and canvass him just as Judge Rotunda  
11 said -- or Professor Rotunda. You are talking about very  
12 important rights that he has, and I can guarantee if things go  
13 south on him he's going to blame you and us and everyone else  
14 over this. And the fact that you didn't hold a hearing, that  
15 you didn't independently verify whether or not this was a  
16 knowing, voluntary waiver of his rights under oath, just like  
17 you would do in any other matter where you canvass a party, is  
18 going to be problematic, to say the absolute least. That's  
19 what we're asking you to do. And to suggest --

20           And most respectfully to Mr. Krakoff, this is not a  
21 business dispute that's being involved here. This is a real  
22 serious conflict. Calling the dispute, as he calls it,  
23 between Universal and Mr. Okada a business dispute is like  
24 saying the Titanic had a little leak. They have said he's a  
25 thief. They have said he's embezzled millions of dollars and

1 as a result of that that he is unfit to sit on a board. Sound  
2 familiar, Your Honor?

3 So my suggestion, most respectfully, is that you do  
4 have to hold a hearing, you do have to hold a hearing, and you  
5 must have Mr. Okada before you just on the seminal issue of  
6 whether or not he has waived. Thank you for your attention,  
7 Your Honor.

8 THE COURT: Thank you, Mr. Campbell.

9 MR. KRAKOFF: I don't have --

10 THE COURT: Nothing else?

11 Mr. Cassity, do you need to say anything?

12 MR. KRAKOFF: Although I'm a bit offended by  
13 suggestions of my impropriety or my misconduct, I won't  
14 address that, Your Honor. I don't --

15 MR. CAMPBELL: Well, Your Honor, if I said that, I  
16 withdraw them. I'm not saying anything about Mr. Krakoff at  
17 all. And if I said that, I misspoke.

18 THE COURT: Okay.

19 MR. KRAKOFF: But I'm happy to answer any other  
20 questions.

21 THE COURT: I don't have any questions for you.

22 Mr. Cassity, do you want to say anything? And  
23 you've got to get near a mike, because your voice isn't as  
24 loud.

25 MR. CASSITY: Your Honor, all I wanted to report is

1 consistent with what we said last week, is that we are  
2 continuing to work with Mr. Okada through issues related to  
3 our representation of him, and, you know, we otherwise join in  
4 the position that was stated by Mr. Krakoff.

5 THE COURT: Okay. Thank you.

6 The motion to withdraw is granted.

7 The request for a canvass of Mr. Okada is denied.  
8 This is not a case of attorney misconduct which requires the  
9 Court to affirmatively take action where counsel is displaying  
10 certain decision making. As a result, I am denying the  
11 request by the Wynn parties to do a canvass of Mr. Okada  
12 and/or the Universal parties to make a determination as to  
13 whether they've made knowing and intelligent voluntary  
14 waivers.

15 So that takes me to the Wynn Resorts motion to  
16 compel responses to questions and for further deposition of  
17 Mr. Okada and Aruze, who I assume now have separate counsel  
18 arguing on the defense.

19 You're up.

20 MR. PISANELLI: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. PISANELLI: Your Honor, I suppose I should start  
23 with the statement that I'm frustrated that we had to bring  
24 this motion. It's not one that should have required your  
25 attention and intervention. Defendants' opposition is quite

1 simply not founded upon good-faith arguments, in our view.  
2 They're most clearly motivated by one party, and it appears to  
3 be Mr. Okada himself, desire to exempt himself from discovery.  
4 We've already seen that as it relates to his interrogatory  
5 responses that were phantomly signed by someone else. And so  
6 here we are asking for Your Honor to enforce not only a rule  
7 that has already been set for the Okada parties, but it's been  
8 enforced by the Okada parties. And what is that rule? It's  
9 the simple rule that you said in this case that we will all  
10 govern ourselves by and that if documents are produced after a  
11 deposition is taken, then there will be additional --

12 THE COURT: Which impact that deponent.

13 MR. PISANELLI: Yes.

14 THE COURT: Right.

15 MR. PISANELLI: So we have received six figures,  
16 100,000-plus pages of documents. That most importantly --  
17 remember, your order was in October of 2015, and it originally  
18 came in relation to Mr. Okada and a 30(b)(6) deponent. At  
19 that time the Okada parties had been sitting on our document  
20 requests for two and a half years. And only after the  
21 depositions took place, two and a half years later and they  
22 claim that we rushed to take a deposition, that's kind of  
23 humorous, but, nonetheless, two and a half years later we get  
24 documents coming in at their own time, at their own speed.  
25 And as you have seen from other litigation before you, it was

1 something short of a robust document production. Even as we  
2 sit here today we have the Okada parties against your orders  
3 continuing to negotiate with and the simple concept of search  
4 terms, not wanting any scrutiny to come down on the process  
5 that they put in place.

6           So what happened at the deposition? We know the  
7 standard, just said it. We also know that -- let's put that  
8 standard aside. Let's assume that they had complied with all  
9 their obligations and this isn't a document issue. Your Honor  
10 ordered Mr. Okada to appear for his deposition for 10 days,  
11 which was supposed to amount to 70 hours, which Your Honor  
12 agreed with us from both your practice as a litigator and  
13 sitting on this bench somewhere between two to 300 pages a day  
14 is what a fair deposition transcript would typically look  
15 like. So what we ended up with was something way, way short  
16 of that. We ended up with a deposition really that only ended  
17 up to be the functional equivalent of about eight days because  
18 of breaks, because of Mr. Okada himself telling us that he  
19 wasn't going to -- and that he just finished one day two hours  
20 early. He was finished, and he walked out. And so we ended  
21 up with an average of about 117, I think the number was, pages  
22 a day from Mr. Okada for the equivalent of only eight days.  
23 And that was because -- well, I should also add while we're  
24 talking about a hundred or so pages a day, that included Mr.  
25 Okada giving a speech at nearly every opportunity, including,

1 please state your name for the record. Seven minutes later we  
2 were finished with the first opening remark from Mr. Okada,  
3 and it went on and on and on to a 20-minute, 30-minute answers  
4 having nothing to do with what I had asked.

5 Now, it's hard in a deposition like this, as you can  
6 imagine, to say, wait, wait, wait, Mr. Okada, that's not what  
7 I'm asking you; because we don't know what he's saying until  
8 it's translated. And so you're a little handcuffed to control  
9 a witness who has that benefit. He knew it, and he took  
10 advantage of it.

11 So we start with the document production, we take a  
12 look at how many hours he was actually there, we take a third  
13 look at how many actual pages of deposition we got, and this  
14 becomes kind of a silly position for them to say that he has  
15 been burdened enough, burdened enough, Your Honor. This is  
16 from the party who has come in on virtually every witness in  
17 this case, in particular as it relates to Mr. Stern, including  
18 our directors, to say, we've got more documents. And they  
19 didn't just go back -- remember, we litigated this, Your Honor  
20 -- didn't just go back and say, we want additional deposition  
21 time on the records, on the new issues; they came in and  
22 successfully argued that they got a free blank check creating  
23 this parade of horrors that if there was a restriction on  
24 the subject matters, then that's just opening fights for  
25 Pisanelli to be objecting and Bice to be getting in the way,

1 let's just have more time. And Your Honor agreed.

