

1 out of the case?

2 A I believe we substituted out of the case in February
3 of 2012.

4 Q All right. So in preparing to respond to that
5 jurisdictional discovery, did you examine any of the
6 information on the drive that you knew about since July?

7 A I can answer that with two answers. Number one, the
8 review of documents to produce in connection with
9 jurisdictional discovery did not take place until we had a
10 ruling from the Court. Initially there was a motion for
11 jurisdictional discovery. My recollection is that Sands China
12 opposed that motion. My recollection also is that the Court
13 granted jurisdictional discovery. There were different
14 categories that were supposed to be a limited scope of
15 discovery for jurisdiction. I think after there was that
16 ruling there were subsequent motions for clarification with
17 regard to certain categories. I think after that ruling was
18 then made with regard to requests for clarification, counsel
19 for Sands China worked with the client to start gathering
20 those documents. So I think that process happened sometime
21 after September of 2011, I just don't remember when.

22 Q When you say counsel for Sands China, that would be
23 you?

24 A Correct.

25 Q All right. You were working with the client to

1 respond to that?

2 A Correct.

3 Q Okay. To respond to the jurisdictional discovery
4 request?

5 A Correct.

6 Q Okay. Did you -- did you ever look at the data that
7 was on that drive that you said that you knew about from July
8 of 2011?

9 A I never did.

10 Q Okay. How were you going to respond to those
11 requests if you never looked at the data?

12 A That issue -- I can answer this as long as there's
13 not an objection with regard to privilege.

14 MR. McCREA: Well, if -- if you're going to divulge
15 any communications with the client, we are going to assert the
16 privilege.

17 THE WITNESS: Okay. I can answer that question
18 without divulging any communications with the client.

19 THE COURT: Okay.

20 THE WITNESS: If there was a determination that this
21 hard drive or whatever data was in Las Vegas was responsive to
22 the jurisdictional discovery request and it needed to be
23 produced, certainly those documents would be produced. It did
24 not -- that issue didn't come up because as we were gathering
25 the documents, we still had not finished gathering the

1 documents for jurisdictional discovery by the time Glaser Weil
2 left the action, or left the case, in February of 2012.

3 BY MR. BICE:

4 Q So is it your testimony to the Court that you
5 intended to examine it if you had stayed in the case, and the
6 only reason you didn't examine it was because you got out?

7 A No, that's not my testimony.

8 Q Okay.

9 A My -- my --

10 Q My question is how were you going to determine --
11 since your firm was the only representative for Sands China,
12 I've got that correct; right?

13 A In this case, correct.

14 Q Okay. So how were you going to determine whether or
15 not you had fulfilled your obligations to the Court to produce
16 responsive documents if you hadn't ever examined that drive?

17 MR. McCREA: Your Honor, scope.

18 THE COURT: Overruled.

19 You can answer.

20 THE WITNESS: We would need to review materials,
21 whether it be on that hard drive or any materials within the
22 possession, custody, or control of Sands China. However,
23 before we can review those materials, we needed to make sure
24 we were comporting with the advice given to us, and I won't go
25 into the advice, but the advice that was being given to us by

1 outside counsel from Macau because they had serious concerns
2 about --
3 BY MR. BICE:
4 Q Well, if you're going to -- if you're going to waive
5 privilege and tell me about concerns, that's fine. I don't
6 have any problem with that.
7 A I don't want to waive --
8 MR. McCREA: We're not waiving.
9 BY MR. BICE:
10 Q But I'm not going to allow this partial waiver.
11 A I'm not going to waive privilege.
12 THE COURT: Mr. McCrea is objecting.
13 Right, Mr. McCrea?
14 MR. McCREA: Yes, ma'am.
15 THE COURT: I just wanted to make sure that the nod
16 of the head was what I thought it was.
17 MR. McCREA: Right.
18 THE WITNESS: And I don't intend to waive privilege
19 and I won't do so.
20 BY MR. BICE:
21 Q What was your understanding that as of July of 2011,
22 up until the January 3rd hearing, and if it changed, you tell
23 me, what was your understanding of who had possession,
24 custody, and control of that drive?
25 A Well, to the extent that we are talking about the

1 legal standard of possession, custody, and control in terms of
2 production of the documents by a party in a litigation, I
3 don't know if I know the answer to that. I may -- I may have
4 known the answer back then, but I haven't been involved in the
5 case since February of 2012. That being --

6 Q Okay. Well --

7 A Well, if I can finish?

8 Q Sure, go ahead.

9 A That being said, to the extent that there were
10 documents in the possession of Las Vegas Sands, those
11 documents would need to be produced by Las Vegas Sands. If
12 there was an issue about whether a document here in Las Vegas
13 was within the possession, custody, or control, I suppose that
14 could be potential motion practice. I don't recall if there
15 was any motion practice on that issue. I just don't remember.

16 Q All right. Do you recall having a discussion with
17 the Court where you were asked on behalf of Sands China to
18 give consent so that Mr. Peek could examine documents that Mr.
19 Jacobs was going to produce?

20 A I do recall a hearing, and you can refresh my
21 recollection about the timing. I don't recall when there was
22 an issue of documents that were improperly taken and
23 improperly retained from Sands China. I recall there was a
24 lot of motion practice seeking to gain return of that data
25 that was improperly taken. I also recall that there was a

1 disclosure from Jacobs's lawyers during that summer time of
2 2011 that there were 11 gigabytes. I recall subsequently
3 there was an additional disclosure that the 11 gigabytes was
4 actually closer to 40 gigabytes.

5 Then there was a disclosure that there was a hard
6 drive that was provided to Jacobs's outside vendor, a company
7 called Quivox [phonetic], and there was a request by Sands
8 China to have those materials produced as part of
9 jurisdictional discovery. I recall a consent issue came up
10 with regard to Jacobs. I can be refreshed in terms of my
11 recollection, but my recollection was that the request from
12 Jacobs was that Sands China sign a consent for documents to be
13 produced to Sands China in Las Vegas as part of the Macau
14 privacy data act, but I can be misremembering. That's my
15 recollection is that's what the consent was.

16 So my understanding is it was not a consent with
17 regard to Mr. Peek reviewing documents. My understanding was
18 that the request was made with regard to consent for documents
19 to be produced under the Macau Privacy Data Act.

20 Q And what was your -- what was your response on
21 behalf of your client Sands China to that?

22 A I believe our response was that the consent was not
23 necessary because the documents -- again, I'm -- I'm
24 struggling to recall the details, but the consent issue was
25 different than the consent that they were asking for because

1 one of the issues that we raised or was contemplating, and I
2 don't mean to waive privilege, was that as I understood the
3 Macau privacy laws, consent was something that was supposed to
4 be given by the author of the data.

5 Q Okay.

6 A So this idea that Sands China needed to consent to
7 data to be produced by somebody from Macau was just irrelevant
8 to the analysis because if there was a person in Macau that
9 was going to decide to give consent or not, they can give that
10 consent, but it wasn't consent for Sands China to give.

11 Q Do you recall telling the Court, Mr. Ma, that Mr.
12 Peek couldn't review the documents?

13 A I don't -- I don't understand your question. Can
14 you repeat it for me?

15 Q Sure. Do you recall ever telling the Court, or
16 suggesting to the Court is perhaps a better way to phrase it,
17 suggesting to the Court that Mr. Peek could not examine
18 documents that belonged to Sands China?

19 MR. McCREA: Is there a reference in the transcript,
20 Your Honor?

21 MR. BICE: I'm asking for his recollection.

22 THE WITNESS: I recall there was a hearing where
23 there --

24 BY MR. BICE:

25 Q It's just really a yes or no. Do you recall telling

1 Her Honor that?

2 A I don't recall one way or the other.

3 Q Okay.

4 A Not that question.

5 Q All right. Is it fair that that is the impression
6 that you wanted to give the Court?

7 A I don't think that's fair.

8 Q Okay. You never intended to give Her Honor the
9 impression that Mr. Peek could not examine documents from
10 Sands China?

11 A No, that was not my intent.

12 Q Can you take a look at the November 22 transcript?
13 Go to page 67 if you would, Mr. Ma.

14 A Can you give me the page again?

15 Q 67. I apologize. I'll let you look at page 67, and
16 then read on over to page 68, line 3.

17 A Thank you. I've read that.

18 Q Have you read it, Mr. Ma?

19 A I have. Thank you.

20 Q Mr. Ma, the Court had made a statement to you,
21 because we were debating, were we not, at this hearing, this
22 issue about release of Mr. Jacobs's data, a return. You
23 claimed Mr. Jacobs should have to return his data; correct?

24 A That's my recollection that --

25 Q Okay.

1 A -- because these are documents taken from the
2 company.
3 Q Right.
4 A Correct.
5 Q And so your position was is that those documents
6 were subject to the Macau Data Privacy Act; right?
7 A My recollection --
8 Q Yes or no?
9 A I think it's no.
10 Q So it's your recollection, it's your position that
11 the documents that Mr. Jacobs had in his possession as of this
12 November 22, 2011, were not subject to the Macau Data Privacy
13 Act; correct?
14 A No, that's not what I said. I think you're
15 misstating what my answer was.
16 Q Okay. Let's just make sure that we're crystal clear
17 on it. Is it your position that the documents that Mr. Jacobs
18 had that you were claiming he needed to return were subject to
19 the Macau Data Privacy Act during this hearing on November 22,
20 2011?
21 A The answer is yes in part.
22 Q Okay. And Her Honor made the statement to you about
23 sharing those documents with Mr. Peek, because she, at the
24 bottom of the transcript, says, "And if he has to release them
25 to Mr. Peek" -- this is Mr. Jacobs she is referencing -- "to

1 look at, there is a potential problem given the position that
2 you've taken in this litigation. Do you understand what I'm
3 saying?"

4 MR. McCREA: Can we have a transcript reference?

5 THE COURT: It's the same page.

6 MR. BRIAN: 67, line 24, onto page 68.

7 BY MR. BICE:

8 Q And Mr. Ma says in response, "I do, Your Honor";
9 correct?

10 A I think that's unfair. I think you need to read
11 the --

12 Q Isn't that what -- but isn't that what you told her
13 on it?

14 A I think you have to finish reading my answer that
15 begins on line 5.

16 Q Okay.

17 A And it says --

18 Q Well, let's continue reading it.

19 A Okay.

20 Q And it says, "This is actually something that I did
21 not appreciate today. So I appreciate Your Honor's take on
22 it, and whatever guidance the Court is able to provide, that
23 is great."

24 A And then the next line reads, "Now, that being said,
25 we don't have specific documents, we don't have specific

1 information. It sounds like there is a general request for
2 some sort of consent."

3 Q Correct.

4 A "I think the request is unreasonable because we
5 don't know the specifics as to what the documents are. We're
6 at a disadvantage. I think if there are any concerns, I think
7 the Court's order" -- which I understood it to be the Court's
8 order for Jacobs to produce the documents -- "takes care of
9 that."

10 Q Okay. You didn't tell her, did you, that you knew
11 that there was a drive here in Las Vegas in November of 2011,
12 did you?

13 A I'd have to go --

14 Q Yes or no? You didn't tell her, did you?

15 A If I can answer?

16 Q It's a yes or no question.

17 A Based on my -- I have not --

18 Q Did you, yes or no, tell her? Why is that such a
19 hard question for you?

20 A I don't have specific recollection of each and every
21 thing I said at that hearing. My recollection is I did not
22 refer to that hard drive.

23 Q Okay. And you knew that it was here; right?

24 A By January of 2012 I did.

25 THE COURT: This was November.

1 BY MR. BICE:

2 Q Well, even November you knew.

3 A Oh, I'm sorry. Maybe I missed -- I'm thinking of
4 the wrong hearing.

5 Q Well, even by November you knew it was here, didn't
6 you?

7 A I did.

8 Q Okay. And you suspected that it pertained -- it
9 contained data relevant to this case, didn't you?

10 A I think I testified that I did not know the contents
11 of the data.

12 Q Okay. That wasn't my question. I'm sorry. Maybe
13 my question wasn't clear. You suspected that it contained
14 data that was relevant to this case, did you not?

15 MR. McCREA: Objection, Your Honor. It calls for
16 his mental impressions.

17 THE COURT: Overruled.

18 THE WITNESS: I don't know if I had a suspicion.

19 BY MR. BICE:

20 Q But you're claiming that the knowledge that you have
21 about -- about how it got here is privileged because it
22 pertained to this litigation; right?

23 A I don't know if that's the position I've taken.

24 Q Okay.

25 A I certainly had privileged communications with

1 regard to that data.

2 Q Okay.

3 A But I don't know if I'm saying -- I mean, it's not
4 my call to make as to whether it's privileged or not.

5 Q Are you saying that that -- that that communication
6 occurred in the context of this litigation?

7 A Which communication?

8 Q The communication where you say how you learned
9 about the drive being here or the document being here.

10 A Thanks for the clarification. Yes, I did learn
11 about that through communications with the client, correct.

12 Q Do you recall telling the Court also that when --
13 strike that. You had made the point here just a moment ago
14 that Mr. Jacobs' prior counsel, Mr. Williams and Mr. Campbell,
15 had previously said there was a certain amount of data, and
16 then they later clarified that it was much more data; correct?

17 A I don't believe I made any reference to Mr. Williams
18 or Mr. Campbell, so you'll have to refresh my recollection.

19 THE COURT: You said it went from 11 gigs to about
20 40 gigs.

21 BY MR. BICE:

22 Q Do you recall that?

23 A Oh, I do recall that. Thank you.

24 Q Okay. How much data was on this drive?

25 A The Jacobs drive?

1 Q Yeah.

2 A I don't know the answer to that. I think the only
3 information that was provided to us was from the declaration
4 from Mr. Jacobs.

5 Q Okay. Well, no, I'm talking about how much data was
6 on the drive that you learned about in July of 2011?

7 A Oh. You're referring to the drive or the data that
8 was referred to by Mr. Peek?

9 Q Yes.

10 A I misunderstood you. Okay. I don't know the amount
11 of data on that drive.

12 Q Why didn't you want to know that?

13 MR. McCREA: Objection, Your Honor. Calls for
14 speculation; calls for his mental impressions.

15 THE COURT: Overruled.

16 You can answer.

17 THE WITNESS: I did not review those materials
18 because it was part of a discussion with outside counsel from
19 Macau. I can testify to it --

20 THE COURT: Okay. We don't want to know what that
21 was.

22 BY MR. BICE:

23 Q You were very concerned, as I understand it, about
24 how much data Mr. Jacobs possessed; correct?

25 A Yes.

1 Q Okay. But you didn't want to know how much data Las
2 Vegas Sands had from Macau?

3 A I don't think that's an accurate question.

4 Q Okay. You did want to know, didn't you?

5 A Well, I'd want to know as much information as
6 possible.

7 Q Okay. And you were never provided that information;
8 correct?

9 A I don't think that's a fair characterization. I
10 think the --

11 Q So are you telling the Court you did have that
12 information?

13 A No, if I can finish my answer. I think outside
14 counsel working together to gather information to be produced
15 in this litigation, and at the same time outside counsel was
16 working with other lawyers to make sure they were in
17 compliance with Macau law.

18 Q Who are the other lawyers?

19 A I can answer that if I'm allowed to.

20 Q Well, the identity certainly isn't privileged.

21 A The company was working with outside counsel. I
22 can't remember the name of the law firm, but -- I apologize.
23 I just can't remember their names.

24 Q Well, who was the name of the lawyer?

25 A I believe his last name was Bismarck. He was one

1 lawyer of several lawyers.

2 Q Okay. Do you remember any of the last names of any
3 of the other lawyers?

4 A I don't.

5 Q Okay. Were they affiliated with the O'Melveny &
6 Myers law firm?

7 A No, it was a different law firm.

8 Q Okay. Do you know where the law firm was based?

9 A I believe it was in Macau.

10 MR. BICE: Can Your Honor give me one second,
11 please?

12 THE COURT: Thank you.

13 MR. BICE: I have nothing further, Your Honor.

14 THE COURT: Thank you.

15 And defendants have nothing for Mr. Ma?

16 MR. BRIAN: Nothing, Your Honor.

17 THE COURT: I gathered that from the expressions on
18 your face.

19 Thank you, Mr. Ma. Have a very nice afternoon.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. Is there any other witness
22 who is from out of town?

23 Then, Mr. Peek, we will take you up on your offer.
24 Can you come up? And is that notebook you're bringing up
25 something you want to tell us about?

1 MR. PEEK: I was going to, Your Honor. It is just a
2 copy of all the transcripts.

3 THE COURT: Thank you.

4 MR. PEEK: So I won't bother the Court or counsel.

5 STEPHEN PEEK, COURT'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. State
7 your name and spell it for the record.

8 THE WITNESS: Stephen Peek, Stephen with a P-H,
9 Peek, P-E-E-K.

10 DIRECT EXAMINATION

11 BY THE COURT:

12 Q Mr. Peek, when were you retained with respect to
13 representing either Las Vegas Sands or Sands China in this
14 matter?

15 A November 2010.

16 Q Do you remember attending the Rule 16 conference
17 that we had on April 22nd where Ms. Salt appeared by video
18 conference?

19 A I do, Your Honor.

20 Q At that time there was no mention of Macau Data
21 Privacy Act as being an issue for us to deal with in this
22 case.

23 A That is correct, Your Honor.

24 Q Can you tell me why?

25 A At that time in April I didn't understand the

1 implications of the Macau Data Privacy Act.

2 Q Okay.

3 A I was not familiar with the Macau Data Privacy Act

4 at that time, Your Honor.

5 Q During that conference --

6 A In -- I'm sorry. In detail. I mean, I think may

7 have generally known that there was such a statute out there,

8 but I'm not even sure if I did, Your Honor --

9 Q Okay.

10 A -- on April 22, 2011.

11 Q During that conference I did, as I frequently do,

12 made sure that the client knew about document preservation and

13 the preservation of ESI and the importance of that. At that

14 time were you aware that a mirror of Mr. Jacobs' laptop

15 computer and copies of some of his Outlook emails had already

16 been made and sent to the U.S.?

17 A Yes, Your Honor.

18 MR. McCREA: Objection, Your Honor. Attorney-client

19 privilege.

20 THE COURT: You've got to be faster, Mr. McCrea.

21 THE WITNESS: Sorry. I guess I got to be slower.

22 MR. BRIAN: Or he needs to be slower.

23 THE COURT: Or he has to be slower.

24 THE WITNESS: Maybe I have to be slower, Your Honor.

25 MR. McCREA: I move to strike.

1 THE COURT: Okay. It's stricken. I've got to
2 forget and go back for a second.

3 THE WITNESS: Well, I disclosed it in a pleading, so
4 that's why.

5 BY THE COURT:

6 Q It's all right. We'll get there sometime soon.
7 Moving forward from that Rule 16 conference, we had a hearing
8 on June 9th. And at that time, and I think this transcript
9 you actually need to look at because there's some language in
10 here that is apparently of some discussion at this point on
11 page 55.

12 A What page, Your Honor?

13 Q 55 of the June 9th transcript.

14 A I'm there, Your Honor.

15 Q At that time you told me that there were some files
16 on servers and email communications and hard documents, hard
17 copy documents in Las Vegas that may have been affected by
18 that data privacy act.

19 A Yes, Your Honor.

20 Q What were you referring to?

21 A I was going as far as I could go, Your Honor, at
22 that time, but it was just that statement, which is that we
23 did have in the United States a collection of documents from
24 Macau, both that had come in the ordinary course and that had
25 been transferred in August of 2010.

1 Q Okay. But according to the statement that was later
2 filed this summer, the information that was on the drive that
3 Mr. Kostrinsky brought back from Macau was never on the
4 server. It was on his laptop.

5 A I don't remember the statement that was made, Your
6 Honor. What I understand today is that there were mirror
7 images that were sent -- there were images made of Mr. Jacobs'
8 desktop and laptops in Macau, put on a hard drive, and then
9 that hard drive was sent to the United States. And I
10 understood for a period of time that they were put on Mr.
11 Kostrinsky's laptop computer.

12 I have since learned, having been at Mr.
13 Kostrinsky's deposition, as well as spoken to the IT folks,
14 that the mirror image of the hard drive was actually put on a
15 server, and Mr. Kostrinsky's laptop was mapped to that server.
16 I don't -- I don't remember what I said in the disclosure. I
17 just -- I do know now, having talked to Mr. Singh, Your Honor,
18 after that disclosure was made.

19 Q Okay. Is there a reason you did not tell me that
20 the mirror of the drive of Mr. Jacobs' laptop computer had
21 come to the U.S.?

22 MR. McCREA: Objection, Your Honor. Attorney-client
23 privilege.

24 THE COURT: Okay.

25 THE WITNESS: Your Honor, I thought I --

1 BY THE COURT:

2 Q That's okay. He objected, and so we're not going to
3 go into that. When did you review Mr. Jacobs' emails on Mr.
4 Kostrinsky's computer?

5 A In May of 2011.

6 Q Were any of the portions of the ESI you reviewed on
7 Mr. Kostrinsky's computer covered on the hard copy?

8 A Yes, they were.

9 Q So you printed some of them?

10 A I did, Your Honor.

11 THE COURT: Given the privilege direction, that's
12 all the questions I have. Do you have some questions, Mr.
13 Bice?

14 MR. BICE: I do, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BICE:

17 Q Mr. Peek, when did you learn about Mr. Jacobs's
18 emails being in the United States?

19 A There are two times I learned about it.

20 MR. McCREA: Objection, Your Honor.

21 THE WITNESS: I learned about it --

22 MR. McCREA: Attorney-client privilege.

23 THE COURT: Mr. Peek, if you could just give us the
24 date or the two dates.

25 THE WITNESS: Okay. I don't know the exact date,

1 but it was December 2010 to January 2011.

2 BY MR. BICE:

3 Q Okay.

4 A And it was on or about July 8th of 2011.

5 Q All right. And what you understood that Her Honor

6 has made reference to a mirror -- you heard Her Honor say

7 that; correct?

8 A I did.

9 Q Okay. But in reality what you understand is that

10 it's only a ghost image; correct?

11 A I don't make a distinction between mirror image and

12 ghost images, Mr. Bice. I know that Mr. Kostrinsky asked for

13 copies to made and those copies to be sent to the United

14 States for preservation purposes.

15 Q You -- you were aware -- or I should presuppose, but

16 you were present for Mr. Singh's deposition; correct?

17 A I was, sir.

18 Q And Mr. Singh said that there is a difference

19 between a mirror and a ghost image?

20 A Yes. Well, I understand the distinction between a

21 forensic image and a ghost image.

22 Q Okay.

23 A I don't know really what a mirror image is, Mr.

24 Bice.

25 Q Okay. Fair enough. And from Mr. Singh's testimony

1 it's your understanding that the image that was brought to Las
2 Vegas will not show what had been deleted prior to it being
3 brought here; correct?

