

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada
corporation, and SANDS CHINA LTD., a
Cayman Islands corporation

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE
HONORABLE ELIZABETH GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Case Number: 62489
Feb 08 2013 03:09 p.m.
Tracie K. Lindeman
District Court of Nevada
Clerk of Supreme Court
A627691-B

**SUPPLEMENTAL
APPENDIX TO
EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS TO
PROTECT PRIVILEGED
DOCUMENTS**

**Vol. 1 of 1
(LVSC/SCL0577 - 97)**

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**SUPPLEMENTAL APPENDIX TO EMERGENCY PETITION FOR WRIT
OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED
DOCUMENTS
CHRONOLOGICAL INDEX**

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**SUPPLEMENTAL APPENDIX TO EMERGENCY PETITION FOR WRIT
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ALPHABETICAL INDEX**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **SUPPLEMENTAL APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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Attorneys for Steven C. Jacobs, Real Party in Interest

Pursuant to Nev. R. App. P. 25, I caused a copy of the **SUPPLEMENTAL APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be hand-delivered on the date and to the addressee(s) shown below:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

DATED this 8th day of February, 2013.

By: /s/ PATRICIA FERRUGIA

Alton B. Johnson
CLERK OF THE COURT

TRAN

COPY ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN C. JACOBS,

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO COMPEL DEPOSITION TESTIMONY
AND DEFENDANTS' MOTION TO STAY

TUESDAY, JANUARY 29, 2013

APPEARANCES:

FOR THE PLAINTIFF:

TODD L. BICE, ESQ.

FOR THE DEFENDANTS:

MARK M. JONES. ESQ.
MICHAEL E. LACKEY, JR., ESQ.
STEPHEN J. PEEK, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
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RECEIVED
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CLERK OF THE COURT

33

LVSC/SCL0577

1 out, and why was he involved, when did he get involved, who
2 else was involved in the decision-making process that leads up
3 to Mr. Jacobs's termination. That's the reason for those
4 questions. I don't believe that those were precluded by the
5 Court in its original order. And you'll notice that they
6 never asserted that until they had to look for some hail Mary
7 here at the end of the hearing to throw up to say that Mr. Kay
8 shouldn't be questioned.

9 THE COURT: It's in Footnote 2 of their opposition.

10 MR. BICE: I understand, Your Honor, it's in
11 Footnote Number 2 of their opposition that Mr. Kay's original
12 -- when you ordered it we had a particular understanding of
13 his role. His deposition, I think, shows that that role is
14 vastly different.

15 THE COURT: I understand, Mr. Bice.

16 MR. BICE: And I did hear your ruling, and I will
17 abide by your ruling.

18 THE COURT: Thanks.

19 MR. BICE: Thank you.

20 THE COURT: The motion to stay.

21 MR. PEEK: Thank you, Your Honor. That is my
22 motion. So there was a reason for me to be here, Your Honor.

23 THE COURT: It's an interesting distinction you're
24 trying to draw with respect to the refreshing recollection as
25 to substance and refreshing recollection as to dates. So --

1 MR. PEEK: Well, Your Honor, it's not just the --
2 that issue, it's also the substantive issue of the sacrosanct
3 nature of the attorney-client privilege, which, as we point
4 out, was something that we all as lawyers grew up with in the
5 practice of -- or in our schooling, we also grew up with it in
6 the practice. So it is one that is the most sacrosanct of all
7 privileges. And what we have here is certainly a disagreement
8 with the Court's decision, which we're asking the Supreme
9 Court to visit. We have, as you know, filed our motion or --
10 excuse me, our petition for writ relief on mandamus and
11 prohibition.

12 But there -- it is, Your Honor, certainly the
13 position of the -- of Las Vegas Sands and for Sands China
14 Limited that with respect to what the purpose was of Mr. Jones
15 to review those documents was, as he testified to you in this
16 courtroom, to refresh his recollection as to dates, not as to
17 substance of the information and communications that he had
18 with the client, but more just as to when did I do certain
19 things. Because the focus of the Court's evidentiary hearing
20 was, why wasn't I told, when did you know, why wasn't I told
21 certain events. And so Mr. Jones certainly wanted to refresh
22 his recollection.