2 THE COURT: And that's to have more motions.

3 MR. PISANELLI: What's that?

4 THE COURT: And to have more motions.

5 MR. PISANELLI: Yeah. Right. And so they got their  
6 way. They got more time because of more documents. They  
7 didn't have any of the problems that we had here, so what we  
8 think, Your Honor, should have been such an easy phone call to  
9 get this thing arranged ended up to be the opportunistic time  
10 for Mr. Okada in particular to make another disguised argument  
11 why he is exempt from discovery.

12 Now, as it relates to some of the topics, we have  
13 been prejudiced pretty severely by lawyer behavior. Mr. Okada  
14 by at least some measures, not in all of his testimony, but  
15 it's a good portion of his testimony, was not even giving his  
16 own positions, he was giving the positions that were fed to  
17 him by his lawyers. And he took notes so that he could  
18 remember those, that script and that testimony. And  
19 naturally, having my name I think on both of the Supreme Court  
20 opinions that touch upon this issue, I immediately wanted to  
21 know what it was they talked about and what he was fed.

22 THE COURT: Did you ask for the notes maybe?

23 MR. PISANELLI: I sure did.

24 THE COURT: Darn.

25 MR. PISANELLI: He destroyed them. He destroyed

1 them. And so then I asked, as you saw from our transcript,  
2 okay, Mr. Okada, tell me what was on the notes, tell me what  
3 was told you that refreshed your recollection, tell me what  
4 you can, since you destroyed the evidence, followed by  
5 instructions not to answer. That happened with the 30(b)(6),  
6 which is all the more outrageous, but certainly with a witness  
7 who had destroyed admissible evidence in this case you would  
8 think you'd bend over backwards to make sure that the record  
9 does not reflect prejudice. But insult to injury, salt into  
10 wounds, and all of those different metaphors and analogies  
11 came into play, and they just made the matter worse.

12 THE COURT: And given the decision in that Justin  
13 Jons issue, we know that this kind of conduct alone would  
14 justify new sessions of the depositions; right?

15 MR. PISANELLI: Yes, it would. Thank you for that.

16 So another topic that I'll just touch upon briefly  
17 which, because it is so ironic as we are marching forward on a  
18 sanctions hearing against us for enforcing a foreign law that  
19 prohibits a non party from producing documents, Mr. Okada was  
20 instructed not to answer because my questions might, didn't  
21 know, might touch upon foreign law. And this had to do with  
22 their claim, a claim in this case that Kim Sinatra and the  
23 company falsely led him to believe that he had financing for  
24 the Philippines project, so a simple question about damages,  
25 well, did you get financing anyway for the Philippines



1 project, was shut down because that might touch upon a foreign  
2 law. Well, we anxiously awaited the motion for a protective  
3 order on that topic, and it never came, again, a topic that  
4 should not have been interfered with in the first instance,  
5 but we're certainly entitled to go back to it.

6 And finally, Your Honor, from a topic perspective --

7 THE COURT: How long do you really need --

8 MR. PISANELLI: Well --

9 THE COURT: -- understanding the interpreter issue  
10 and understanding the way in which Mr. Okada answered  
11 questions at the first session?

12 MR. PISANELLI: Five days.

13 THE COURT: Okay.

14 MR. PISANELLI: Because that will probably end up to  
15 be the equivalent of two. If I come back here, Your Honor,  
16 with somewhere between five and 600 hundred pages, I'll be  
17 shocked. I don't think I will. And if I filter it down to  
18 actual answers, I'm willing to bet you I barely get to a  
19 hundred pages again with this witness. Nothing has happened  
20 in this case that leads me to believe that Mr. Okada has  
21 changed his ways. Recall, I've already said this once, but  
22 it's important on this topic, he didn't even participate in  
23 the interrogatory process. Someone else looked at them,  
24 someone else answered them. He spent 60 to 120 seconds  
25 talking to that person, and we don't even know if it was on

1 the actual topic. So I have no doubt that I'm going to spend  
2 the same time wrestling with this gentleman to answer my  
3 questions rather than giving me a speech of why I should be  
4 looking to other people for answers or that I should be  
5 ashamed of myself for daring to ask him some of the  
6 fundamental questions in this case.

7           The 30(b)(6) deposition is no different. We were  
8 stonewalled is the word that I'm going to use there, hiding  
9 behind lawyers again. Both Mr. Okada and the 30(b)(6)  
10 deponent, they continue to say, uh uh uh, you can't answer  
11 that question because you only know this fact because you  
12 talked about it with the lawyer. Well, I didn't ask for the  
13 source. I didn't say, what did your lawyer say to you. I  
14 said, Mr. Okada, I said, 30(b)(6) witness, what facts do you  
15 know that relate to or support this contention that there was  
16 something unlawful about the Macau donation, University of  
17 Macau donation; don't answer that question, anything -- any  
18 fact that you are in possession of was given to you by a  
19 lawyer. And we know from the Upjohn case, from our Supreme  
20 Court, and from you telling us over and over again a fact is  
21 not privileged, period, and it doesn't become privileged  
22 because you happen to include it in what otherwise was a  
23 communication with your lawyer.

24           So all we're asking for is fairness and consistency.  
25 The Okada parties are attempting to have two different sets of

1 rules here, one that applies to them, and one that applies to  
2 us, and that's just not how it works.

3 THE COURT: Thank you.

4 Team?

5 Now, you weren't in that hearing when I let Mr.  
6 Jones say that he would give me the documents later, huh?

7 MR. CASSITY: I was not in that hearing, Your Honor.  
8 My firm was involved as counsel --

9 THE COURT: I made a mistake in not stopping the  
10 hearing and making him go to the office and grab all the  
11 documents before continuing with the hearing, apparently.

12 MR. CASSITY: Apparently, Your Honor.

13 Your Honor, I'll just address briefly. Mr. Krakoff  
14 will address the issues as to the 30(b)(6).

15 At the very beginning of this case we invited  
16 counsel to our office and we had some discussions about  
17 deposition scheduling. And one of the items that we proposed  
18 to counsel was that we should complete the substantial  
19 production of documents before we moved forward with all the  
20 depositions. Obviously --

21 THE COURT: Took longer than you anticipated, didn't  
22 it, Mr. Cassity?

23 MR. CASSITY: It did for both sides, of course, Your  
24 Honor. But we waited until after both sides had completed the  
25 substantial completion of their documents -- of the production

1 of their documents before we noticed any depositions. They  
2 wanted to get an early bite at Mr. Okada, and, respectfully,  
3 Your Honor, this is their attempt to get a second bite with  
4 Mr. Okada. And our view, Your Honor, is that they need to  
5 live with that decision, that that decision was intentional,  
6 that they made it knowing full well that they didn't have all  
7 the documents in the case. They knew that there was going to  
8 be a continued production by the Aruze parties of their  
9 documents, and they made the decision that they would move  
10 forward with the deposition early for that strategic reason.