4 A I understand that there is some data that when you
5 do a -- the image that was undertaken doesn't collect all of
6 the data, maybe the deleted. I don't know exactly. But I do
7 know that there's a difference between a forensic image and a
8 ghost image, as you call it.

9 Q And to your knowledge what -- has a -- was a
10 forensic image of Mr. Jacobs's -- any of Mr. Jacobs's ESI ever
11 created in Macau?

12 MR. McCREA: Objection, Your Honor. Attorney-client
13 privilege.

14 THE COURT: Okay.

15 MR. BICE: You're sustaining the objection?

16 THE COURT: Sustaining, yes. Can we move on?

17 MR. BICE: Okay.

18 BY MR. BICE:

19 Q All right. So you knew about the data, the emails
20 in December and January of -- did I misunderstand?

21 A No, you're correct.

22 Q Okay.

23 A December to January --

24 Q December to January time frame.

25 A -- 2010, 2011. Yes, sir.

1 Q Okay. And you did not begin to review any of them
2 until May of 2011?

3 A That is correct, sir.

4 Q And how did you review them?

5 A I sat at Mr. Kostrinsky -- sat in Mr. Kostrinsky's
6 office --

7 Q Okay.

8 A -- at his laptop because his laptop was his desk
9 top.

10 Q Okay.

11 A And on his computer there were, I believe, icons, if
12 I can recall, or there was an Outlook and there was an index.
13 It was a typical Outlook file. That was as though I was
14 looking at Mr. Jacobs' Outlook file.

15 Q Okay. And how long did you look at them?

16 A I believe over the course of two days probably six
17 to seven hours. I don't know exactly.

18 Q And how many of them did you print off?

19 A I don't know, Mr. Bice, because I left them there in
20 Mr. Kostrinsky's office. I did not distribute them.

21 Q Did you print more than two or three?

22 A No -- yes, I did. I mean, I would say that if I had
23 to hazard a guess, maybe --

24 Q Well, let's call it an estimate and not a guess if
25 that would be more fair to you.

1 A Well, I was talking about guess.
2 Q Okay.
3 A I could call it an estimate.
4 Q I'll take whatever it is you can recall.
5 THE COURT: But we don't want you to speculate or
6 guess.
7 THE WITNESS: No, no, I'm not speculating.
8 THE COURT: I had to say it.
9 THE WITNESS: I would say 100 emails.
10 BY MR. BICE:
11 Q Okay. And you get -- and you gave those --
12 A I don't know how many documents, that is, so --
13 Q Because they might have been multiple pages?
14 A They might have had multiple pages to them, yes.
15 Q Did they have attachments?
16 A I believe some did have attachments, Mr. Bice, yes.
17 Q Okay. And you gave those hard copies to Mr.
18 Kostrinsky?
19 A I didn't give them to anybody, sir.
20 Q Oh. You didn't?
21 A There was nobody in the room with me at the time I
22 was reviewing them. I took them out, put them in a Redwell,
23 left them in his office.
24 Q All right. So Mr. Kostrinsky wasn't present when
25 you did this?

1 A No, he was not.

2 Q Okay. And why --

3 A He was in -- he was in another location because --

4 because there wasn't room in the office.

5 Q Okay. And why didn't you take the physical copies

6 with you?

7 A The Macau Data Privacy Act.

8 Q Okay. And that's the reason that you didn't take

9 them, but you didn't believe that it stopped you from

10 reviewing them; correct?

11 A I did not think at that time that it stopped me from

12 reviewing them.

13 Q And you didn't think that it stopped you from

14 printing them off and giving a hard copy to Mr. Kostrinsky?

15 A I didn't give hard copies to Mr. Kostrinsky.

16 Q I -- I apologize.

17 A But I --

18 Q I stand corrected.

19 A -- I left them --

20 THE COURT: Wait. Only one at a time, please.

21 THE WITNESS: I left them there.

22 BY MR. BICE:

23 Q And you didn't believe that it stopped you from --

24 or precluded you from doing that, either?

25 A From printing them out? At that time I did not.

1 Q And did you ever disseminate any of the -- well,
2 strike that. Let's just -- let's try and keep going
3 chronologically. Were you -- were you reviewing those in
4 conjunction with the initial disclosures that you were
5 preparing in May for Las Vegas Sands Corp?

6 A Yes and no. The initial disclosures were not the
7 customary initial disclosures that you would normally
8 undertake. In this case what we had determined was that we
9 would develop an ESI protocol as opposed to just make what you
10 might say was a blanket production.

11 Q Okay.

12 A And pursuant to that, those ESI protocols that were
13 negotiated over the course of May and June, the object was for
14 plaintiff to identify to each of the two defendants,
15 custodians from whom they wanted us to collect ESI, as well as
16 hard copy. And to then, from the search terms that the
17 parties agreed would be utilized, to then run those search
18 terms on the ESI, as well as the hard copy documents that we
19 had anticipated putting in, OCRing those copies so they can be
20 in a searchable format.

21 Q What was your understanding or your knowledge, I
22 guess, in the November -- I apologize, December to January
23 time frame about what had been brought over from Macau?

24 MR. McCREA: Objection, Your Honor. Attorney-client
25 privilege.

1 THE COURT: Sustained.

2 BY MR. BICE:

3 Q Is the only thing you looked at were emails?

4 A Yes.

5 Q Did you --

6 A Together with the attachments to those emails.

7 Q Okay.

8 A And there were some attachments that I said, Mr.

9 Bice, to which I looked.

10 Q The database to which you were given access, did it

11 only contain emails with their attachments, or did it contain

12 other things, as well?

13 A I understood at that time that the collection that I

14 was reviewing was actually on Mr. Kostrinsky's laptop.

15 Q Understood.

16 A Had been put only on that laptop.

17 Q Okay.

18 A And that it was whatever had been sent over, which I

19 understood only to be Mr. Jacobs' email and nothing else.

20 Q And so you had no knowledge of any other data

21 transfers in the -- that -- when we're talking about in the

22 December and January time frame your only knowledge of data

23 transfers was that Mr. Jacobs' emails that you had been given

24 access to in May?

25 A That's not entirely true.

1 Q Okay.

2 A And this is something to which Ms. Glaser alluded,
3 is in the ordinary course --

4 MR. McCREA: Your Honor, I want to lodge an
5 attorney-client objection here because I don't want him to --
6 as long as he can answer this question without revealing
7 communications from the client or client's representative,
8 that's fine.

9 THE WITNESS: I can, Your Honor.

10 THE COURT: He's going to try his best, Mr. McCrea.

11 MR. McCREA: Thank you.

12 THE WITNESS: In the ordinary course, because Mr.
13 Jacobs reported to the chairman of the -- of Las Vegas --
14 excuse me, of Sands China, Limited, whose address was SAdelson
15 or SheldonAdelson@Venetian.com, and he also from time to time
16 reported to general counsel and communicated with general
17 counsel, and he also from time to time communicated with Mike
18 Leven who was a special advisor to the board of Sands China,
19 Limited, I knew that there would be -- that there would be
20 data that had been transferred out of Macau pursuant to that
21 ordinary course of business communication of Mr. Jacobs, as
22 well as others who might have reported.

23 BY MR. BICE:

24 Q Okay. I want to go back to, just so I can make sure
25 that we're all clear on this, the Court asked you to look at

1 page 55 of the transcript from June 9, 2011.

2 A Yes, sir.

3 Q Do you recall that? And just so that we're all
4 crystal clear on this, the reference on page 55 to you where
5 you say, "The same data privacy act, Your Honor, also
6 implicates communications that may be on servers and email
7 communication and hard document, hard copy documents in Las
8 Vegas." Do you see that?

9 A I do, sir.

10 Q All right. And so your testimony for the Court is
11 you were disclosing to her the data that you had been
12 examining prior to this representation that included Mr.
13 Jacobs's emails?

14 A As much as I was allowed to disclose to the Court, I
15 was disclosing it in that statement.

16 Q And so you were consciously aware that when you were
17 providing this statement on June 9, 2011, you were consciously
18 aware of the fact that that you had been reviewing the emails
19 for Mr. Jacobs; correct?

20 A Yes, and I was disclosing the existence of that data
21 in the possession of Las Vegas Sands, which would be
22 implicated by the Macau Data Privacy Act.

23 Q All right. You viewed that data to be in the
24 possession, custody, and control of Las Vegas Sands; correct?

25 A I did.

1 Q You never considered that data to be in the
2 possession, custody, or control of Sands China, did you?

3 A That's a hard question. I don't think I ever
4 thought about it one way or the other, Mr. Bice, because it
5 was Sands China's -- it had come from Sands China to -- to the
6 U.S. I don't know -- I never thought about it in the context
7 in which you're --

8 Q You weren't expecting Sands China to produce that
9 data?

10 A No, it was my expectation that in the ordinary
11 course I would produce that data once we had resolved the
12 issue through briefing of the Macau Data Privacy Act.

13 Q All right. And you never disclosed, except for this
14 statement, which I guess you claim as a disclosure, but you
15 never disclosed to Mr. Campbell or to Mr. Williams that you
16 had Mr. Jacobs's emails here in the United States, did you?

17 A I don't have a specific recollection of talking
18 about this Jacobs ESI collection. I do know --

19 Q Well, I'm talking about his emails.

20 A If I could finish, Mr. Bice, before you interrupt
21 me.

22 Q Well --

23 A I'm just --

24 Q -- I just --

25 THE COURT: It's okay. Please let Mr. Peek finish.

1 MR. BICE: Sure, Your Honor.

2 THE COURT: Thanks.

3 THE WITNESS: I do know that during the course of
4 May, June, and July we had discussions with Campbell and
5 Williams about priority custodians. We had discussions about
6 the Macau Data Privacy Act and the fact that the Macau Data
7 Privacy Act implicated documents in the possession of Las
8 Vegas Sands, as well as documents in Macau.

9 I do know that we received a letter from Campbell
10 and Williams in terms -- I mean, excuse me. I received a
11 letter as counsel for Las Vegas Sands in which they identified
12 one of the priority custodians as being Mr. Jacobs. In fact,
13 he was number one on that. So from that letter I inferred
14 they knew that we had data in the United States because Mr.
15 Jacobs did not have a Venetian.com email address.

16 BY MR. BICE:

17 Q So you inferred from that that they knew that you
18 had his emails in the United States and that's why you didn't
19 feel that you needed to tell them?

20 A I thought that they already knew and I thought that
21 we had discussed it in the meeting first. I don't have a
22 specific recollection of it. I'm only going back to some of
23 the email correspondence in the June, July period of time with
24 Mr. Williams primarily, not Mr. Campbell.

25 Q Do you recall the dates in which you did your

1 initial disclosures in this case?

2 A It would have been two weeks after the business
3 court conference, or 14 days after that, so I have to believe
4 that that's at least the first initial disclosure, primarily
5 witnesses. Then once we had completed the ESI protocols and
6 negotiation with Campbell and Williams, we began the
7 production of documents and started -- well, I'll leave it at
8 that.

9 Q Is it your understanding that Mr. Jacobs did not
10 have a Venetian.com address?

11 A That was my understanding, sir.

12 Q And where did you get that understanding?

13 MR. McCREA: Objection, Your Honor. Attorney-client
14 privilege.

15 THE COURT: To the extent it calls for client
16 communications, we want you to observe that privilege.

17 THE WITNESS: That's the only place I would have
18 gotten it, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: I mean --

21 THE COURT: That's okay.

22 BY MR. BICE:

23 Q Would it be fair, Mr. Peek, to say that you did an
24 initial disclosure, which was witnesses only, on May 5, 2011?

25 A That sounds about right because there are eight days

1 in -- left in April, and the first five days will be 13 days
2 and we had to do it in 14 days.

3 Q Okay. And you said you had received a letter from
4 Campbell and Williams, correct, about prioritizing discovery;
5 right?

6 A Yes, sir.

7 Q The search. And Mr. Jacobs was item numero uno;
8 correct?

9 A He was, sir.

10 Q Okay.

11 A That in June 22nd, 23rd --

12 Q All right.

13 A -- 2011.

14 Q And by that point in time you had reviewed Mr.
15 Jacobs's emails; correct?

16 A That's my answer, yes.

17 Q And you had printed off approximately 100 of them
18 with attachments?

19 A Yes, sir, I had.

20 Q Okay. And on July 28, 2011, you did your first
21 supplemental disclosures, would that be fair?

22 A You must have the dates. I'm not -- I'll accept
23 your representation, Mr. Bice --

24 Q All right.

25 A -- that we --

1 Q That's what --
2 A -- we --
3 Q -- I've been told --
4 THE COURT: Only one of you --
5 MR. BICE: -- by my staff.
6 THE COURT: -- at a time, please.
7 MR. BICE: I apologize. I cut him off.
8 THE WITNESS: We -- once we received the ESI
9 protocols, we began the production of documents in accordance
10 with the direction from Campbell and Williams which changed
11 after we received the letter because they wanted to take Mr.
12 Adelson's deposition first, followed by Mr. Leven. And we
13 switched, because Mr. Campbell was insistent that that
14 deposition go forward, I believe, late August or early
15 September, so we started with Mr. Adelson's collection, and
16 then switched to Mr. Leven's. And we were -- that's just the
17 way we did it.
18 BY MR. BICE:
19 Q But you had already reviewed Mr. Jacobs's; correct?
20 A I had --
21 Q Or prior to July 28, 2011.
22 A I had looked at some. I had not, in terms of a
23 review for document production, done a document production
24 review of Mr. Jacobs' ESI because I didn't look at every email
25 on -- that was contained within the collection on Mr.

1 Kostrinsky's computer.

2 Q Well, we know that. Okay. But we do know that you
3 found 100 of them significant enough to print or so.

4 A About 100 of them, yes, sir.

5 Q Right? And you printed them for a reason, I assume?

6 A I did, sir.

7 Q Okay. Did you produce, since you had already
8 printed those in May of 2011, did you produce any of those to
9 Campbell and Williams in any of your 16.1 disclosures?

10 A No, I did not.

11 Q Did you list them on a privilege log under the
12 theory that you felt that you were entitled to withhold them
13 from production to them?

14 A I did not because the -- my review was not for
15 purposes of the production.

16 Q Did you ever review them other than the number of
17 hours you said that you did it in May, did you ever review
18 them again, the emails?

19 A No, sir, I did not.

20 Q Did anyone else from your office?

21 A Yes, sir.

22 Q Who did?

23 A Mr. Jones.

24 Q When did he do that?

25 A I don't know exactly, but my recollection is maybe a

1 day or two or three after I reviewed them.

2 Q Okay. What was the purpose of his review?

3 A The same as mine, as to begin to have an
4 understanding for purposes of the litigation that we had with
5 Jacobs, what the merits of his claim was, whether there was
6 any merit to his claim, what our defenses would be with
7 respect to those claims that he had made.

8 Q Okay. And so in your review of this you realized
9 that all of these documents were relevant to the case, is that
10 fair?

11 A The ones that I printed off I believed would have
12 been produced in the ordinary course once we resolved the
13 issue with the Macau Data Privacy Act.

14 Q Okay. But you never told Mr. Williams or Mr.
15 Campbell that you were withholding documents, Mr. Jacobs's
16 emails, on the basis of the Macau Data Privacy Act, did you?

17 A I believe that I did. I believe in court hearings,
18 particularly the June 9th hearing where I referred to the fact
19 that the Macau Data Privacy Act also implicated documents in
20 the possession and that we would also have to go through the
21 same process under the Macau Data Privacy Act. And I don't
22 have a reference.

23 THE COURT: It's on page 55.

24 BY MR. BICE:

25 Q Why were you looking at them if you believed that

1 there's --

2 A Let me -- let me just finish.

3 Q Sure.

4 A "That same data privacy act, Your Honor, also

5 implicates communication that may be on servers and email

6 communication, hard document, hard copy documents in Las

7 Vegas." The Court says, "Here in the States." Mr. Peek,

8 "Sands, as well." And then the Court says, "Well, you can

9 take that position." And then I go on and tell her that we're

10 told that it does -- it is implicated.

11 Q Okay. When was the Macau Data Privacy Office,

12 whatever it's called, actually told about the emails being

13 brought over here?

14 MR. McCREA: Objection, Your Honor. Attorney-client

15 privilege.

16 MR. BICE: How -- when a government agency is told

17 something, Your Honor --

18 THE COURT: No, I was coughing. I'm sorry.

19 MR. BICE: I apologize.

20 THE COURT: Mr. Peek, to the extent that you had

21 direct conversations with the governmental agency, as opposed

22 to learning of the communications with the governmental agency

23 from your client, I would love to hear about it.

24 THE WITNESS: Your Honor, I didn't have any

25 conversations --

1 THE COURT: Okay.

2 THE WITNESS: -- myself with the office of personal
3 data protection.

4 BY MR. BICE:

5 Q Well, you -- you were quoting this transcript --

6 MR. BICE: And, Your Honor, this is, I guess, where
7 we have a bit of a disagreement with their position is, for
8 example, Mr. Peek told you clear back in 2011 --

9 THE WITNESS: I don't know if that's a question or
10 if you're just arguing with the Court.

11 THE COURT: No, he's arguing --

12 MR. BICE: I'm arguing with the Court --

13 THE COURT: -- with me on my ruling --

14 MR. BICE: -- a little bit right now.

15 THE WITNESS: Oh. I'm sorry.

16 THE COURT: -- of the objection.

17 THE WITNESS: My apologies.

18 THE COURT: You didn't realize he was arguing with
19 me now, not you?

20 MR. BICE: That Mr. Peek had told you, well, they
21 were told something by the data --

22 THE COURT: I know what it says.

23 MR. BICE: Okay. Well, he obviously wasn't told
24 that directly as he's just acknowledged.

25 THE COURT: Right.

1 MR. BICE: So we get this sort of selective waiver.
2 We'd like to tell you some things, but then when something is
3 bad we don't want to answer questions.

4 THE COURT: Mr. Bice, for purposes of this
5 hearing --

6 MR. BICE: Yes.

7 THE COURT: -- I'm going to honor the assertion of
8 the privilege.

9 MR. BICE: Okay.

10 THE COURT: I am assuming that prior to your
11 evidentiary hearing on your Rule 37 motion I might have some
12 briefing related to some of these privilege issues so I can
13 rule on them in a more detailed and thoughtful manner.

14 MR. BICE: Understood, Your Honor.

15 THE COURT: Okay.

16 BY MR. BICE:

17 Q Do you recall doing a supplemental production on
18 August 1, 2011?

19 A I do, sir.

20 Q Okay. Do you recall doing another one on August 5,
21 2011?

22 A I know that we did some rolling productions.

23 Q Okay.

24 A I know that we had conversations with Mr. Campbell
25 and Mr. Williams in which we said to them, and we presented at

1 status conference to the Court, is that we're going to be
2 delayed because of the fact that there are -- there is
3 documents that we have that are implicated by the Act, and so
4 we're going to have to resolve that. I mean, we made two or
5 three productions in the summer of 2011.

6 Q Okay. When you say that you disclosed it to the
7 Court, again, is that the -- the three lines on page 55 of the
8 transcript, or do you believe that you disclosed it to the
9 Court in another context?

10 A I believe we -- I don't remember if it was in this
11 context or another context. I know that we came to the Court
12 and advised the Court that we couldn't meet a certain date to
13 complete production, whether it was in this hearing or another
14 one. And I know that there's correspondence between Mr.
15 Williams and my office where we're talking about the ability
16 to meet -- I think the first deadline was sometime August 1st,
17 and it may have been even -- I think it might have been July
18 1st, and then I think we said we had to move that because of
19 the Macau Data Privacy Act.

20 Q Well, let's go to page 54 of the same transcript,
21 right before you made the statement to the Court.

22 A Yes, sir, I'm here.

23 Q Okay. Do you see line 20 of the document?

24 A The Court's comment? Yes, sir.

25 Q You see where the Court says, "All right. You're

1 not going to consult with somebody in Macau. They're going to
2 do what they're going to do. They're going to produce
3 documents with the privilege log, which may include this
4 unusual entry for us, which is Macau privacy law, and then we
5 will deal with that someday." Do you see that?

6 A Yes, sir, I did.

7 Q Okay. And you had reviewed, and you had, in fact,
8 printed off perhaps 100, maybe more. We'll get to Mr. Jones
9 in a minute. And you knew that you had all of those; correct?

10 A Yes, sir.

11 Q And you never produced them on any privilege law;
12 correct?

13 A No, because -- well, I don't -- you probably don't
14 want to hear the answer, but --

15 Q Well, the answer is no; correct? You never -- you
16 never identified them on a privilege log so that Mr. Williams
17 and Mr. Campbell or even the Court would know that those
18 documents were in the United States.

19 A As of August 26th when the stay went into effect,
20 you are correct.

21 Q Okay. But as of June 9 and as of August -- July 28
22 when you did a supplemental disclosure and August 1 when you
23 did an supplemental disclosure and August 5 when you did yet
24 another supplemental disclosure, you never identified those
25 documents as being withheld on the basis of any Macau data

1 privacy; correct?

2 A That is correct because we were producing in the
3 manner in which Campbell and Williams wanted them produced.

4 Q Well, did you tell Campbell and Williams that you
5 had already reviewed many of Mr. Jacobs's emails and that you
6 had printed off 100 of them?

7 A No, sir, I did not.

8 Q Okay. So when you're saying that you -- they asked
9 them to be produced in a particular fashion, you never told
10 them what you had actually done; correct?

11 A I think I just said that, but I'll say it again. I
12 did not, sir.

13 Q Do you recall receiving some jurisdictional
14 discovery in this case for your client?

15 A I do, sir.

16 Q Okay. And do you recall attending hearings where
17 the Court ordered jurisdictional discovery in this matter?

18 A I do, sir.

19 Q And in responding to that jurisdictional discovery,
20 you considered the documents, the emails from Mr. Jacobs to be
21 in your clients' possession, custody, and control, did you
22 not?

23 A I did, sir.

24 Q Okay. Did you ever review those documents to
25 produce them in response to the jurisdictional discovery that

1 the Court had ordered?

2 A Did I personally, or did --

3 Q Did anyone -- did anyone representing Las Vegas

4 Sands Corp do so?

5 A Yes.

6 Q Who did?

7 A Reviewers at Munger Tolles & Olson --

8 Q And when did they do it?

9 A -- had commenced that review. I don't know when. I

10 know it's -- I know it's -- I know it's late in time.

11 Q Well, what do you mean late in time? They didn't

12 start that review until after the Court learned that the

13 documents were here, isn't that fair, Mr. Peek?

14 A That is a fair --

15 MR. McCREA: Your Honor, it seems we're going well

16 beyond the scope of what this hearing is about.

17 THE COURT: This is appropriate because they all

18 know I got mad at them and yelled at them on June 28th.

19 THE WITNESS: What I know is jurisdictional

20 discovery was ordered in the September/October time frame.

21 You did not serve a respect with respect to which had been

22 granted until December 27th of 2011, about three months after

23 you were permitted discovery. You delayed your request.

