EXHIBIT E

EXHIBIT E

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation, Plaintiff, vs. KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation, Defendants. AND ALL RELATED CLAIMS	Case No.: A-12-656710-B Dept. No.: XI **NOTICE OF EXPEDITED CONSIDERATION BY SUPREME COURT**

Wynn Resorts hereby gives notice to this Court that the Nevada Supreme Court has established an expedited briefing schedule on Wynn Resorts' petition concerning application of the Business Judgment Rule. A copy of the Supreme Court's order for expedited briefing is attached hereto as Exhibit A. Wynn Resorts submits that the Supreme Court's decision to expedite consideration of the writ petition further supports its pending motion for stay.

DATED this 14th day of December, 2017.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 14th day of December 2017, I caused to be served via the Court's E-Filing system a true and correct copy of the above and foregoing **NOTICE OF EXPEDITED CONSIDERATION BY SUPREME COURT** to the following:

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/s/ Shannon Dinkel
An employee of PISANELLI BICE PLLC

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 74591

ORDER GRANTING MOTIONS AND DIRECTING EXPEDITED ANSWER

This petition for a writ of mandamus or prohibition challenges a district court order granting in part and denying in part summary judgment. Petitioner's December 5, 2017, motion for leave to file volumes II and III of its appendix under seal is granted. SRCR 3(4)(b), (7). The clerk of this court shall file under seal volumes II and III of the appendix, provisionally received on December 8, 2017.

Further, Steve A. Wynn has moved for leave to intervene as a petitioner in this proceeding, asserting that petitioner Wynn Resorts, Limited, does not oppose his intervention and that he will join in the previously filed petition. The December 8, 2017, motion for leave to intervene is granted; the clerk of this court shall modify the caption to add Steve A. Wynn as a petitioner in this proceeding.

Finally, having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real parties in interest, on behalf of respondents, shall have until December 22, 2017, to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). Thereafter, petitioners shall have until December 29, 2017, to file and serve any reply to the answer.

It is so ORDERED.

Cherry, C.J.

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Pisanelli Bice, PLLC
BuckleySandler LLP
Holland & Hart LLP/Las Vegas
Kemp, Jones & Coulthard, LLP
Morris Law Group
Campbell & Williams
Eighth District Court Clerk

EXHIBIT D

EXHIBIT D

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 74500

FILED

DEC 04 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges an October 31, 2017, district court order imposing sanctions on petitioner for violating a November 2016 discovery order compelling the production of certain documents located in Macau.

Mandamus and prohibition are extraordinary remedies, available only when the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; *see also D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). The right to appeal in the future, after a final judgment is ultimately entered, generally constitutes an adequate and speedy legal

remedy precluding writ relief. *Id.* "Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented." *Id.* at 474-75, 168 P.3d at 736.

Having considered the petition and supporting documents, we are not satisfied that our intervention is warranted at this time. This case has been pending in the district court since 2012, several interlocutory issues of substantial magnitude already have been addressed by this court, *see, e.g., Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334 (2017); *Okada v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 83, 359 P.3d 1106 (2015), and the underlying proceedings are approaching a set trial date. Moreover, although we do not decide the merits of the petition here, the district court applied the relevant authority in deciding the sanctions request and allowed petitioner to purge the sanctions upon compliance with the discovery order, rendering the sanctions less than final. Although petitioner claims that the district court's order will impact or influence future pretrial litigation decisions, such does not defeat meaningful review on appeal, and the issues will likely be even further developed at trial. Given this and the upcoming trial date, we decline to exercise our discretion to consider this writ petition. *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737 (recognizing this

court's broad discretion in determining whether to consider a writ petition). Accordingly, we

ORDER the petition DENIED.[1]

Cherry, C.J.
Cherry

Douglas, J.

Gibbons, J.

Hardesty, J.

Stiglich, J.

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Pisanelli Bice, PLLC
Morris Law Group
BuckleySandler LLP
Holland & Hart LLP/Las Vegas
Kemp, Jones & Coulthard, LLP
Lewis Roca Rothgerber Christie LLP/Las Vegas
Sidley Austin LLP/Washington, DC
Sidley Austin LLP/Chicago
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk

[1]In light of this order, the following pending motions are denied as moot: (1) the November 20, 2017, motion for a stay; (2) the November 21, 2017, motion to file appendices under seal and redact portions of the petition; and (3) the November 28, 2017, motion to intervene. The clerk of this court shall return, unfiled, the proposed appendix to petition, provisionally received on November 21, 2017.

EXHIBIT C

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 73641

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a June 14, 2017, district court order granting a motion to compel production of certain communications with petitioner's accountants.

Mandamus and prohibition are extraordinary remedies, available only when the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; *see also D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). The right to appeal in the future, after a final judgment is ultimately entered, generally constitutes an adequate and speedy legal

remedy precluding writ relief. *Id.* "Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented." *Id.* at 474-75, 168 P.3d at 736.

Having considered the petition, answer, reply, and supporting documents, we are not satisfied that our intervention is warranted at this time. This case has been pending in the district court since 2012, several interlocutory issues of substantial magnitude already have been addressed by this court, *see, e.g., Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334 (2017); *Okada v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 83, 359 P.3d 1106 (2015), and the underlying proceedings are approaching a set trial date. Moreover, petitioner seeks relief from a discovery order compelling the disclosure of certain accounting documents, but this court rarely entertains writ petitions addressed to discovery issues, generally intervening only when "the resulting prejudice would not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions." *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 351, 891 P.2d 1180, 1184 (1995). Although petitioner claims that the district court's order allows the disclosure of privileged information and as a result meaningful review on appeal could be compromised, we conclude that the issues presented herein are not of such a magnitude so as to require our extraordinary and rare intervention, given the upcoming trial date. Accordingly, we decline to exercise our discretion to consider this writ petition, *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737 (recognizing this

court's broad discretion in determining whether to consider a writ petition), and we

ORDER the petition DENIED.[1]

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Pisanelli Bice, PLLC
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLC/Los Angeles
BuckleySandler LLP
Holland & Hart LLP/Las Vegas
Kemp, Jones & Coulthard, LLP
Morris Law Group
Eighth District Court Clerk

[1]In light of this order, we vacate the stay of the district court's June 14, 2017, order compelling production, which was granted by the court of appeals on August 8, 2017, and continued by this court on November 30, 2017.

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 73949

FILED

DEC 04 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges an August 25, 2017, district court oral ruling concluding that the work-product privilege does not apply to certain Freeh report documents.

Mandamus and prohibition are extraordinary remedies, available only when the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; *see also D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). The right to appeal in the future, after a final judgment is ultimately entered, generally constitutes an adequate and speedy legal remedy precluding writ relief. *Id.* "Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings'

status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented." *Id.* at 474-75, 168 P.3d at 736.

Having considered the petition and supporting documents, we are not satisfied that our intervention is warranted at this time. This case has been pending in the district court since 2012, several interlocutory issues of substantial magnitude already have been addressed by this court, *see, e.g., Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334 (2017); *Okada v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 83, 359 P.3d 1106 (2015), and the underlying proceedings are approaching a set trial date. Moreover, the challenged ruling resulted from the district court's consideration of this issue pursuant to *Wynn Resorts*, 133 Nev., Adv. Op. 52, 399 P.3d 334, in which we addressed this same issue just a few months ago. This court rarely entertains writ petitions addressed to discovery issues, generally intervening only when "the resulting prejudice would not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions." *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 351, 891 P.2d 1180, 1184 (1995). Although petitioner claims that the district court's order allows the disclosure of privileged information and as a result meaningful review on appeal could be compromised, we conclude that the issue presented herein is not of such a magnitude so as to require our extraordinary and rare intervention, given the upcoming trial date. Accordingly, we decline to exercise our discretion to consider this writ petition, *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737 (recognizing this

court's broad discretion in determining whether to consider a writ petition), and we

ORDER the petition DENIED.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Pisanelli Bice, PLLC
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLC/Los Angeles
BuckleySandler LLP
Holland & Hart LLP/Las Vegas
Kemp, Jones & Coulthard, LLP
Morris Law Group
Eighth District Court Clerk

EXHIBIT A

EXHIBIT A

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO STAY AND VARIOUS OTHER MOTIONS

MONDAY, DECEMBER 18, 2017

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD L. BICE, ESQ. MITCHELL J. LANGBERG, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. ROBERT CASSITY, ESQ. DAVID KRAKOFF, ESQ. ADAM B. MILLER, ESQ. JON RANDALL JONES, ESQ. WILLIAM R. URGA, ESQ. MARK E. FERRARIO, ESQ. SCOTT D. STEIN, ESQ. DANIEL F. POLSENBERG, ESQ. DONALD JUDE CAMPBELL, ESQ. COLBY WILLIAMS, ESQ.

LAS VEGAS, NEVADA, MONDAY, DECEMBER 18, 2017, 8:08 A.M.

(Court was called to order)

THE COURT: Good morning. I'd like to start with the motion to stay.

Mr. Bice, why do you think this is a notice of expedited hearing -- expedited consideration?

MR. BICE: What's that, Your Honor?

THE COURT: I know the Supreme Court for a long time.

MR. BICE: Yes, Your Honor.

THE COURT: And this order that you attached as Exhibit A doesn't say anything about expedited consideration.

MR. BICE: Well, I disagree, Your Honor. I mean, the fact that --

THE COURT: Just says they ordered an answer.

MR. BICE: No. They ordered an answer and they ordered it on an expedited basis and they ordered us to expedite our reply. Their answer is due by December the 22nd.

THE COURT: Yes.

MR. BICE: Our reply is due by December the 29th.

THE COURT: So you think that's an expedited proceeding?

MR. BICE: Absolutely.

THE COURT: Okay.

MR. BICE: The normal rule is 30 days for a

opposition and 30 days for reply.

THE COURT: Not always on writs. On writs they frequently set their own schedule.

MR. BICE: Your Honor, my experience is this is a very expedited schedule from the Supreme Court.

THE COURT: Given the holiday season, probably so.

MR. BICE: So, Your Honor, our point here, Your Honor, is we've been here several times, the Court has raised this question with us. This is our motion to stay this case in light of our petition to the Supreme Court concerning the scope of the business judgment rule. I don't believe anybody can really argue seriously that the scope of the business judgment rule fundamentally impacts the nature of this case. When I say the nature I mean the scope of the case, the duration of the trial in the case, and virtually every aspect of this case, except perhaps save and -- with respect to Elaine Wynn.

But our point here, Your Honor, is with -- I'm not sure what was amusing, but --

THE COURT: That was Mr. Polsenberg.

MR. BICE: Ah. With respect to that, Your Honor, our point is we believe that it would be prudent to stay this case particularly in light of the Supreme Court's consideration of that writ. And we do maintain it is on an expedited basis. Because if the Court -- I mean, I can just

give the Court -- here's one prime example. I looked at the jury questionnaire or the jury notice that the Court had sent us, and I'm prepared to --

THE COURT: The ability to serve questionnaire.