11 Now, I understand the Court's comments and see where  
12 the Court's going with its intention with respect to the  
13 ruling. And in that regard, Your Honor, I would just ask that  
14 there be some limits that are imposed upon that. First that  
15 it -- and our request is that any further deposition should be  
16 limited to two days. And we also ask the Court to locate the  
17 deposition in Hong Kong, where Mr. Okada resides. He came out  
18 for 10 full days of deposition in Las Vegas. The Court has  
19 ordered him to appear next week in Las Vegas, and he'll be  
20 here next week in Las Vegas for that deposition. So we ask at  
21 this point that there be fairness in that respect.

22 And with respect to the documents, you know, they  
23 have the documents that they had at the time and that there be  
24 no examination on documents that had been produced and were  
25 available to them at the time they took the 10 days of

1 deposition. Thank you, Your Honor.

2 THE COURT: Thank you.

3 Counsel for Universal.

4 MR. KRAKOFF: I like my new title, Your Honor, or  
5 role I guess I should say.

6 Your Honor, with all due respect to Mr. Pisanelli,  
7 our papers say what their questions to the 30(b)(6) witness  
8 really were that invaded the attorney-client privilege. Facts  
9 are fair game, communications are not. So I would make that  
10 point.

11 THE COURT: So you don't think that communications  
12 by counsel to make a witness the 30(b)(6) are discoverable?  
13 So if that's the only source of information somebody has to  
14 become the 30(b)(6) and it comes from counsel, you don't think  
15 they can inquire into it?

16 MR. KRAKOFF: Well, I don't think that was --  
17 respectfully, Your Honor, I don't think that was the situation  
18 here. Because what he was testifying about was the litigation  
19 and his knowledge of the litigation, because this man, Mr.  
20 Takiuchi, and we got into this a bit last week, he lived this  
21 whole litigation, he did the internal investigations.

22 THE COURT: You told me that last week, yeah.

23 MR. KRAKOFF: I know. But I think that that's --  
24 respectfully think that's relevant here, as well. I think it  
25 is fair when the questions are, well, what is it, what was it

1 that counsel told you about the \$135 million contribution. I  
2 don't think that that's -- he can testify to what he learned,  
3 but not the communications. I think that that's a brightline.  
4 There's facts, what he's learned because he's -- it's not his  
5 knowledge, it's collective knowledge that he is imparting in  
6 the deposition. So I think that that's not a difficult  
7 standard to address, to try to stick to. And it's done,  
8 frankly, in all of our other depositions. Facts, yes.  
9 Knowledge, yes. But not what a lawyer has communicated.

10 THE COURT: In the context of giving legal advice.

11 MR. KRAKOFF: In the context of giving legal advice,  
12 yes, Your Honor.

13 THE COURT: Not prepping somebody to be a 30(b)(6)  
14 witness.

15 MR. KRAKOFF: Well, I think that -- I think that  
16 giving legal -- that prepping is giving legal advice,  
17 respectfully.

18 THE COURT: Okay.

19 MR. KRAKOFF: We've already agreed to another  
20 deposition, and so that's not the issue. They can't complain  
21 that this witness was not prepared or made speeches or didn't  
22 answer questions. What they want is a -- they've already got  
23 five days. They want another four days. They want a total  
24 mulligan. And -- but they're unwilling to abide by any  
25 limitations at all. There were -- they noticed 126 topics

1 before for five days. They say, well, we get to ask about all  
2 those 126 again. And they're not willing to be limited to the  
3 31 new topics. It seems to me, Your Honor, that's fair, that  
4 that is a fair limitation that should be applied to our  
5 30(b)(6) witness. Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Pisanelli, anything else?

8 MR. PISANELLI: The only point as it relates to Mr.  
9 Cassity is conducting Mr. Okada's deposition in Las Vegas or  
10 Japan, you've already ruled that it should be here. The  
11 problem with this deposition was of Mr. Okada's making, not  
12 ours. And so he shouldn't be rewarded by requiring a plane full  
13 of lawyers to come to him. Your Honor already balanced all of  
14 the factors of why he should come here.

15 THE COURT: But you can all be there anyway.

16 MR. PISANELLI: But we're not going to be -- we will  
17 not be able to do it on that trip. We've already explored  
18 that opportunity, and it just can't be done. So he caused  
19 this problem. We need to finish the process Your Honor's  
20 already put in place.

21 Mr. Krakoff is wrong both factually and legally as  
22 it relates to the preparation of a 30(b)(6) designee. We were  
23 shut down no matter how we phrased our questions on what facts  
24 this witness was there to offer if they came from a lawyer.  
25 Didn't matter if I said, what did your lawyer tell you, or

1 not. So that's the factual problem.

2           The legal problem is he's just wrong. You can't --  
3 you're not waiving a wholesale waiver of your attorney-client  
4 when a lawyer helps prepare the witness. I concede that. But  
5 if the witness is presenting the facts as the position of the  
6 company, we are entitled to know the source of those facts, be  
7 it a lawyer, a book, a document, or watching television. And  
8 we were not allowed to find out the source of the facts if  
9 they came to the lawyers, and that's just not how the process  
10 works.

11           THE COURT: Thank you.

12           MR. PISANELLI: And the final point, Your Honor,  
13 about putting limitations. Sounds like a familiar debate. I  
14 took his position before, I lost it before. We just ask for  
15 the same rule to apply here so that we don't have more motion  
16 practice about people arguing whether a question falls under  
17 Topic A or Topic Z. We'll ask our questions, we'll utilize  
18 our time, and if they think that we haven't used it  
19 effectively or efficiently, they can come back to Your Honor  
20 and say so.

21           THE COURT: Thank you.

22           The motion is granted. Mr. Okada will appear in Las  
23 Vegas for an additional five days of deposition of 7.5-hour  
24 days, including any interpretations.

25           The 30(b)(6) witness will appear for two days in Las



1 Vegas of 7.5 hours. Same caveat about interpreters.

2 Anything else?

3 So that takes me to the motion to dismiss, multiple  
4 motions to dismiss.

5 MR. PISANELLI: Argue them both at the same time,  
6 Your Honor? Makes sense?

7 THE COURT: Please. I know all these people love  
8 seeing you guys in court, but, you know.

9 MR. PISANELLI: So, Your Honor, if there's anything  
10 clear from you and from the law that governs this dispute it's  
11 that cosmetic and conclusory allegations don't cure pleading  
12 defects. This Court warned Ms. Wynn, and I think it was I  
13 have to say her then counsel, I'm not sure which one they were  
14 at the time, I believe it was Quinn Emanuel, that claims that  
15 are tied to the contract between Ms. Wynn and her ex-husband  
16 were, your words, not appropriate, the claims had to relate to  
17 something extracontractual, they could not be tied back.