24 BY MR. BICE:

25 Q And I'm sure --

1 A We responded to it on or about January 30th, raised
2 the objections that we had, and over the course of the next
3 two or three months we had a number of meet and confers over
4 our response in the documents.

5 Q During all of those meet and confers did you ever
6 tell me that you hadn't looked at this data that you had in
7 the United States?

8 A I don't think -- I don't believe that I did tell you
9 that sir.

10 Q You don't believe, or you're quite confident that
11 you --

12 A I don't believe that I did. That's all I can say.
13 I don't have a -- I can't remember everything that I said to
14 you, Mr. Bice.

15 Q Okay.

16 A Maybe you have a better memory than I and you can
17 tell whether I did or not.

18 Q I'm positive you didn't tell me about it. I don't
19 -- I don't have a belief. I'm positive you didn't tell me
20 about it.

21 MR. McCREA: Move to strike, Your Honor.

22 MR. BICE: I suspect you're positive --

23 MR. McCREA: This is argumentative.

24 MR. BICE: -- you didn't tell me about it, either.

25 THE COURT: Bice, you can't testify. All right?

1 THE WITNESS: If you want to get up here, get under
2 oath.
3 THE COURT: Mr. Peek.
4 MR. BICE: I actually will. I have no --
5 THE COURT: Gentlemen.
6 MR. BICE: -- hesitancy to do so.
7 THE COURT: Gentlemen. You know what, it's 4:37. I
8 had to break at 4:45 anyway, so we're going to break eight
9 minutes early. We're going to let everybody come back
10 tomorrow fresh.
11 MR. BICE: Thank you, Your Honor.
12 THE COURT: I'm hopeful to see you at 10:30 in the
13 morning. Unfortunately, I have a very challenging motion
14 calendar. And we will resume with Mr. Peek's examination.
15 THE WITNESS: Thank you, Your Honor.
16 MR. BICE: Thank you, Your Honor.
17 (Court recessed at 4:39 p.m., until the following day,
18 Tuesday, September 11, 2012, at 10:30 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 HOYT, TRANSCRIBER



DATE

1 BY MR. PISANELLI:

2 Q You state down on line 24 that you hope, you were
3 representing to the Court, and anticipate being able to
4 convince the Macau court, I'm assuming that you meant convince
5 the Macau Court that you would be able to bring over the
6 Jacobs emails from Macau; correct?

7 A And anything relevant. Mr. Jacobs -- we had
8 reviewed 35 different people's emails to determine he had sent
9 a bunch of document requests, and we were attempting to in
10 good faith respond to those and look at documents that he was
11 calling for. That's why we sent so many people there to look
12 at the documents. So --

13 Q Is there a reason why you didn't send all those
14 people to Las Vegas Boulevard instead of Macau?

15 A I had no understanding those same documents were in
16 Las Vegas. Is that accurate?

17 Q You tell me.

18 A I can't. I had no idea, and I don't believe today,
19 as a matter of fact, that what was in Macau with these 35
20 people even remotely, with or without whatever I was told at
21 the time versus what I know now. There is many, many, many,
22 geometrically more documents in Macau that were never moved
23 once we learned about the Privacy Act from Macau to here.

24 Q Geometrically more documents that relate to the
25 Jacobs case?

1 A Yes, sir.

2 Q How would you know that?

3 A Because Mr. Ma and others from my office went to
4 Macau to review them.

5 Q And they actually performed word search terms to
6 figure out how many documents related to the Jacobs dispute
7 were in Macau?

8 A You bet they did.

9 MR. McCREA: Objection, Your Honor. Invokes the
10 attorney-client privilege.

11 THE COURT: Okay.

12 BY MR. PISANELLI:

13 Q And did they do this --

14 THE COURT: Do you want me to strike it, that Mr. Ma
15 went over and looked at thousands of documents or terabytes of
16 documents, since she already answered it before you got the
17 objection out?

18 MR. McCREA: Yes.

19 THE COURT: Strike it.

20 BY MR. PISANELLI:

21 Q Did anyone from Sands China review the document --
22 the Jacobs email that were sent over from Macau?

23 A I thought you asked that before. To my knowledge,
24 no.

25 Q By the way, you say that you learned that a hard

1 drive came over. In relation to the two trips you've told us
2 about to Macau when did that occur?

3 A That's what I -- I don't know. It certainly -- it
4 didn't occur before I went -- to my knowledge. it didn't occur
5 before I went in November. Whether I knew it in May I just
6 don't know.

7 Q Turn to page 58, will you.

8 A 58? I have 58 in front of me.

9 Q Now, if you will look at your remark on line 7,
10 where you say, "Your Honor you made a comment, well you should
11 be able to start producing documents now." do you see that?

12 A I do.

13 Q Take your time, because I want to make sure you
14 understand the context in which you were making that remark.
15 And I believe you were doing so in relation to Her Honor's
16 remarks on page 56, lines 9 through 17, where Her Honor was
17 instructing that she wanted non-implicated documents to be
18 produced immediately. And take a moment so that you get your
19 bearings on what I'm talking about.

20 A 56, what line?

21 Q Lines 9 through 17.

22 A Well 9 is Mr. Peek. Do you understand that?

23 Q Understood. But Your Honor was responding to Mr.
24 Peek's statement that he wasn't going to be able to make his
25 deadline.

1 A Okay, just give me a second.

2 Q And Her Honor starts on line 11 saying that she
3 understood but she wanted non-implicated documents produced
4 immediately.

5 A Okay.

6 Q Before we answer these questions, is it possible Ms.
7 Glaser, that you were aware of the Jacobs emails being
8 transferred to Las Vegas Boulevard separate and apart from
9 your knowledge of that hard drive's delivery?

10 A No. I don't know what was on the hard drive. But
11 if there was Jacobs emails on that hard drive, I accept that
12 representation.

13 Q Point being is that you knew there were emails here?

14 A I knew there was a hard drive here, and I knew at
15 some point they had some Jacobs emails on them.

16 Q Now, in the work that you were doing in preparing
17 for the Jacobs case, you learned what Mr. Jacobs's email
18 address was, didn't you?

19 A I have no idea.

20 Q You never learned that fact?

21 A I am so computer illiterate that I -- it would be
22 surprising to me if I knew what his email address was.

23 Q Anyone on your team know what his email address was?

24 A I don't know.

25 Q Okay. As you sit here today you don't know one way

1 or another if he was on the Sands China email server or the
2 Las Vegas Sands email server?

3 A No. Except I know that he -- Mr. Jacobs worked for
4 Las Vegas Sands before he worked. I do know that.

5 Q If you don't know, that's fine.

6 A Let me just finish. I knew he worked for Las Vegas
7 Sands before he worked for Sands China. Just in terms of the
8 calendar I know that.

9 Q All I want to know is if you knew where his emails
10 housed?

11 A Well, I'm trying to answer it as candidly as I can.
12 I'm sure that there were emails of Mr. Jacobs from before he
13 ever worked for Sands China here in Las Vegas.

14 Q And you knew there was emails from the time he did
15 work for Sands China?

16 A At some point in time I knew there was some emails
17 from the time he worked in Macau.

18 Q And those were the emails that were here in Las
19 Vegas Boulevard. You knew that?

20 A You keep asking me the same question. I knew
21 sometime in 2011 that there was a hard drive that Mr.
22 Kostrinsky had sent to him from Macau. That's what I know. I
23 can't do any better than that.

24 Q So now, when Her Honor said to you -- to everyone on
25 page 56 her expectation about the production of non-implicated

1 records, you had a concern about that, did you not?

2 A Concern about what?

3 Q Her Honor's directive.

4 A Can I go back further? I don't know what the Court
5 meant by -- non-implicated by what?

6 THE COURT: I think I was talking about documents
7 that didn't relate to the MDPA so we could get moving on the
8 discovery.

9 THE WITNESS: Oh. Okay. Got it. Thank you.

10 THE COURT: Of course, it's been a year ago.

11 BY MR. PISANELLI:

12 Q You understood that's what Her Honor was saying;
13 right?

14 A Yeah. I understood that she thought that there were
15 such things.

16 Q Yes. And you told her that there were not, didn't
17 you, on page 58?

18 A I say, "My only comment to you is that we have to
19 get permission to get documents out of Macau." I was
20 specifically under that understanding or I would not have
21 represented it to the Court.

22 Q So had you known then that Macau emails from Mr.
23 Jacobs are sitting in Las Vegas Boulevard, you would not have
24 made this statement?

25 A I don't -- I'm not saying that. Because Mr. Peek

1 had said, and I'm going to repeat it, and if it wasn't clear,
2 I thought it was clear. Mr. Jacobs -- Mr. Peek was quite
3 clear that there were documents in Las Vegas that were
4 implicated. He said that in court on the record. Mr. -- we
5 had discussions with your prior counsel prior to hearing on
6 more than one occasion, at least one that I participated in
7 person and there were some telephonic ones where they were
8 specifically told unequivocally that there are documents here
9 from Macau and there was a dispute about whether or not they
10 took -- we took the position those documents did not need to
11 be produced. They took the position, oh, yes, they do.

12 Q Who's they?

13 A Mr. Campbell and Mr. Williams. Your predecessor.

14 Q So your position to Her Honor is that you on behalf
15 of Sands China had been unequivocal in your candor that there
16 were Macau documents that had been transferred to Las Vegas
17 Boulevard for the possession of Las Vegas Sands?

18 A It was -- I believe that we were candid. In
19 retrospect, I don't think we had a requirement to tell the
20 Court what was here, because we told the Court and Mr.
21 Campbell perhaps in more detail than Mr. Williams, that there
22 were documents here from Macau before we learned about the
23 Macau Privacy Act. Once we learned about it I was not aware
24 that any documents had been transferred out of Macau to here.
25 Once we learned about it, was in that April-May time period of

1 2011.

2 Q You didn't believe you had any duty to tell Her
3 Honor that documents had been transferred here?

4 A We told the Court that there were documents from
5 Macau. I thought it was candid. I appreciate the fact that
6 the Court may not think we were candid enough, but we told Mr.
7 Peek in responding on behalf of Las Vegas Sands and he said --
8 I don't know where it is exactly in the transcript. He said.
9 there are documents from Macau in Las Vegas. That's how I
10 understood it.

11 Q Let's just look right there on page 58. Her Honor
12 asked you, "All documents from Sands China have to get
13 permission from the Office of Privacy?" What did you say?

14 A Yes.

15 Q You said, "Oh, yeah. Absolutely."

16 A Absolutely. And I meant it. Documents that were in
17 Macau could not leave Macau without the permission of the
18 government.

19 Q At what point did you seek government advice on the
20 documents, the emails that had already been transferred to Las
21 Vegas, that would have given you the ability to say that to
22 Her Honor?

23 A I can only tell you I personally didn't, the client
24 did.

25 Q Prior to you making this statement?

1 A Yes.

2 Q So the client knew prior to you making statement the
3 position you were taking with this Court?

4 MR. McCREA: Objection, Your Honor. Attorney-client
5 privilege.

6 THE WITNESS: I would love to be able to respond to
7 you, sir.

8 MR. PISANELLI: Can't give half of the client's
9 story, Your Honor.

10 THE COURT: Mr. Pisanelli, if we could move on.

11 MR. PISANELLI: Yes, ma'am.

12 BY MR. PISANELLI:

13 Q Let's take a look at what you said during the July
14 19th hearing starting at page 5. Let me know when you're
15 reading, Ms. Glaser.

16 A I have page 5 in front of me.

17 Q Do you recall in that hearing having a debate with
18 Mr. Campbell about whether Sands China would be obligated to
19 produce documents in this case whether located in Macau or
20 not?

21 A No. May I read this? Is that what this says?

22 Q Do you recall accusing Mr. Campbell of being
23 disingenuous -- you'll see that on page 5 -- for making such
24 an assertion?

25 A I'm going to read the page, if I might.

1 THE COURT: Please feel free to to give yourself
2 context for the rest of Mr. Pisanelli's questions.

3 THE WITNESS: Obviously the Court disagreed with me
4 about my understanding of the case. I've read from line 3 of
5 page 5 to line 6 of page 6.

6 BY MR. PISANELLI:

7 Q By July of 2011 you knew the hard drive was here;
8 correct?

9 A I may have known that. I just don't recall when I
10 learned it, but I may have.

11 Q Now, on page 6 you tell Her Honor that, "We," and
12 I'm assuming we means Sands China, right, on line 5, "We are
13 on the cusp of violating the law, Your Honor"? You see where
14 you said that?

15 A Yes, I do.

16 Q Now, you said that with knowledge that documents
17 were already coming here in the ordinary course of business;
18 right?

19 A You keep saying -- you act as this is present tense.
20 I knew that they were coming in the ordinary -- had come in
21 the ordinary course of business before we learned about the
22 Privacy Act, which was in the April-May 2011 time period. If
23 you're asking me did I know if they continued after that time,
24 the answer, as I've said before, is no.

25 Q And I apologize for this, Ms.Glaser. Are you

1 testifying that you don't know if the information from Macau
2 was shut down, or you were informed that it was? To use your
3 words that we'll get to later, that a stone wall was put up?

4 MR. McCREA: Objection, Your Honor. Calls for
5 attorney-client privilege.

6 THE COURT: Okay. If we could move on.

7 BY MR. PISANELLI:

8 Q My point is when you told Her Honor that you were on
9 the cusp of violating the law you knew that Sands China was
10 already sending documents here; right?

11 A No. I can tell you what I know. I knew about
12 sometime in 2011 the hard drive. I can't tell you exactly
13 when I knew it. And I knew documents prior to learning about
14 the Privacy Act had been sent in the ordinary course of
15 business. Those documents were located in Las Vegas in the
16 possession of Las Vegas Sands. I knew that.

17 Q What did you mean by use of the term "cusp?" On the
18 verge of?

19 A Do you want me to tell you what I meant and why I
20 said it? Because why I said it I think is privileged. I
21 meant that if we had provided documents that were in Macau
22 here, we would, at least as were told, be violating the law.

23 Q If you provided additional documents that weren't
24 already here?

25 A Correct. And with respect to the documents that

1 were here we didn't know what was going to -- sometime in
2 2011 there was a discussion about it. I don't know if you
3 want me --

4 MR. McCREA: Don't divulge those --

5 THE COURT: I haven't heard an objection on
6 attorney-client privilege.

7 MR. McCREA: I'm going to assert it, yes.

8 THE COURT: Okay. I was waiting for you to say
9 something.

10 BY MR. PISANELLI:

11 Q By this time you knew that Steve Peek had been
12 reviewing documents on Las Vegas Boulevard?

13 A I knew that Steve Peek and his office -- I don't
14 know about Steve personally but I know that Steve Peek and his
15 office had reviewed documents. Is it Las Vegas Boulevard?
16 It's at Las Vegas Sands.

17 Q Fair enough. I keep using that phrase, and I'm
18 assuming that's where the office was. So thank you for the
19 clarification.

20 Okay. And in your judgment there was no need to
21 tell Her Honor when you make a statement that we're on the
22 cusp of violating the law that Las Vegas Sands is already
23 reviewing those same records here in Las Vegas?

24 A It's not the same records. I don't know why you
25 keep saying that. I had never had that understanding, ever.

1 Q Now, on the next page, page 7, you tell Her Honor --
2 A This is highlighted.
3 THE COURT: That's me, sorry. Just so you guys
4 didn't know that I prep sometimes it has tabs on it.
5 BY MR. PISANELLI:
6 Q -- that there are terabytes of documents that are
7 going to require you to go to Macau. Do you see that?
8 A Yep.
9 Q And that you're now allowed to look at the documents
10 at a station here. You see that?
11 A I do.
12 Q Now, if I understand your testimony a moment ago,
13 you knew that Steve Peek was at a station here reviewing
14 documents from Macau; right?
15 A I knew he was reviewing documents in Las Vegas --
16 Q That came from Macau?
17 A I assumed some of those documents came, because he
18 told us in court that they did.
19 Q Right. And so you're telling Her Honor that all of
20 these records -- you have to go on behalf of Sands China to
21 Macau to read them, but that Las Vegas Sands can stay here in
22 Las Vegas and read documents that came from Macau. That is
23 the position you were offering this Court?
24 A That is a complete misrepresentation, and you know
25 it.

1 Q Those are the black letters of what I'm reading.

2 A No, that's not correct. I had no knowledge -- I
3 can't speak for Mr. Peek -- no knowledge at all that the
4 documents we were reviewing, these terabytes -- and I still
5 don't believe those terabytes of documents were anywhere other
6 than Macau, ever.

7 Q And you didn't believe that those terabytes had
8 anything to do with the Jacobs mail?

9 A Sure I did. The terabytes surely did in Macau. I'm
10 sure they did. There were emails from a variety of people, 35
11 different people to and from each other and ccs that involved
12 the Jacobs lawsuit. That's what Mr. Ma and others in my
13 office had reviewed.

14 Q My question to you is very simple. You were telling
15 Her Honor that you were going to have to go to Macau --

16 A True.

17 Q -- and follow this process to review the Jacobs
18 emails; correct?

19 A The documents that had been requested by Mr. Jacobs
20 that were in Macau absolutely we had to go to Macau and
21 review, they could not be reviewed here. I believed it then,
22 and I believe it now.

23 Q And you were telling Her Honor that with complete
24 knowledge that Las Vegas Sands was reviewing the Jacobs emails
25 here in the United States?

1 A I'm going to say it again, and if I haven't been
2 clear --

3 Q It's a yes or no question. That's all you have to
4 say.

5 A I'd like to answer the question, but your question
6 is loaded, sir.

7 THE COURT: So if you could explain, please.

8 THE WITNESS: Thank you.

9 THE COURT: Then I'm going to ask for a
10 clarification, because I'm getting confused.

11 BY MR. PISANELLI:

12 Q Okay. Go ahead.

13 A There was -- you are equating the documents that
14 were in Macau with the documents in Las Vegas. Not only did I
15 -- didn't believe it then, I don't believe it now, and it's,
16 to my knowledge, still not true. The documents that were in
17 Macau, the terabytes that you're talking about, to my
18 knowledge had never been provided in Las Vegas, ever. And I
19 believe that today, and I believed it when I made the
20 representation to the Court.

21 Q Okay.

22 THE COURT: Can I stop you while I ask my question.

23 MR. PISANELLI: Yes, of course.

24 THE COURT: All right. You keep harking back to
25 this comment that Mr. Peek had made during our June 9th

1 hearing about some documents the Sands had perhaps being
2 involved with the MDPA, as well. At that time that statement
3 was made it seemed to be like it was a discussion about
4 documents from the ordinary course of business, as you've
5 referred to it.

6 THE WITNESS: I understand. And you know what, if I
7 were you I might have assumed that Your Honor. I'm not sure I
8 knew also about this hard drive at that time, but I honestly
9 believed whatever it was was a complete disclosure, because --
10 I do want to clarify this if I might -- because our
11 conversations with Campbell and Williams were such they knew
12 that there were documents here. We never described for them,
13 to be completely -- I don't want you to think that I did,
14 because I certainly didn't. We never described for them
15 exactly what they were. They were going to be asking for the
16 identification of those documents in due course, and they
17 never did. But we weren't hiding the fact that documents were
18 here. We did not disclose to Your Honor what those documents
19 were, and I'm the first to acknowledge that. We did not
20 disclose what they were. But we did disclose, and I thought
21 it was sufficient for whatever my state of knowledge was at
22 the time that Mr. Peek was telling Your Honor and reiterating
23 what we had told Campbell and Williams privately that there
24 were documents here in Las Vegas. They were very concerned
25 that they didn't believe anything that had initially come from

1 Macau for whatever reason, they wanted to make sure that they
2 were not waiving the right to move to compel those documents,
3 because they didn't think the Macau Privacy Act applied to
4 those documents, documents already here. We took a position,
5 yes, they do and we told them that we did. We suggested that
6 they hire their own Macau privacy lawyers in Macau, as we did,
7 and we asked them to do that. And as far as I know, they did.
8 But I don't know that for a fact.

9 THE COURT: -- told us [inaudible].

10 THE WITNESS: I'm sorry?

11 THE COURT: He told us he wasn't going to hire his
12 lawyer while we were here in court one day.

13 THE WITNESS: You're right, he did. But I'm not
14 sure if he did or not.

15 THE COURT: I don't know.

16 THE WITNESS: He was out of the case shortly after
17 that.

18 THE COURT: So your understanding at the time the
19 statement was made on June 9th to me by Mr. Peek that it might
20 be something other than ordinary course of business documents?

21 THE WITNESS: Yes, I did. Whatever was here, he was
22 telling you we got those documents, and we were letting the
23 Court know that. That's what my understanding was. If I look
24 back on it, should we have been more specific and said, by the
25 way, there's a hard drive of documents that I know were sent

1 to Mr. Kostrinsky? I don't know. I don't know. I'm trying
2 to be as candid as I can be. But it certainly wasn't intended
3 to mislead Your Honor. Certainly by -- I'm going to speak for
4 Mr. Peek, certainly by Mr. Peek and I. We were not intending
5 -- but we did think it was important that he disclose to you
6 that there were documents in Las Vegas from Macau that had
7 come before. And that's true. There were.

8 THE COURT: Okay. Thank You.

9 BY MR. PISANELLI:

10 Q Let me make sure I'm understanding your terms.
11 You've used this phrase several times now "the ordinary course
12 of business." Did you consider the delivery of the Jacobs
13 emails to Las Vegas Sands to be an ordinary or extraordinary
14 delivery of information?

15 THE COURT: And by Jacobs emails you're talking
16 about the group of emails that were copied and sent, as
17 opposed to an individual email that was sent while he was
18 employed?

19 MR. PISANELLI: Yes, Your Honor. Thank you for the
20 clarification.

21 THE WITNESS: I didn't view it as ordinary or
22 extraordinary. I viewed it as different than in the ordinary
23 course.

24 BY MR. PISANELLI:

25 Q Okay. Fair enough. All right. So now, getting

1 back to the statements that you've made during this hearing,
2 you told Her Honor that --

3 A Which page are we on?

4 Q Same page 7. You told Her Honor that Justin Jones
5 could not go to Macau to review the Sands China documents;
6 right?

7 A That's what we were told.

8 Q And you made that statement, and you see a few lines
9 down to line 18, because, quote, "Only people that can go are
10 people that represent Sands China, and they do that in Macau,"
11 end quote. You see that?

12 A I do.

13 Q At that point you knew Las Vegas Sands, not Sands
14 China, was reviewing information from Macau; right?

15 A You've asked me the same question.

16 Q This is a new statement, that's why I'm asking you.

17 A I don't know if I knew about the hard drive at that
18 point, but I certainly knew that respect to documents in Macau
19 nobody else was allowed to go.

20 Q Well, let's focus on this hard drive, because I'm
21 not following you. I think you -- you told us a moment ago
22 you knew the hard drive came from Macau; right?