MR. BICE: Yes. And I'm prepared to address that today, as well.

THE COURT: I'm not on that issue yet, but I have that.

MR. BICE: I understand. But let's think about what's going to happen. The Court sends that out right now, which essentially it I think has to do if -- unless the case is stayed, as I understand it from Jury Services. This isn't the right word, Your Honor, but I can't think of any other sort of -- how to describe it. We're going to infect the jury pool. We're going to be sending out a notice to I think the Court had indicated perhaps 10,000 --

THE COURT: It doesn't say anything about your client --

MR. BICE: I understand.

THE COURT: -- or any other client.

MR. BICE: I understand that it does not. But it tells the jury when the trial is going to be, it's telling these jurors that they're going to be potentially serving they least six months, we're going to get back -- as the Court has already acknowledged, we're going to get back thousands and

thousands of excuses with conflicts and various things checked off as to why people cannot serve. And if, as we maintain, the Supreme Court is going to find that the business judgment rule does bar the Okada parties' claims with respect to their claims about the breach of the articles of incorporation, that's going to fundamentally completely transform this case and then we're essentially going to have already sent out this notice to these jurors, and it's going to be fundamentally different and we're going to have a bunch of jurors writing down excuses, and we're going to have to try and sort through that with a potential jury pool, assuming that there's something left to try with respect to the Okada parties, and then we're going to have this entire process, I would submit, sort of upended because we now have sent out this notice to these jurors and we've essentially told them, you're going to be serving for six months, when we just do not think that that's accurate.

And so we believe, Your Honor, that it makes sense to stay this case, give the Supreme Court -- like I said, they've ordered this briefing schedule. We would inform the Supreme Court that the Court has stayed it for a period of time to give the Supreme Court an opportunity to give us an answer on that, and once they give us a ruling on that, whether they're going to grant the writ or going to deny the writ, it's going to fundamentally transform this case. And

that's why we would ask the Court to stay the matter.

THE COURT: Thank you, Mr. Bice.

MR. BICE: Thank you.

MR. POLSENBERG: Good morning, Your Honor. Dan Polsenberg.

THE COURT: Mr. Polsenberg.

MR. POLSENBERG: And I apologize to Mr. Bice for laughing, but --

MR. FERRARIO: I think Mr. Krakoff --

MR. PEEK: That's all right. You can go ahead.

MR. POLSENBERG: I'll tell you why I was laughing. Because I made a motion to intervene in this writ petition, and --

THE COURT: They granted Steve Wynn's petition. It says it right here in this order.

MR. PEEK: We never even saw it, Your Honor.

THE COURT: So what?

MR. PEEK: But we know they granted it.

THE COURT: Okay. Wait. I don't practice in the Supreme Court anymore, I'm a District Court judge. But usually when a motion's filed it's served on all interested parties.

MR. PEEK: You're shaking your head, Mr. Peek?

MR. PEEK: I agree with the Court.

THE COURT: Did it happen?

MR. PEEK: Didn't see --

THE COURT: Mr. Williams is standing up now. I'm sure he wants to tell you what happened.

Mr. Williams, how are you this morning?

MR. WILLIAMS: I'm good. And it was served on all counsel.

THE COURT: Okay. So Mr. Polsenberg.

MR. POLSENBERG: Thank you, Your Honor. And, again, we're in the middle of my apology to Mr. Bice. And it was because they had -- I'd made a motion to intervene, they expressed their intent to oppose that, and while Mr. Bice was talking I'm thinking I need to get this transcript so I can say to the Supreme Court, look, they're even saying the same thing that I'm saying about this issue. But then Mr. Bice added that, well, it doesn't affect Elaine Wynn. So I apologize for finding that funny.

THE COURT: Doesn't it affect her as a director, since I specifically excluded her from the summary judgment?

MR. POLSENBERG: Yes, it would. And that was Mr. Bice's point to me. He suggested that I intervene on behalf of his position, rather than opposing his position. But I declined that invitation.

So I don't think this is a motion for stay. I think this is really a motion to continue. The Supreme Court -- you know, when we were here on November 30th -- and I'm confused

about the Wynn Resorts position, because when we were here on the 30th Mr. Pisanelli and you were talking about the seven pending petitions and that's why we need to consider a stay. And that argument's been relegated to page 10 out of 10 on their motion, because you can see how the Supreme Court has been working through the seven petitions with dispatch and now yet another petition. I don't think the Supreme Court in the four orders it recently issued denying writ petitions is actually inviting us to take any longer to go to trial. They -- in all four orders they point out that they've intervened a lot no this case, they've published two opinions in this case already, and this case, they expressly note, is set for trial in April. And I think the Court's not going to tolerate us delaying any more. If the Court wants to delay this case, the Supreme Court can do that. Thank you, Your Honor.

THE COURT: Mr. Krakoff.

MR. KRAKOFF: Good morning, Your Honor.

THE COURT: Good morning.

MR. KRAKOFF: Here's the problem with Mr. Bice's argument. Granting the motion to stay would assure we can't begin the trial on April 16th. We're in the midst of expert discovery, we have 20 depositions to conduct by January the 19th. There's no room for a suspension of discovery. And it would also delay dispositive motions, motions in limine. And I think, Your Honor, that their anxiety that the Supreme Court

won't rule on their summary judgment petition before the trial date has absolutely no basis, because every indication from the Supreme Court is the opposite, like the briefing that we're doing this week and they're doing next week, and last week or week before last they summarily denied three petitions of Wynn and they said they didn't want to interfere with the trial.

So their position, Your Honor, really has no credibility. We need to move forward with this schedule and keep us on track to start this trial on April 16th. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Bice, did you have anything else you wanted to say?

MR. BICE: Yes, Your Honor. You'll notice that neither Ms. Wynn nor the Okada parties wanted to discuss their own pending writ petitions and stays that they have, which aren't apparently going to be -- there hasn't -- in fact, the court gave them an extended stay because of the holidays with respect to a couple of their writ petitions. Those are certainly not going to be resolved, and they don't even pretend that they're going to be.

So, again, Your Honor, we reiterate we think that there's very good reason to stay this case, let the Supreme Court address it. If it's granted, which we believe that it

will be granted, it's going to fundamentally transform this case. We are going to send out -- what the Court's proposing, to send out a notice to jurors. We're going to send out 10,000 of them, and we're going to be informing 10,000 potential jurors, virtually the entire jury pool, of a six-month --

THE COURT: Since when is 10,000 people virtually all of my jury pool in the county?

MR. BICE: Well, I'm not saying for the entire -- it depends on when they go out. Does the County send out more than 10,000 in any given month? I don't think that the Jury Commissioner does that. But if this --

THE COURT: Mr. Bice, whenever we do large questionnaire cases we send out a significant number of questionnaires. I don't think you have any idea how many jurors we summon every week to this court.

MR. BICE: Okay.

THE COURT: Anything else you want to tell me?

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

THE COURT: All right. All the other stays that I've granted have related primarily to discovery motions that had compliance issues with orders that I have issued for purposes of us getting ready for the case. And I have stayed those on a pieces-by-pieces evaluation on the issues. This, conversely, is a motion where Wynn, who has opposed every

other stay request, is asking for me to stay the entire case because of a ruling on partial summary judgment related to the business judgment rule.

I do not believe that ruling is erroneous. The Supreme Court may disagree. Clearly they are paying some attention to it given the fact they're making all of you work over the holidays. So the request is denied. You may, of course, ask the Supreme Court for relief, if you'd prefer.

Now if I could go to the motion to amend the findings of fact and conclusions of law related to the business judgment rule order.

Mr. Krakoff.

MR. PEEK: We have 10 minutes for --

THE COURT: We have 10 minutes for everybody. And Cassandra's been timing you guys.

MR. FERRARIO: You mean on everything?

THE COURT: You don't have any time left, basically.

MR. KRAKOFF: Your Honor, I'll try to be brief on this. In our motion to amend we make three requests. First we ask the Court to clarify that our Count 6 breach of fiduciary duty claim was not dismissed against Steve and Elaine Wynn because the Court specifically denied summary judgment for them. Wynn agrees. And the fix, Your Honor, is to delete the second parenthetical in paragraph 5 of the order.

Wynn also asks for modification of paragraph 3(f). We don't oppose that.

Next we request that Wynn's second cause of action -- third cause of action, excuse me, seeking declaratory relief should be deleted -- that's paragraph 1 of the order -- because only the company sought declaratory relief that it acted lawfully. And the Court granted summary judgment as to only the director defendants, not the company.

Finally we request that paragraph 11 be corrected because it plainly misstates the articles of incorporation. The articles make clear that unsuitability and redemption are two separate decisions. Once unsuitability is determined, then the board can order redemption, quote, "to the extent deemed necessary or advisable by the board." It's not mandatory. But that's how paragraph 11 reads. It says, "Upon a finding of unsuitability the unsuitable person's shares shall be deemed immediately redeemed."

And, Your Honor, the distinction between unsuitability and redemption is important, because one of our claims is that even if Mr. Okada were unsuitable, the board's separate decision to redeem Aruze's shares at a huge discount was unwarranted. And Wynn tries to distort the clear import of paragraph 11, claiming it doesn't misstate the articles because it goes to what the board is required to do post redemption. The problem is that's not what paragraph 11 says.

So we respectfully request that it be modified.

THE COURT: Thank you.

Mr. Pisanelli.

MR. KRAKOFF: Thank you.

MR. PISANELLI: Your Honor, this is obviously a motion to reargue, which we saw from that third point. This issue, as you've just noted in our first hearing, is in front of the Supreme Court, and now the Okada parties want to change the order that's already been briefed before them.

THE COURT: Well, and you agree.

MR. PISANELLI: I agree that one is more, I don't know, I wouldn't call it typographical, but it's a non issue and it won't have any impact on the briefing.

The third one in particular changes very fundamentally the debate before us. The third one is an attempt to leave open the issue of whether the board had other options after its determination of unsuitability. The Okada parties have put forth in this case an argument that is supported by nothing in the articles of incorporation anywhere to suggest that they had other options available to them. They had but one option available to them, and that's what you wrote. Paragraph 9 already says the language that they were talking about. Paragraph 11 goes to the duty and the obligations of the board once the determination of unsuitability has occurred.

So it should be denied as an attempt to reargue the issue and to change the debate.

On the second, the middle issue, our statement is a correct one. And I should say your statement in the order is a correct one. Simply because they are going to debate the issue of declaratory relief on the good faith of the board and how it acted and they're going to debate it as it relates to the company, that doesn't change the fact that you entered summary judgment on behalf the directors, with the exception of Mr. Wynn and Ms. Wynn. So, again, it's a rehearing request that is untimely and not supported by the record. You've already resolved both of those issues.

THE COURT: Anything else, Mr. Krakoff?

MR. KRAKOFF: No.

THE COURT: The motion is granted in part. With respect to the portions related to the sixth claim and the third claim for relief the language will be modified to make it entirely clear those relate only to the dismissed directors, which do not include the company or Mr. and Mrs. Wynn.

With respect to paragraph 11 it's denied.