23 But more importantly, Your Honor, is we look at not
24 just the purpose under which he looked at them, but whether or
25 not this is a trial proceeding, a trial measure, as opposed to

1 a discovery issue or a deposition issue when you're in the
2 middle of a deposition and somebody is -- you know, said he
3 reviewed documents. But here we have now, at a trial in the
4 proceedings, and you ruled at that time that the necessity of
5 having those documents available and produced at that hearing
6 was unnecessary to your hearing. You certainly did invite the
7 plaintiff, I think, that sometime later, well, if you really
8 disagree with this maybe you might want to pursue it in a
9 different manner.

10 But the purpose of 50.125 is to have those documents
11 immediately available to test the credibility of that witness
12 in that proceeding in which he or she is testifying. You
13 determined, Your Honor, during the course of the evidentiary
14 hearing that it was not necessary for you to have those
15 documents -- or, excuse me, for the plaintiff to have those
16 documents to test that credibility of Mr. Jones, being, review
17 those and say, well, okay, now I see here you've told me X in
18 your testimony -- and remember, what he would be testifying to
19 would have been attorney-client privileged communications
20 anyway -- but, you've told me this and I have a document that
21 impeaches you. And that was what the purpose under 50.125 is,
22 is to be able to have that document to determine whether or
23 not there is credibility to what the witness has said.

24 So if we -- and, again, I'm not arguing, really,
25 that motion, Your Honor. I really don't mean to want to do

1 that, because I think we need to focus on whether the object
2 of the writ or the petition will be defeated if the stay is
3 denied. It certainly will be, because the horse will be out
4 of the barn, the cat will be out of the bag, you know,
5 whatever kind of phrase you want to use. There certainly will
6 not be any opportunity to ever, ever recover back those
7 documents and those privileged communications that took place.

8 Whether the appellant petition will suffer
9 irreparable or serious injury if the stay is denied. There is
10 no irreparable injury. This is not going to delay an
11 evidentiary hearing, Your Honor, on the issue of jurisdiction
12 over Sands China Limited. Whether or not the 14 or 15
13 documents that Mr. Jones reviewed prior to giving testimony at
14 the evidentiary hearing in September, they had nothing to do
15 with jurisdiction. In fact, as we pointed out, Your Honor,
16 they really go to the issue of violating the stay that the
17 Supreme Court entered to allow those kinds of documents,
18 because they're not jurisdictional documents. So they won't
19 suffer any harm at all by not having 14 or 15 documents when
20 they in fact have over almost 200,000 pages already of
21 documents, Your Honor, related to jurisdictional discovery.

22 Whether certainly we will -- whether we will suffer,
23 yeah, I've already gone over that, but whether they will
24 suffer, I've gone over that, as well. So then whether we're
25 likely to prevail on the merits in the appeal or the writ. I

1 think this is a matter of first impression with the Supreme
2 Court, Your Honor. I don't think that this is something that
3 has been, as they argue, resolved by Means versus State.
4 Means versus State was a completely different situation, and,
5 as the Court knows, the Supreme Court has very often recently
6 intervened by writ relief in issues related to attorney-client
7 relationships, attorney-client privilege. I mean, as you
8 know, Mr. Bice's firm took up Mr. Mowbray on an issue of --
9 trying to seek to disqualify Mr. Mowbray, and the Supreme
10 Court took that one up on a writ and denied the application of
11 Pisanelli Bice to disqualify another firm.

12 As you know, this Court got involved in other
13 disputes with Mr. Morris on another issue. The Supreme Court
14 did that. So I think, Your Honor, that this is something
15 where the -- where the Supreme Court would like to visit this
16 issue of -- excuse me, as a matter of first impression. So on
17 balance, there's no harm, really, to the -- to Jacobs here and
18 there's significant harm to Sands China, and particularly to
19 Las Vegas Sands, to lose the privilege and to have attorney-
20 client privileged communications be given to the plaintiff in
21 this case.

22 THE COURT: Thank you, Mr. Peek. Mr. Bice.

23 MR. BICE: Thank you, Your Honor.

24 I'm sure that if the Supreme Court does believe that
25 this is something that they want to take up, they will do so,

1 and they will express their views as to why or when and how it
2 should be taken up.