23 A I did.

24 Q And you knew that Steve Peek and his team were
25 reviewing documents from Macau; right?

1 A I knew that Mr. Peek and his colleagues were
2 reviewing documents on a server or from a server in Las Vegas.
3 Q That came from Macau?
4 A Well, things in the ordinary course of business I
5 knew -- I assumed he was reviewing.
6 Q You assumed he was reviewing the hard drive that you
7 just told us was outside of the ordinary course of business.
8 A I believed it was outside the ordinary course of
9 business.
10 Q Right. So when you said, only people that can go
11 are people that represent Sands China, that was a knowingly
12 false statement?
13 A Not at all.
14 Q You knew that Mr. Peek was reviewing Sands China
15 records; right?
16 A I knew -- Mr. Peek?
17 Q Yes.
18 A No. Mr. Peek was reviewing whatever was in Las
19 Vegas.
20 Q From Macau?
21 A I assumed he was reviewing whatever was in Las
22 Vegas. I'm assuming the documents from Las Vegas included
23 documents from Macau.
24 Q And you knew that Mike Kostrinsky, lawyer for Las
25 Vegas Sands, was doing that?

1 A I knew he was reviewing documents in Las Vegas.

2 Q You knew that O'Melveny Myers, counsel for Las Vegas
3 Sands, was reviewing the same records?

4 A Well, that I know, yes. I knew that.

5 Q You knew there was a whole battery of Las Vegas
6 Sands lawyers that were reviewing Sands China documents when
7 you told Her Honor that the only people who can review them
8 were Sands China lawyers.

9 A No, that's not true. What I knew was the documents
10 were being reviewed by Mr. Peek and his office in Las Vegas
11 that belonged to Las Vegas Sands and were in the possession of
12 Las Vegas Sands. With respect to Sands China documents,
13 nobody, and we were explicitly told this other than Sands
14 China lawyers, couldn't take anybody else to Macau. They were
15 not allowed to be transported here, they were not allowed to
16 be put on the server and looked at here, they had to be looked
17 at in Macau.

18 Q And you are telling Her Honor that you found no
19 inconsistency in that statement to you in light of everything
20 you knew about the exchange of information between Sands China
21 and Las Vegas Sands and all of the work that Steve Peek was
22 doing to review it?

23 A Yes sir.

24 Q Okay. On the next page, page 8. This is where you
25 are explaining to Her Honor this protocol that has to be

1 followed before a document in Macau can be reviewed; is that
2 right?

3 A From line 7 through 24, yes.

4 Q And at the risk of belaboring the issue, you knew at
5 the time that you were explaining this to Her Honor that she
6 did not know that there was a hard drive that had been
7 delivered from Macau without following this protocol; isn't
8 that right?

9 A I don't know what I knew when I made this
10 representation. I did know in 2011, I want to be very clear,
11 at some point I knew that Kostrinsky had a hard drive sent to
12 him. There was not an intention by me or to my knowledge by
13 anybody else to ever misrepresent to the Court and indeed Mr.
14 Peek made a representation. With hindsight, one -- you or the
15 Court may look at it and say, you should've told us exactly
16 what you were talking about. We didn't do that.

17 Q Let me ask it another way. You knew at the time
18 that you made this statement that neither Mr. Peek nor anyone
19 from Las Vegas Sands had followed this protocol you were
20 describing to Her Honor?

21 A They weren't required to follow the protocol.

22 Q We agree. Now turn to page 10. Here -- and take
23 your time if you need to put in context what Her Honor was
24 directing. But here on line 6 --

25 A Hold on one second. May I read this, please?

1 Q Of course. Take your time. Let me know when you
2 are ready.

3 A I've read down to the Court saying, "I understand,"
4 line 10.

5 Q Here you accuse the Court on line 6 of putting Sands
6 China in harm's way, don't you?

7 A I mean -- it says what it says.

8 Q That's the message you are intending to send to her?

9 THE COURT: I kept telling her to file a motion.

10 THE WITNESS: This transcript speaks for itself.

11 What I said -- I don't think this is a misrepresentation of
12 what I said.

13 BY MR. PISANELLI:

14 Q Well, let's wait for my question. Before you told
15 Her Honor that she was doing, quote, "tremendous damage to
16 Sands/China" is it your testimony today that you believe at
17 the time that you made this remark that Her Honor knew that
18 documents had been transmitted from Macau to Las Vegas?

19 A I think Mr. Peek by July 19th had told the Court
20 that there were documents from Macau in Las Vegas. I do
21 believe that. Do I believe she understood that there was a
22 hard drive? I don't think so.

23 Q In your best judgment you decided at that time that
24 there was no need to tell Her Honor that the hard drive had
25 come here when you told her that she was the one putting Sands

1 China in harm's way?

2 A I don't understand your question.

3 Q You didn't think Her Honor needed to know that as
4 part of your statement to her that her ruling was putting
5 Sands/China in tremendous -- she was causing tremendous damage
6 to your client. You didn't think at that time that she needed
7 to know about that hard drive? Is that what your testimony
8 is?

9 A I don't think one has anything to do with the other.
10 This was not about that.

11 Q Okay. On page 11. I'm sorry there's redundant
12 statements. Let's just stay where we are on page 10.
13 You say --

14 A Actually page 11 is sort of interesting.

15 Q Well, I'm sure your counsel will give you plenty of
16 time to explain those remarks. I want to focus right now
17 still starting on page 10, line 6. You state that, "I think
18 you are doing tremendous damage to Sands China which is by law
19 required under the Hong Kong stock exchange -- rules by law
20 required to act independently and separate from Las Vegas
21 Sands." You see that?

22 A I do.

23 Q Was it your intent to tell Her Honor in that
24 statement that not only was Las Vegas Sands obligated, but
25 that it actually does operate independent of Las Vegas Sands?

1 A I think you misspoke.
2 Q Misspoke?
3 THE COURT: You meant Sands/China?
4 MR. PISANELLI: I'm sorry?
5 THE COURT: You meant Sands/China has to be
6 independent?
7 MR. PISANELLI: I'm sorry. My mind's racing faster
8 than my mouth can keep up, which is unusual. Usually it's the
9 other way around.
10 BY MR. PISANELLI:
11 Q So let me restate it. Was it your intent to tell
12 Her Honor that Sands China was obligated to and did act
13 independently of Las Vegas Sands?
14 A I was saying that, yes.
15 Q And you're aware that Las Vegas Sands in this very
16 case has stated the exact opposite?
17 MR. McCREA: Your Honor, I object to the scope of
18 this examination again.
19 THE COURT: Sustained.
20 BY MR. PISANELLI:
21 Q You knew at the time that you made that statement,
22 Ms. Glaser, that Las Vegas Sands controls Sands China, didn't
23 you?
24 MR. McCREA: Same objection, Your Honor.
25 THE COURT: Sustained.

1 BY MR. PISANELLI:
2 Q Let's look at page 12.
3 A May I start reading on page 11?
4 Q Yes, of course.
5 THE COURT: And, Ms. Glaser, I'll tell you, since
6 you are a witness today, at any time if you need a break, you
7 let us know. Because you are the witness. And you've got the
8 M&M's and the water there.
9 THE WITNESS: Thank you, Your Honor.
10 Understood. I read down to line 15.
11 BY MR. PISANELLI:
12 Q I wanted to focus starting at line 2.
13 A On page 12?
14 Q Yes. Here you tell Her Honor that, "The government
15 investigations that are occurring...." do you see that?
16 A I do.
17 Q What government investigations are you referring to
18 there?
19 MR. McCREA: Your Honor, scope again.
20 THE COURT: Overruled.
21 THE WITNESS: I am assuming, but -- I don't remember
22 100 percent, but I'm assuming I was talking about the
23 investigations by governmental authorities here.
24 BY MR. PISANELLI:
25 Q The SEC?

1 A I think it was two different ones, but --
2 Q Department of Justice?
3 A Yeah.
4 Q You were aware of both of those at the time you made
5 this remark?
6 A Yes.
7 Q And you told Her Honor that those government
8 agencies were hitting the same stone wall that was being set
9 up for Mr. Jacobs in this case?
10 A I did.
11 Q And you said that, "They are not even permitting the
12 government to come and look at the documents." Who's the
13 "they?" Is that Las Vegas Sands or Sands China?
14 A I understood it was the Office of Privacy.
15 Q Okay. So it was the Macau --
16 A That's how I read that.
17 Q I'm sorry. Thank you for the clarification. Macau
18 government is not allowing the United States Government to
19 look at the Sands/China records; that's what you're saying?
20 A That's my understanding.
21 Q And at this point you didn't think Her Honor needed
22 to know that while the United States Government couldn't
23 review these documents, Steve Peek could?
24 A It's a different group of documents, sir.
25 Q All right. Let's focus on the documents that we're

1 talking about --

2 A And I don't know why you keep doing that.

3 Q -- with Steve Peek. The Steve Jacobs emails. You
4 understand that's what I'm talking about right now?

5 A We've done this before. I was very clear with you.
6 I said to you there was a hard drive that came over from Sands
7 China from Macau. I understood that. Sometime I learned that
8 in 2011. I did not disclose that to the Court. I understand
9 that. I don't know when I learned it in 2011. The documents
10 that were in Macau were completely unrelated, to my knowledge,
11 and they were many, many geometrically more in Macau, to my
12 knowledge, than had ever been provided here in Las Vegas
13 Sands.

14 Q Very good. So your statement here about the United
15 States Government hitting a stone wall was intended to tell
16 Her Honor that you were only talking about the terabytes in
17 Macau?

18 A Correct.

19 Q You weren't suggesting to Her Honor that the United
20 States Government couldn't even get access to what Steve Peek
21 had?

22 A I assumed that they could get whatever they wanted
23 from Las Vegas Sands.

24 Q And you understood that that's what Her Honor knew
25 at this time?

1 A I'm not sure I knew what the -- I knew that the
2 Court had been told in June about documents being here from
3 Macau without any elaboration. I knew that when this
4 occurred. I'm not sure I'm answering your question.

5 Q I think you are. But to be clear, you're stating
6 that it was your understanding the United States Government
7 could have access to the Jacobs emails that were in Las Vegas.
8 You were just telling her there's a stone wall for the stuff
9 that's still in China. Do I have it right?

10 A I'm assuming they could serve a subpoena on Las
11 Vegas Sands and get whatever was here. But that's -- I'm
12 saying that to you now. I'm not sure I thought about it at
13 the time.

14 Q Well, then help me understand only a couple of lines
15 later, where you say that, "There are no documents that have
16 been produced from Sands China to the federal government in
17 any way, shape, or form and I need to be very clear about
18 that, Your Honor." You even just before that state that,
19 "It's only Sands China lawyers that are being allowed to start
20 to review this process." How, Ms. Glaser, can you make that
21 remark and acknowledge in just the immediate breath preceding
22 that you thought the United States Government could have
23 access to the Jacobs emails that were in possession of Las
24 Vegas Sands?

25 A I don't see the parallel at all. The documents that

1 were at Las Vegas Sands, I'm assuming the United States
2 Government could subpoena those documents and get those
3 documents. The documents that were sitting in Macau, the
4 terabytes, there was not any access, to my knowledge, the
5 United States Government had, period, to those documents. And
6 there was great frustration about that that I was made aware
7 of.

8 Q And so your statement that there have been no
9 documents produced to Sands to the federal government in any
10 way, shape, or form was intended to tell Her Honor she was
11 supposed to understand with the exclusion of the Jacobs
12 emails?

13 A You keep saying Jacobs emails. It's whatever was on
14 that hard drive was on that hard drive.

15 Q Okay. I'll use your words. With the exclusion of
16 the hard drive that came from Macau, Your Honor was supposed
17 to understand that from your words?

18 A I thought in due course the documents that were in
19 Las Vegas were going to be produced not only to the United
20 States Government, but in this case. And there was never an
21 attempt to avoid that.

22 Q But you use the words "no documents in any way,
23 shape, or form. You didn't say, with the exception of the
24 hard drive, did you?

25 A You mean with the exception of the documents already

1 in Las Vegas? I didn't say that.

2 Q That's right. You didn't. And a matter of fact,
3 the statement in and of itself, separate and apart from the
4 hard drive, is untrue, also, isn't it?

5 A No, it's not sir.

6 Q Sands China actually has produced documents to the
7 federal government, hasn't' it?

8 Q I am not -- no. I'm not aware of that. That may
9 be. I'm not aware of that.

10 THE COURT: Mr. Pisanelli, we're going a bit far
11 afield.

12 MR. PISANELLI: Well, Your Honor, it's merely to
13 point out this statement that nothing has been produced to the
14 federal government is our understanding is not a true
15 statement.

16 THE COURT: We're still going a little a far afield
17 from this hearing.

18 MR. PISANELLI: Fair enough. I'll move on.

19 THE WITNESS: Your Honor, I'm not aware to this day
20 that there are. I certainly wasn't aware at the time --

21 THE COURT: Doesn't matter to me today. It may
22 matter to me later.

23 BY MR. PISANELLI:

24 Q So before we wrap up this particular hearing, to
25 make sure that I understand your point, since we now appear to

1 be excluding the hard drive, you understood that the MDPA did
2 not apply to the hard drive that came over from Macau?

3 A No, I did not understand that. I didn't know. And
4 I can tell you that we got advice that I don't think I'm
5 supposed to disclose. But we got advice in that regard. If
6 you want -- if there's no objection, I'm glad to disclose what
7 I've been told.

8 MR. McCREA: There's an objection.

9 THE WITNESS: I'm sorry?

10 MR. McCREA: We object. Attorney-client privilege.

11 BY MR. PISANELLI:

12 Q Let's go the hearing of January 3rd of this year.

13 A 2012?

14 Q Yes. Let's take a look starting at the very last
15 line of page 41.

16 A I'm sorry?

17 Q Page 41.

18 A Do you want me to start on any particular line?

19 Q You said to Her Honor, "One of the issues that's
20 going to come up --"

21 A Can you tell me where you're reading from?

22 Q Oh. I'm sorry. Last line of page 41, going down to
23 line 9 of page 42. Take your time and let me know when you're
24 ready.

25 A I see it.

1 Q Here you're telling Her Honor about your position of
2 the -- your concern about Mr. Jacobs taking his laptop out of
3 Macau; fair enough?

4 A I don't know if it's his laptop. I said, "He's
5 taken documents on his hard drive and he's removed them from
6 the jurisdiction of Macau."

7 Q Right. You didn't say anywhere in this hearing that
8 Las Vegas Sands did the same thing. did you?

9 A It's not the same thing. He took 11 -- to my
10 knowledge, what I knew at the time was 11 gigabytes, whatever
11 that means, but it's a lot of documents, and I believed at the
12 time there was a hard drive that I've never seen to this day
13 with documents on it. So it was in my view apples and
14 oranges. But in hindsight, we should have said to the Court
15 -- you can make that argument, you should have said to the
16 Court, and, by the way, there is a hard drive that has come
17 over that's in the possession of Las Vegas Sands.

18 Q I will agree with you on that on point.

19 MR. PISANELLI: Your Honor, one moment.

20 THE COURT: Yes. How long do you gentlemen think you
21 have on your examination?

22 MR. PISANELLI: No further questions at this time,
23 Your Honor.

24 THE COURT: Thank you.

25 MR. McCREA: Can we have a moment?

1 THE COURT: Yes. I'm asking you to decide if I want
2 to take my break now or not.

3 MR. BRIAN: Would it be possible to take the break
4 and let us caucus, Your Honor?

5 THE COURT: Yes it would.

6 MR. BRIAN: That would be great. Thank you.

7 THE COURT: Ten minutes.

8 (Court recessed at 3:07 p.m., until 3:15 p.m.)

1 THE COURT: So who is my examiner?

2 MR. McCREA: We don't have anything --

3 THE COURT: All right. Thank you.

4 MR. McCREA: -- for Ms. Glaser.

5 THE COURT: Ms. Glaser, you can step down. Have a
6 nice afternoon. I would leave before they change their minds.

7 THE WITNESS: Your Honor, may I -- I'm going to stay
8 the rest of the afternoon, but may I be excused otherwise?

9 THE COURT: You are.

10 THE WITNESS: Thank you.

11 All right. Who is the next available person that
12 was on the --

13 THE CLERK: Your Honor, plaintiff's counsel.

14 THE COURT: Oh.

15 MR. PEEK: I'm here, Your Honor.

16 THE COURT: There were no questions for Ms. Glaser
17 from the defendant, so I'm letting her go.

1 MR. PISANELLI: Thank you, Your Honor.

2 THE COURT: You already had your opportunity to ask
3 her questions.

4 Have a nice day, Ms. Glaser.

5 MS. GLASER: Thank you, Your Honor.

6 THE COURT: Mr. Peek, do you want to go next?

7 MR. PEEK: I'm happy to. Whatever you'd like, Your
8 Honor.

9 THE COURT: I was trying to get out of town people
10 in and out if they were going to come. The only other out of
11 town person I had was Mr. Ma, and I didn't really think that I
12 needed Mr. Ma.

13 MS. SPINELLI: Mr. Ma is here, Your Honor.

14 THE COURT: I know. I didn't really think I needed
15 him, so if you guys are ready with Mr. Peek, I'm happy to go
16 with Mr. Peek.

17 MR. BRIAN: One rule of procedure, Your Honor. The
18 way we had allocated responsibility is was Mr. Lionel and Mr.
19 McCrea were going to be voicing objections with Mr. Peek. If
20 there were redirect examination, I was going to ask leave to
21 do that For reasons that we decided we were going to have them
22 make all the objections. is that acceptable? I know you
23 don't want to double up, and I won't double up on the
24 objections, but just in terms, frankly, just knowledge of the
25 case --

26 THE COURT: Since you've declared, it's okay with

1 me. It's typically not the procedure I would permit, but --
2 MR. BRIAN: I know it isn't, Your Honor. I know it
3 isn't.
4 THE COURT: -- given the lack of historical
5 knowledge that Mr. McCrea and Mr. Lionel have, I think it's
6 okay.
7 MR. BRIAN: Thank you, Your Honor.
8 MR. PISANELLI: Understood, Your Honor. One moment
9 before Mr. Peek takes the stand.
10 THE COURT: I'm listening.
11 MR. PEEK: And I told Mr. Brian of that rule, Your
12 Honor, so that he would --
13 MR. BICE: As I understand -- and I apologize, Your
14 Honor. If I understand, you're going to release Mr. Ma from
15 today. We would want to put him on the stand, Your Honor.
16 MR. PEEK: Then maybe I should step down.
17 THE COURT: Then why don't you step down and let's
18 let Mr. Ma get in and out of here.
19 MR. McCREA: Your Honor, could we get some kind of a
20 proffer? I mean, this was supposed to be your proceeding, not
21 their proceeding.
22 THE COURT: Well --
23 MR. McCREA: And you have indicated --
24 THE COURT: -- Mr. Ma made representations at one
25 hearing. It's very narrow, very brief. So in the interest of

1 getting Mr. Ma gone, I'd rather have him go now instead of me
2 waiting for three days to --

3 MS. SPINELLI: I think he's indisposed.

4 THE COURT: So we can stall for a minute while we
5 wait.

6 Mr. Bice, what are you going to ask him about, the
7 things he told me in court?

8 MR. BICE: I'm going to ask him about things he told
9 you in court and things that other people told you in court
10 that he knew about and was present for and did not speak up --

11 THE COURT: Okay.

12 MR. BICE: -- when he was present for it.

13 THE COURT: You cannot ask him about the things that
14 he was present for and didn't speak up on on the Las Vegas
15 Sands versus Jacobs case because he pointedly, and Ms. Glaser
16 pointedly, did not make an appearance in that case for
17 jurisdictional reasons, and I think we discussed that at the
18 time. But if you want to narrowly ask Mr. Ma questions about
19 things he heard and why he didn't do things, that's okay, but
20 it has to be narrow.

21 MR. BICE: Understood.

22 THE COURT: So we're just waiting --

23 It's okay, Ms. Glaser. It's okay. I had just said
24 a minute ago we weren't going to him, so it's no problem.

25 MR. OWENS: Your Honor, may I take up a quick

1 housekeeping matter?

2 THE COURT: I would love to handle a housekeeping
3 matter so we don't waste time.

4 MR. OWENS: Thank you, Your Honor. John Owens for
5 Sands China, for the record. Mr. Whiddon from Las Vegas
6 Security has in his possession certain electronic devices that
7 back in June you had requested to be brought to the Court.

8 THE COURT: Uh-huh.

9 MR. OWENS: These devices had been provided to
10 Advanced Discovery, they've been imaged by Advanced Discovery,
11 but we wanted to make sure you knew that Mr. Whiddon was here,
12 he had the devices, and further instruction from the Court
13 what you'd like us to do.

14 THE COURT: The question related to where are the
15 devices is on my Mr. Kostrinsky examination. If you all want
16 to have Mr. Whiddon lodge the devices with the clerk, we can
17 do that, and I can put them in the safe over there until
18 somebody else wants to do it if you don't want him to sit here
19 and waste his time.

20 MR. OWENS: That's fine, Your Honor. Thank you.

21 THE COURT: Is that okay with you, Mr. Bice?

22 MR. BICE: Yes, Your Honor.

23 THE COURT: Okay. Anybody else want to look at
24 what's being delivered to the clerk to be put in the safe?

25 Go get Dan. He's the only one I know with the

1 combination to the safe.

2 MR. BICE: Is there an inventory?

3 THE COURT: That's why I'm asking you if you want to
4 look because the clerk then has to make a list of anything we
5 put in the safe so I know what's in it so later somebody
6 doesn't say I lost something.

7 MR. PEEK: I believe there's a chain of custody
8 paper that goes along with it.

9 MR. PISANELLI: May we approach to look, Your Honor?

10 THE COURT: Yes, you may. That's what I asked you
11 to do.

12 And, Mr. Ma, we'll get to you in just a minute.
13 We're doing a housekeeping matter.

14 (Pause in the proceedings)

15 THE COURT: In a minute Max will be back with your
16 copies. Is there any reason you can't resume the examination
17 of witnesses while we wait for the copies of the items that
18 are going to be put in the safe?

19 MR. BICE: There is not.

20 MR. BRIAN: No reason, Your Honor.

21 THE COURT: Okay. Mr. Ma, if you can come on up,
22 please. When you get up here remain standing so we can swear
23 you in.

24 MR. BRIAN: Procedurally, Your Honor, if there is
25 going to be redirect, which I would expect to be very, very

1 narrow, I would ask leave to have Mr. Owens do it. The
2 objections will be stated by Mr. Lionel and/or Mr. McCrea.

3 THE COURT: That's fine.

4 MR. BRIAN: Thank you, Your Honor.

5 STEPHEN MA, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. State
7 your name and spell it for the record, please.