Anything else?

Okay. That takes me to the motion to strike.

MR. PEEK: If I can do the motion to stay first, because we're going to withdraw --

THE COURT: Your motion to extend the partial stay?

MR. PEEK: Yeah. We're going to withdraw that request, Your Honor, and just ask for 10 days within which to produce the documents.

THE COURT: That okay with you?

MR. BICE: Well, I can't certainly object to their withdrawing of it.

THE COURT: Are you okay with 10 days given the holidays?

MR. BICE: That's fine.

THE COURT: Okay. All right, Mr. Peek. Those need to be produced within 10 judicial days, which by my calculation is January 2.

MR. PEEK: Thank you, Your Honor.

THE COURT: All right. So now are we going to the motion to strike?

MR. PEEK: Yes, Your Honor.

THE COURT: Okay.

MR. PEEK: And, Your Honor, this presents a straightforward application of what I believe to be an unambiguous provision under 16.1. We've been litigating for the --

THE COURT: Did you know Michie thinks -- Michie thinks 16.1's been withdrawn. They left it out of the book they give all you guys. Those of us who sit here knew it

wasn't withdrawn, but apparently lots of lawyers thought it'd been withdrawn and they just missed the ADKT order.

MR. PEEK: I'm sorry, Your Honor. You just --

THE COURT: No, it's -- okay. Never mind. Justice Gibbons --

MR. PEEK: It's in the rule book.

THE COURT: Not anymore. They took it out.

MR. PEEK: Then I --

THE COURT: The publisher took it out --

MR. FERRARIO: It's a blue book, Steve.

THE COURT: -- not the Supreme Court. It's a blue book.

MR. FERRARIO: It's about this big, and it says "Rules" on it.

MR. URGA: Your Honor, Mr. Rhodes in our office called. They claim they're going to send out a new one.

MR. PEEK: I guess I missed --

THE COURT: Justice Gibbons has been very upset.

MR. PEEK: I hope I'm not on the clock here with all this colloquy.

THE COURT: Sure.

MR. PEEK: Yeah. Thank you. The rule still is there, Your Honor.

THE COURT: The rule is still in force.

MR. PEEK: Yeah. Thank you. That's where it kind

of went over my head. I apologize, Your Honor, I might have been having a senior moment here.

THE COURT: Sorry.

MR. PEEK: That's all right. I wasn't on track with the question.

THE COURT: Even Ferrario knew what I was talking about.

MR. PEEK: That was unusual, Your Honor.

MR. FERRARIO: You said that to me last week, so I had to go figure it out. Because I was in the same boat.

MR. PEEK: All right. So I guess I'm now on the clock, Your Honor.

Anyway, we have been litigating this matter for the past five and a half years on the central theories of our clients' affirmative defenses and counterclaims, which seem to be lost on Wynn. These are not new theories, however, and they should not be new theories to Wynn Resorts. We've repeatedly raised the issues on discovery in motion after motion before this Court related to certainly valuation, governance, the propriety and the efficacy of the Freeh report.

So Rule 16.1(a)(2)(c)(ii) permits rebuttal expert reports within 30 days that are, quote, "intended solely to contradict or rebut evidence on the same subject matter identified by another party."

But then it goes on to say specifically that this rebuttal deadline or really rebuttal reports "do not apply to any party's witness whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party or to present any opinions outside of the scope of another party's disclosure."

Each of Wynn's reports concerns central elements of defendants' affirmative defenses and counterclaims and clearly were and should have been expected and anticipated by Wynn Resorts. Wynn presents no credible argument that it did not anticipate or expect. In fact, all it says is that, well, we met the terms of the first portion of the rule that says they were intended to solely contradict or rebut evidence on the same subject matter so therefore our reports are correct. They do not ever address at any time a credible argument that it did not anticipate or that it did not expect the subject matter on the portion of the rule that states that it must be intended solely to contradict and to expect -- excuse me, that are expected or anticipated.

By submitted reports by these witnesses for the first time in the rebuttal stage Wynn seeks to gain a significant tactical advantage by enabling its witnesses to first review defendants' expert reports before submitting their own reports and thus denying defendants our opportunity

and our ability to rebut these opinions.

Perhaps the most egregious violation of Rule 16.1 is that we see Kenneth Lehn, I think I'm pronouncing that correct, who's identified in their September disclosure as a witness who will testify on financial matters, but then Lehn did not become an initial expert as they had anticipated. Clearly we anticipated that there would be an expected report regarding financial reports or damages, if you will. But they wait until after we report on Mr. Karen, and then Mr. Lehn now makes his report in rebuttal to Mr. Karen's report.

The other supposed rebuttal reports fare no better. They challenge the valuation of Aruze USA shares in the promissory note which has been part of this entire litigation. So clearly Wynn would have anticipated and expected these central elements of our case in chief, both in the affirmative defenses, as well as the counterclaim; but they waited until December 8th to submit the Lehn report and the McDonald reports, both of which exclusively address the issues of valuation.

We challenge the validity of the Freeh investigation. So then what do they do? They have Mr. Freeh say, oh, I did it all right. Clearly they should have disclosed Freeh as somebody who was going to defend. And interestingly, as well, Your Honor, Freeh himself should have been identified.

THE COURT: Mr. Peek, will you wrap up, please.

MR. PEEK: Your Honor, the other reports I think we've identified well in our briefing, which are the reports regarding gambling, which are the reports regarding governance, all of which should have been part of the original initial reports, the Solomon report, the Tyrell report, and each of these should be stricken.

THE COURT: Thank you.

Mr. Bice.

MR. BICE: Good morning, Your Honor.

THE COURT: And you don't have much time left, Mr. Bice.

MR. BICE: Your Honor, I think the point I would make is Mr. Peek says Mr. Lehn is an egregious instance. I find that amusing in light of the fact that as the Court -- as we have pointed out to the Court, is they said Mr. Lehn should have anticipated or we should have anticipated. Actually, if they looked at what Mr. -- what we identified Mr. Lehn to testify about originally, it was about the work of professionals that provided financial advice.

We believe that the central issue in the case is a business judgment rule. That's why we ultimately [sic] didn't have Mr. Lehn. What Mr. Lehn -- ultimately, then, what we had him do was do a rebuttal when we received their report. And, of course, their argument is, well, now everything --

everything that is ever raised in the case becomes, quote, "central." And that's why we actually cited, Your Honor, the actual cases that were the basis for that rule amendment, and particularly the LaFlame case, Your Honor, where Judge Cook -- and they raise this exact same argument, and as she characterized it, they reached too far in making this argument that everything now becomes anticipated and central such that you could never have rebuttal experts.

We did three opening experts on this matter on what we believe are the actual issues in the case, i.e., being suitability. They have now come back and they designated I believe it was six opening experts, and we have designated responses to each one of those six opening experts. The financial ones are particularly ironic, Your Honor, in the sense that they never once did a calculation or disclosure of damages under 16.1. And we point that out in our countermotion. They say, well, you should have anticipated this is what we were going to say, even though they'd never offered that 10 percent calculation, even though they'd never offered their 6 percent interest calculation. These all came up for the first time with their experts and have never -- they have never to this day amended their 16.1 disclosure. Their 16.1 disclosure is the same as it was the first time they filed it in this case. They never amended it once other than to change the name of the defendants to the Aruze

parties. That was the extent of their amendment of that.

So when Mr. Peek says, well, this is just egregious with Ken Lehn, they're the ones who -- their experts are the ones who should be stricken. They never did a disclosure. And each of ours, Your Honor, to quote the LaFlame case, Your Honor, is they made this exact same argument. Because they had raised past and future income losses in the case, that somehow meant that everything becomes a central issue and so therefore you have to have an opening expert in order to have a rebuttal expert. And, as the judge said, you're reaching too far with that characterization. It has to be some central issue in the case such that you can't be disguising a rebuttal -- or an opening expert as a rebuttal designation. And we have certainly not done that, Your Honor. We have designated our three opening -- I was waiting for the buzzer.

THE COURT: You've got 15 seconds left.

MR. BICE: We designated our three, and we responded to theirs, Your Honor.

THE COURT: Thank you.

MR. BICE: I thank the Court for its time.

THE COURT: Mr. Peek, anything else? I'll give you a minute.

MR. PEEK: Thank you, Your Honor.

Your Honor, I think the critical issues are the Macau land concession, the corruption in Macau, all of which

was identified in our counterclaim, all of which has been litigated even in the motion for sanctions that we had, Your Honor. This is just a sandbag on their part.

THE COURT: But in the counterclaim you are the party who bears the burden of proof.

MR. PEEK: That's right. And they bear the burden of defending that claim, Your Honor, so they have to have an initial report, because it's an expected and anticipated report.

THE COURT: That's now how my scheduling order is written. Remember, Mr. Peek, the initial disclosure reports are those on which you bear the burden of proof, and rebuttal reports are ones you don't bear the burden of proof. I try and define it because of the confusion that everyone has.

Anything else?

MR. PEEK: Then, Your Honor, their damage experts and the valuation experts and the redemption is they bear that burden, and they bear that burden of the three, and they bear that burden of the damages, and they bear that burden of the governance and the redemption, all of which are their claims. Perhaps you're right on the Macau issue and the UMDF donation and the corruption, but all of the other reports go to their affirmative claims for relief, which are the first three -- the three claims for reflect.

THE COURT: Thank you.

The motion to strike and the countermotion are both denied.

All right. So, Mr. Ferrario, you joined. I've considered what you were going to say, and since I was going to deny it anyway, you're included. I understand you have another person you want to strike. When do you plan to do that, since we don't have another Monday hearing at 8:00 o'clock until January 8th?

MR. FERRARIO: I was on the road last week, and we were trying to get it filed. I don't know what happened. We tried to get it set for today. So I guess we'll have to heard it heard on the 8th.

THE COURT: I can't sign an OST on Friday for a Monday hearing.

MR. FERRARIO: No, I understand, Your Honor. We were trying to put things together. There's a lot of stuff going on, and we just couldn't get it done. So it'll have to be the 8th, I guess.

THE COURT: Okay. Are you going to send over a separate --

MR. FERRARIO: We will send over pleadings today, Your Honor.

THE COURT: All right. So they -- that was your countermotion on Weil --

MR. FERRARIO: Yes.

THE COURT: -- W-E-I-L?

MR. FERRARIO: Yes.

THE COURT: That portion of the briefing will be continued until January 8th, Dulce.

MR. FERRARIO: Thank you.

MR. PEEK: Your Honor, just so I can make sure I understand when the order is prepared and submitted, is the Court saying that its scheduling order modifies the rule?

THE COURT: My scheduling order indeed does modify the rule.

MR. PEEK: So the "expected" and "anticipated" portion of the rule goes away as a result of your scheduling order?

THE COURT: My scheduling order and my trial setting order specifically identify the -- what I intend to be disclosed at each time for the expert reports because of the historical problem that we have had in this area.

MR. PEEK: That's why the Court amended the rule, and now you're amending the rule even more.