18 Apparently that fell on deaf ears, because all we  
19 got was --

20 THE COURT: So I've got this new issue that I've not  
21 seen before and I spent some time thinking about last night,  
22 which is a majority shareholder in a publicly traded company  
23 owes a fiduciary duty to a minority member. Can you address  
24 that issue.

25 MR. PISANELLI: Yes. It doesn't exist. And, if it

1 does exist, it would not be to any particular minority  
2 shareholder, it would be to all shareholders, which would make  
3 the claim derivative. But imagine the ruling in the corporate  
4 governance if every single minority shareholder says in a  
5 publicly traded company that a majority shareholder has to  
6 make all of their decisions based upon this assumed personal  
7 fiduciary obligation to them, to millions of minority  
8 shareholders in a publicly traded company the chairman or the  
9 majority has to take all of their interests into  
10 consideration. It is not workable, and it's not the law.  
11 Where the fiduciary obligation comes from is to the company  
12 and by protecting the company and making sure that all of the  
13 majority shareholders, if the obligation exists in the first  
14 place, it would flow to the company so that any harm to the  
15 company would rest with the company, and if the company had  
16 any grievance or claim, it then could prosecute that claim and  
17 get redress for the benefit of all. The individual personal  
18 interests are not the governing factor here.

19           So with that, Your Honor, the problem Ms. Wynn can't  
20 seem to plead around is this. It's one big, glaring fact that  
21 she continues to try to dodge and she can't, and it's that the  
22 shareholders here held a vote. They held a vote with her name  
23 being nominated because she nominated herself and launched a  
24 proxy battle, and she lost badly. That is a problem that she  
25 cannot escape. Nothing Wynn Resorts, nothing Kim Sinatra

1 could do would have changed that. So the only possible remedy  
2 for her to come in and file a lawsuit complaining that she was  
3 harmed because she's not on the board is if somehow there was  
4 a contractual guarantee that she would be on that board.

5           There's two problems there, and that's what this  
6 motion is all about. The contractual guarantee, if it ever  
7 existed, would have been the agreement with her ex-husband,  
8 which you told them could not be the basis of a claim against  
9 these two parties, and, secondly, the shareholders agreement  
10 doesn't come close to giving her a guarantee. No matter which  
11 way they twist it and turn it, no matter how they cut and  
12 paste to put Kim Sinatra's name elsewhere that problem keeps  
13 coming back to haunt them.

14           So very briefly, the eleventh cause of action  
15 against the company and the twelfth cause of action against  
16 Kim Sinatra is the intentional interference with contractual  
17 relations. So Your Honor knows what the elements of those  
18 claims are, but our motion is based really on the third and  
19 the fifth, that there were intentional acts tended or designed  
20 to disrupt that contract resulting in damage. The third and  
21 the fifth "resulting in damage" is the key here. So none of  
22 the factual allegations, if you look at this complaint, Your  
23 Honor, suggest that Wynn Resorts or Kim Sinatra induced or  
24 persuaded Mr. Wynn to breach this agreement he had with his  
25 ex-wife.

1           From Ms. Sinatra's perspective we gave you, because  
2 we thought it was very telling, a black-line copy of the  
3 complaint. All they did was take the allegations about Mr.  
4 Wynn and add in essence "and Kim Sinatra," "and Kim Sinatra,"  
5 "and Kim Sinatra," thinking that that was going to be good  
6 enough, that there was going to be enough specifics in those  
7 allegations for Your Honor to see and for us to defend of why  
8 Kim Sinatra should be standing as a defendant for intentional  
9 interference with a contract, the contract you told them to  
10 stay away from. They didn't listen. What they're doing here,  
11 Your Honor, is ignoring their own allegations. They have  
12 allegation after allegation that Mr. Wynn was predisposed to  
13 violate this agreement, he wanted her out of the company is  
14 their theory because, sounds familiar, she's adopted the Okada  
15 refrain she was a thorn in his side and was objecting or  
16 complaining about his corporate management.

17           Now, in order to really retaliate against Kim  
18 Sinatra in particular, but the company, as well, for not  
19 voting her in, she tries to bootstrap them into what was  
20 always her theory, that Steve Wynn was predisposed not to  
21 nominate her or to somehow circumvent his obligation to  
22 nominate her for the board. That's the problem with their  
23 case. It is self defeating.

24           More important than that, however, is the earlier  
25 point that I made to you. If we're talking about the elements

1 of intentional acts and resulting damage, what was the  
2 resulting damage, that she didn't get elected by millions of  
3 other shareholders? She was nominated, and they voted against  
4 her. Was Steve Wynn's actions somehow responsible for that?  
5 There's no possible way to find that out. But we know that  
6 Kim Sinatra and Wynn Resorts cannot as a matter of law have  
7 participated in that cause of action. And so that fails.

8           From the company's perspective there's a unique  
9 argument here that is being ignored, and that is the stranger  
10 doctrine, which Your Honor is familiar with. Simply because  
11 Wynn Resorts is not a stated intended third-party beneficiary  
12 of the shareholders agreement doesn't mean that it doesn't  
13 have an interest in it. Remember, by their own allegations  
14 the purpose of the shareholders agreement is for corporate  
15 governance and protection of how their shares would be voted.  
16 So it has an interest in that contract, and if it has an  
17 interest in that contract, as a matter of law that company  
18 cannot be brought in under a claim of this sort to interfere  
19 basically with its own contract.

20           The aiding, abetting, and a fiduciary duty suffers  
21 from the same flaws. First of all you have to assume that  
22 there was a fiduciary relationship, which doesn't exist as a  
23 matter of law. Next you have to see that the third party  
24 here, Kim Sinatra and the company, knowingly participated in  
25 the breach, again ignoring your caution to say away from that

1 shareholders contract, it's inappropriate and too attenuated  
2 for other people's participation. And, most importantly, the  
3 damage. How was she damaged? We don't know. We'll never  
4 know. Even if you accept every allegation as true, that Kim,  
5 which was really the way they have phrased this, is a  
6 coconspirator inside her own company had some participation in  
7 her not being reelected, this sounds like our own election in  
8 this country; right? We all have feelings of what happened  
9 with Russian intervention. None of us, however, will ever be  
10 able to say that 80,000-something votes in the midwest would  
11 have changed but for Russian intervention in the election.  
12 We'll never be able to prove that. We just have to accept as  
13 a fact that it happened. Isn't that Ms. Wynn's problem here?  
14 Even if we accept at the Rule 12 level that Kim Sinatra and  
15 the company either encouraged or allowed or participated Steve  
16 Wynn to do whatever it was he did as it relates to the  
17 election, we can never know and she can never prove, because  
18 it is far too speculative, that the millions of people who  
19 voted against her in the proxy battle would have changed their  
20 vote but for Kim Sinatra's fingerprints being on these -- this  
21 process if we were to accept her allegations it's true. You  
22 don't have to, because they're conclusory. But even if you  
23 do, the claim fails as a matter of law because there is  
24 nothing but speculative damage with no real harm that can ever  
25 be compensated in this case.