3 Our point here, Your Honor, is at this point in the
4 proceedings, we do not believe it is appropriate, and we do
5 believe it is prejudicial to give Sands yet another stay.
6 Again, they have asked the Supreme Court. They can ask the
7 Supreme Court for a stay if the Supreme Court believes there
8 is some overriding merit to their position to the petition
9 that they presented to the Supreme Court.

10 The premise -- fundamentally, in our view, false
11 premise of their entire writ proceeding at the Supreme Court,
12 in addition to, blaming Jacobs and this Court for all of the
13 woes of this case and the status of the jurisdictional
14 discovery, nary a mention, of course, of their own conduct and
15 what is the real cause of where we are at today, but the false
16 premise is that as soon as a witness is off the stand their
17 credibility, an officer of the court's credibility has somehow
18 now been conclusively resolved and so therefore documentation
19 to the underlying issue is somehow now no longer relevant.
20 That's what Mr. Peek is arguing, it's not relevant because Mr.
21 Jones is now off the stand. That's not the law. And here,
22 fundamentally, we continue and they continue to come back to
23 the Court and make the point of, well, what did this person
24 testify to.

25 We're going to be back in front of you on issues

1 about, one, their compliance with that sanctions order, and,
2 two, then that is definitely going to -- and that's why we
3 attach, Your Honor, some of the documents that they have --
4 this is their compliance, are those documents attached to our
5 order or -- to our opposition. There are -- every document
6 that they have produced to us, Your Honor, is like this. They
7 are beyond unintelligible. They have just redacted everything
8 out of them. You couldn't make heads or tails out of these
9 documents if your life depended upon it. And that, of course,
10 is exactly what they wanted to have happen.

11 That's why, contrary to the argument being made like
12 an ordinary witness that somehow a trial is over and so
13 therefore there's going to be no further proceedings and the
14 credibility of what these lawyers have been telling the Court,
15 the credibility of what these lawyers at Holland and Hart were
16 telling this Court for two years is going to play out, not
17 only in our forthcoming other motions for sanctions, but
18 you've already said that we are free to refile that. So this
19 issue hasn't somehow died. Because Mr. Jones is now off the
20 stand doesn't relieve them of their duty of candor, and it
21 doesn't relieve them of their obligations to disclose all the
22 material facts to the Court. And it's also highly relevant to
23 our position of what they have been doing is -- you know, Mr.
24 Jones disagrees with me, I understand that. I believe this is
25 a very perverse calculus that this very sophisticated litigant

1 has decided to engage in. They have decided just on this
2 exact same issue the risk of compliance or the consequences of
3 noncompliance is preferable to the documents and the truth
4 coming out, and that's all that this is about.

5 So, yes, we are harmed by this constant obstruction
6 and the constant delay, and we're going to be bringing a
7 motion on this issue. And Mr. Jones's emails we believe are
8 highly relevant to showing that there has been a long-running
9 plan of concealing evidence from the Court and that this is
10 just the latest, these redactions of every document to the
11 point where they are unintelligible is just part of that plan.
12 It is part of that very sophisticated, very perverse
13 calculation by this litigant that we would rather endure the
14 consequences of ignoring Court orders, ignoring our
15 obligations to the Court of disclosing documentation than
16 having to having the information come out, it's contrary to
17 what we've told the public, it's contrary to what we've told
18 our shareholders, and it's contrary to what we've told the
19 United States. And that's what is going on here.

20 So there's no grounds for a stay. We are entitled
21 to that documentation. Mr. Jones knew the rules. He used the
22 documentation, and we are entitled to it. If they want to
23 convince the Supreme Court of a stay, fine.

24 Alternatively, as I've asked you in my conclusion of
25 the brief, if you're going to give them a stay, I ask that it

1 be temporary so that we can get an opposition to the Supreme
2 Court to explain what really has gone on in this case, not
3 that Sands China and Las Vegas Sands are the victims here,
4 that they just, you know, didn't know that they were obligated
5 to disclose to you or to us those documents. They actually
6 say that to the Supreme Court. So if that's going to be the
7 Court's ruling it should be a very limited stay so that we can
8 get a brief up there and the Supreme Court can then make a
9 decision about whether or not a stay is appropriate.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Bice.