THE COURT: Mr. Peek, I'm allowed to amend the rule anytime I want --

MR. PEEK: I'm just asking, Your Honor.

THE COURT: -- as long as I have a hearing and do an order. Anything else?

MR. PEEK: Just so I understand so when the order

comes around I can see what -- make sure it conforms to --

THE COURT: None of these appear to me to be sandbagging. How's that? Which is what I'm trying to get away from.

MR. PEEK: The problem we have now, Your Honor, is that we don't now have an opportunity to do any kind of rebuttal to their reports.

THE COURT: That's fine. In a minute we're going to talk about that with your depo schedule issue.

So now we're going to the Elaine Wynn's motion to compel. Mr. Ferrario, you've saved all of your 10 minutes.

MR. FERRARIO: Well, this is kind of a --

THE COURT: Yeah. We're going to do them both. They're related. One deals with Gaming, and one deals with sword and shield, as Mr. Peek likes to call it.

MR. FERRARIO: You're on it. I know you've read it.

THE COURT: Really?

MR. FERRARIO: You've heard similar motions in the past. I really do think this is pretty easy to digest in the sense that as the case has progressed Wynn Resorts has more robustly touted all of the investigations that they've done, all the work that they've done, and they're putting it out there saying, you know, we did everything right, but then they don't want to give us any of the information to show that they did anything right or what they did at all, quite frankly,

Your Honor. And you can't have it both ways.

And so from our perspective it's a pretty straightforward motion. We are entitled to these materials. The broad application of the so-called Gaming privilege on a statute that was just passed has no applicability here. We've argued that in the past. It doesn't subsume everything that a company does and then shield it from discovery in litigation, which is what they would have you believe. If you look at the compliance committee charter, the compliance committee does a number of things, one of which is to respond to Gaming where appropriate. But if they're submitting things to Gaming, we can argue about those discrete things. But in terms of what they did, what investigatory steps they took, those types of things, we're entitled to know all of that. They can't hide behind this and say they did this investigation and then not let us show the jury that it was half baked or that it was no investigation at all and in fact the conclusions that they reached probably weren't based on a thorough understanding of the facts. That's really what's at issue here.

So you can't have it both ways. And that's what they're trying to do. And it's become even more relevant as the expert reports come out. One of their experts is now relying on the so-called investigations to justify what the company did when that expert presumably doesn't know or, if he does know, we should be able to delve into that. So that's

really -- really pretty simple issue from our perspective, Your Honor, and we'd request that you grant our motion and that we be entitled to these materials that were again produced on the last day of discovery.

THE COURT: Okay.

MR. PISANELLI: Your Honor, it appeared to us that Mr. Ferrario just argued two motions. Do you want to hear one --

THE COURT: Yes. No. I want to them together because they -- I know that they're different issues, but they're combined on the attorney-client and the use of the materials and whether they claim your waiver because you have repeatedly said, we did an investigation, trust us, everything's okay, you said that in many different ways. Since you have said that, is that an at issue waiver? I mean, that's really where we're discussing. And then you go into, well, the Supreme Court says it's not for business judgment but these aren't really business judgment issues.

MR. PISANELLI: Well, there's a few things here, Your Honor. First put this in context of what we constantly do with Ms. Wynn, of looking to get behind privileges. We saw the videotape of what she thinks of her own claims, and so now I understand it. There's no evidence for her claims, so now she wants to get behind the privileges to try and create some smoke where there really is nothing there.

Second point I will make is let's not forget fact discovery's closed, Your Honor. This is the party that intentionally waited till the eleventh hour to do any discovery, and now they've come in saying, well, we want more discovery because, because waiver, because this, because that. They should have been doing their discovery earlier. That fact in and of itself, that fact discovery is closed, should be dispositive on this point.

But let me get to the heart.

THE COURT: No, Mr. Pisanelli, it's not. It's not. Motions to compel do not -- are not denied simply because the discovery cutoff is [inaudible].

MR. PISANELLI: Well, in the greater context of what we've been doing here I don't understand why Ms. Wynn would come in with an expectation of entitlement to additional rights that other parties have not even asked for, let alone tried to enforce.

So with that said, the standard here, Your Honor, is not whether we said that we got legal advice, not whether we said that there was an investigation. And the suggestion that an expert is relying upon what the substantive advice was or the substantive rulings and findings of a special committee is just not true. It is the fact that it occurred. And the fact that something occurred is not an at issue waiver. We cited to you, Your Honor, a case that I think goes directly to this

point, and that's the In re Kellogg, Brown, and Root case, where the court said --

THE COURT: Mr. Pisanelli, you're not relying on the fact the investigation occurred.

MR. PISANELLI: Indeed we are, Your Honor.

THE COURT: Wait. In these proceedings you have been relying upon the results of the investigation, which is different than just fact that an investigation occurred. And that's why I'm troubled by the position we're currently at.

MR. PISANELLI: We're not relying upon the results of anything. Keep in mind we did not put any of these investigations or Mark Rubenstein's advice from Skadden Arps at issue in this case to say, here is our claim, here's our defense. We have responded to questions in an interrogatory. We have responded to questions in depositions to Mr. Rubenstein in particular and to Kevin Tourek as a 30(b)(6) designee. We're not inserting anything into this case. When they make the allegation over and over to you, this concept of half baked, whatever that means, and a rigged system, whatever that means in the context of this case, they then go to the discovery and say, look at this, Your Honor, they didn't even have legal advice of whether these issues should go to the board. They asked a question of Mark Rubenstein, he says, yes, I did. And now they say, aha, you said you got legal advice and now we want to know what the legal advice was.

Mark Rubenstein did exactly what he was obligated to do in a deposition. He said, I got legal advice. He did not say what the legal advice was. And then they asked him what his actions were. Well, it's not hard to figure out what the legal advice was if he was following it. But that's not because we put it at issue. A party cannot, as Ms. Wynn is trying to do, put something at issue with allegations and with questions in a deposition and have non-privileged answers come in. Yes, I got legal advice; yes, this is the party -- or the law firm I got legal advice from, and then say that that's an at issue waiver. There is no privilege if it is so easily stripped away as by merely asking questions.

I ask Your Honor and I challenge Ms. Wynn to stand up and say anything in our case that we are reliant upon or depending upon as it relates to any of these things. This isn't our case. It's not even a defense to her case. The defense to her case is her testimony that there's no evidence behind her case. Summary judgment will come based on nothing but Elaine Wynn's own testimony that her -- that there's no facts behind her claims and that they were lawyer half-baked claims apparently without even interviewing their client before they filed their claims.

So they cannot turn around and say to you that there's a sword and a shield. There's no sword anywhere here, because these issues have nothing to do with our case. As the

Kellogg case said, Your Honor, if all it took to defeat the privilege and protection attaching to an internal investigation was to notice a deposition regarding the investigation and the privilege attaching to them, we would expect to see such attempts to end-run these barriers to discovery in every lawsuit in which a prior internal investigation was conducted related to the claims. Unless you see us talking about the results as part of our claim that we injected, like the Freeh report, the Supreme Court said we injected it because it was attached to our complaint. Got it. Message is loud and clear. Did we inject the special investigation into this report? Did we inject Mark Rubenstein at all, let alone the fact that he sought legal counsel? Did we inject any of this into this case? The answer is no to all of it. What we did was answer discovery questions as a privilege log would have required us to disclose. There's no substance anywhere in this case, and we're not going to give the substance. Therefore, this is again an end-run around privileges by merely giving discovery requests. That's not how the law works, Your Honor. Let Elaine Wynn stand up in this courtroom and prosecute her claims based upon evidence. We know where that will get her. Getting behind our privileges is not fair to the company. It has not crossed any lines, and it's not creating an uneven playing field with this sword and shield. It's a good buzz word, but it's not what's

going on here.

THE COURT: Mr. Peek used it in another case.

MR. PISANELLI: I know that.

THE COURT: So wait, Mr. Pisanelli, don't sit down. Do you want to address anything about the compliance issues related to the Gaming privilege?

MR. PISANELLI: I would ask Your Honor to allow Mr. Langberg to address that issue.

THE COURT: Mr. Langberg. Briefly.

MR. LANGBERG: Well, Your Honor, what they don't tell you but you can see from their exhibit is that the compliance officers' report was produced in a package along with all the other materials that we're given to the compliance committee. Those were redacted to take out information that wasn't relevant to the discovery request. There's no discovery request even identified in their motion to compel. What they've done is they've looked for documents, they've looked for places where they suspect there might be discoverable information. Without tying it to any discovery request they just say, hey, this is hiding something that we think might be discoverable, rather than looking to what were these documents responsive to in the first place.

Then we go to the -- why were these compliance officers' reports redacted. Well, one, they're privileged under the Gaming Law privilege. Two, they contain within them

attorney-client privilege.

THE COURT: But simply the investigation that's internal for compliance committee is not privileged.

MR. LANGBERG: But this is -- that's an --

THE COURT: A communication to the Gaming authorities is.

MR. LANGBERG: But that makes an assumption about what is contained in the compliance officers' report.

THE COURT: Absolutely.

MR. LANGBERG: So the compliance officers' report, which is prepared pursuant to an order of Gaming under the orders of registration, so they have -- they're ordered by Gaming to make this report, right. So just because this report they're ordered to make is presented to the compliance committee doesn't mean -- and it's required to be given to Gaming, doesn't mean it falls outside of the new privilege, and it certainly doesn't fall outside of the old privilege, the original privilege, which is specifically about reports that are made as required by Gaming.

So there's a big difference between materials that the board got. So they got -- where relevant and responsive, they got the materials the board got, the facts redacted for privacy where appropriate, redacted for privilege where appropriate. But the compliance officers' report itself, the place where in this case Kevin Tourek, exercising his work

product judgment to decide what's supposed to be reported to the compliance committee, what they need to know about giving advice about what they should do, all assessing the law that applies, those reports themselves, his communications to the compliance committee are not only privileged, not only work product, but because of why they're made and what has to be done with them, they're subject Gaming Law privilege.

THE COURT: Thank you.

MR. LANGBERG: Thank you, Your Honor.

THE COURT: Mr. Ferrario.

MR. FERRARIO: Just very briefly. I guess after touting the thoroughness of their investigation I would expect they would want to produce this stuff. We've been fighting this forever. They don't want to produce this because they know what's there. Your Honor's asked very good questions. If there's a privilege at all that attaches here, it's only what they're talking to Gaming about. It's not what they're talking -- it's not the investigative steps, it's not what they're reporting to the board. Your Honor's spot on there.

Not everything goes to Gaming. That's another thing, okay. And we know that. The privilege logs we've addressed in our -- the adequacy of the privilege logs we addressed in our brief.

But let me get back to Mr. Pisanelli's comments to you where he says they haven't said certain things. Page 13

of our brief we quote the testimony of Mr. Tourek. He's the 30(b)(6) designee. He testified under oath -- now, this is them talking now, so perhaps Mr. Pisanelli didn't remember what Mr. Tourek said. "Upon consultation with outside counsel Skadden it was determined that the issue did not need to be disclosed to the board and there was no concern or vulnerability of the company." He then went further and said, "The company's general counsel reviewed the settlement agreement --" this is on the assault allegation "-- reviewed the settlement agreement release language in a consultation with outside counsel Skadden was content that the company was protected. With no exposure there's no issue to bring to the board's attention."