8 THE WITNESS: Stephen Ma; M-A.

9 DIRECT EXAMINATION

10 BY MR. BICE:

11 Q Good afternoon, Mr. Ma. Can you tell us where you
12 currently work?

13 A I work at the Glaser Weil law firm in Los Angeles.

14 Q And what is your position at Glaser Weil?

15 A I am a partner at that firm.

16 Q And how long have you been a partner?

17 A I'm embarrassed to say I don't remember how many
18 years, but it's been a few years.

19 Q Understood. Were you a partner in the firm the
20 entire time in which you worked on the lawsuit Steven Jacobs
21 had filed against Las Vegas Sands and Sands China?

22 A I believe so, yes.

23 Q And what was your role in the litigation?

24 A I served as outside litigation counsel for Sands
25 China.

1 Q And did you serve in that capacity the entire time
2 of your involvement?

3 A Yes, I believe so.

4 Q Were you ever an attorney representing Las Vegas
5 Sands Corp?

6 A No.

7 Q Were there other outside counsel that represented
8 Las Vegas -- I apologize -- Sands China while you were outside
9 litigation counsel for Sands China?

10 A In connection with his action?

11 Q Yes, sir.

12 A My recollection is that the Glaser Weil law firm
13 represented Sands China, while Holland & Hart represented Las
14 Vegas Sands.

15 Q All right. Understood. I just want to make sure
16 were there any other outside law firms also representing Sands
17 China at the time in which you and the Glaser Weil firm were
18 representing it?

19 A Again, in this action, I believe Glaser Weil was the
20 only law firm.

21 Q Was the only law firm?

22 A In connection with this action because there were
23 other proceedings and there were other actions. But with
24 regard to the Jacobs action here in Las Vegas, I believe
25 Glaser Weil was the only law firm representing Sands China.

1 Q All right. When did you come to learn, and I guess
2 this presupposes something, so if I'm wrong on the premise
3 you'll have to correct me. And maybe I'll ask it this way.
4 Did there come a point in time in which you learned while you
5 were counsel for Sands China that a hard drive had been taken
6 from Macau to Las Vegas by Michael Kostrinsky?

7 MR. McCREA: Objection, Your Honor. Calls for
8 attorney-client confidence.

9 THE COURT: And what we're trying to find out is --
10 we're not trying to breach an attorney-client -- I -- I'm not
11 going to speak for Mr. Bice. I don't want you to have to
12 waive your attorney-client privilege when your client is
13 asserting that privilege. So if you can answer without
14 revealing information that is from your attorney-client
15 relationship, we would like you to. But if you can't, given
16 the limited statements that you made here to me in court, I'm
17 hopeful that Mr. Bice will move on.

18 MR. BICE: Well, I would like to make sure I
19 understand because obviously law firms represent clients, not
20 just individual lawyers, and there were multiple lawyers from
21 the Glaser Weil firm. And so part of what I do intend today
22 is to establish knowledge of the firm, not just knowledge of
23 individual lawyers who say, well, I didn't know X. We heard
24 Ms. Glaser say I didn't know something. I want to test and
25 see whether other people in the firm did know.

1 THE COURT: Okay. I'm limiting you to what Mr. Ma
2 knew and discussed with me.

3 MR. BICE: Understood.

4 THE COURT: There may be different issues when you
5 file your Rule 37 motion for sanctions that you're going to
6 file someday.

7 MR. BICE: I understand that, Your Honor. What I'm
8 trying to understand is -- well, maybe I'll ask it this way.

9 BY MR. BICE:

10 Q When did you learn, if ever, that Michael Kostrinsky
11 had brought over a hard drive from Macau to the United States?

12 MR. McCREA: Same objection.

13 MR. BICE: It's merely --

14 THE COURT: This is a when.

15 MR. BICE: -- a when.

16 THE COURT: This is a date. It's overruled.

17 THE WITNESS: The question as posed, I don't know if
18 I ever had that knowledge.

19 BY MR. BICE:

20 Q Okay. Are you -- did you become aware that Mr.
21 Kostrinsky had transported some data to the United States?

22 A I can clarify. I'm concerned that my clarification
23 would be something that's covered by privilege, but I think
24 the nature of the question --

25 MR. McCREA: Then, Your Honor, I don't want him to

1 answer.

2 THE COURT: Let me ask the question a different way
3 for Mr. Bice. At some point in time did you become aware that
4 data had been transferred?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Can you tell us about when that
7 was?

8 THE WITNESS: I don't have an exact date as to when
9 I knew, Your Honor. It was approximately the July 2011 time
10 period, but I don't have a specific recollection of when I
11 knew. And if I can clarify, if I'm allowed to clarify, my
12 knowledge was not that there was a transfer by Mr. Kostrinsky
13 to Las Vegas. I had a different knowledge.

14 THE COURT: Okay.

15 BY MR. BICE:

16 Q But you did understand that by July of 2011 you were
17 aware that data that pertained to Mr. Jacobs and the
18 litigation had been transferred from Macau to Las Vegas;
19 correct?

20 MR. McCREA: Objection, Your Honor. Calls for
21 attorney-client privilege.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know if my knowledge
24 specifically related to Jacobs' data.

25 //

1 BY MR. BICE:

2 Q All right. Did it relate to this lawsuit?

3 A Again, I don't know if my knowledge related to data
4 that was related to this lawsuit because I didn't know what
5 the specific data was. I did have a knowledge that there was
6 a hard drive that was transferred to the United States, but I
7 did not know the contents of that data.

8 Q All right. And you -- just so that we're clear,
9 we're talking about the same device, you learned about that
10 sometime in of July 2011?

11 A Approximately. It could have been a little later,
12 but that's my rough recollection.

13 Q Could it have been before July of 2011?

14 A I just don't know one way or the other.

15 Q Understood. In preparation to be here today did you
16 review any of your billing records?

17 A I did not.

18 Q Was there another attorney here or in the firm also
19 working on the matter by the name of Andrew Sedlock?

20 A Yes.

21 Q Okay. And I take it -- did you have any form of
22 remote access via computer to any of the documents at Las
23 Vegas Sands here in Las Vegas?

24 A Did I? I don't recall having any access.

25 Q Did you have something that was called a VPN access?

1 A I did not have any access to VPN.

2 Q Did any other lawyers in Glaser Weil have VPN access
3 to data?

4 A I can testify with regard to my knowledge today. In
5 preparation for the hearing today --

6 Q Yes.

7 A -- I was looking at some information. If I'm
8 allowed to testify to that, I'm happy to testify to that.

9 Q Okay. You've learned --

10 MR. McCREA: Objection, Your Honor. Attorney-client
11 privilege and lack of foundation.

12 THE COURT: Okay. You did some additional
13 investigation and you found out some information. That was
14 looking at internal information within your law firm?

15 THE WITNESS: Correct.

16 THE COURT: Was it administrative information within
17 your law firm, or was it records related to client work?

18 THE WITNESS: It was administrative information.
19 The question was did we have access to VPN. So in order to
20 get an understanding to that question, I went and looked at
21 our information and spoke with our IT personnel at our firm.

22 THE COURT: Okay. The objection is overruled.

23 BY MR. BICE:

24 Q And what did you learn?

25 A I learned that the access to VPN was offered to our

1 firm, as told to me by our IT department there was an attempt
2 to get access to VPN, but it did not work because there was a
3 problem with the pass code or something to that effect.

4 Q When you say firm, was that regardless of where the
5 office was located, or was that just for your office in Los
6 Angeles?

7 A I don't know if I asked that specific of a question.

8 Q Okay. And there may not be a distinction. That's
9 just kind of why I'm trying to get clarification from you.
10 Okay. Do you recall -- but certainly by January of 2012 you
11 knew that a hard drive had been brought to the United States
12 from Macau; correct?

13 A Again, I did not have a knowledge of a hard drive
14 being brought. I had a different knowledge, and I believe
15 that there was a privilege objection made with regard to my
16 knowledge, and my knowledge did come from the client.

17 Q All right. You had -- but you had knowledge, did
18 you not, that data had been brought from Macau to the United
19 States --

20 MR. McCREA: Objection, Your Honor.

21 BY MR. BICE:

22 Q -- around -- and you said you learned about it
23 around July of 2011; correct?

24 MR. McCREA: Objection. Attorney-client privilege.

25 THE COURT: To the extent you already testified

1 about the one drive that you knew about, I'll let you answer.
2 As to other attorney-client communications, please do not
3 answer those.

4 THE WITNESS: Without reviewing attorney-client
5 communications, I did have knowledge of a hard drive that was
6 in the United States. I don't know if -- in fact, let me
7 clarify. I don't believe my knowledge was that it was brought
8 to the United States by any individual.

9 BY MR. BICE:

10 Q Okay. But you knew that one was here?

11 A That's correct.

12 Q All right. And you -- was it your belief that it
13 contained data from Macau?

14 A Yes, I think that's accurate.

15 Q Okay. Did you ask to review the data on it?

16 A No, I did not.

17 Q Is there a reason that you didn't?

18 A By the time that I had learned about the data in the
19 United States -- I can answer this also, but this is
20 information that I received from the clients. I need some
21 guidance.

22 MR. McCREA: Objection.

23 THE COURT: Then don't tell us.

24 All right. Next?

25 //

1 BY MR. BICE:

2 Q What was your understanding of who was going to be
3 responsible for producing the data that was on that drive
4 since you assumed it was from Macau?

5 A Could you -- could you restate the question? I
6 don't understand the question.

7 Q Sure. What I'm trying to understand is -- you're a
8 litigator; correct?

9 A Yes.

10 Q Right? And part of the job that you do in
11 litigation as counsel is you comply with discovery
12 disclosures; correct?

13 A Correct.

14 Q And you comply with discovery responses; correct?

15 A Correct.

16 Q Okay. And you have to do that and that's pretty
17 much your daily job in many regards; correct?

18 A Correct.

19 Q Okay. So what I'm trying to understand is if you
20 knew in July of '11 that there was a drive that had -- and you
21 assumed that it had Macau data on it, what was your
22 expectation of who was going to be responsible for reviewing
23 it and producing it to the extent there was information on it
24 that pertained to this case in discovery?

25 MR. McCREA: Objection, Your Honor. Attorney-client

1 privilege.

2 THE COURT: Sustained.

3 MR. McCREA: And also scope.

4 THE COURT: Sustain the objection on the privilege
5 issue.

6 BY MR. BICE:

7 Q Do you recall being present at a hearing on January
8 3, 2012, Mr. Ma?

9 A I -- you'll have to refresh my recollection as to
10 when our firm substituted out, but that sounds consistent with
11 our involvement.

12 Q All right. If you would, there's a transcript book,
13 I believe, in front of you. If you would turn to a transcript
14 dated January 3, 2012.

15 THE COURT: There's a book there, or you can just
16 use this one.

17 THE WITNESS: This is fine. Thank you, Your Honor.

18 BY MR. BICE:

19 Q I'd like you to turn to page 41 of that transcript,
20 please. No, I apologize. I'd like you to -- well, maybe I
21 marked the wrong one. No, it is. It's page 41. I apologize.
22 I was wrong. Are you there?

23 A I'm here.

24 Q Okay. I'd like you to take a look at page 41. This
25 is Ms. Glaser speaking; correct?

1 A Line 25?

2 Q Yes.

3 A Yes.

4 Q Okay. And can you read that to yourself, that page,
5 please?

6 A Do you want me to continue onto page 42?

7 Q Yes, onto page 42. Correct.

8 A I've stopped at line 9 of page 42.

9 Q Okay. And do you believe, if you look at the front
10 of the transcript, the front page of it, do you believe that
11 you were present for that discussion?

12 A I believe so.

13 Q Okay. What was your understanding by this point in
14 time, Mr. Ma; of what was in the United States in terms of
15 documents from Macau?

16 MR. McCREA: Objection, Your Honor. Attorney-client
17 privilege.

18 THE COURT: Overruled.

19 Sir, I don't want you to give me the answer as it
20 relates to communications with your client, but there were
21 certainly other discussions we had here in court and
22 discussions related to Mr. Jacobs' data that was on his hard
23 drive.

24 THE WITNESS: My understanding as of January 3,
25 2012, was that there was data in the United States that was

1 from Macau, and that the company was consulting with outside
2 counsel, including counsel in Macau, to make a determination
3 what to do.

4 BY MR. BICE:

5 Q Okay. And was it your understanding as of January
6 3, 2012, that that data that you understood was in the United
7 States was data brought over from Macau that pertained to this
8 lawsuit and to Mr. Jacobs?

9 A I don't know if I had that understanding. I don't
10 know if I knew that they were documents responsive to this
11 case. I did know that it was Macau data. I don't believe I
12 had a knowledge as to what the specifics of that data was.

13 Q All right. And do you recall being present when Ms.
14 -- on January 3, as the transcript shows starting on page 41
15 line 25 and then going on, do you recall being present when
16 Ms. Glaser was informing the Court about claiming that there
17 was a problem with the fact that Mr. Jacobs had taken data out
18 of Macau?

19 A I do remember that discussion.

20 Q Okay. And at that point in time in which that
21 discussion, those representations were made to the Court, you
22 were aware that Las Vegas Sands had removed data from Macau,
23 were you not?

24 A Again, I don't know if I had knowledge of Las Vegas
25 Sands removing data from Macau. I do not know, as I stated

1 before, that there was data in Las Vegas that came from Macau.
2 I don't know if I had knowledge as to whether it was from Las
3 Vegas Sands or anybody else.

4 Q But you knew that the data was here. And did you
5 know it was in the possession of Las Vegas Sands?

6 A I did not have knowledge with regard to possession.
7 I did know that the data was here in Las Vegas, and I recall
8 that there was a statement by Mr. Peek in a prior hearing that
9 it may have been on a server in Las Vegas, but I don't know
10 the specifics of where the data was.

11 Q Okay. So it was your belief or your understanding
12 that Mr. Peek had disclosed that the information was here in
13 Las Vegas?

14 A That's correct.

15 Q Okay. And that was the same drive -- when you
16 understood Mr. Peek had made that representation, that was the
17 same drive that you learned about in July, is that your
18 understanding?

19 A My understanding back then is that we were talking
20 about the same data. I didn't -- subsequent to the hearing in
21 January, I will state that I have read briefs that were filed
22 in this proceeding after our firm left the case seemingly
23 referring to other data, apparently, that seems to be separate
24 and apart from the hard drive that Ms. Glaser has spoken to
25 and that I have spoken to. But with regard to my

1 understanding back in January of 2012, I understood there to
2 be a hard drive in Las Vegas, that it contained Macau data.

3 Q All right. And it was your impression that Mr. Peek
4 had disclosed to the Court that that hard drive was here?

5 A I don't recall the specifics of Mr. Peek's statement
6 in court. You can refresh my recollection with a transcript.
7 My recollection was that there was an announcement made that
8 there was data in Las Vegas that may have been subject to the
9 Macau --

10 Q Data privacy --

11 A -- privacy laws.

12 Q Okay. And it was your belief that when you heard
13 that, that that was in reference to the drive that was here in
14 Las Vegas; is that correct?

15 A The reason I am having difficulty with your question
16 is because when that disclosure was made, I guess it was June
17 of 2011, I'm having a hard time remembering what my knowledge
18 of the data was because I may not have had that knowledge in
19 June of 2011. So I'm having difficulty remembering what my
20 knowledge would have been, if it was that precise in June of
21 2011.

22 Q Did you ever ask to see what was on the drive that
23 you knew about certainly by July?

24 MR. McCREA: Objection, Your Honor. Attorney-client
25 privilege.

1 THE COURT: Well, did you ever ask anybody who
2 wasn't a client of yours?

3 THE WITNESS: No, all of my discussions were with
4 the client and outside counsel for the client.

5 THE COURT: Thank you.

6 BY MR. BICE:

7 Q Turn to November 22nd.

8 THE COURT: And, sir, here's that transcript.

9 THE WITNESS: Thank you, Your Honor.

10 MR. McCREA: Do we have a page?

11 BY MR. BICE:

12 Q Oh, I apologize. Page 11, but I will ask you a
13 question first about it, Mr. Ma.

14 A I'm on page 11.

15 Q Mr. Ma, were you still involved in the case when the
16 Court ordered jurisdictional discovery to occur in this
17 action?

18 A I'm sorry. I didn't hear the last part of the
19 question.

20 Q Sure. Were you still involved in this case as
21 counsel when then Court granted Mr. Jacobs's motion approving
22 jurisdictional discovery in this action?

23 A I believe so. I believe that order came in
24 approximately September of 2011.

25 Q Okay. And when did you -- when did Glaser Weil get

1 Based upon my review of the transcripts, Mr. Krum
2 and Mr. Ma, M-A, are peripheral given the limited
3 representations that each made to the Court. Depending upon
4 the testimony of other witnesses, testimony from those two
5 individuals may not be needed.

6 After these witnesses have testified counsel for the
7 plaintiff may propose additional witnesses they believe that
8 assist the Court in making the determination of whether a
9 violation of EDCR 7.60 has occurred and to assist the Court in
10 evaluating the appropriate sanction. The Court will consider
11 the proposal on a witness-by-witness basis.

12 After the witnesses identified by the Court and any
13 witnesses proposed by the plaintiff and permitted by the Court
14 have been completed, the defendants may then present any
15 additional evidence that they believe is appropriate.

16 I've been through a mountain of transcripts, I've
17 been through a number of pleadings. I appreciate the
18 submissions from both the plaintiffs and the defendants, but I
19 don't really need to hear a whole lot from you right now,
20 since I've had an opportunity to review all that information.

21 If no one has any questions, I will tell you what
22 the standards that I think I'm going to apply, and then we can
23 get started.

24 Does anybody have any questions about the process?

25 MR. BRIAN: One brief question, Your Honor.

1 THE COURT: Yes.

2 MR. BRIAN: If the defendants have any additional
3 questions, in the nature of redirect I suppose, should we do
4 them now, or after you're done with your questioning of the
5 witnesses?

6 THE COURT: Here's how I think it's going to work.
7 We're going to call up a witness, I'm going to swear them, I'm
8 going to ask my questions. My questions are generally short
9 and to the point.

10 Then I'm going to ask plaintiff's counsel if they
11 have any questions they'd like to ask. Hopefully those
12 questions will remain in the narrow scope that I have tried to
13 set for this hearing.

14 They're going to ask their questions, then I'm going
15 to ask I guess Mr. Lionel and Mr. McCrea if they have
16 questions, unless you're going to be asking questions, too.

17 MR. BRIAN: It would depend on the witness, Your
18 Honor.

19 THE COURT: So at least you guys are going to
20 caucus, so I won't have you each asking questions, but you'll
21 as a group decide what needs to be done? Is that the plan.

22 MR. BRIAN: Yes, I believe that is the plan. We
23 won't duplicate effort, Your Honor.

24 THE COURT: That's a lovely plan. And then if you
25 have both finished, I may have a followup question or two I

1 want to ask. I'll do the same thing that I would do in any
2 evidentiary proceeding, make sure that everybody's had their
3 questions with that witness asked.

4 If you want to reserve any questions that the
5 defendants would have during their evidentiary presentation,
6 you may reserve those to the time when you would have a chance
7 to present any information that you have.

8 MR. BRIAN: Thank you, Your Honor.

9 THE COURT: Any other questions about the procedure
10 before I tell you what I think the standard is? There's
11 little --

12 MR. BICE: Not from us, Your Honor.

13 THE COURT: There is little caselaw interpreting the
14 appropriate sanctions applicable under EDCR 7.60. To the best
15 of my knowledge, there's only one case it's ever been
16 mentioned in before. If I determine that the conduct was
17 knowing, then I will make a determination in fashioning an
18 appropriate sanction by looking at the cases that interpret
19 NRCP Rule 11 and NRCP Rule 37. And I think you all know what
20 those cases are.

21 Anybody have any questions?

22 All right. Ms. Glaser's here. Does anybody have a
23 problem starting with her so we can get her in here and out of
24 here?

25 Ms. Glaser, if you'd come up, please. I will tell

1 you, as I do every witness, that there are M&Ms at the witness
2 stand. Today you're a witness. You are welcome to the M&Ms.
3 And addition there's water there. If you would remain and be
4 sworn, please.

5 PATRICIA L. GLASER, COURT'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. State
7 your name and spell it for the record, please.

8 THE WITNESS: Patricia L. Glaser, G-L-A-S-E-R.

9 DIRECT EXAMINATION

10 BY THE COURT:

11 Q Good afternoon, Ms. Glaser. Thank you for coming.

12 As you may have read or been informed, some events
13 have occurred in the last couple of weeks -- few weeks that
14 impact some things that were told to me over the history of
15 this case, and, as a result, I'm having an evidentiary hearing
16 to try and get to the root of where the miscommunication or
17 misrepresentation, depending upon which side you believe,
18 started and how it has progressed.

19 MR. MCCREA: Your Honor, we're having a hard time
20 hearing you when you're facing the witness.

21 THE COURT: All right. Then I'll try and speak up,
22 Mr. McCrea.

23 MR. MCCREA: Thank you.

24 THE COURT: I've never been accused of being soft
25 spoken before.

1 MR. McCREA: I don't think the microphone is picking
2 you up when you're facing Ms. Glaser.
3 THE COURT: Is my mike off?
4 THE COURT RECORDER: No.
5 THE COURT: Okay. Please tell me if you can't hear
6 me, and I'll speak up, okay.
7 MR. McCREA: Thank you.
8 THE WITNESS: I heard everything, Your Honor.
9 BY THE COURT:
10 Q When were you retained to represent Sands China in
11 this case related to Mr. Jacobs?
12 A Shortly after the lawsuit was filed. I don't
13 remember the precise date.
14 Q So sometime in the spring of 2011?
15 A No. No, that's not -- I think it was in 2010,
16 because I think the lawsuit was filed in 2010. But I'm not
17 sure when the lawsuit was filed. But it was -- it was in
18 2010, not 2011.
19 Q Right. When did you first become aware of the MDPA?
20 A In April-May of 2011.
21 Q And how did you become aware of it?
22 MR. McCREA: Objection, Your Honor. May call for an
23 attorney-client communication.
24 THE COURT: Okay. So are you going to direct the
25 witness not to answer?

1 MR. McCREA: I'm lodging the objection, Your Honor.
2 I don't think it's my prerogative to direct her not to answer.
3 THE COURT: But it's your client's privilege. Your
4 client can waive the privilege if you want.
5 MR. McCREA: The client has not --
6 THE COURT: She has to -- she has to not tell me if
7 you don't waive the privilege.
8 MR. McCREA: We are not waiving the privilege, Your
9 Honor.
10 THE COURT: Okay.
11 THE WITNESS: Your Honor, if you direct me to
12 answer, is it still a waiver of the privilege?
13 THE COURT: It is, I think. But I'm not -- I'm not
14 an expert in this matter, so we're just going to avoid that.
15 I've already told the lawyers that if privileges are asserted
16 I may make inferences and those inferences may be adverse --
17 THE WITNESS: Well, my concern is --
18 THE COURT: -- which is I think how Mr. McCrea and
19 Mr. Lionel got hired.
20 THE WITNESS: I have -- I want to be completely
21 candid with the Court, and it's hard for me to be completely
22 candid if I am interrupted, appropriately, with attorney-
23 client privilege objections.
24 THE COURT: Well, I know. And that's part of the
25 challenge that we're going to have here during this

1 proceeding.