1           Unless you have any other questions, the remainder  
2 of our positions are set forth in our briefs, Your Honor.

3           THE COURT: So it looks like between the two motions  
4 you're looking to have me dismiss the eleventh, twelfth, and  
5 fourteenth causes.

6           MR. PISANELLI: Yes.

7           THE COURT: Okay. Thank you.

8           MR. PISANELLI: Thank you.

9           THE COURT: Mr. Cole.

10          MR. COLE: Thank you, Your Honor.

11          Obviously I don't need to tell the Court we're in  
12 the motion to dismiss stage and Nevada is a notice pleading  
13 state. All the facts are taken as true.

14          Just to start with the question that you raised,  
15 Your Honor, you look at the Grayson case, the PT China case.  
16 Those both show that these are in fact minority shareholders  
17 having individual causes of action, and your issue about  
18 whether a majority shareholder owes that fiduciary duty, I  
19 think the cases that we have cited do support that, and, in  
20 any event, it would be an issue of fact as to whether or not  
21 Mr. Wynn really was the person who was in that control and  
22 running that issue.

23          I think what we need to keep in mind here, because  
24 so much of what Mr. Pisanelli was talking about rests on the  
25 allegations and his characterization of what the breach was,

1 let's just take a bit of stock. We have a situation where  
2 Wynn Resorts, where Kim Sinatra engineered affirmatively  
3 reducing the size of the Wynn Resorts board. This is very  
4 significant in this case, because by reducing it you really  
5 change the dynamic of that shareholder vote. They can't vote  
6 for three people on a board, the three who would be up --  
7 their terms would be up at that point. They are forced to  
8 only vote for two. This isn't just a happenstance of the  
9 shareholders that didn't vote. This was engineering a  
10 reduction in their ability to vote for three instead of two.  
11 So it's highly unusual, done at the last minute, even garnered  
12 the quizzical questions from the SEC as to why.

13           They also, and this is perfectly alleged in the  
14 complaints, made up false stories about Elaine Wynn to try and  
15 justify the reasons why they wanted her off the board. And  
16 they took these false stories to the shareholder, the investor  
17 groups and told them of these stories. They libeled her, they  
18 slandered her. They said false things about her so they would  
19 vote against her. This isn't just something happening in the  
20 ether and, oh, there's an election and who can tell. There  
21 were active steps taken. When Steve Wynn went on TV and made  
22 statements which could be interpreted as an endorsement of  
23 Elaine Wynn, Wynn Resorts came out with public statements  
24 refuting that endorsement. And again, as I said, they  
25 actively sought the solicitation of institutional investors to



1 go about voting against her.

2           This isn't just some impartial shareholder vote.  
3 This is engineering something with a purpose, and that purpose  
4 was to get her off the board because they were retaliating  
5 against her because she raised legitimate issues of corporate  
6 governance. Those included the improper use of corporate  
7 funds by Steve Wynn, not telling the board any number of  
8 things that were important to the actual operation of that  
9 company, just to name a few.

10           Now, Nevada law provides causes of action for this.  
11 And there's two that we are doing here, aiding and abetting  
12 the breach of fiduciary duty, and the tortious interference  
13 with contract. Now, the Court had asked and directed that  
14 there be a change in the way that the pleading was styled.  
15 And we did. We made it clear that the breach of fiduciary  
16 duty had nothing to do with the contract. The breach of  
17 fiduciary duty could survive even if there was no shareholder  
18 agreement, because there are two duties here. One is a  
19 positive, contractual duty. That's what we have pled is the  
20 source of the tortious interference. And the other --

21           THE COURT: And that's your paragraph 142?

22           MR. COLE: I'm sorry?

23           THE COURT: Paragraph 142?

24           MR. COLE: And the other is a negative fiduciary  
25 duty.

1           Your Honor always amazes me with your encyclopedic  
2 knowledge about these things.

3           THE COURT: Oh, no, not encyclopedic. I have the  
4 documents marked and the pages folded. So --

5           MR. COLE: The other is the negative duty, a  
6 fiduciary duty not to retaliate against a minority shareholder  
7 for raising legitimate concerns. And we cured that by the way  
8 we pled this. As the sixth amended cross-claim makes clear,  
9 Mr. Wynn's fiduciary obligations to Ms. Wynn were independent  
10 of any obligation under the shareholders agreement.

11           Now, Wynn Resorts and Kim Sinatra fundamentally and  
12 I believe intentionally misstate what the duty is. Because  
13 they have to. Because if they accept what the actual duty is,  
14 I would submit they lose. The duty is not to put Ms. Wynn on  
15 the board. And we talked about that in our opposition.  
16 That's not the duty that we're complaining about. The duty is  
17 to not retaliate against her, not to take steps to punish her  
18 for engaging in legitimate activities of a board member. That  
19 is the duty that was breached, and that was the duty that was  
20 engineered by all of the things that we have listed in the  
21 complaint.

22           We have gone, I believe, Your Honor, into great  
23 detail, more detail than is required under Nevada law, to put  
24 them on notice as to what the sources of this are. Now, this  
25 duty is not derivative. As we've seen in the Grayson and PT

1 China case, these duties can be individual. Even if there are  
2 other breaches that may be derivative, they are not sole or  
3 exclusive. This can go in both directions.

4 And I think we also have to look at the aspect of  
5 intent. Wynn Resorts keeps talking and Kim Sinatra keeps  
6 talking about this but for standard. They cite cases from the  
7 '70s and the '90s which really are not valid cases anymore.  
8 The standard, and we have cited it in our allegations, is that  
9 they knowingly participated in and substantially assisted Mr.  
10 Wynn's breaches of his fiduciary duty. I direct, as we did in  
11 our brief, Your Honor to the Americo case, where the standard  
12 is knowingly participated in the breach and the breach of the  
13 fiduciary relationship --

14 THE COURT: We called that case Schoen 2 here.

15 MR. COLE: Pardon?

16 THE COURT: Mr. Peek's litigated it several times.  
17 Mr. Polsenberg, yeah.

18 MR. COLE: I know it's been -- the name has been  
19 around a lot.

20 THE COURT: So can you guys not cite -- just for  
21 fun, don't cite my unpublished decisions, because none of my  
22 decisions are published and they have no binding authority  
23 even on me.