So they have put these things at issue. They are relying on them. Their recently disclosed expert is featuring these in his report as justification for what the company did. So they can't hide behind the privilege to the extent it applies at all. And we've argued that before. The new statute doesn't apply. Clearly this all happened way before that. The earlier set of statutes didn't insulate this in any way, shape, or form. And so they want -- it is the classic sword and shield, and they can't have it both ways. We're entitled to this material, we're entitled to know what they did, when they did, the adequacy of the investigation. And in fact Mr. Pisanelli put this in issue in his letter to Ms. Wynn

when he was addressing the proposed amended complaint where he said there was a thorough investigation and he said the allegations were false.

The problem with this case, Your Honor, isn't that we don't have evidence. We do. The problem with this case, and we addressed it in a four-day hearing with you, is Wynn Resorts' wilful failure to comply with the discovery rules. And that's what the problem here is. That's the only reason we're here arguing these things. Had they played by the rules, we wouldn't be here now, we would already have this material. So I would request Your Honor grant the motion. Thank you.

THE COURT: Thank you.

The motion related to the Wardleigh decision is granted in part, but only to the extent that the investigation related to Marc Schorr will be reviewed in camera for determination as to whether there is any relevant information within the redactions that had been previously made.

With respect to the compliance officer reports on order shortening time those will also be provided to the Court for in-camera review with the redacted and unredacted versions for determination as to whether any relevant material that was not provided to Gaming needs to be produced. Okay.

MR. LANGBERG: Your Honor, for clarification, you just want the -- you don't want the 150-page report of --

THE COURT: Yes, I do.

MR. LANGBERG: You want just the compliance officers' report that was redacted?

THE COURT: If the compliance officers' report includes reference to the board book and it's attached as an attachment, I need all of it.

I am specifically denying the motion related to the unredacted compliance officers' report to the extent there are any Gaming communications that are within there.

Mr. Peek, the Ergin case, the DISH Network case, what's that case name, real case name, Supreme Court's?

MR. PEEK: In re Jacksonville Police and Fire, Your Honor.

THE COURT: Pursuant to that decision the Court is not granting the request for any production of the special committee materials, because here the parties have not proffered the special committee's investigation as a basis for the resolution of these claims.

Anything else?

Mr. Peek didn't even claim the privilege with the special litigation committee. He just produced it all because he moved for summary judgment. So -- in that case.

MR. FERRARIO: Your Honor --

MR. PISANELLI: Denied for Mark Rubenstein and Skadden Arps?

THE COURT: Denied for Mark Rubenstein and Skadden Arps.

MR. FERRARIO: Under the DISH case you just talked about?

THE COURT: No. That was about the special investigation committee part.

MR. FERRARIO: Then they can't rely on the fact they contacted Skadden. That should -- otherwise they're put it in issue.

THE COURT: I don't know that they are relying upon the fact they contacted Skadden.

MR. FERRARIO: I just read to you what Mr. Tourek said as a 30(b)(6) witness.

THE COURT: That was in response to discovery requests. That's not necessarily reliance. Remember, there's broader. The discovery is broader than admissibility. I don't know that Wynn Resorts is relying upon that.

MR. FERRARIO: Well, then it's denied -- I guess we'd take it up at trial with --

THE COURT: Motions are always denied without prejudice.

MR. FERRARIO: I understand, Your Honor.

The other thing we would ask, and I'm going to have to read your decision now and go back to the --

THE COURT: It wasn't my decision. Chris Pickering

wrote a really good -- was it a dissent?

MR. PEEK: She wrote a dissent, Your Honor.

THE COURT: Yeah. Really good dissent.

MR. FERRARIO: But we also addressed some other privilege issues in our motion, and we would request that Your Honor review the documents that we highlighted in our motion in camera, as well, to test the adequacy of the privilege assertions made by Wynn Resorts.

THE COURT: No.

MR. FERRARIO: Okay.

MR. PISANELLI: Thank you, Your Honor.

THE COURT: All right. So I've got a couple of issues before you leave. I've got a status report from the Wynn Resorts parties that says, gosh, Judge, we're having problems scheduling expert depositions, is basically what it says.

MR. BICE: That is basically what it --

THE COURT: Anybody else read it?

MR. BICE: That is basically --

MR. PEEK: I did read it, Your Honor, and I wasn't sure whether it was a report or a motion of some type to compel something.

THE COURT: No. It was, gosh, Judge, we're having trouble scheduling experts, we'd really like you to help us work it out.

MR. PEEK: That's certainly their view of the case, but that's certainly not ours, Your Honor. So, I mean --

THE COURT: So do you want to have a conference call with me? You want to go out in the hallway to see if you could work it out before I work it out for you?

MR. PEEK: Ms. Spinelli is the one who'd been working those with Mr. Miller, so I don't know if Mr. Bice has Ms. Spinelli's authority to be able to work out that schedule. But certainly Mr. Miller can do that with Mr. Bice and then come back to you and see if we have resolved to so-called dispute.

THE COURT: It's a scheduling issue.

MR. PEEK: Well, there are two issues framed. One is a scheduling issue, and one is the location issue.

THE COURT: I understand.

MR. PEEK: So there are two issues. You want us to address each of those with the Wynn folks and then come back to you?

THE COURT: Well, if you're going to finish the expert depositions before we start trial, it would be good for us to get this worked out.

MR. PEEK: Okay. So let me preview another issue. One of the other issues that they say is, we are entitled to take initial expert reports before you get to do rebuttal.

THE COURT: And typically I require the initial

experts to be deposed before the rebuttal experts. Typically.

MR. PEEK: I understand typically.

THE COURT: I make a decision on a case-by-case basis --

MR. PEEK: Thank you.

THE COURT: -- after hearing the information.

MR. PEEK: That's what I --

THE COURT: But it's typical that the initial round of experts get deposed and then we go to the next round.

MR. PEEK: While I understand the Court's ruling this morning on my motion to strike, their rebuttal experts are initial experts.

THE COURT: I don't agree with you on that. I've already ruled.

MR. PEEK: I understand you don't agree with me, but I --

THE COURT: Okay.

MR. PEEK: Because you've modified the rule and your scheduling order. And I understand that and I appreciate it.

MR. BICE: We disagree with --

THE COURT: All I'm trying to do is figure out are you guys going to decide or am I going to tell these experts on days when they're going to appear with any regard at all to their schedules?

MR. PEEK: We're happy to go out in the hall and do

that, Your Honor, and come back to you.

THE COURT: Because otherwise I'm going to set up a calendar and I'm going to tell the experts where they're going to appear and when people are going to be there. And since they all decided to work for you, they'll either decide to appear or they'll decide they've got other important stuff to do.

MR. PEEK: Well, Your Honor, we didn't --

THE COURT: Not just you. All of you.

MR. PEEK: I was going to say we're not having the issue about the location. That's an Elaine Wynn issue more so than it is our issue. So we understand that and we appreciate it. But to have them dictate to us what that schedule should be --

THE COURT: No. I'll dictate.

MR. BICE: We're not dictating anything.

THE COURT: But I want you guys to have the opportunity to control your own lives.

MR. BICE: We're not dictating anything.

THE COURT: Guys. We're not fighting. I'm trying to get a scheduling issue resolved. If you are unable to resolve it, I will dictate the schedule. How's that?

MR. PISANELLI: Your Honor, my request is we need -- before we step out in the hallway we need to know if they're finally going to change their position. They're telling us in

Chicago and only one day.

THE COURT: He said his location is not an issue, it's only an Elaine Wynn issue. I don't know that to be, but --

MR. PISANELLI: Well, that's their problem. My point is only this. We don't need to step out in the hallway unless they tell Your Honor they're going to come off this position. Otherwise we'll ask you to do it --

MR. BICE: They're giving us one day.

THE COURT: Well, but I don't have enough information to do it. I'm not going to make everybody else on my 8:30 calendar wait a half hour for you guys to figure that out. So if you want to step in the hallway --

MR. PEEK: Do you want us to come back at 9:30, then, Your Honor?

THE COURT: Well, just stand around out in the hallway and work it out. Don't go too far, because you never know, I may get done with them faster, except for Cotter.

MR. PEEK: I know you have Cotter.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: 'Bye.

(Court recessed at 9:00 a.m., until 9:34 a.m.)

THE COURT: So if I can have Wynn-Okada come back and tell me how your negotiations on scheduling of expert depositions have gone.

MR. PISANELLI: So here's the good news, Your Honor. We are bringing all of our experts to Nevada. The Okada parties are bringing all their experts --

THE COURT: Nevada being Las Vegas, or Reno?

MR. PISANELLI: Las Vegas.

THE COURT: Okay.

MR. PISANELLI: The Okada parties are doing the same. We're doing as a general rule and goal the sequencing that we traditionally do, opening experts, then rebuttals. There might be an exception for the Okada parties that would make one of their witnesses impossible on that schedule, and we'll work with them. We're not going to say that person's excluded. So we think with the Okada parties everything's worked out.

Elaine Wynn has told us we have to go to Chicago even though they're not even Chicago experts, and gave us one day when to do that. So we would ask Your Honor to allow us to notice Elaine Wynn's experts in on five days' notice in Las Vegas.

THE COURT: Mr. Stein.

MR. FERRARIO: Your Honor --

THE COURT: Wait. I asked the guy from Chicago. Because Randall's going to Chicago. It threw off my closing arguments.

MR. FERRARIO: Well, no.

MR. PISANELLI: That's who we'd like to hear from.

MR. FERRARIO: You know what, he's going to deal with this. But I went outside. I hate these things, but two of the experts live in Chicago, okay, so it's not just a Sidley Austin thing. The other expert's in New York. We brought him out. We accommodated the sequencing. We're bring our expert to Nevada. So we've addressed the sequencing issue and everything else, and with two experts in --

THE COURT: Why do you guys want to go to Chicago in January?

MR. FERRARIO: Nobody does.

MR. PISANELLI: Because Sidley Austin's located there, that's why.

MR. FERRARIO: That's not true. I'll tell you what. I'll tell you what, Judge.

MR. PISANELLI: And one-day notice.

MR. FERRARIO: I'll fly somebody from my office to Chicago just to show that's not the reason. It's absurd.

MR. PISANELLI: That doesn't help us.

MR. FERRARIO: It's a scheduling -- the two experts live there. We're bringing one from New York there. We can have a brief Chicago swing and knock these three out. And then Mr. Stein can speak to this. It's not as they're portraying it at all. And we accommodated their sequencing, which, quite frankly, with the scheduling --

THE COURT: My sequencing.

MR. FERRARIO: Well, I understand. But with the days we have left and the number of experts, you know, that should also -- should go away, quite frankly.

THE COURT: Okay. Mr. Stein.

MR. STEIN: Thank you, Your Honor.