2 MR. PISANELLI: And, Your Honor, may we be heard on
3 these objections?

4 THE COURT: Not right now. Let me ask a couple of
5 questions to try and get around this issue.

6 BY THE COURT:

7 Q When you became aware of the MDPA in April or May of
8 2011 did you become aware of it from any source other than a
9 privileged communication from your client?

10 A I don't think so.

11 Q Okay. I conducted a Rule 16 conference on
12 April 22nd, 2011, where you were here, and I don't know if you
13 remember, but we had by video a young lady named Ms. Salt, who
14 attended from I believe Macau.

15 A Well, I do remember Ms. Salt attending. I don't
16 remember the date. And I do remember she attended by video,
17 because there was another time when other counsel from Macau
18 attended, the general counsel of --

19 Q And I remember that occasion, as well. But she was
20 the one who attended at that first hearing where we had a
21 discussion about documents.

22 A Okay.

23 Q During that hearing I inquired of Ms. Salt related
24 to the preservation of electronically stored information. I
25 do not from reviewing the transcript recollect any reference

1 at that time to the MDPA being made. Do you believe that you
2 were aware of the MDPA at the time of that Rule 16 conference?
3 And I'll tell the date was April 27, 2011.

4 A I don't want to misrepresent to the Court. I don't
5 think so, but I don't know for sure.

6 Q Okay. At that time that I conducted that Rule 16
7 conference I advised Ms. Salt as the client representative who
8 was participating of the importance of maintaining the
9 integrity of the electronically stored information. At that
10 time she did not tell me that any of the information had
11 already been mirrored or ghosted, depending upon which group
12 of pleadings you read. Were you aware at the time of that
13 conference that a mirror image or a ghost image had been made
14 of Mr. Jacobs's hard drive that he used while he was in Macau?

15 A I would like to tell you what I was aware of --

16 Q Sure.

17 A -- but require telling you based -- because it's
18 strictly based on information I have from the client.

19 Q Okay. Well, then, we're going to guess they're
20 going to tell me it's attorney-client privilege.

21 THE COURT: Right?

22 MR. McCREA: I'm going to object, yes, Your Honor,
23 on that grounds.

24 BY THE COURT:

25 Q It was a nice guess, though.

1 A Narrow knowledge, but it all comes from the client.

2 Q Okay. The first mention that I have of the MDPA
3 being made was about early May 2011 in connection with a
4 motion to stay and discovery motion that your firm and Mr.
5 Krum was the one who came and argued that day. Was that about
6 the time that you believe you became aware of the potential
7 impact of the MDPA?

8 A Probably. Because I know in May I went to Macau to
9 try to -- I don't know if I can testify to this. I mean, I
10 can tell you why I went to Macau in May.

11 Q Well, keep talking. Mr. McCrea's here to object
12 when he's supposed to.

13 A Okay. I went to Macau in May to get to the bottom
14 of and get an understanding, because I had not a clear
15 understanding at all until I went to Macau and met with
16 counsel, outside counsel for the company and inside counsel
17 for the company. And that's when I was educated with respect
18 to the significance of the Macau Privacy Act.

19 Q Okay.

20 A I had been told about it before, but the -- and the
21 reason --

22 MR. MCCREA: Objection.

23 THE WITNESS: I'm sorry.

24 MR. MCCREA: Please don't divulge any attorney-
25 client communications.

1 BY THE COURT:

2 Q Let's try and avoid the attorney-client
3 communications. But to the extent that you can tell me what
4 you did, telling me you went to Macau and you met with certain
5 people I think is probably okay.

6 THE COURT: Mr. McCrea, to give me the overview of
7 what she was doing?

8 MR. MCCREA: I guess I have to hear the question.

9 THE COURT: Well, she's already answered it. That's
10 why I'm asking.

11 MR. MCCREA: Okay. I'm not sure what you're asking
12 now.

13 BY THE COURT:

14 Q All right. Then let me go to my next question.
15 When did you first become aware of the transfer of certain ESI
16 from Macau related to Mr. Jacobs's hard drive and emails? And
17 that's a date I'm asking, not a who.

18 A I understand.

19 MR. MCCREA: Objection, Your Honor. May call for
20 attorney-client communications.

21 THE COURT: All right. Now, Mr. Pisanelli.

22 MR. PISANELLI: You haven't asked the witness about
23 a communication. You haven't asked about any word that was
24 spoken, any document that was transmitted. You asked about a
25 date of when this witness was aware of a particular set of

1 knowledge. The only way Your Honor can determine whether
2 misrepresentations were made to this Court is, as you've said,
3 if we find out that intentional misstatements were made. The
4 only way to find out is to find out when Ms. Glaser knew that
5 documents and data were leaving Macau and coming to the United
6 States. It's an issue of timing, not an issue of what was
7 said.

8 THE COURT: Well, I'm not really worried about when
9 they were leaving. I'm worried about when the lawyers who
10 said things to me learned that the information they had told
11 me was untrue.

12 MR. PISANELLI: And that is my point. To the extent
13 I'm overstating it, I'm only talking about this witness, when
14 did this witness learn that hard drives, et cetera, were
15 coming from Macau to the United States.

16 THE COURT: Mr. McCrea.

17 MR. McCREA: How she --

18 THE COURT: He's asking when.

19 MR. McCREA: I know. But how she learned and -- the
20 question assumes that she knew. In answering that question --

21 THE COURT: Well, she can say, I didn't ever learn.
22 She can tell me, I never figured that out, nobody ever told me
23 that, nobody ever told me that until there was a filing on
24 June -- what was it, June 28th somebody told me that?

25 MR. McCREA: Your Honor, I believe it calls for the

1 -- for divulging attorney-client communications to answer that
2 question.

3 THE COURT: Objection is overruled.

4 BY THE COURT:

5 Q Can you just give me the when. All I want is the
6 date.

7 A I knew documents had come in the ordinary course of
8 business over the history of the company. The only thing I
9 knew about peculiar to the Jacobs case was at some point in
10 2011, and I cannot pin down when, I learned that there was a
11 hard drive that had been sent to Mr. Kostrinsky. A hard
12 drive. And I learned about it for the first time in 2011.

13 Q Okay. At any point in time did you view the data
14 that was on the transferred electronically stored information?

15 A You mean -- which one are you talking about, Your
16 Honor?

17 Q Any of them.

18 A No. I mean, I didn't -- I never viewed them.

19 Q And other than an attorney-client communication,
20 which I don't want you to tell me about given the objections
21 I'm getting, how did you become aware of the transfer of the
22 ESI peculiar to Jacobs?

23 A Through the client.

24 Q Did you ever access the electronically stored
25 information that had been transferred from Macau?

1 A No.

2 Q On June 9th when we were here at a hearing you told
3 me that all of the information had to be reviewed in Macau.

4 A (No audible response)

5 Q Is that yes?

6 A I'm sorry. Yes.

7 Q At the time you told me that were you aware that the
8 information had already been transferred on a hard drive to
9 Las Vegas?

10 A You say --

11 MR. McCREA: Objection, Your Honor.

12 THE COURT: Are you making an attorney-client --

13 MR. McCREA: Yes, Your Honor.

14 BY THE COURT:

15 Q Okay. On July 19th you told me that for purposes of
16 the MDPA review of 2 to 13 terrabytes of ESI you were not
17 allowed to look at documents on a work station located in the
18 U.S., but had to travel to Macau. At the time you made that
19 statement were you aware that the information that was on the
20 imaged hard drive that Mr. Jacobs had used while he was in
21 Macau was already in Las Vegas?

22 A I don't recall when I knew that one hard drive -- I
23 was surprised -- I don't know if I'm supposed to say this --
24 when I saw what was disclosed in the June filing. I had not
25 seen that at all and did not know about it.

1 Q Okay.

2 A But I did know sometime in 2011, I want to be as
3 clear as I can be with the Court, that there was a hard drive
4 that had been sent -- or I understood had been sent from Macau
5 to Mr. Kostrinsky.

6 Q Okay.

7 A But I did not learn that until 2011, and I cannot
8 tell you for sure when I learned it, Your Honor.

9 Q All right. On July 19th, 2011, in that same hearing
10 you told me only people who represent Sands China could review
11 the information and it had to be reviewed in Macau. At time
12 you told me that, same question, were you aware that that hard
13 drive had been transmitted to the United States?

14 A I am assuming, because I don't remember for sure,
15 I'm assuming that by virtue of -- I've read the transcript,
16 Your Honor. So Mr. Peek said there were documents in Las
17 Vegas from Macau. He said that in the June hearing, I
18 believe. And I believed that there were documents here from
19 Macau in June when he said that to you in open court.

20 Q Actually I think what he told me was there were
21 communications on servers and email communications in Las
22 Vegas.

23 A That's what I understood.

24 Q Okay.

25 A In June.

1 Q All right. And is that a different understanding
2 than this hard drive that was a mirror image of Mr. Jacobs's
3 computer that had been made and then sent to Mr. Kostrinsky?

4 A I have been wracking my brain, honestly, and I
5 cannot tell you for sure if I knew. I may have known then
6 about the Kostrinsky -- a hard drive, not what's contained in
7 the disclosure that's in -- that was given to the Court in
8 June and July of this year.

9 Q Okay. Again, at that same hearing in July of 2011
10 you told me that only Sands China lawyers would be allowed to
11 start the process of reviewing documents for the MDPA
12 analysis.

13 A That's my understanding it was -- and it's my
14 understanding today.

15 Q Okay. And given what you've read in the filing that
16 was made in the last two weeks, it appears to you that a
17 significant difference in information exists?

18 A Much more -- appears to me that more than a hard
19 drive being forwarded to Mr. Kostrinsky had been -- was -- had
20 left Macau for Las Vegas.

21 Q And at the time that you and I were having the
22 discussions about the MDPA and the document review that had to
23 occur in Macau, which would be the summer of 2011, was it your
24 understanding that Mr. Kostrinsky was not a Sands China
25 employee?

1 A It was not.

2 Q Okay. What was your understanding of what he was?

3 A My understanding is he was a Las Vegas company --

4 Las Vegas Sands employee.

5 Q And were you aware that other outside counsel had

6 reviewed information on Mr. Kostrinsky's computer?

7 MR. McCREA: Objection, Your Honor. Calls for

8 attorney-client privileged communication.

9 THE WITNESS: Everything I know is from counsel,

10 Your Honor.

11 THE COURT: Thank you.

12 MR. PISANELLI: Your Honor, because -- if I may.

13 THE COURT: It's okay. We're going to let them take

14 the attorney-client, because they have to assert it. If

15 they're going to assert it, that's fine.

16 MR. PISANELLI: But I don't want our silence to be

17 taken that this is a legitimate assertion of the privilege.

18 Simply because, as Your Honor knows, a fact is filtered

19 through a lawyer doesn't turn that fact into a privileged

20 fact. This counsel has come before you and made

21 representations to you about facts. And we are entitled to

22 know what she knew and when she knew it. We don't need to

23 talk about the sources.

24 THE COURT: I'm going to let you ask questions.

25 Remember, I said I had a short and to-the-point examination

1 and then I was going to let you ask questions that were in the
2 bounds of the hearing I've scheduled. You can be the bulldog.
3 I'm trying to get some information that I need to get to make
4 the evaluation I need to, which is whether a knowing violation
5 was made. That's really all I need to do. And I'm going to
6 try and do it in the most effective way that I can given my
7 position as a judge, because I'm the fact finder here. I'm
8 not here to argue one side or the other. I'm not here to be
9 the advocate. I'm here to get information so I can evaluate
10 whether a violation of my rule has occurred. That's all I'm
11 trying to do.

12 MR. PISANELLI: But the only point that I would
13 make, Your Honor, is -- I don't want to interrupt you, but I
14 also don't want our silence to be interpreted in this record
15 as an agreement that this is a proper assertion of the
16 privilege, nor do I --

17 THE COURT: You mean for the Nevada Supreme Court up
18 there? Make an objection every question, then, Mr. Pisanelli.

19 MR. PISANELLI: All right.

20 THE COURT: That's what you've got to do.

21 BY THE COURT:

22 Q All right. At some point in time you were
23 negotiating an ESI protocol with Campbell & Williams before
24 they left.

25 A Yes.

1 Q All right. And eventually we approved an ESI
2 protocol about a year later. As part of --
3 A We were gone by the time it was approved, I think.
4 Q Oh. Were you?
5 A I think so.
6 Q Okay. Well --
7 A I wasn't involved in it, and they approved it.
8 Q Eventually an ESI protocol was approved by the
9 Court, and you believe based on your recollection that at that
10 time you were already out of the case?
11 A I'm looking to counsel. I don't remember the dates.
12 Q Nobody remembers.
13 A I could have been in the case still.
14 Q Okay.
15 A Mr. Ma negotiated -- from our office negotiated the
16 detail of it much more than I did.
17 Q Let me see if I can --
18 A But I do remember having -- I want to be -- just
19 finish the -- I did have conversations about an ESI with Mr.
20 Campbell and Mr. Williams.
21 Q Okay. Thank you. Before you left your
22 representation of Sands China is there a reason you did not
23 disclose to the Court that the mirror of Mr. Jacobs's hard
24 drive was already in the U.S.?
25 A I didn't --

1 MR. McCREA: Objection, Your Honor. Privileged.
2 THE COURT: Okay. Thank you.
3 BY THE COURT:
4 Q Next one, why did you fail to disclose to the Court
5 that the Outlook emails related to Mr. Jacobs were already in
6 the U.S.?
7 MR. McCREA: Same objection, Your Honor.
8 THE COURT: Mr. Pisanelli, did you want to ask any
9 questions?
10 MR. PISANELLI: Yes, ma'am. If I could have just a
11 moment or two to set up the Elmo.
12 THE COURT: And remember to be nice.
13 MR. PISANELLI: I'm always nice. It's all relative.
14 (Pause in the proceedings)
15 MR. PISANELLI: Your Honor, for ease of reference we
16 have created basically a witness notebook to reference the
17 transcripts so that Ms. Glaser will know exactly what quotes
18 that I'm referencing when I read it to her, she won't have to
19 take my word for it.
20 THE WITNESS: I'm prepared to take Mr. Pisanelli's
21 -- if it speeds it up, to --
22 MR. PISANELLI: And I -- and I have a book for Your
23 Honor.
24 THE COURT: I don't need a book. I went through all
25 the transcripts and marked on them myself over the weekend

1 after I made my children and my externs have them.

2 THE WITNESS: And I'm prepared to accept Mr.
3 Pisanelli's representations if it speeds it up.

4 MR. LIONEL: If Your Honor please, we will object to
5 plaintiff's counsel asking of this witness. We rely on Club
6 Vista Financial Services. We think that there are other means
7 to find out this, and that's demonstrated by the fact that
8 Your Honor was able to ask pointed questions. We think, Your
9 Honor, that Club Vista bars -- precludes the plaintiff's
10 counsel from questioning this witness. And we make that
11 objection for the record.

12 THE COURT: Mr. Pisanelli, is there anything you
13 want to say about your interpretation of Club Vista?

14 MR. PISANELLI: Yes, Your Honor. We are not here to
15 find out anything about the defendants' position about sources
16 of evidence going to the merits of this case. We're here at
17 Your Honor's direction in order to find out just how broadly
18 this campaign of misrepresentation to you is. We go back from
19 virtually the day my law firm entered into this action and
20 find statements throughout the transcripts that just do not
21 seem to comport with what we have learned over the past month
22 or so. So this is an issue more akin to contempt proceedings
23 than one to the merits, and there is nothing about Club Vista
24 that handcuffs Your Honor, so to speak, in getting to the
25 bottom of misrepresentations that are made to you.

1 THE COURT: Okay. The objection is overruled.
2 Mr. Pisanelli, please be narrow in your questions.
3 Only one person per side gets to object. You've
4 already had your --
5 MR. BRIAN: I wasn't to go object. I have a
6 request, Your Honor. I heard either Mr. Pisanelli or Mr. Bice
7 indicate they had a binder of documents. I just wonder if
8 they do if we could have a copy.
9 MR. BICE: I apologize. Yes.
10 THE COURT: Ms. Glaser, you may, if you like, review
11 the binder that's in front of you, but you do not have to.
12 I'm not going to open it or look at it, and I'm not making it
13 part of my record since everything in it is supposed to be a
14 transcript.
15 Correct, Mr. Pisanelli? Everything's a transcript
16 that's in the binder?
17 MR. PISANELLI: Yes.
18 THE COURT: Okay. So if you will just cite to the
19 date of the transcript, then --
20 THE WITNESS: That's not accurate.
21 MR. BICE: That's not true.
22 THE COURT: All right.
23 MR. BICE: There are some briefs that are also in
24 the --
25 THE WITNESS: Well, there's also emails or letters,

1 I should say.

2 THE COURT: Why don't you take the book back, then,
3 Mr. Pisanelli.

4 MR. BICE: Okay. I can take those out, Your Honor.
5 They just -- they're exhibits from other briefs that are
6 already in the record.

7 MR. PISANELLI: Everything in the book is in the
8 record.

9 MR. BICE: Yes.

10 MR. PISANELLI: Nothing --

11 THE COURT: Fine. I'm just mainly worried about
12 transcripts. So if you want to cite to transcripts by date,
13 I'd be happy for her to, if she doesn't take your word for it,
14 look at. But I have my copy, because I have my copies, as I
15 said.

16 MR. BICE: All right. We'll take them out, Your
17 Honor, and I'll hand it back.

18 THE COURT: I probably have more transcripts than
19 you guys do.

20 CROSS-EXAMINATION

21 BY MR. PISANELLI:

22 Q While Mr. Bice is doing that, first just a couple of
23 points of clarification, Ms. Glaser. You told Her Honor that
24 in I believe it was May of 2011 you went to Macau to get an
25 understanding of the MDPA. Did I understand you correctly?

1 A Yes.

2 Q Was that your first trip to Macau concerning the
3 Jacobs case?

4 A No.

5 Q When did you first go to Macau in connection with
6 the Jacobs case?

7 A I believe it was in November of the year before, and
8 there was no discussion whatsoever about the Privacy Act at
9 that time.

10 Q Who accompanied you on that trip?

11 A Justin Jones, I believe; Gayle Hyman; and Michael
12 Kostrinsky. When I say -- when you use the word
13 "accompanied," I'm not sure everybody travelled together, but
14 everybody was there.

15 Q That's fine. Thank you for that clarification.

16 While you were there, Ms. Glaser, you had an
17 opportunity to review documents concerning the Jacobs dispute,
18 did you not?

19 A I don't think we reviewed documents. I think we
20 spent -- I don't know if this is attorney-client privilege,
21 but we spent the entire time, my recollection is, interviewing
22 witnesses.

23 Q You don't recall viewing any documents?

24 A I don't.

25 Q Do you recall Mr. --

1 A Excuse me. I -- well, I don't know what to do now.
2 I reviewed -- I remember reviewing a explanation of an
3 attorney bill when I was in Macau for the first time in
4 November of 2010, written by some lawyers in Macau.

5 Q Mr. Jones --

6 THE COURT: Ms. Glaser, let's just assume that Mr.
7 McCrea or Mr. Lionel are going to make an objection if they
8 see something that is problematic where they want to protect
9 the privilege. Otherwise, just pause a little bit before you
10 answer so that they have that chance.

11 THE WITNESS: Thank you.

12 BY MR. PISANELLI:

13 Q Justin Jones was with you on that trip?

14 A He was.

15 Q And who did you understand Mr. Jones to be
16 representing on that trip?

17 A Las Vegas Sands.

18 Q And Michael Kostrinsky was with you on that trip, as
19 was Gayle Hyman?

20 A Yes.

21 Q And who did they represent?

22 A Las Vegas Sands.

23 Q And did you become aware that all three of those
24 lawyers on behalf of Las Vegas Sands were also reviewing
25 documents while on that trip?

1 MR. McCREA: Objection, Your Honor. Calls for
2 attorney-client privilege.

3 THE COURT: Go on to the next one.

4 MR. PISANELLI: Okay. I'm just seeking your
5 guidance if you want to debate on the ruling.

6 THE COURT: If there's one I need a debate, I'll ask
7 you for comment. Otherwise let's just assume that we're going
8 to protect the privilege and I will make any inference that I
9 deem appropriate, which may be adverse.

10 MR. PISANELLI: Your Honor, just for clarification
11 of the record, what we're worried about is any inferences
12 coming in connection with a privilege and we're not sure, you
13 know, what the privilege is or whether it's properly asserted.
14 Is Your Honor assuming for purposes of today's hearing that if
15 a privilege is made, then you are going to assume that it is
16 appropriately being asserted, or is Your Honor just simply not
17 giving a ruling on that point and making an inference and
18 moving on to the next topic?

19 THE COURT: There are certain ones that I assume we
20 will address because they are a stretch of the attorney-client
21 privilege --

22 MR. PISANELLI: Right.

23 THE COURT: -- and there are others that are
24 obviously within the attorney-client privilege, and so for
25 those that are obvious, if there's an objection I'm probably

1 not going to ask you for much comment.

2 MR. PISANELLI: Okay.

3 THE COURT: For those where it seems to be a little
4 more tenuous I might ask you for comment.

5 BY MR. PISANELLI:

6 Q Did you return with the Las Vegas Sands lawyers,
7 return to the United States?

8 A Are you talking about the first trip?

9 Q Yes.

10 A I'm pretty confident I did.

11 Q And were you aware that on that return trip Michael
12 Kostrinsky was given electronic data to bring back to the
13 United States with him from Sands China?

14 MR. McCREA: Objection, Your Honor. Attorney-client
15 privilege.

16 MR. PISANELLI: I will take your silence as you've
17 instructed to move on to the next point.

18 BY MR. PISANELLI:

19 Q Ms. Glaser, did you bring back any electronically
20 stored information with you?

21 A I did not.

22 Q All right. And do you know whether Justin Jones
23 did?

24 MR. McCREA: Objection, Your Honor. Attorney-
25 client.

1 MR. BICE: Your Honor, I think --
2 THE COURT: We're not doing a team approach.
3 MR. BICE: Understood. Understood. So --
4 THE COURT: So pass him a note.
5 MR. BICE: I will. Since Mr. Kostrinsky and others
6 testified to these facts already, I'm not sure how it's
7 privileged.
8 THE COURT: Let's not argue. I didn't read the
9 depositions, because I don't have complete copies of the
10 depositions.
11 BY MR. PISANELLI:
12 Q Now, Ms. Glaser, you told us that you were aware
13 that a hard drive, I think was your terminology, a hard drive
14 was taken from Macau into the possession of Sands China and
15 delivered to Las Vegas Sands in Las Vegas; is that right?
16 A That is not exactly what I said. I said I believed
17 that at some time I learned that there was a hard -- a hard
18 drive sent from Macau to Mr. Kostrinsky.
19 Q Now --
20 A And Mr. Kostrinsky was, I'd understood, in Las
21 Vegas.
22 Q You had an opportunity to review the defendants'
23 filing with this Court on July 6th of 2012 entitled
24 "Defendant's Statement Regarding Data Transfers"?
25 A I read it, yes.