24 MR. COLE: I understand.

25 THE COURT: I'm happy to take authority from other

1 people that's published, but, you know, what I decided in  
2 another case is probably not a good way to --

3 MR. COLE: Your Honor, I obviously submitted the  
4 brief and bear responsibility.

5 MR. FERRARIO: I'll take responsibility here.

6 THE COURT: Yeah. It was his case.

7 MR. COLE: I understand that. I think he had a  
8 certain affinity for it and wanted it in there. And I have  
9 great respect for it.

10 THE COURT: He doesn't win very often, so when he  
11 does --

12 MR. COLE: He wants to relive it over and over  
13 again.

14 THE COURT: And then the Supreme Court affirmed me.  
15 So, you know. At least on most of the stuff.

16 MR. COLE: That's right.

17 MR. FERRARIO: There's some winning and some losing  
18 here, Your Honor. Mr. Malley's name was on the other side.

19 MR. COLE: If I may, Your Honor, let me move on to  
20 the tortious interference. I think it's pretty clear in the  
21 modern era that the only ones who are immune from tortious  
22 interference claims are parties to the contract. The Hilton  
23 Hotel case I think is incredibly instructive.

24 THE COURT: We call that one Butch Lewis.

25 MR. COLE: Pardon me?

1 THE COURT: That's the Butch Lewis case.

2 MR. COLE: The Butch Lewis case. I think it's very  
3 instructive for a couple of things that the opinion really  
4 states, and it is very, very similar to this case. And I'm  
5 looking at page 1229 in the Pacific Reporter, where it first  
6 sets out that the court says, "We recognize that where the  
7 terms of a contract are literally complied with but one party  
8 to the contract deliberately contravenes the intention and  
9 spirit of the contract that party can incur liability for  
10 breach of the implied covenant of good faith and fair  
11 dealing." That sounds like what everybody's talking about  
12 Steve Wynn did here. He tried to have that technical  
13 compliance, he tried to say, I endorsed her and voted my  
14 shares; but the concept of good faith and fair dealing was  
15 extremely violated here. And the Hilton court, the Butch  
16 Lewis court, goes on to say, "If Hilton is able to prove that  
17 the implied contractual covenant of good faith and fair  
18 dealing was breached, the jury will be free to also determine  
19 whether the breach resulted from tortious acts of conspiracy  
20 and interference involving the other named defendants."

21 That's this case. We have a situation where Steve  
22 Wynn very well may and we allege wanted Elaine Wynn off that  
23 board, but he couldn't do it himself. He needed Kim Sinatra  
24 to do it. He needed her to engineer it and to execute it.  
25 And this is where we find that she was involved. Under almost

1 any standard she is involved, but certainly under the  
2 substantial factors standard that's in the Rutherford case she  
3 clearly was a substantial standard. And I think one of the  
4 things that is very interesting is that in the Wynn and  
5 Sinatra briefs they talk about how the substantial factors  
6 standard subsumes the but for test. And then they stop. And  
7 the rest of the quote from Rutherford is that, "while reaching  
8 beyond it to satisfactorily address other situations such as  
9 those involving independent or concurrent causes." At a  
10 minimum we have that here. At a minimum. And in any event,  
11 again, this is an issue of fact for the jury.

12           Your Honor, at the end of the day I think we have  
13 any number of issues of fact, but I think these complaints,  
14 these causes of actions are more than well-enough pled to  
15 survive a motion to dismiss at this early stage, and we would  
16 respectfully submit, Your Honor, that their motion should be  
17 denied.

18           THE COURT: Thank you.

19           Mr. Pisanelli. If you could wrap up quickly.

20           MR. PISANELLI: I will.

21           THE COURT: Because you guys have got one more  
22 motion, and we've been going an hour and 10 minutes.

23           MR. PISANELLI: Yes, Your Honor.

24           So Counsel tells you that this is not Ground Hog's  
25 Day and we're not having the same debate the last time that

1 Quinn Emanuel lost it because, there's his words, great detail  
2 was added into this complaint. That's why we quoted to you,  
3 and you can see it on page 11, their great detail was a cut  
4 and paste and just put "Kim Sinatra" in the general conclusory  
5 allegations where Steve Wynn's name was. That's hardly taking  
6 this outside of the contract that you told them not to do. At  
7 best what they have done is said that there was some harm to  
8 the company, that she was complaining that she serves as a  
9 watchdog, that she should have been on the board because she  
10 was complaining or things could have changed. Assuming all of  
11 that is true, that is a derivative claim. That is not damage  
12 in any form that Elaine Wynn is going to be able to collect.  
13 In any form. And I waited and waited and waited for Counsel  
14 to get up here and tell you why this complaint has pled around  
15 the speculative nature of her damage claim, whether it be  
16 speculative that millions of votes that were cast against her  
17 -- remember, Your Honor, this wasn't a close vote. This  
18 wasn't like our presidential election. This was truly a  
19 landslide.

20 THE COURT: You know, we try not to do politics here  
21 for a reason.

22 MR. PISANELLI: I can't help --

23 THE COURT: You've been having a hard time, I know.

24 MR. PISANELLI: I'm addicted to news. I can't help  
25 it.

1 THE COURT: I know you are. I've heard.

2 MR. PISANELLI: Sorry about that.

3 But the point is there was deafening silence on how  
4 he claims that they pled around the speculative nature of the  
5 damage or what her entitlement was. If not from the contract,  
6 what was her personal entitlement that she had been denied?  
7 As a board director? There's no such thing. Is there some  
8 financial compensation that she's talking about she would have  
9 had there? Never pled. It's nowhere, because it's too  
10 speculative that she would have won and there's nothing there  
11 for her to collect. At best it was a company harm that is not  
12 hers to prosecute. Any suggestion, and I'll close on this,  
13 Your Honor, that there was somehow a case anywhere that  
14 supports this fiduciary -- personal fiduciary obligation of  
15 one shareholder to another just does not exist. The Nevada  
16 Legislature has never come up with an idea like that. At best  
17 the only time you see it is in fights in closely held  
18 corporations, not in publicly traded corporations with  
19 millions of shareholders where it would be impossible standard  
20 for any majority shareholder to say that he or she or it owes  
21 a duty to the millions of diverse interests of all the million  
22 shareholders. It cannot exist as a matter of law, and it  
23 doesn't exist as a matter of law.

24 THE COURT: Thank you.

25 At this point the pleadings have been adequately



1   pled for a direct claim.  There are certainly issues of  
2   factual nature and of potential damages that I assume we will  
3   deal with on a Rule 56 basis as we move through discovery.

4               All right.  You have one last motion.  Who's arguing  
5   the motion to stay?

6               MR. BICE:  I am, Your Honor.

7               THE COURT:  Mr. Bice.

8               MR. BICE:  Yes, Your Honor.  Your Honor, this is our  
9   motion.  We're asking the Court for a temporary stay of the  
10  issues about Ernst & Young and Price Waterhouse Coopers.  The  
11  Okada parties have not opposed the motion for stay as a whole,  
12  they just simply ask that it be limited to 15 days.  We're  
13  asking for a little more time than that because, unlike Mr.  
14  Polsenberg, I don't control when the Nevada Supreme Court  
15  enters or gets around to entering its rulings on these  
16  matters.  So I need a little more time to get this in front of  
17  meet and give them an opportunity to address it.  So --

18              THE COURT:  So you don't think only giving 15 days  
19  will make them make a decision one way or the other?