THE COURT: Your office is in Chicago; right?

MR. STEIN: It is.

THE COURT: Because Mr. Jones is going there so he can't come do closing argument next week -- or this week.

MR. STEIN: By the way, it's not much -- it's much warmer here, at least last night, than it was in Chicago.

THE COURT: Well, but the wind off of Lake Michigan is not pleasant.

MR. STEIN: Fair enough.

So I had some discussions last week with Mr. Williams. And while I understand that some of the Wynn Resorts side still have this issue with the location, there are essentially two groups of experts. We each have a gaming expert, and then there are experts on corporate governance and damages. Our gaming expert is currently in Florida. We've offered to bring him to Las Vegas and to be deposed before their rebuttal expert. So there's no issue there. But those will be in Las Vegas.

Then we have two other experts, one is in Chicago,

and one in New York. They have one rebuttal expert to that expert in Chicago. So they have a Chicago expert responding to our Chicago expert, and there's one additional expert in New York. We were able to find dates where our New York expert would come to Chicago so all those depositions could take place, nobody needs to make multiple trips, and we would put our two experts first, and then their rebuttal Chicago expert third. All could take place during the week of the 15th. These people are -- like, of course, many people, have day jobs. But we've got everything that works. This seems to come down to a spitting match about whether or not everybody has to get on a plane to come to Las Vegas because they want that when we've got dates, dates that we know work for their side, that work for our experts, and that work for us and that don't result in any inefficiency. We'll have them all back to back to back in Chicago, where two of them live and where one of them is in New York.

MR. BICE: And here's the problem with that, Your Honor. I understand that works out with their schedules and --

THE COURT: You have to travel, don't you?

MR. BICE: Yes. And we have other depos that week, that same week. And we're trying -- we've got 21 witnesses --

THE COURT: Nice try.

Next? Your fallback position?

MR. STEIN: My fallback position.

THE COURT: Ask Mr. Polsenberg what I mean by that. That means go to Number 6 of the jury instruction versions in your pocket now.

MR. STEIN: Your Honor, if that's the case, then we'll need to -- you know, the way we had it worked out I could -- we had it worked out where the initial experts went before the rebuttal. I'm not sure what requiring them to travel to Las Vegas is going to do given their other obligations and given that we weren't contacted about scheduling until relatively late. We'll attempt to work within that construct if you're going to require them to come to Las Vegas, but I just --

THE COURT: I asked for your fallback position, Counsel, so I'm just -- I'm waiting to hear it.

MR. STEIN: My fallback position would be that if they are required to come to Las Vegas, then they'll need to be scheduled whenever they can be here. Again, for somebody from New York that's essentially a four-day trip between two days of travel, day of preparation, and day of deposition. So it could only be that there's one day that that person's available.

MR. PISANELLI: Your Honor, it doesn't seem to me that they should benefit from their belligerence in the first part of this process.

MR. FERRARIO: Oh, my God.

MR. PISANELLI: They gave us one --

THE COURT: Mr. Ferrario.

MR. PISANELLI: -- day and said, take it or leave it. That's why we have asked you now to give us five days' notice to be in Las Vegas. They should have had a fallback position before they presented that position in the first place.

THE COURT: Okay. File your motion -- or file your notice.

MR. PISANELLI: Thank you.

THE COURT: Anything else?

MR. FERRARIO: What's the notice on, five days?

THE COURT: Uh-huh.

MR. PISANELLI: Yeah.

MR. FERRARIO: That's just patently unfair, Your Honor. We -- that was --

THE COURT: You want to pick a day?

MR. FERRARIO: There was nothing unreasonable -- Mr. Stein said we have to go back and look at this. We're talking to these folks, he's talking to Mr. Williams. The whole thing's coming -- we show up today, they take this absurd position, quite frankly, and now you're saying, okay, you got to come to Vegas. Give us a chance to work out a schedule.

THE COURT: He's going to send you a notice on five

days' notice. If there is a problem that somebody has a procedure scheduled for a medical procedure, if there's a real problem with someone having their deposition taken at that time, I would be happy to address that on a motion for protective order, and I'm sure they'd be willing to accommodate somebody's schedule.

MR. FERRARIO: Yeah. It's been so reasonable so far.

MR. PISANELLI: As always.

MR. FERRARIO: Right.

MR. STEIN: Can I make one other suggestion? We had -- we -- I had an agreement with Mr. Williams on dates at the time they were going to take place in Chicago. I would at least like to be able, since I know that they are available on those dates, to have the option to go forward on those dates.

MR. PISANELLI: Everything's changed.

THE COURT: Are you okay on those days?

MR. PISANELLI: No.

THE COURT: Why not?

MR. PISANELLI: Because we're overlapped with making agreements with the Okada parties. They're the only party that wouldn't negotiate, so everyone else tried to do their job and get everything done. So we give them five days' notice.

MR. BICE: And we have -- I think we have worked out

most of the dates with the Okada parties. If --

THE COURT: See what happens when you don't cooperate when everybody else is cooperating?

MR. FERRARIO: Your Honor, I'm just going to hold my tongue in terms of cooperation. We had a five-day -- four-day hearing about cooperation last week --

MR. PISANELLI: Your Honor, may we leave?

MR. FERRARIO: -- with a finding of wilful violation. Okada had --

THE COURT: On both sides.

MR. FERRARIO: Okada had it, as well. No. Ours had to do with the protective order --

MR. PISANELLI: Your Honor, may we leave?

MR. FERRARIO: -- thing with Mr. Zeller --

THE COURT: Can they leave now?

MR. FERRARIO: -- okay?

THE COURT: Mr. Ferrario, don't do it today. Don't lose your --

MR. FERRARIO: I'm not, Your Honor. But -- but --

THE COURT: -- temper today with me, because I don't have my sign that says "Patience is a virtue, don't put him in jail."

MR. FERRARIO: Your Honor, Mr. Stein made a very reasonable -- we've worked out dates, we tried to fold them in. Give us a chance to see if those folks can come out.

THE COURT: Well, of course. Why don't you talk to them about it, tell them what the dates are when they can come to Vegas. I did not order them in Vegas, but I am not going to require the schedule which you have come up with.

MR. FERRARIO: I understand -- we understand the Court's ruling. We're asking to maintain these dates and give us a chance to see if they can come out.

MR. STEIN: Your Honor, so you're not ordering them to come to Las Vegas?

THE COURT: I didn't issue an order. Did you hear me issue an order?

MR. FERRARIO: No, she didn't.

THE COURT: Was there a motion? I didn't adopt the procedure that you told me, because I don't think the procedure that you gave is appropriate.

MR. FERRARIO: We get your message, Your Honor. We will get some dates, we will proffer them, and hopefully we don't have to come back in front of Your Honor.

THE COURT: It would be easier for everybody and you're more likely to get an agreement if they come to Las Vegas.

MR. FERRARIO: We understood you loud and clear.

THE COURT: Is there any objection to any of the motions to redact or seal?

MR. PEEK: None, Your Honor.

MR. FERRARIO: No.

THE COURT: They're all granted because they include commercially sensitive information and are narrowly tailored to protect that commercially sensitive information.

MR. BICE: Your Honor, I apologize. I was talking to Mr. Jones, and I did not hear what the preface of your question was.

MR. PEEK: The redactions.

MR. FERRARIO: Do you object to any of these motions to redact?

MR. BICE: No.

THE COURT: Was that the part you missed?

MR. BICE: That was the --

THE COURT: You heard the part about I didn't issue an order that somebody had to come to Nevada today --

MR. BICE: I heard that.

THE COURT: -- because I didn't have a motion in front of me.

MR. PISANELLI: Exactly.

MR. BICE: We'll deal with that being the notice if we can't work out a schedule. And then we'll [inaudible].

THE COURT: I understand that.

MR. BICE: Thank you.

THE COURT: And then I'll do an analysis under this case called Wynn versus Okada.

MR. BICE: Exactly. Thank you, Your Honor.

THE COURT: Anything else, Mr. Peek? Thank you for remember the DISH Network case, because I was thinking about that and I couldn't remember the name.

(Wynn Resorts parties left courtroom at 9:43 a.m.)

MR. PEEK: Well, Your Honor, I don't know if you saw that the motion for reconsideration was just denied.

THE COURT: No. I've been in trial with Randall Jones.

MR. PEEK: On the 8th -- yeah, on the 8th their motion for reconsideration was denied.

THE COURT: Does that mean you won?

MR. PEEK: Well, I won twice, yes.

THE COURT: Good job.

MR. PEEK: Nice I can -- so do I get to put two?

THE COURT: I think so. But Chris Pickering wrote probably the most well-reasoned discussion in the dissent even though she couldn't get to the numbers she needed. But it was a very well-reasoned thing.

MR. PEEK: I told her spouse that, Your Honor, but I didn't like it, but I told her spouse that.

THE COURT: It was very well reasoned.

(Court recessed at 9:43 a.m., until 9:45 a.m.)

THE COURT: Okay. I've got all three. So I have all three sides here. Did anybody get a chance to review the

ability to serve questionnaire that I sent to you guys last week before we start the process of sending it to the 10,000 people? And we're going to try and do them in 2,000 batches to see I four electronic-response questionnaire will work. Did you have objections?

MR. FERRARIO: No.

THE COURT: Other than the objections you gave me on my potential contamination of the jury pool --

MR. BICE: Well, I told you I didn't -- that wasn't the right word, but I couldn't think of a different word.

THE COURT: Okay.

MR. BICE: But I know what you're saying, contaminated, yeah.

THE COURT: So was there any -- the language that are on the postcard, because we're going to use a postcard because my Jury Commissioner says Maricopa County gets a higher response rate to postcards than they do to letters, so we're going to try a postcard this time, and we're going to try to have them electronically fill out the service and qualification questionnaire online and then get the responses to you that way.

MR. BICE: Your Honor, I didn't have any objection to any of the language, and I did look at all of them. I did have an objection, though. Are all three -- the postcard goes out, and then --

THE COURT: Postcard goes out.

MR. BICE: And then the other two documents are online?

THE COURT: This is part of the electronic information they will be filling out.

MR. BICE: Okay. So do they have to fill out both of them, or are those alternatives? Because they seem to contain a lot of the same information on them.

THE COURT: She sends out the postcard. If the person is clever enough to be able to figure out the online system, they will be prompted with the next two pages on the online system to answer it.

MR. BICE: Okay.

THE COURT: If for some reason the person says they can't do that or if we get a terrible response rate to our requests, to the postcards --

MR. BICE: Yes.

THE COURT: -- then we are going to send out the last four pages.

MR. BICE: So the last four go out as essentially a paper version?

THE COURT: It's an alternate to the postcard version.

MR. BICE: Okay. So I did not have any objection to the language that was being proposed. I actually -- I

actually like the fact that the six months wasn't in bold and highlighted. I actually had to search the document to say, now, where is it. And it's actually right in the first sentence.

THE COURT: Well, but I'm giving them holidays through October.