1 Q And you noticed that there are references to several
2 hard drives that were sent from Macau to the United States in
3 that document?

4 A I saw that.

5 Q And you understood that this was a statement of the
6 defendants to the Court?

7 A I did.

8 Q Okay. Were you able to determine from a review of
9 that filing which hard drive you were aware of had been sent
10 to the United States?

11 THE COURT: Which one that was identified? In the
12 statement?

13 BY MR. PISANELLI:

14 Q Yes. Which of the many hard drives identified in
15 this statement. Were you able to determine which is the one
16 that you knew of?

17 A I don't think there were many, but I was not able to
18 identify the one that I was aware of.

19 Q Okay. You understood --

20 A And I wouldn't be able to identify it, just to
21 finish my answer, because I never knew what was on the hard
22 drive.

23 Q How did you become aware that a hard drive had been
24 sent from Macau?

25 MR. McCREA: Objection, Your Honor. Attorney-client

1 privilege.

2 BY MR. PISANELLI:

3 Q By the way, on this issue of source of knowledge,
4 did I understand you correctly to say that you had no other
5 source of information about the MDPA other than attorney-
6 client communications?

7 A I think the Court asked me if I knew about it from
8 any source other than the client. And my answer is I don't
9 think I knew it from any source other than the client.
10 Clients.

11 Q So you never analyzed the law yourself?

12 A I spoke -- when I was in Macau the second time, in
13 May, I spoke to outside counsel -- I read their opinion and
14 spoke to outside counsel about that opinion. If you're asking
15 me did I do that, that I did.

16 Q Did your firm, Glaser Weil firm, conduct any
17 analysis of that law?

18 A Other than trying to understand what Macau counsel
19 was saying? I don't think so.

20 Q What do you mean by that?

21 A Well, it was hard to understand.

22 Q So you did your own research?

23 A No. It was hard to understand, which was one of the
24 reasons we went to Macau, because we couldn't understand part
25 of what was in -- a good deal of what was in the written

1 opinion of Macau counsel.

2 Q Okay. What I'm getting at, Ms. Glaser, and I'm
3 probably guilty of using over the broad terms in particular
4 the pronoun "you." To be clear, I want to know if the Glaser
5 Weil firm ever independently analyzed the MDPA.

6 MR. McCREA: Your Honor, I think this calls for
7 attorney-client privileged communications.

8 THE COURT: As to whether her firm ever did the
9 analysis for MDPA -- of MDPA?

10 MR. McCREA: Yes.

11 THE COURT: Okay. Was the only analysis you did in
12 conjunction with evaluating the MDPA for Sands China, or did
13 you do it as a source of gaining additional knowledge, like
14 for other clients?

15 THE WITNESS: I evaluated the information that had
16 been provided to Sands China by people in Macau.

17 THE COURT: Or the scope of your representation of
18 Sands China, as opposed to teaching a class or seminar or
19 something like that?

20 THE WITNESS: For sure I did not teach a seminar or
21 class.

22 BY MR. PISANELLI:

23 Q And I'm sorry. I know Her Honor just asked you
24 this, but I'm not altogether clear. Are you still saying that
25 the Glaser Weil firm did no independent analysis of this law?

1 A As best I can recall, I'm not recalling any
2 independent analysis other than -- I don't -- it's partly
3 analysis when you sit there and you read somebody else's
4 analysis and you examined them to understand it, I consider
5 that analysis, I guess. I personally did that.

6 Q You personally did that. And that, if I understood
7 you correctly, was May of 2011.

8 A Yes.

9 Q Now, at any time did anyone from the Glaser Weil
10 firm -- well, strike that. Let's back up one step here.

11 You knew that a hard drive came over to the United
12 States from Macau; right?

13 A At some point I did.

14 Q Okay. Did you understand that that hard drive came
15 from a computer used by Steve Jacobs?

16 MR. McCREA: Objection, Your Honor. Calls for
17 attorney-client privilege.

18 THE COURT: Overruled.

19 THE WITNESS: Everything I know I know from counsel,
20 and I believe that it contained some Jacobs emails. I don't
21 know -- I'm not sure I knew it was a, quote, "Jacobs" hard
22 drive, but I knew it contained Jacobs's emails.

23 BY MR. PISANELLI:

24 Q Did you learn that there were in essence two initial
25 deliveries to the United States, one a delivery of the emails

1 and secondly a delivery of a hard drive? Did you understand
2 that?

3 MR. McCREA: Objection, Your Honor. Objection.
4 Calls for attorney-client --

5 THE WITNESS: I understand what you just said.

6 THE COURT: Hold on a second.

7 Mr. McCrea, this is information that's totally in
8 the defendants' statement, which is why I overruled the
9 objection before, because it seems to be something that has
10 already been waived by your client in the public filing that
11 was made. With respect to particular knowledge that she has
12 from communications by Sands people I'm probably going to give
13 you a little more leeway. But this is directly out of your
14 brief -- not your brief, their brief.

15 MR. BRIAN: Your Honor, may I consult? I know you
16 don't want two people talking --

17 THE COURT: That's correct. You may consult.

18 THE WITNESS: And if the question's allowed, may I
19 just have it repeated?

20 THE COURT: Yes. We don't have a court reporter, so
21 the lawyer has to remember. It's a harder job for them.

22 MR. McCREA: Your Honor, there's a clear distinction
23 between a fact that we disclosed in a pleading to this Court
24 and a fact that is disclosed to an attorney by a client or
25 client's representative. And that's where my objection goes.

1 THE COURT: So you're objecting to this new
2 question, which is did somebody tell you there were two sets
3 of information that were on this one hard drive that you found
4 out Mr. Kostrinsky had here in Las Vegas?

5 MR. McCREA: I'm not sure that was the question.
6 Maybe that was the gist of it. And the facts that were
7 communicated to her by a client or client representative are
8 protected by the attorney-client privilege. Facts that are
9 disclosed in pleadings before this Court are not. But I want
10 to protect --

11 THE WITNESS: What about a lack of facts?

12 MR. McCREA: But I want to protect the
13 communications.

14 THE COURT: Okay. Mr. Pisanelli, can you ask your
15 question again so that we're all clear on what you're asking.
16 Because I thought you were trying to get to the point in the
17 brief that I got that tells me about all of the different hard
18 drives and data transfers that have occurred.

19 MR. PISANELLI: And I am, Your Honor. And I take
20 Ms. Glaser at her word that there are many transfers
21 identified in that document, that filing from the defendants
22 that she's unaware of. So I'm trying to narrow down what it
23 was she did know about prior to making the statements to this
24 Court.

25 //

1 BY MR. PISANELLI:
2 Q So let me ask you again, Ms. Glaser. Were you made
3 aware that an electronic storage device containing Mr.
4 Jacobs's emails were sent from Macau to the Las Vegas Sands
5 here on Las Vegas Boulevard?
6 A At some point in 2011 I was aware of a hard drive
7 that had been sent from Macau to Las Vegas.
8 Q You understood it to be a singular hard drive?
9 A I did.
10 Q Did you understand that there was also an electronic
11 storage device that was sent that contained emails from Mr.
12 Jacobs?
13 A I don't mean to sound stupid, but is that in
14 addition to a hard drive?
15 Q Yes, ma'am.
16 A No.
17 Q Okay. Did you learn what was on the hard drive
18 generally speaking?
19 MR. McCREA: Objection, Your Honor. Calls for
20 attorney-client privilege.
21 BY MR. PISANELLI:
22 Q In other words, you understood this was Jacobs's
23 ESI?
24 MR. McCREA: Same objection.
25 THE COURT: Sustained.

1 BY MR. PISANELLI:
2 Q Okay. What did you know to be on that hard drive?
3 MR. McCREA: Same objection.
4 THE WITNESS: Everything I know I learned from --
5 MR. McCREA: Your Honor --
6 THE COURT: She's telling me that everything she
7 would answer falls within the attorney-client privilege, so
8 therefore she's not going to answer anymore.
9 Right?
10 THE WITNESS: Yes.
11 MR. McCREA: Okay. Thank you.
12 BY MR. PISANELLI:
13 Q Did I understand your testimony earlier, Ms. Glaser,
14 to be that you never reviewed any of the emails on that hard
15 drive that you've identified for us?
16 A That's correct.
17 Q Again, I'm using a singular and personal pronoun
18 here. Did anyone from the Glaser Weil firm review any emails
19 that were transferred from Macau to Las Vegas Boulevard?
20 A Not to my knowledge.
21 Q Have you ever learned of that fact?
22 MR. McCREA: Objection, Your Honor. Calls for
23 attorney-client privilege.
24 THE COURT: From any source other than your former
25 client.

1 MR. McCREA: Or a client representative.

2 THE WITNESS: Then it's sort of a pregnant -- soon

3 as I learned it -- I'm just --

4 THE COURT: You don't know that?

5 THE WITNESS: I don't know that.

6 THE COURT: Okay.

7 BY MR. PISANELLI:

8 Q You don't know that. Did you ever learn that any

9 lawyers for Las Vegas Sands had reviewed those emails?

10 MR. McCREA: Objection, Your Honor. Attorney-client

11 privilege.

12 THE COURT: Other than in the public filings that

13 have been made that say that they were?

14 BY MR. PISANELLI:

15 Q You must know that someone from Las Vegas Sands

16 reviewed those emails by now. Las Vegas Sands has put it in

17 the public record in this case.

18 A I don't know what's in the public record. I

19 apologize for that. I do have knowledge that I've learned

20 surrounding this proceeding that I did not have before.

21 Q You know that Steve Peek was reviewing those emails

22 in 2011?

23 A I believe -- I know that he had reviewed documents

24 in 2011 that came from Macau.

25 Q When did you know that?

1 A I don't know when --
2 Q For the first time?
3 A -- I knew it but I did know it.
4 Q Did you know it 2011?
5 A I don't know if I did or not.
6 Q Did you know that Michael Kostrinsky was reviewing
7 emails here in Las Vegas that came from Macau?
8 A No.
9 Q Did you know that Michael Kostrinsky was printing
10 off emails that had been sent from Macau and delivering them
11 to certain executives in Las Vegas Sands?
12 A Is that true?
13 Q It is. That's what he testified to. I certainly
14 can't attest to it, but that's what he said.
15 A I don't know that.
16 Q You're hearing that for the first time now?
17 A Am I hearing it for the first time? No. I heard it
18 in connection with this proceeding.
19 Q Okay. Did anyone from the Glaser Weil firm obtain
20 an electronic link that allowed them to review the emails from
21 their own desk?
22 A I don't know what an electronic link is. I
23 certainly didn't. I don't believe so.
24 Q Do you know what a shared drive is?
25 A No.

1 Q Okay. Have you set up --

2 A Well, excuse me. I know -- somebody explained it to
3 me this morning. So I do know what I've been told a share
4 drive is, which I guess is my ability from a distant place to
5 hook into a server located someplace else that other people
6 can get on to, as well.

7 Q Using your definition, did anyone at Glaser Weil
8 have the ability to electronically gain access to the emails
9 of Mr. Jacobs that had been sent over from Macau?

10 A I don't know if they had an ability to use a shared
11 drive, and I certainly don't know whether or not -- what was
12 on that shared drive. So I know that there was an attempt to
13 set up a shared drive at one point. I don't know what was on
14 the shared drive, and I don't -- I certainly had no access to
15 it, and I don't know if anybody else in my firm did.

16 Q When did you learn that there was an attempt to set
17 up a shared drive with these emails that had come over from
18 Macau?

19 A Again, you're rubbing two issues together. I knew
20 there was a shared drive; I didn't know what was on the shared
21 drive.

22 Q I didn't ask you what was on it. I asked you when
23 did you learn?

24 A You said emails. You actually said, when did you
25 know there was shared drive with emails on it.

1 THE COURT: Mr. Pisanelli she --

2 BY MR. PISANELLI:

3 Q I'll take a step back. That's a fair point. When
4 did you learn that a shared drive had been set up?

5 A Sometime in 2011.

6 Q And is it your testimony to this Court that you had
7 no idea what was put on this shared drive?

8 A I knew it was documents in connection with the
9 Jacobs litigation. I didn't know if it was emails or anything
10 else.

11 Q You didn't know where the documents came from?

12 A Correct. Well, I knew they came from -- they were
13 in the possession of Las Vegas Sands.

14 Q And you knew they were Jacobs's emails?

15 A I don't know what was on the shared drive. To this
16 day I don't know what was on the shared drive.

17 Q You knew there were Jacobs-related documents on the
18 shared drive in 2011?

19 A I knew they were Jacobs related in the sense of
20 Jacobs litigation related, yes.

21 Q Did you have responsibility with managing Sands
22 China's discovery requests in this case as it related to
23 jurisdiction?

24 A I don't know what that means. I was certainly aware
25 of efforts to manage the process. I didn't personally manage

1 the process.

2 Q Were you lead counsel for Sands China in this case?

3 A I was.

4 Q Did you assume that it was your responsibility to
5 make sure that your team was complying with all the discovery
6 rules in connection with the jurisdiction-related discovery?

7 A I'd certainly take responsibility if they didn't.

8 Q Okay. So if it was ultimately your responsibility,
9 how did you intend to comply with your discovery obligations
10 if neither you nor anyone from Glaser Weil looked at,
11 reviewed, or even inquired about the information that was in
12 the possession of Las Vegas Sands?

13 MR. McCREA: Your Honor, objection. This calls for
14 the mental impressions of the attorney.

15 THE COURT: Mr. Pisanelli, I believe his objection
16 is well founded.

17 MR. PISANELLI: Fair enough.

18 BY MR. PISANELLI:

19 Q What did you do to insure that Sands/China was
20 complying with the discovery obligations as it related to
21 personal jurisdiction?

22 MR. McCREA: Your Honor, Mr. Pisanelli, is also
23 going well beyond the scope of this hearing. He's going into
24 the jurisdictional discovery and other issues that aren't
25 before the Court today.

1 MR. PISANELLI: Your Honor, I think what --
2 THE COURT: The jurisdictional discovery is why
3 we're here.
4 MR. PISANELLI: Thank you.
5 THE COURT: So, Mr. Pisanelli, if you could limit it
6 to try and elicit questions that won't invade the attorney-
7 client privilege or the attorney work product mental
8 impressions issue.
9 BY MR. PISANELLI:
10 Q Did Sands China take any steps to insure that it was
11 complying with this discovery obligations --
12 MR. McCREA: Objection.
13 BY MR. PISANELLI:
14 Q -- as it related to personal jurisdiction?
15 THE WITNESS: Can I answer?
16 MR. PISANELLI: It's up to him.
17 MR. McCREA: Objection, Your Honor. Calls for
18 attorney-client privilege.
19 THE WITNESS: I can tell you what we --
20 THE COURT: Wait. Hold on a second.
21 Mr. McCrea, are you objecting?
22 MR. McCREA: I am, Your Honor. Attorney-client
23 privilege.
24 THE COURT: Okay. That appears to be
25 attorney-client privilege.

1 THE WITNESS: Well, I think I have information
2 that's not subject to the attorney-client privilege. Does
3 that matter?

4 BY MR. PISANELLI:

5 Q What information do you have?

6 THE COURT: Well, wait. Is it work product? If
7 it's work product, he's also raised an objection on it.

8 THE WITNESS: I think we reported to the Court what
9 we were doing. We sent lawyers to Macau. And I --

10 THE COURT: Yeah, you did that. You were part of
11 that.

12 THE WITNESS: And I --

13 THE COURT: And there was 2 to 13 terabytes of
14 information that had to be reviewed.

15 THE WITNESS: And it was done in Macau. And we sent
16 a team of lawyers to do it. That's a fact. So if you're
17 asking what did we do, we spent a lot of money, the client
18 money, and we sent lawyers over to Macau to review documents
19 in Macau because we were told those documents couldn't be
20 reviewed anywhere else.

21 BY MR. PISANELLI:

22 Q Told by who?

23 MR. McCREA: Objection, Your Honor. Attorney-client
24 privilege.

25 MR. PISANELLI: Well, Your Honor, we can't have the

1 clients say that they were told something --

2 THE COURT: Yes, we can, Mr. Pisanelli. If the
3 client is going to be the one who takes responsibility for
4 this action and wants to direct counsel not to answer the
5 question, then that is an inference I will likely make someday
6 at the end of this hearing.

7 MR. PISANELLI: Fair enough.

8 MR. McCREA: Your Honor, I would also like to move
9 to strike her answer to that question.

10 THE WITNESS: Sorry.

11 THE COURT: That information was information that
12 was told to me during status conferences, which was why I had
13 the 2 to 13 terabytes of information that we discussed at the
14 July 19th, 2011, hearing as part of my questions to her. It's
15 part of being late to the game, Mr. McCrea. Sorry.

16 MR. McCREA: I don't think that was the question she
17 was answering. It was the one after that she answered before
18 the objection got out.

19 THE COURT: Okay. The request to strike is denied.
20 because I think it was part of what we discussed in the status
21 conferences.

22 Mr. Pisanelli.

23 BY MR. PISANELLI:

24 Q I want to ask you a few questions about some remarks
25 you made during the hearing before this Court June 9th, 2011.

1 Specifically I'm going to be turning to page 52, if you would
2 like to.

3 A Can I just look here?

4 Q You can, but in fairness to you --

5 MR. McCREA: Which exhibit is that?

6 THE COURT: It's not an exhibit, it's a transcript.
7 It's June 9th.

8 MR. PISANELLI: It's not an exhibit, it's
9 demonstrative.

10 MR. McCREA: Is it in your witness book?

11 MR. PISANELLI: It is.

12 MR. McCREA: What number?

13 MR. PEEK: Transcript page 52.

14 THE COURT: Here go you, Ms. Glaser. You are
15 welcome to us my copy since I don't know where it is in that
16 book you have.

17 THE WITNESS: Thank you, Your Honor.

18 Do you want me to read the whole --

19 MR. BICE: It's Number 1, Charlie.

20 THE WITNESS: I have it in front of me.

21 BY MR. PISANELLI:

22 Q Do you? Okay. Now, you see what I have up on the
23 screen is a paraphrasing of page 52. If you look at page 52,
24 line 7, you stated to the Court, "This is what happens.
25 Documents get -- must be reviewed in Macau." Do you see that?

1 A I do.

2 Q Okay. Now, when you told the Court that documents
3 must be reviewed in Macau you knew at that time that Steve
4 Peek was reviewing the documents on Las Vegas Boulevard, did
5 you not?

6 A What documents?

7 Q Steve Jacobs's emails.

8 A I knew at some point -- no. Actually I know that
9 Peek was reviewing documents, because Las Vegas Sands was
10 actually producing documents well before Sands China. What I
11 was referring to here and what I very strongly believed then
12 and now is that the documents that were in Macau were not
13 going to be able to leave Macau, period.

14 Q Okay. Let's focus on what I asked you, okay.

15 A I thought I did.

16 Q When you made this statement to Her Honor, you knew
17 that Steve Jacobs was reviewing -- Steve Peek was reviewing
18 Steve Jacobs's emails that had been sent over from Macau to
19 Las Vegas Boulevard, did you not, at the time you made this
20 statement?

21 A Okay. I'm going to try again. I knew --

22 Q It's a yes or no. It's not that difficult. Yes or
23 no?

24 A I knew at some -- can I answer my question?

25 Q No. My question to you is at the time that you made

1 this statement on June 9th, 2011, you knew that Steve Peek was
2 reviewing the Jacobs emails on Las Vegas Boulevard?

3 A I knew at some point Peek was reviewing documents in
4 Las Vegas --

5 Q At the time that you made the statement --

6 A -- because they were producing documents.

7 Q -- did you know it?

8 MR. McCREA: Your Honor -- Your Honor, can she
9 finish her answer, please?

10 THE COURT: You've got to let her finish her answer.

11 MR. PISANELLI: The answer's yes or no.

12 THE COURT: Guys, can we have a little bit of
13 courtesy.

14 Ms. Glaser, can you finish your answer.

15 THE WITNESS: I knew that Steve Peek was reviewing
16 documents, he and Justin Jones and others from his firm, in
17 connection with producing documents by Las Vegas Sands, not
18 Sands China. I did not understand that Sands China was
19 producing documents at this point in time, because they were
20 in Macau. That's what I understood.

21 Q You believed that Justin Jones and Steve Peek were
22 reviewing Las Vegas Sands records?

23 MR. McCREA: Objection, Your Honor. Calls for a
24 mental impression.

25 THE WITNESS: hatever was here in Las Vegas.

1 THE COURT: Overruled.

2 THE WITNESS: I believe that they were reviewing Las
3 Vegas documents in the possession of Las Vegas Sands in Las
4 Vegas. I did believe that.

5 BY MR. PISANELLI:

6 Q Okay. Let me be very clear. You understood that
7 what Mr. Peek was reviewing had come from Macau?

8 A It is -- I certainly knew -- I want to be clear. I
9 knew that there were documents certainly in the ordinary
10 course of business that had come from Macau, because I had
11 seen some of those that preceded -- having been sent preceding
12 the litigation. I can give you examples, if you're
13 interested. Having said that --

14 Q Please do.

15 A Can I finish?

16 Q Yes. I'm sorry. Go ahead.

17 A And I knew that they were looking at documents for
18 purposes of producing documents in this litigation for
19 jurisdictional reasons. I knew that. If you told me that
20 they were reviewing Jacobs documents that had come from this
21 hard drive, I don't -- I know it now based on what I've been
22 told. I don't think I knew it -- what they were reviewing at
23 the time.

24 Q This is I think the second time you've used this
25 phrase "ordinary course of business." What do you mean by

1 that?

2 A Well, Sands China is 70 percent owned by Las Vegas
3 Sands or whatever the parent's called. And I knew there were
4 documents back and forth regarding financial issues. I knew
5 that over the course of -- ever since it was formed --

6 Q In other words --

7 A -- I just knew there were documents going -- I
8 assumed going back and forth.

9 Q Right. In other words, you knew at the time that
10 you made this statement that there was a free flow of
11 information between Sands China and Las Vegas Sands, didn't
12 you?

13 A I wouldn't use that expression. I know that when
14 necessary documents came from Macau had nothing to do with
15 Jacobs litigation, and I think documents went from Las Vegas
16 Sands to Macau having nothing to do with the Jacobs
17 litigation. I did know that.

18 Q Okay. And so now coming back to my statement or my
19 question, I'm sorry. So in June 9th, 2011, you knew that
20 there was a regular exchange of information between the
21 companies; right?

22 A I don't know if it was a regular exchange. I knew
23 that ordinary course of business unrelated to Jacobs, means
24 what you just said. I guess I knew that.