12 The stay is granted. The reason that I am granting
13 the stay is because the issues related to Mr. Jones's review
14 of the documents for his testimony at the sanctions hearing is
15 not truly relevant to my jurisdictional hearing.

16 So I am going to issue a stay for a period of six
17 months, which may be renewed, depending upon where we are in
18 the proceedings and where the Nevada Supreme Court is on the
19 writ proceeding.

20 Any questions?

21 MR. PEEK: None, Your Honor. Thank you, very much.

22 MR. JONES: Thank you, Your Honor.

23 MR. BICE: And we assume that they'll prepare the
24 order. We may be raising that issue with the Supreme Court,
25 Your Honor, so we'd like to get the order entered.

1 Thank you, Your Honor.

2 MR. JONES: Feel better, Your Honor.

3 THE COURT: I'm in trial.

4 THE PROCEEDINGS CONCLUDED AT 9:17 A.M.

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CERTIFICATION

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

AFFIRMATION

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

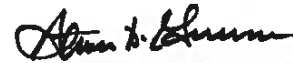
**FLORENCE HOYT
Las Vegas, Nevada 89146**

Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

2/3/13

DATE



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27 **DISTRICT COURT
CLARK COUNTY, NEVADA**

28 **STEVEN C. JACOBS,**

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada
corporation; **SANDS CHINA LTD.,** a Cayman
Islands corporation; **SHELDON G.
ADELSON,** in his individual and
representative capacity; **DOES I-X;** and **ROE
CORPORATIONS I-X,**

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B

DEPT NO.: XI

Date: n/a

Time: n/a

**ORDER GRANTING DEFENDANTS'
MOTION FOR STAY OF ORDER
GRANTING MOTION TO COMPEL
DOCUMENTS USED BY WITNESS TO
REFRESH RECOLLECTION
PENDING DEFENDANTS' PETITION
FOR WRIT OF PROHIBITION OR
MANDAMUS**

On January 29, 2013, Plaintiff Steven C. Jacobs and Defendants LAS VEGAS SANDS
CORP. and SANDS CHINA LTD. ("SCL") (collectively "Defendants") came before this court

KEMP, JONES & COULTHARD, LLP
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1 on Defendants' Motion for Stay of Order Granting Motion to Compel Documents Used by
2 Witness to Refresh Recollection Pending Defendants' Petition for Writ of Prohibition for
3 Mandamus ("Motion for Stay"). Todd L. Bice, Esq., of the law firm PISANELLI BICE PLLC,
4 appeared on behalf of Plaintiff. J. Stephen Peek, Esq., of the law firm HOLLAND & HART
5 LLP, appeared on behalf of Defendants. Mark M. Jones, Esq., of the law firm KEMP, JONES
6 & COULTHARD, LLP, appeared on behalf of SCL. The Court considered the papers filed on
7 behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

8 THE COURT HEREBY STATES as follows:

9 1. It has considered the factors contained within *Hansen v. Dist. Ct.*, 116 Nev. 650,
10 P.3d 982 (2000) for the issuance of a stay pending the Nevada Supreme Court's review of a
11 writ petition;

12 2. Plaintiff will suffer no prejudice because, among other reasons, the documents
13 which were ordered to be produced are not necessary for the evidentiary hearing on
14 jurisdictional issues; and

15 3. Sufficient reasoning exists to warrant a stay of the Order Granting Motion to
16 Compel Documents Used by Witness to Refresh Recollection Pending Defendants' Petition for
17 Writ of Prohibition or Mandamus.
18

19 ///

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27 ///

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

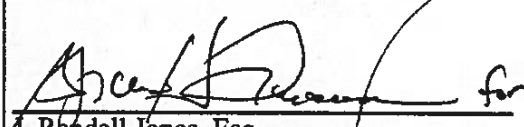
- 2 1. The Motion for Stay is GRANTED for six months; and
3 2. Defendants have the ability to renew the stay after six months.