20              MR. BICE:  Actually, Your Honor, in my experience it  
21  doesn't have that effect.  My concern actually is --

22              THE COURT:  It's a message that I send.

23              MR. BICE:  And, Your Honor, I know that, and they  
24  know that, too.

25              THE COURT:  They do.

1           MR. BICE: Which is why I think it has the boomerang  
2 effect, and I get prejudiced by that boomerang. So that's why  
3 we're just asking for a little more time, Your Honor. Thank  
4 you.

5           THE COURT: That was the back story of all the  
6 Nevada stuff that you don't hear about. You can ask Mr.  
7 Polsenberg, and he can explain it.

8           MR. POLSENBERG: At least he didn't compare me to  
9 the Russians.

10          MR. BICE: Yet.

11          MR. KRAKOFF: I'm not touching that at all, Your  
12 Honor. No politics from us.

13          Mr. Bice is correct, we don't oppose. We just think  
14 it should be limited to 15 days, as the Court has done on  
15 other writs in the past. And they, of course, could come back  
16 after 15 days if the Supreme Court didn't rule, as Mr. Bice is  
17 anticipating; but, in any event, that's all we wanted to say,  
18 Your Honor.

19          THE COURT: Thanks.

20          I'm going to grant the motion. I'm going to grant  
21 it for a period of 30 days because of the summer holidays.

22          MR. BICE: Thank you, Your Honor.

23          THE COURT: I have a couple of motions to redact  
24 that are on. I've not received any objections. Anybody  
25 opposed to those? Those are granted.

1           And then I have a status check.

2           Mr. Polsenberg, did the Supreme Court agree to lift  
3 the stay when you voluntarily requested they lift the stay so  
4 you could withdraw your petition?

5           MR. POLSENBERG: No. And not yet.

6           THE COURT: Darn.

7           MR. POLSENBERG: I don't think they've gotten to it  
8 yet.

9           THE COURT: Congratulations, by the way.

10          MR. POLSENBERG: Thank you, Your Honor.

11          THE COURT: How's it feel to be a grandfather?

12          MR. POLSENBERG: It feels great.

13          THE COURT: Good.

14          MR. POLSENBERG: I don't think the court has gotten  
15 to it yet, and, as you can see by the reply I filed -- or  
16 rather the motion I filed I think on June 30th, I didn't have  
17 a deadline from the District Court, so I couldn't say it was  
18 an emergency motion under Rule 27(e). I asked them for  
19 expedited treatment under Rule 2. From my experience they  
20 don't even look at that till they get around to looking at  
21 that.

22                 So if you wanted us -- I may disagree with Mr. Bice  
23 on a couple of items, but if you wanted us to make an  
24 emergency motion under 27(e), you could give me a deadline to  
25 do that.

1           THE COURT: How about 30 days given the summer  
2 holidays?  
3           MR. POLSENBERG: The problem is that I have to say  
4 that the deadline comes up in 15 days to --  
5           THE COURT: Then you can have 15 days, Mr.  
6 Polsenberg.  
7           MR. POLSENBERG: Thank you, Your Honor.  
8           THE COURT: All right. Are you guys coming Monday,  
9 next Monday?  
10          MR. FERRARIO: We may. There's --  
11          THE COURT: I saw there were OSTs going back and  
12 forth, but I don't remember when they were being set for.  
13          MS. SPINELLI: Not Monday, Your Honor. The Monday  
14 after.  
15          THE COURT: Not the 17th. Okay.  
16          MR. FERRARIO: Well, wait. There's an issue that's  
17 going to --  
18          THE COURT: There's a problem? You represent Elaine  
19 Wynn; right?  
20          MR. CASSITY: We circulated this. We're talking  
21 about discovery schedule, Your Honor.  
22          THE COURT: He represents Mr. Okada. I'm just  
23 making an observation.  
24          MR. FERRARIO: I understand.  
25          THE COURT: You're directing him on whether he does

1 stuff?

2 MR. CASSITY: He asked a question.

3 MR. FERRARIO: I asked a question. There's been  
4 discussions about the schedule, and --

5 THE COURT: What schedule?

6 MR. FERRARIO: That governs this entire case,  
7 which --

8 THE COURT: You mean like we have a trial in  
9 February?

10 MR. FERRARIO: No. It's April.

11 THE COURT: April.

12 MR. COLE: Now you've got me scared.

13 MR. FERRARIO: So we've been discussing moving some  
14 dates. There was a proposal floated. That's why I asked him  
15 if he sent it.

16 THE COURT: I assume that means that there's some  
17 expert disclosure dates that people are having trouble with.

18 MR. PISANELLI: No. That's not it.

19 MR. FERRARIO: I'm more concerned about the cutoff  
20 of fact discovery. And so what I was going to tell the Court  
21 is if there isn't an agreement --

22 THE COURT: I'm here all week.

23 MR. FERRARIO: -- we may very well file a motion,  
24 and I was going to ask to have it set for --

25 THE COURT: The day before Mr. Okada's deposition?

1 MR. FERRARIO: Monday, yes.

2 MS. SPINELLI: The reason why we have about six  
3 motions on the 24th is because the 17th is unavailable, Your  
4 Honor.

5 THE COURT: I keep hearing rumors that people have  
6 lives.

7 MS. SPINELLI: It's random; right?

8 MR. FERRARIO: I'd like to find mine, but that's  
9 okay. My vacation was cut short for a variety of things.  
10 But maybe this Friday.

11 THE COURT: I'm here working. I mean, I don't have  
12 -- I do have a courtroom this week. Judge Escobar lent me my  
13 old courtroom, 14C, for most of the week. So if I could ever  
14 finish your calendar here, I'm going to go up there.

15 MR. FERRARIO: Let's just set a hearing for Friday  
16 for the hell of it. It's the 14th. We can go up there for  
17 old time's sake.

18 THE COURT: Those people all don't want to.

19 MR. PISANELLI: Except there's no motion, Your  
20 Honor. We're in depositions in this case. I understand Mr.  
21 Ferrario feels strongly about his position, but it will come  
22 as no surprise to him so do we. So --

23 THE COURT: You disagree with him?

24 MR. PISANELLI: Shocking. So we'd like a motion set  
25 in a fair amount of time.

1 THE COURT: And if Mr. Peek was back, you would  
2 disagree with him, too?

3 MR. FERRARIO: Well, Your Honor, the only thing I  
4 don't want to get is when we come in here and they say, well,  
5 you delayed another week to do this, you delayed another week.  
6 We want to get this on.