MR. BICE: I know. That's [inaudible], you know, and I'm like, oh boy, they're going to see -- they're going to see that date and because -- yeah, Mr. Jones is here -- on our last trial together when they started figuring out those dates and they started doing the -- we could see the jurors doing the math in their head, and it was a -- we almost -- well, we kind of did have a mutiny.

THE COURT: Well, luckily, in CityCenter when we did this and it was a one-year, we had a year's worth of holidays that were in there.

MR. BICE: Yeah.

THE COURT: It was very clear that there were some people who were willing to serve and others who weren't. And, as I've told you guys, I am not going to put somebody out of their house for your trial. So if somebody has a true financial hardship, then I'm probably going to excuse them from your case and let them be on a jury that's a three-day jury trial.

MR. BICE: And, Your Honor, on that issue how is

that --

MR. PEEK: We'll get -- when you're done here we'll just say we're okay with the format that the Court has --

MR. BICE: I agree with the format, as well. But on that issue that you highlighted, how is that going to be resolved? So, in other words, will --

THE COURT: We're going to get these answers on this blank, where they're either going to type it in or they're handwrite it in.

MR. BICE: Right.

THE COURT: I am then going to have the returned jury questionnaire responses, whether they were submitted electronically or they weren't, we send them typically to the County printshop, we get the copy made. You've agreed on a printer that you're sharing the cost. I send your one copy to the printer, it goes to you guys, and you pick it up and you review it and you say, hey, Judge, we don't have any problem excusing, and you give me a list of the people you're okay with excusing. They give me a list, and Elaine Wynn's people give me a list.

MR. FERRARIO: It actually works out fine.

THE COURT: And then if all agree, that person, no matter what I think, gets excused if you all agree. If you don't agree, I review it and make a determination as the Judge whether I'm going to excuse that person.

MR. BICE: Those are -- the financial ones are always sort of the tough ones, in my view.

MR. FERRARIO: And, actually, Todd, I mean --

THE COURT: It's not tough on this length. If you tell me you've got a financial hardship, you're a hair stylist or manicurist, I'm getting you out of here.

MR. BICE: Yeah.

MR. FERRARIO: What we did in CityCenter once your list -- we get the list, you'll be surprised how they line up. That was the least contentious part of the whole thing.

THE COURT: It probably was the least contentious part. The agreed-upon excusals was very smooth in CityCenter.

MR. BICE: Okay.

MR. JONES: We had the same issue with --

MR. FERRARIO: It was.

MR. JONES: -- Judge Johnson, Your Honor. That actually went five and a half months, and --

THE COURT: Well, but she's getting ready to do two more six-month cases, which is why I don't think this issue that you're concerned about is going to be a concern, because we're going to be sending --

MR. BICE: Because you're going to be sending out a lot more than --

THE COURT: For several different trials that are all going.

MR. PEEK: Your Honor, when are you expecting us to have true juror questionnaires to you?

THE COURT: I told Mr. Ferrario I wanted them the beginning of January.

MR. FERRARIO: We're already working on it.

MR. PEEK: Okay. So the beginning of January, so --

THE COURT: You were in Curacao when that question came up the last time, and he asked me before you told me how much time you needed for trial, and I said January.

MR. PEEK: So January 8th?

THE COURT: I don't know.

MR. FERRARIO: We're pushing for mid January.

MR. PEEK: January 5th? Well, I was trying to get a date.

THE COURT: I'm not -- I'm worried about me having them by mid January so I can resolve disputes among you and have it done before the end of January.

MR. BICE: Right.

THE COURT: Because I've got to resolve your disputes somewhere in that two-week time of mid January before end of January.

MR. BICE: When it's going to get sent out in --

MR. PEEK: When are the ability to serves going to go out?

THE COURT: I'm going to give approval from them to

go out this morning.

MR. PEEK: Okay.

THE COURT: I do not know as a practical matter what that means with printshop, the mailing, and all that crap. Generating the list is the easy part.

MR. FERRARIO: Is this the first time you've used the postcard thing?

THE COURT: Yes. This will be the first time we've used the postcard thing.

Where's -- did you guys talk to Dennis Prince?

MR. BICE: Yes.

THE COURT: Are you guys going to consider doing that for the whole questionnaire thing?

MR. PISANELLI: The initial conversation is that neither side was comfortable with it, oddly enough.

THE COURT: Okay. Then we will use paper jury questionnaires and we will bring them down in batches. We are hoping not to have a repeat of Queensridge where we had to take them to Cashman Field.

MR. JONES: Had to take the questionnaires to Cashman?

THE COURT: We had to take the people because the phone system failed and they didn't know who was supposed to report what day and they all showed up on the first day. So we sent them all down to -- we had to rent Cashman Field. We

didn't get a cheap rate, either. County -- you'd think County agency they'd give us a break. No, not so much

MR. JONES: Your Honor, I would -- I have done several months- -- many months-long trials. I would personally advocate against having more than a very -- a manageable number coming down as a batch.

THE COURT: You mean after they've filled out the questionnaires?

MR. JONES: Yes. Yes, yes.

THE COURT: Yes. Mariah says we can't call more than 60-ish, a recommended number per day. We did get through more than that in CityCenter except on the days we had to do individual voir dire.

MR. PEEK: Even with Ferrario?

THE COURT: He was very effective. Very effective.

MR. FERRARIO: Remember at the beginning --

THE COURT: You know when he was the most effective was when I was ruling on the deposition designations he said, Judge, I've never seen anybody read faster than you. It's like, yep.

MR. FERRARIO: Remember, though, at the beginning we did --

MR. PISANELLI: Judge Mahon just recently allowed zero questions from counsel on voir dire, so we could always have that.

MR. FERRARIO: Although we had too many at the beginning and they were sitting over there seething. And I can't remember which one of your clerks was in there singing songs with them to keep them -- who?

THE COURT: Laura.

MR. FERRARIO: They were stewing.

THE COURT: We had a bad group. And then when we had them sequestered while we were doing individual voir dire a lawyer's wife decided to tell all the jurors in her group about her husband's litigation with MGM on the CityCenter work comp case.

MR. PEEK: Oh, my gosh. You're kidding.

MR. FERRARIO: Nope.

THE COURT: She was so mad I hadn't excused her already. She was so mad she figured out a way to get out of jury duty.

MR. FERRARIO: I'd forgotten about that.

MR. JONES: She almost sounded like she figured out a way to get into County Jail, too.

MR. FERRARIO: It was close.

THE COURT: It was close. I brought her in and had a discussion with her about that.

THE PROCEEDINGS CONCLUDED AT 9:55 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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

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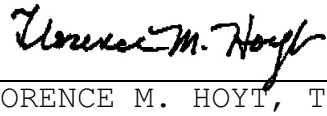

FLORENCE M. HOYT, TRANSCRIBER

12/18/17

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

KAZUO OKADA, UNIVERSAL ENTERTAINMENT CORP. AND ARUZE USA, INC.,

Real Parties in Interest.

Supreme Court No. 74591

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

ARUZE PARTIES' OPPOSITION TO PETITIONER WYNN RESORTS, LIMITED'S MOTION TO STAY DISTRICT COURT PROCEEDINGS PENDING DISPOSITION OF ITS WRIT PETITION

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Real Parties in Interest Universal Entertainment Corp., Aruze USA, Inc. ("Aruze USA"), and Kazuo Okada (collectively referred to as "Defendants") submit this Opposition to Wynn Resorts, Limited's ("WRL's") Motion for a Stay of District Court Proceedings Pending Disposition of its Petition for Writ of Mandamus or Alternatively, Prohibition (the "Petition").

I. INTRODUCTION

WRL commenced this strike lawsuit nearly six years ago. Since then the Defendants have been struggling to obtain their day in court to present their case for recovery of the tremendous losses WRL needlessly inflicted on Defendants. Although WRL was the first to rush to court, filing its initial complaint at 2:14 am on February 19, 2012, WRL's strategy over the last six years has been to create delay after delay to deny Defendants a fair and timely resolution of this lawsuit on its merits. Now, after some dispositive motion practice and with the depositions of 21 expert witnesses at hand to conclude preparation for trial, WRL asks the Court to stay the entire case pending review of its writ petition regarding the district court's recent summary judgment ruling.[1] However, under Nevada law, WRL is not entitled to a stay. None of the factors the Court considers when deciding whether to issue a stay favors stopping this case from going to trial on April 16, 2018.

At issue in this hard-fought lawsuit are billions of dollars in damages. Dozens of depositions already have been completed. Millions of documents have been reviewed. The issues are complicated and have

[1] On December 18, 2017, the district court denied WRL's effort to stay the case. Ex. A, Dec. 18, 2017 Hrg. Tr. at 12.

resulted in numerous petitions to the Court, mostly on discovery issues. The Defendants have been waiting for their day in court for nearly six years since the WRL Board decided to improperly redeem their founder's shares of stock at a substantial discount. Granting a stay now will assure another delay of the trial for no good reason. A stay is neither required nor necessary because WRL has an adequate remedy at law to review the district court's decision declining to dismiss WRL from this lawsuit under the business judgment rule. And a stay will cause extreme prejudice to the Defendants.

The purported irreparable and serious injury WRL insists will occur if a stay is denied—that it will endure an extraordinarily costly six-month trial involving issues that might not need to be litigated pending the Court's writ review—is exaggerated advocacy that is completely at odds with the realities of this case. WRL's suggestion of harm by the district court's decision to prepare for trial by sending out a preliminary questionnaire on availability for a lengthy trial does not support a stay because it does not uniquely impact WRL, which is not even identified on the proposed notice as a party. First, the Court has ordered an expedited briefing schedule with respect to the writ petition, with an Answer due from Defendants on December 22 and a Reply due from WRL on December 29. Second, in recently summarily denying three of WRL's other writ petitions, the Court expressed extreme reluctance to interfere with the district court's firm trial date. It is thus reasonable to infer that the Court will consider this petition promptly, well before trial. For this reason alone, a stay is not necessary. A stay will disrupt completion of expert discovery and render trial on April 16 impossible to achieve. The parties should be allowed to continue with expert depositions—all 21 experts must be

deposed between now and January 19—that have been difficult to schedule and get ready for trial consistent with the district court's scheduling order.

The day of reckoning is now at hand. Fact discovery has closed. Expert discovery is in its final stage; that is the principal task to be completed by the parties between now and trial on April 16, 2018. This "emergency motion" to stay seeks to vacate the trial date that the district court set after years of intensely contested pretrial proceedings and is another unwarranted effort by WRL to perpetuate delay and deny the Defendants their day in court. This writ petition is WRL's 8th and the instant motion is its 20th motion to stay. The Court should not indulge WRL's efforts to prevent justice from being done, starting in April 2018.

II. ARGUMENT

In deciding whether there is good cause to issue a stay, the Court weighs the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. NRAP 8(c); *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Each of the *Hansen* factors weighs in favor of denying a stay.