4 DATED this 4th day of February, 2013.

5
6 
7 District Court Judge


8 Submitted by:

9 KEMP, JONES & COULTHARD

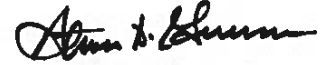
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20 Approved as to form and content:

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19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

21 STEVEN C. JACOBS,

22 Plaintiff,

23 v.

24 LAS VEGAS SANDS CORP., a Nevada
25 corporation; SANDS CHINA LTD., a Cayman
Islands corporation; DOES I through X; and
26 ROE CORPORATIONS I through X,

27 Defendants.

28 AND ALL RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

NOTICE OF ENTRY OF ORDER

LVSC/SCL0592

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, please take notice that an Order
2 Granting Defendants' Motion For Stay Of Order Granting Motion To Compel Documents Used By
3 Witness To Refresh Recollection Pending Defendants' Petition For Writ Of Prohibition Or Mandamus
4 was entered in this matter on February 4, 2013, a copy of which is attached hereto.

5 DATED this 5th day of February, 2013.

6 KEMP, JONES & COULTHARD, LLP

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CERTIFICATE OF MAILING

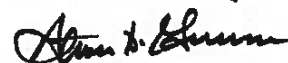
I hereby certify that on the 5th day of February, 2013, the foregoing **NOTICE OF ENTRY OF ORDER** was served on the following persons by mailing a copy thereof, first class mail, postage prepaid, to:

James J. Pisanelli, Esq.
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CLERK OF THE COURT

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Attorneys for Sands China, Ltd.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a Cayman
Islands corporation; SHELDON G.
ADELSON, in his individual and
representative capacity; DOES I-X; and ROE
CORPORATIONS I-X,

Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

Date: n/a

Time: n/a

**ORDER GRANTING DEFENDANTS'
MOTION FOR STAY OF ORDER
GRANTING MOTION TO COMPEL
DOCUMENTS USED BY WITNESS TO
REFRESH RECOLLECTION
PENDING DEFENDANTS' PETITION
FOR WRIT OF PROHIBITION OR
MANDAMUS**

AND ALL RELATED MATTERS.

On January 29, 2013, Plaintiff Steven C. Jacobs and Defendants LAS VEGAS SANDS
CORP. and SANDS CHINA LTD. ("SCL") (collectively "Defendants") came before this court

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1 on Defendants' Motion for Stay of Order Granting Motion to Compel Documents Used by
2 Witness to Refresh Recollection Pending Defendants' Petition for Writ of Prohibition for
3 Mandamus ("Motion for Stay"). Todd L. Bice, Esq., of the law firm PISANELLI BICE PLLC,
4 appeared on behalf of Plaintiff. J. Stephen Peek, Esq., of the law firm HOLLAND & HART
5 LLP, appeared on behalf of Defendants. Mark M. Jones, Esq., of the law firm KEMP, JONES
6 & COULTHARD, LLP, appeared on behalf of SCL. The Court considered the papers filed on
7 behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

8 THE COURT HEREBY STATES as follows:

9 1. It has considered the factors contained within *Hansen v. Dist. Ct.*, 116 Nev. 650,
10 P.3d 982 (2000) for the issuance of a stay pending the Nevada Supreme Court's review of a
11 writ petition;

12 2. Plaintiff will suffer no prejudice because, among other reasons, the documents
13 which were ordered to be produced are not necessary for the evidentiary hearing on
14 jurisdictional issues; and

15 3. Sufficient reasoning exists to warrant a stay of the Order Granting Motion to
16 Compel Documents Used by Witness to Refresh Recollection Pending Defendants' Petition for
17 Writ of Prohibition or Mandamus.

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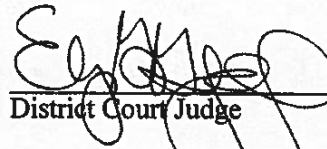
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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

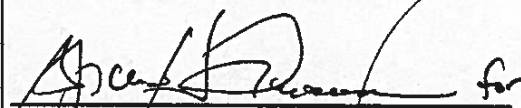
- 2 1. The Motion for Stay is GRANTED for six months; and
3 2. Defendants have the ability to renew the stay after six months.

4 DATED this 4th day of February, 2013.

5
6 
7 District Court Judge


8 Submitted by:

9 KEMP, JONES & COULTHARD

10
11  for
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