7 THE COURT: When is the deadline you were of  
8 concern?

9 MR. FERRARIO: It's the -- the fact discovery  
10 ends --

11 THE COURT: What's the deadline?

12 MR. FERRARIO: -- September 8th, I think.

13 THE COURT: Then we don't need to come in Monday.  
14 We'll see you a week from Monday.

15 MR. PISANELLI: Your Honor, a couple other issues.

16 MR. FERRARIO: That's all I needed to hear.

17 MR. PISANELLI: So we have pending before you our  
18 motion to sever and stay Elaine Wynn's discovery because it's  
19 one sided.

20 THE COURT: So I gave 15 days to Mr. Polsenberg to  
21 get an answer or I'm going to do something.

22 MR. PISANELLI: In that 15 days --

23 THE COURT: Right.

24 MR. POLSENBERG: Well, you originally gave me 30,  
25 Your Honor, but 15 for --

1           THE COURT: You want me to drop it to 14 so I can  
2 move this to another hearing date?

3           MR. FERRARIO: Let's just shorten it. I mean, we're  
4 the beneficiaries of the stay. We're saying --

5           THE COURT: Well, no. It's the Supreme Court.

6           MR. FERRARIO: I understand. But we're saying we're  
7 not going to -- it's never going to be an issue.

8           THE COURT: When they used to order me to do things  
9 in 30 days I would have somebody send a response that it was  
10 unreasonable what they were trying to do, but they didn't  
11 care.

12           MR. PISANELLI: So to finish my thought, Your Honor,  
13 during this 15 days or 14 days or 30 days Ms. Wynn is moving  
14 forward with one-sided discovery as early as this and next  
15 week. So we're prejudiced, and we'd like Your Honor to  
16 address that.

17           And secondly, we now have expert disclosures coming  
18 up literally in weeks with new claims just injected into this  
19 case from Ms. Wynn. So we would ask you to take that into  
20 consideration in addition to the other two points, major  
21 points that we've raised in our motion to sever. This hole  
22 keeps getting deeper, but only for Wynn Resorts as it relates  
23 to Elaine Wynn's litigation in this case.

24           MR. FERRARIO: Your Honor, we've dissected this  
25 issue. This is the biggest non issue of all time. This is



1 such a small piece of the discovery --

2 THE COURT: We're not arguing right now.

3 MR. FERRARIO: Okay.

4 THE COURT: We're not arguing right now.

5 MR. FERRARIO: Can I inquire about our orders  
6 regarding the motion to compel that you granted like 30-some-  
7 odd days ago, 45 days ago?

8 THE COURT: Do I have competing orders?

9 MS. SPINELLI: Yes.

10 MR. FERRARIO: Yeah. One -- they're essentially  
11 identical, but we wanted a time frame for them to respond to  
12 the discovery, they didn't.

13 THE COURT: Okay.

14 MR. FERRARIO: That's the difference in the orders.

15 THE COURT: Jonathan and I will look at that today.

16 MR. FERRARIO: That would be greatly appreciated.

17 THE COURT: If I ever finish with you and get to go  
18 to my 8:30 calendar, which is now an hour late.

19 MR. FERRARIO: Can we shorten the time?

20 MR. PISANELLI: So, Your Honor, to file that motion  
21 -- Mr. Ferrario went right over my point that they are  
22 conducting one-sided discovery while our motion to stay has  
23 been delayed and delayed and delayed.

24 THE COURT: So I'm going to continue the motion to  
25 stay that's currently on calendar today to the 24th. And if

1 Mr. Polsenberg does not have an answer from the Supreme Court  
2 by Friday, the -- is it the 21st -- then I'm going to have to  
3 decide the motion one way or the other.

4 MR. PISANELLI: Is Ms. Wynn still permitted --

5 MR. POLSENBERG: I think -- I think --

6 MR. FERRARIO: This is a false -- they're engaging  
7 in discovery against us now. One sided would be --

8 THE COURT: Guys. Guys.

9 MR. FERRARIO: -- I get to do something they don't.

10 THE COURT: Guys, we're not arguing.

11 MR. FERRARIO: Okay.

12 THE COURT: We're not arguing. I moved the motion  
13 fourteen days from today.

14 So, Mr. Polsenberg, the Supreme Court usually  
15 doesn't give us things at 8:00 o'clock in the morning when I  
16 start court, so you probably need to hear from them Friday  
17 afternoon.

18 MR. PISANELLI: But, Your Honor, my question is  
19 whether during this 14 days Ms. Wynn is allowed to continue to  
20 conduct depositions and prosecute her case while we are  
21 stayed. It's one sided.

22 THE COURT: I understand, Mr. Pisanelli. It's been  
23 one sided for a year.

24 MR. PISANELLI: But that doesn't make it any better  
25 for us that it continues.

1           THE COURT: I understand. But it's been going on  
2 for a year, so it's not like it's an emergency.

3           MR. POLSENBERG: But, Your Honor, we can voluntarily  
4 submit to the discovery.

5           MR. CAMPBELL: Your Honor, it's a due process  
6 violation.

7           THE COURT: Thank you, Mr. Campbell.

8           You and Mr. Bice were unable to resolve the issue,  
9 and I don't know which of the you on your team it was. But,  
10 remember, Mr. Bice had a negotiation about the voluntary  
11 dismissal of the petition and had some conditions attached to  
12 it.

13           MR. POLSENBERG: It has huge conditions --

14           THE COURT: I --

15           MR. POLSENBERG: -- and I'm waiting to see --

16           THE COURT: I don't care. I don't know. It's not  
17 my problem.

18           MR. POLSENBERG: They haven't filed their opposition  
19 that's due today. I need to see what conditions they're  
20 really asking for.

21           MR. PISANELLI: The ones we told them.

22           THE COURT: Okay.

23           MR. POLSENBERG: Nobody actually talked to me.

24           THE COURT: So you will keep doing whatever you've  
25 been doing in accordance with the stay the Nevada Supreme

1 Court issued a year ago on this issue. Hopefully Ms. Wynn's  
2 request from the Supreme Court to vacate the stay they entered  
3 will be addressed by them, and then --

4 MR. PISANELLI: Doesn't fairness suggest, Your  
5 Honor, that at least a portion of our stay against her  
6 discovery while this 14 days lapses would be fair for both  
7 parties?

8 THE COURT: No, Mr. Pisanelli.

9 MR. POLSENBERG: How is this not arguing?

10 THE COURT: Guys, go away.

11 MR. POLSENBERG: Thank you, Your Honor.

12 THE COURT: Go away. Except for people who might be  
13 on Cotter.

14 THE PROCEEDINGS CONCLUDED AT 9:29 A.M.

15 \* \* \* \* \*

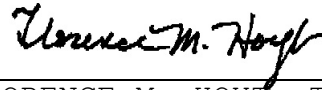
**CERTIFICATION**

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

7/10/17

\_\_\_\_\_  
DATE