A. The Object of the Petition Will Not Be Defeated

The Court should deny WRL's Motion because the object of WRL's Petition—having the Court reverse the district court's well-considered summary judgment ruling and dismiss Defendants' claims related to the redemption of their stock—will not be defeated without a stay. WRL faces

no irreparable injury whatsoever from going to trial according to the existing schedule in a case it initiated and rushed to file at 2:14 a.m. on a Sunday morning nearly six years ago.

WRL claims it needs a stay because absent a stay of the entire case and immediate writ review, it has no "plain, speedy and adequate remedy at law," Mot. at 4, which is nonsense. As the Court pointed out in three rulings in this case just two weeks ago, "***The right to appeal in the future, after a final judgment is ultimately entered, generally constitutes an adequate and speedy legal remedy precluding writ relief***." Ex. B, Order at 1, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, No. 73949 (Dec. 4, 2017) (emphasis added); Ex. C, Order at 1–2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, No. 73641, (Dec. 4, 2017) (emphasis added*);* Ex. D, Order at 1–2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, No. 74500 (Dec. 4, 2017) (emphasis added).

WRL does not provide a reason why the Court should not follow this precedent and change course to rule today that an appeal after final judgment is an ***inadequate*** legal remedy. WRL seeks only to prolong resolution of litigation it initiated against Defendants, and lengthen the life of this case with yet another writ petition. But as with all of the other writ petitions the Court recently denied, WRL has a perfectly adequate and speedy legal remedy in an appeal after final judgment. At that time, the Court can appropriately assess the role of the business judgment rule on *all* of the issues in this case together, ***and*** on a full trial record. *Walters v. Eighth Judicial Dist. Ct. of State*, 127 Nev. 723, 727, 263 P.3d 231, 234 (2011) ("court will only consider writ petitions challenging a district court denial of a motion for summary judgment when no factual dispute exists ***and*** summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification.") (emphasis added); *see also D.R. Horton*

v. Green, 125 Nev. 449, 215 P.3d 697 (2009) (writ review is not available when the issue on which writ relief is sought can be appealed post judgment)).

B. WRL Will Not Suffer Irreparable and Serious Injury if a Stay is Denied

WRL contends it needs a stay to save itself from the costs of a six-month trial on issues that might not need to be litigated if the Court reverses the district court's summary judgment ruling that the business judgment rule does not immunize the company from liability for its wrongful acts. Mot. at 5. This argument is premature and ignores both the law and recent rulings of the Court. In the near term, a stay will disrupt 21 expert depositions that are scheduled to occur over the next month and which must be completed on time to assure the trial can start on April 16, as scheduled.

In any event, as a matter of law (law that WRL itself quotes, albeit selectively), ***litigation costs do not amount to injury sufficient to justify a stay***. *Mikohn Gaming Corp. v. McCrea,* 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) ("[w]e have previously explained that litigation costs, *even if potentially substantial*, are not irreparable harm.") (emphasis added); *see also Hansen*, 116 Nev. at 658, 6 P.3d at 986-87 (litigation expenses such as "length and time-consuming discovery, trial preparation, and trial . . . while potentially substantial, are neither irreparable nor serious"). WRL claims that this case is different because it is "not talking about ordinary litigation costs" but the costs of a trial that could last a few months, Mot. at 5, which the Court rejected in both *Mikohn* and *Hansen* – even if litigation costs are "potentially substantial," they do not amount to irreparable harm justifying imposition of a stay. *Id.*

Next, WRL claims a stay is necessary because if the Court accepts WRL's writ and if the Court rules in its favor (two big "ifs"), such a ruling will "materially alter[] the contours of this case." Mot. at 4. This speculation is not supported by the law—and for good reason. If a party was entitled to a stay every time it sought writ review of a dispositive ruling, few cases would go to trial without substantial and unjustified delays. And no matter how the Court resolves WRL's writ petition, this case will still proceed to trial because the Defendants have a number of counterclaims that are not subject to the writ WRL is pursuing.

WRL's hypothetical argument also ignores the Court's recent action in response to this writ petition, which counsels against a stay: the Court imposed an expedited briefing schedule for the subject writ, ordering Defendants to answer the writ petition by December 22.[2] Moreover, in summarily denying three of WRL's writ petitions two weeks ago, the Court declined to interfere with this case going to trial on April 16, and ruled:

> Having considered the petition and supporting documents, we are not satisfied that our intervention is warranted at this time. ***This case has been pending in the district court since 2012***, several interlocutory issues of substantial magnitude already have been addressed by this court . . . ***and the underlying proceedings are approaching a set trial date***. Moreover, the challenged ruling resulted from the district court's consideration of this issue pursuant to *Wynn Resorts*, 133 Nev. Adv. Op. 52, 399 P.3d 334, in which we addressed the same issue just a few months ago. . . . [W]e conclude that the issue presented herein is not of such a magnitude so as to

[2] *See* Ex. E, Not. of Expedited Consideration by Nev. S. Ct., *Wynn Resorts Ltd. v. Okada*, No. A-12-656710-B (Dec. 14, 2017) (noting that any Reply to the Answer must be filed and served by December 29).

> require our extraordinary and rare intervention, given the upcoming trial date.

Ex. B, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct., No. 73949* (Dec. 4, 2017) (emphasis added); *see also* Ex. C, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.,* No. 73641 (Dec. 4, 2017) (emphasis added); Ex. D, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.,* No. 74500 (Dec. 4, 2017) (emphasis added).

This express recognition of the trial date, combined with its order for an expedited Answer to the writ petition and Reply before year end makes it highly likely that the Court will resolve the matter promptly, without a need for a stay of the proceedings and disruption of the 21 expert depositions scheduled for completion next month. Under these circumstances, WRL will not be harmed by denial of a stay. Although the parties will continue to expend resources on expert discovery, which is scheduled to close on January 19, the costs of those depositions would be miniscule compared to the costs already incurred during the preceding six years of intense litigation. And, again, as the Court has made clear, even litigation costs that are "potentially substantial" do not add up to "irreparable harm." *Mikohn*, 120 Nev. at 253, 89 P.3d at 39.

Finally, WRL's suggestion of harm by district court's inquiry of 10,000 prospective jurors whether they would be able to serve for a six-month trial is speculative and exaggerated. Mot. at 5. Not only are the parties not identified on the proposed notice, but the "harm" that WRL sees from this inquiry–that many prospective jurors will claim financial hardship to serve for six month—would be equally imposed on all parties. That would not be harm WRL would uniquely suffer. Moreover, the district court's questionnaire makes clear that "the Court may conclude you would be able

to serve on a trial of less duration." Ex. A to Mot. Denial of the stay does not harm WRL in any way.

C. Defendants Will Suffer Irreparable and Serious Injury if the Stay is Granted

On the other hand, Defendants will suffer serious injury if the Court further delays these proceedings. *See Hansen*, 116 Nev. at 657, 6 P.3d at 986 (no stay when "respondent/real party in interest will suffer irreparable or serious injury if the stay is granted"). We are approaching the sixth anniversary of the improper redemption of Defendants' stock and they have yet to see their day in court. Fact discovery has closed, and we are in the final stage of necessary expert discovery. If a stay is issued, the expert depositions will be halted, which will derail compliance with the district court's scheduling order, including trial on April 16.

On balance, the potential harm to Defendants far outweighs any possible "harm" to WRL. *See, e.g.*, *Hansen*, 116 Nev. at 659, 6 P.3d at 987 (stay should be denied unless "the balance of equities weighs heavily in favor of granting a stay"). In fact, granting a stay would ***reward*** WRL for its primary litigation tactic, that of creating further delays.[3] Accordingly, there is no reason to immediately stop expert discovery and final trial preparation and overturn the district court's scheduling order.

D. WRL Will Not Prevail on the Merits

Finally, the Court should not grant the requested stay because, we submit, the Court is not likely to reverse the Court's ruling on the summary judgment motion. *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d

[3] WRL's overall delay strategy, in terms of Defendants' access to documents, to witnesses, to information, and now the firm trial date, has been unprecedented.

982, 986 (2000) (no stay when movant cannot "demonstrate that extraordinary relief is warranted").[4]

It is settled law that a denial of summary judgment cannot be appealed even after a final judgment, let alone through extraordinary writ review four months before trial. As the Court said years ago (and remains valid today):

> [M]andamus petitions have continued to inundate this court, challenging denials of motions for summary judgment and motions to dismiss. We must now decide whether it is in the best interests of the court, and of the Nevada judicial system as a whole, for us to continue to entertain such petitions. We conclude that it is not.

State ex rel. Dept. of Transp. v. Thompson, 99 Nev. 358, 361, 662 P.2d 1338, 1340 (1983); *see also, e.g.*, *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) ("An order denying summary judgment is not independently appealable.") (citing NRAP 3A(b)); *State v. Eighth Jud. Dist. Ct.*, 118 Nev. 140, 147, 42 P.3d 233, 238 (2002) ("Very few writ petitions warrant extraordinary relief and . . . the interests of judicial economy which inspired the *Thompson* rule will remain the primary standard by which this court exercises its discretion."). Instead, writ review is only warranted to address "discovery order[s] that require[] disclosure of privileged information" and "blanket discovery orders without regard to relevance."

[4] The fact that the Supreme Court has directed Defendants to answer WRL's writ petition does not make it any more likely that the Supreme Court will grant WRL's writ petition and overrule the Court's summary judgment ruling. Indeed, the Court has directed answers to writ petitions in connection with other issues in this case and thereafter denied the respective writ petitions. *See e.g.*, Op., *Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. No. 83 (2015), No. 68310 (Oct. 15, 2015).

Clark Cnty. Liquor & Gambling Licensing Bd. v. Clark, 102 Nev. 654, 659-60, 730 P.2d 443, 447 (1986). Neither circumstance is presented here.[5]

Further, as will be set forth in great detail in Defendants' Answer to WRL's Petition (due December 22), the district court was unquestionably correct in holding that the business judgment rule does not apply to the company itself or to claims asserted against the company and interested directors; *Wynn Resorts,* 399 P.3d 334, does not hold otherwise, as Defendants answer will confirm. Therefore, WRL cannot show it will prevail on the merits.

III. CONCLUSION

For the foregoing reasons, Defendants ask that the Court deny WRL's Motion for a Stay.

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[5] Moreover, and as discussed above, the Supreme Court made clear two weeks ago when it in summarily denied three of WRL's writ petitions that it is not inclined to interfere with this case going to trial. Ex. B, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, No. 73949 (Dec. 4, 2017); Ex. C, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.,* No. 73641 (Dec. 4, 2017); Ex. D, Order at 2, *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, No. 74500 (Dec. 4, 2017). The Court should not impose a stay when there is every reason to believe that the Court will deny WRL's writ petition, just as it denied three of WRL's writ petitions two weeks ago because of "the upcoming trial date."

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I certify that I am an employee of MORRIS LAW GROUP; I caused the following document to be electronically filed and served on the 20th day of December, 2017: **ARUZE PARTIES' OPPOSITION TO PETITIONER WYNN RESORTS, LIMITED'S MOTION TO STAY DISTRICT COURT PROCEEDINGS PENDING DISPOSITION OF ITS WRIT PETITION**

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