25 MR. McCREA: Your Honor, I'm going to object again

1 to the scope of his questioning. He's going well beyond
2 your --

3 THE COURT: Overruled.

4 BY MR. PISANELLI:

5 Q And more specifically you knew that what Mr. Peek
6 was reviewing on Las Vegas Boulevard had come from Macau?

7 A I did not know at the time what he was reviewing. I
8 knew he was reviewing what was on a server in Las Vegas for
9 Las Vegas Sands.

10 Q Let me put it a different way. You knew that Steve
11 Peek was reviewing Steve Jacobs's emails while he was sitting
12 here on Las Vegas Boulevard; right?

13 A I thought I just answered that.

14 Q I'm sorry. I apologize, then. Please answer it
15 again.

16 A I don't believe I knew exactly or with any precision
17 what he what was reviewing. He was reviewing not documents
18 from -- that had come from Macau in connection with this
19 litigation. I believe he was reviewing documents in the
20 possession of Las Vegas Sands. What those documents were Mr.
21 Peek could tell you.

22 Q So is then your testimony that you didn't know that
23 Steve Peek was reviewing Steve Jacobs's emails?

24 A When?

25 Q At the time you made the statement to the Court on

1 June 9th, 2011.

2 A I don't know if I knew that at the time. I knew
3 there were documents from Macau in Las Vegas and we had told
4 -- both your prior counsel and Mr. Peek had told the Court the
5 documents that were extant in Las Vegas that had come from
6 Macau. I know that for a fact.

7 Q You do. And you can direct Her Honor and us to
8 where that statement was made?

9 A In one of the transcripts, I --

10 Q Somewhere in here?

11 A Well, yeah.

12 Q Okay.

13 A Absolutely. And I think you know that, Mr.
14 Pisanelli.

15 Q Well, I'm going to ask you lots of quotes, so you'll
16 be able to tell me if this was it.

17 THE COURT: It's on page 55.

18 BY MR. PISANELLI:

19 Q Okay. Now you also said --

20 THE COURT: Will you not hit the microphones.

21 THE WITNESS: That's me. I apologize.

22 THE COURT: Okay.

23 BY MR. PISANELLI:

24 Q Now, on the very next line --

25 A Well, wait a minute. It's right here on page 55.

1 Q Trust me, Ms. Glaser, we're going to get to it. I
2 want to stay on page 52.

3 A Okay.

4 Q Now, when you told Her Honor, "We're starting that
5 process now," that process you were talking about was the
6 assemblage of documents in Macau; correct?

7 A Correct.

8 Q You knew when you said that that there were
9 documents here on Las Vegas Boulevard, didn't you?

10 A I knew that there had been documents here in Las
11 Vegas from Macau. I did know that.

12 Q And when you told us a moment ago that you knew
13 sometime in 2011 that a hard drive had come over from Macau,
14 you knew when the hard drive came, as well, didn't you?

15 A No.

16 Q When did you learn that fact?

17 A I'm not sure I know today. I know it came in 2011,
18 so I probably know that today. But I'm not sure I knew ever
19 when it came over.

20 Q It came in 2010, didn't it?

21 A I have no knowledge it came in 2010. I learned
22 about it in 2011.

23 Q Are you aware that Mr. Kostrinsky has testified that
24 everything he obtained from Macau he shared with outside
25 counsel?

1 A I'm not aware of that.

2 Q You didn't read his deposition transcript?

3 A I did not.

4 Q Okay. Do you know that he said that everything he
5 obtained from Macau he shared specifically with your law firm?

6 A I'm not aware of that. That would not be true.

7 Q So it's your testimony, then, that Mr. Kostrinsky
8 brought evidence about the Jacobs case over from Macau and
9 kept it secret from his outside counsel?

10 A His outside counsel? I did not know, speaking about
11 me.

12 Q Thank you. That's fair and thank you for the
13 clarification. It is your point or your testimony that Mr.
14 Kostrinsky brought the evidence from Macau to Las Vegas and
15 kept it secret from Sands China, the company that gave it to
16 him in the first place?

17 MR. McCREA: Objection, Your Honor. That
18 mischaracterizes --

19 Q That's your testimony?

20 THE COURT: Wait, wait.

21 I need you to finish your objection.

22 MR. McCREA: Mischaracterizes the testimony.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Sometime in 2011 I learned that Mr.
25 Kostrinsky had caused a hard drive, I thought physically that

1 looks like a hard drive to be sent from Macau to Las Vegas. I
2 was aware of that in 2011. I've told you before and I -- you
3 haven't triggered my recollection at all with your questions,
4 I don't remember precisely when I knew that, but I certainly
5 knew it in 2011.

6 BY MR. PISANELLI:

7 Q So help me understand this. On line 12 you say to
8 Her Honor, "They're," referencing documents; correct?

9 A Yes.

10 Q "The documents are in Macau. They are not allowed
11 to leave Macau." You said that to Her Honor; right?

12 A This is an accurate reflection as best as I can
13 recall of what I told the Court.

14 Q And you said, "We have to review them there"; right?

15 A Correct.

16 Q How -- well, strike that. Why would you make a
17 statement like that, Ms. Glaser, when, as you just admitted,
18 that you knew in the ordinary course of business information
19 was being exchanged between these two companies on a daily
20 basis?

21 A Well, I can answer that question.

22 Q Please.

23 A The -- what I was representing here is anything in
24 Macau, I mean anything in Macau as of June 9th, 2011, anything
25 couldn't leave and it had to be reviewed in Macau. That's

1 what I was intending to convey. If I said something that was
2 misleading, then I apologize to the court to the nth degree.
3 But I meant exactly what I said here. It was my understanding
4 that we were not permitted to even review documents outside of
5 Macau that were in Macau at that point. And from the moment
6 we learned -- to my knowledge, the moment we learned about the
7 Macau privacy act, I'm not aware that anything left Macau and
8 was brought to Las Vegas. That's my knowledge.

9 Q So the moment you learned of the Privacy Act the
10 exchange of the information between the companies that
11 occurred in the ordinary course of business, as you described
12 it, stopped? Is that what you are telling Her Honor?

13 A I don't have knowledge that any additional documents
14 came. I don't know if it stopped or not, sir.

15 Q All right. What I'm getting at here, and I'm
16 confused, is how you can tell Your Honor in one breath that
17 you knew prior to making this statement in June of 2011 that
18 there was a ordinary course free flow of exchange between the
19 companies and then turn around and say that they must be
20 reviewed in Macau, they're not allowed to leave Macau.

21 A This is what I knew. I knew that any email -- I'd
22 like to be able to elaborate. Any email that was -- a human
23 being was sent to or from or cc-ed, we had to get their
24 permission for that email to leave Las Vegas -- excuse me, to
25 leave Macau. It could not leave Macau without everybody

1 signing off on it, and then I was told you had to go to the
2 Office of Privacy and they would look at the document again.
3 That's what we were told.

4 Q Who told you that?

5 MR. McCREA: Objection, Your Honor. Calls for
6 attorney-client privilege.

7 BY MR. PISANELLI:

8 Q Whoever that person was, did he also told you that's
9 also the process that Steve Peek used when he was reading
10 thousands of emails on Las Vegas Boulevard?

11 MR. McCREA: Objection, Your Honor. Lack of
12 foundation. Assumes facts not in evidence.

13 THE COURT: Overruled.

14 THE WITNESS: It wasn't a he.

15 BY MR. PISANELLI:

16 Q I apologize for that. Whoever that person was, did
17 that person tell you that Steve Peek and Michael Kostrinsky
18 had followed that procedure when they brought Mr. Jacobs's
19 emails over from Macau?

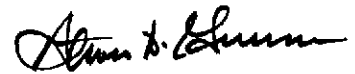
20 A I don't think Mr. Peek brought anything over.

21 MR. McCREA: Objection, Your Honor. Calls for
22 attorney-client privilege.

23 THE COURT: Okay. Can you go to the next one.

24 MR. PISANELLI: Yes, ma'am.

25 //



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN 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 TO SET TIME FOR EVIDENTIARY HEARING

THURSDAY, JUNE 28, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRADLEY BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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1 LAS VEGAS, NEVADA, THURSDAY, JUNE 28, 2012, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Okay. If I could go to Jacobs versus
4 Sands.

5 Mr. Pisanelli, if you'd switch sides of the room.
6 What did you guys do with Mr. Peek? There he is.

7 MR. PEEK: I'm here, Your Honor. The elevator --

8 THE COURT: Well, while you're coming up, Mr. Peek,
9 I've got a question.

10 MR. PEEK: Yes, Your Honor.

11 THE COURT: I've been dealing with what I
12 characterize as a discovery dispute in a jurisdictional
13 portion of this litigation because of the writ I told you to
14 file in the Nevada Supreme Court related to this discovery
15 issue was determined by the Nevada Supreme Court to be
16 inappropriate. So why didn't somebody tell me 11 months ago
17 or so that the Macau Data Privacy Protection Act wasn't going
18 to be an issue because somehow the documents had already
19 gotten to the U.S. and, geez, it was by mistake, but we're not
20 going to pursue that anymore?

21 MR. BRIAN: I'm volunteering to take him up --

22 MR. PEEK: I mean, I could, but I --

23 THE COURT: I don't think you guys understood how
24 frustrated I was when I read the statute.

25 MR. PEEK: No, I'm sure you were very frustrated,

1 Your Honor. And we are prepared to answer that question with
2 -- to you this morning. And I can do it, or I'm going to
3 defer to Mr. Brian, because --

4 THE COURT: I don't care who does it. I'd just
5 really like an answer, because we've spent 11 or 12 months on
6 this issue.

7 MR. PEEK: Yeah. And I think, Your Honor, just
8 understand that although you say it was all here, it's not --
9 what they're suggesting to you, that it is all here, is not
10 exactly correct.

11 THE COURT: Okay.

12 MR. PEEK: So I'll let Mr. Brian --

13 MR. BRIAN: Your Honor, Brad Brian for Sands China
14 Limited. Let me try, Your Honor, because I appreciate Your
15 Honor's frustration.

16 When we got into the case we got in in stages. Mr.
17 Weissman got in a few months before I did. I got in around
18 February or March. And when this issue first came up --

19 THE COURT: You can sit down. You don't have to
20 stand.

21 MR. BRIAN: -- and we learned that there had been
22 some transfers of documents from Macau there was -- those
23 documents were in error. They should not have happened.
24 There was a real concern about what we should do about it.
25 And since that -- since that concern began there have been a

1 number of meetings with the Macau authorities who are
2 responsible for dealing with this issue. Mr. Weissman and
3 another lawyer from the United States travelled to Macau and
4 met with the authorities. There've been I think -- I'm told
5 five meetings, some involving folks from the U.S., others
6 involving lawyers over there, to try to figure out how to deal
7 with this. And the intention at the time -- and frankly there
8 was a concern about whether we could do anything with it,
9 whether or not we were allowed to do anything with those
10 documents. It was not until a meeting on May 29th of this
11 year, after the last status conference that there was
12 sufficient comfort that we could produce in this litigation
13 Macau documents that were already in the United States.
14 Before that it had been our plan, which I --

15 THE COURT: Nobody told me for the 11 months that
16 I've been dealing with it there was a potential issue that you
17 were exploring with the Macau authorities, and all the times I
18 asked questions about whether we could talk to the Macau
19 authorities about making this process work better. Nobody
20 thought to say, gosh, Judge, we're already talking to them
21 because we screwed up and took this information we weren't
22 supposed to and we're trying to see what we're supposed to do
23 now.

24 MR. BRIAN: Your Honor, in hindsight if you could
25 roll the clock back there's no doubt that it would have been

1 better to advise the Court of that. I recognize that. There
2 was real worry about what the implications of all this were,
3 and so the plan had been, which I understand Your Honor did
4 not like and expressed a discomfort about it at the last
5 status conference, which unfortunately I was sick and couldn't
6 attend -- maybe fortunately, I don't know -- was it had been
7 to go through Jacobs's -- Mr. Jacobs's ESI, go through those
8 documents, then compare it to the documents that were already
9 here, and if there were additional documents already here, to
10 go to the Macau authorities and try to persuade them that it
11 was okay to produce them.

12 Your Honor expressed the view that, no, no, we don't
13 sequence that discovery, and I'm not asking Your Honor to
14 revisit that. And then on a meeting on May 29th we got
15 sufficient comfort -- by the way, it's not a waiver issue.
16 The question is what the Macau authorities will do about it in
17 the event we were to make a production in this lawsuit of
18 those documents. We got the comfort and then developed --
19 immediately developed a protocol, went to the plaintiff's
20 lawyers and laid out the protocol, requested a meet and
21 confer, which they were not available to do last week, that's
22 why it appeared this week. So now we're in a process -- we're
23 in a situation where we're going to end up reviewing
24 essentially two sets of what are largely overlapping
25 documents. That's going to be more expensive, more

1 burdensome, more time consuming, I get that. We think it
2 could have been avoided if Mr. Jacobs had produced his ESI
3 earlier. He didn't for reasons that he can explain. But we
4 are where we are. And if we had rolled the clock back, maybe
5 this thing would have been done differently, maybe it should
6 have been done differently. There was no -- there was no ill
7 intent on the part of anybody to do this and in any way
8 conceal it, and all those documents were either going to be
9 produced to the extent they were nonprivileged or recorded on
10 a privilege log. So that's -- that's where we are. And they
11 took -- it took a long time to get guidance from the Macau
12 authorities. This is not a -- the law is complicated and
13 evolving, I think is the best way to say it. And as to what
14 the Macau authorities would do about it is evolving. That led
15 to the multiple -- multiple meetings.

16 THE COURT: Well, I'm very disappointed in the
17 conduct of counsel.

18 MR. BRIAN: I understand, Your Honor. And I can
19 only tell you that it's an issue that -- it's just been a
20 concern, and counsel, the client, everybody have been
21 struggling with certainly since the time we got in this case.
22 I can't speak for what happened before we got in this case,
23 but it's an issue that people have been dealing with, dealing
24 with diligently.

25 I will tell you my perspective -- I mean, I

1 understand that's a concern, but when I went over the papers
2 last night to prepare for this hearing my perspective on it
3 was -- I read two different pleadings. We think that despite
4 Your Honor's --

5 THE COURT: I'm not really worried about what's in
6 the status reports now. I'm worried about the work that we've
7 done related to the production of the documents and the
8 application of the Macau Data Privacy Act and the work we've
9 done on this side and the work that you guys have done on that
10 side when you have the documents here in the U.S. all along.
11 Now, whether they were in the U.S. wrongfully, appropriately,
12 or in violation of Macau law is a different issue. But nobody
13 told any of us, and that's a problem, Counsel.

14 MR. BRIAN: Your Honor, I can only repeat what I
15 said. I understand the Court's frustration, I do. And to the
16 extent that it should have been done earlier, I apologize. I
17 mean, if it had become more -- if it had been raised earlier,
18 maybe in hindsight that would have been better. I'm just
19 telling you that at the time there was a real concern about
20 what we are to do about it, and nobody really had an answer
21 until we went through those series of meetings with Macau
22 authorities. That's -- that may not be satisfactory to the
23 Court, I'm just telling you that's the process that both the
24 clients and counsel went through for the last -- oh, God, last
25 number of four, five months.

1 THE COURT: All right.

2 MR. PEEK: And, Your Honor, since -- since I was the
3 one that --

4 THE COURT: You've been here the whole time.

5 MR. PEEK: I've been here the whole time, and so I'm
6 not going to let Mr. Brian take any hits for me. So I have to
7 take and accept that responsibility, as well. And if we're
8 wrong in your view, Your Honor, I apologize. But it is, as
9 Mr. Brian has described it, a struggle with the Macau PDPA.
10 It's been a struggle for over 14, 15 months or longer since it
11 came to our attention. They're trying to work through that
12 issue with the Office of Personal Privacy Data and the
13 implications that come from that potential violation that put
14 us where we are here today. And for that, Your Honor, I
15 apologize to this Court. I do.

16 MR. BRIAN: And I do.

17 MR. PEEK: And I take that responsibility, Your
18 Honor, because my credibility with this Court is important to
19 me, because I appear in front of this Court an awful lot, and
20 I have been here an awful lot.

21 THE COURT: I sent you on a writ up to the Supreme
22 Court because --

23 MR. PEEK: You did, Your Honor.

24 THE COURT: -- of what you told me about this.

25 MR. PEEK: You did.

1 THE COURT: You didn't have to tell them anything,
2 because they sent you right back.

3 MR. PEEK: They did. But it was a different issue,
4 Your Honor.

5 THE COURT: Overlapping, Mr. Peek.

6 MR. PEEK: I agree, Your Honor, it is overlapping.
7 But certainly --

8 MR. BRIAN: Your Honor, there are -- there are other
9 issues, and I just second what Mr. Peek says. If we made a
10 mistake in judgment, I apologize for that. I can tell you
11 that for many, many months that everybody has been trying to
12 resolve that issue and to solve it. Now, we obviously didn't
13 solve it to the Court's satisfaction, and for that I
14 apologize. But people were trying to solve it and, you know,
15 either there were mistakes made with the transfers and maybe
16 there were mistakes made with how it was handled, but there
17 are other issues raised in the papers, and I would like to
18 address them briefly --

19 THE COURT: Sure.

20 MR. BRIAN: -- because when I read the papers, I
21 mean, I do think that we have acted diligently to -- we've
22 searched over 300,000 documents, we've produced at a cost of
23 more than \$300,000, we have met and conferred, and now we read
24 for the first time yesterday a litany of allegations that we
25 have not been told about, there've been --

1 THE COURT: You're referring to the declaration Mr.
2 Jacobs attached to the status report?

3 MR. BRIAN: I'm referring to the declaration of Mr.
4 Jacobs, which I think, Your Honor, is an example of what is
5 wrong with litigation nowadays, where people put out
6 essentially press releases in the disguise of a declaration.
7 And that's what that largely is. There is nothing in that --

8 THE COURT: Because there's absolute immunity for
9 that.

10 MR. BRIAN: I stand.

11 THE COURT: That's why Mr. Adelson got out of the
12 case [inaudible].

13 MR. BRIAN: Well, Your Honor, that -- what's done is
14 done, but that declaration, there are things in there that
15 they're not -- we have never heard about those things before.
16 If Mr. Jacobs --

17 THE COURT: Aren't you glad you know about them now?

18 MR. BRIAN: If Mr. Jacobs truly believed that Mr.
19 Adelson had approved prostitution, he would have resigned. He
20 was fired. And that is in that declaration for one reason.
21 You know that and they know that and Mr. Jacobs knows that.
22 And those sort of false, scurrilous allegations do not belong
23 in the case.

24 With respect to the discovery disputes, we have met
25 and conferred with -- Mr. Weissman and other colleagues at my

1 firm, Mr. Peek, have met and conferred with them on a number
2 of occasions. It was not until yesterday that they said they
3 raised two issues of documents they say we did not produce
4 that should have been produced. They're wrong on one, and Mr.
5 Weissman can explain this if you need more details, and the
6 other one we don't think was ever requested. So we went --

7 THE COURT: And the Mr. Tracy ones have now been
8 produced.

9 MR. BRIAN: We went through -- we went through last
10 night -- because we hadn't seen this declaration and these
11 allegations until we got it, we went through last night and we
12 prepared this report, which if I may pass it up to the Court,
13 goes through some of the allegations of documents that they
14 say were not produced which in fact have been produced.

15 THE COURT: Okay. We've marked it as Court's 1 for
16 you.

17 MR. BRIAN: Thank you, Your Honor. Those documents
18 have been produced. So we're in a situation where we would
19 like to move forward to solve the discovery disputes, not to
20 conjure up disputes and try to make hay out of them, which I
21 think is what's happening on the other side.

22 Now, unfortunately, we have the issue with the Macau
23 documents that Your Honor doesn't feel so kindly toward us
24 about. I understand that. But on the other issues, we have
25 been dealing with this diligently, as competently as we know

1 how to try to move this case forward. We met with the client
2 last night. We are going to double and redouble our efforts
3 to move this thing along and review the Jacobs documents that
4 are in the United States and get those documents that are
5 responsive to jurisdiction produced as quickly as we can. We
6 are the ones who've wanted to move forward with a hearing on
7 jurisdiction. We were the ones who came in and wanted to keep
8 today's date. It was the plaintiff who wanted to delay it.
9 Now they pretend to want to move forward quickly.

10 So we think, Your Honor, we can address the specific
11 issues, but I don't think it's appropriate to put in the
12 declaration that was put in without raising that, I don't
13 think it's appropriate to put in all of these so-called
14 discovery disputes without raising them in a meet and confer
15 and, if they can't be resolved, filing a motion, which is the
16 appropriate -- I think that if there are issues --

17 THE COURT: It is the appropriate way, you're
18 absolutely right.

19 MR. BRIAN: If there are -- if there are documents
20 that they say are responsive that Mr. Jacobs knows were not
21 produced, tell us and we'll go back and look at them, which is
22 what we're going to do now in response to this declaration.
23 Thank you.

24 THE COURT: Okay. I marked your Table of Production
25 as Court's Exhibit 1 so that we have it for the record, but I

1 anticipate always that issues related to compelling documents
2 will be handled by a motion. The status report is merely to
3 tell me if we're going to throw me off schedule further. Part
4 of what we were hoping today was to talk about scheduling.

5 MR. BRIAN: Here's our -- here's our --

6 THE COURT: I'm not sure we're at a point to even
7 talk about scheduling in this case.

8 MR. BRIAN: Well, here's our --

9 MR. BICE: I'd like to be heard before we talk about
10 scheduling, Your Honor.

11 THE COURT: Wait. Not yet, Mr. Bice. Not yet, Mr.
12 Bice.

13 MR. BRIAN: On that -- if you want my thoughts, I'll
14 sit down after that, but --

15 THE COURT: Sure.

16 MR. BRIAN: -- as I say, last night we sat down with
17 the client and talked about how we would essentially increase
18 staffing, increase the expense, and get it done. And we think
19 that we can get all of the documents, other than documents in
20 Macau -- and we have to decide what the Court is going to do
21 with that, because documents in Macau are a whole different
22 situation and involve legal issues that may or may not have to
23 be resolved on the jurisdictional issue. But we think we can
24 get through all of the Jacobs documents and all of the other
25 documents in the United States by Labor Day and get those

1 produced so that if, Your Honor -- if there's no discovery
2 disputes and discovery motions, we think we'd be in a position
3 to have a hearing in October. That's our best bet.

4 THE COURT: All right. Thank you.

5 Mr. Bice.

6 MR. BICE: Yes, Your Honor. I learned about this
7 information -- I think the day before yesterday was the first
8 I --

9 THE COURT: And "this information," you mean the
10 stuff that got taken out of Macau?

11 MR. BICE: Yes. That's right. Now, Mr. Brian
12 didn't -- wasn't on any of the calls that we've had over the
13 course of the last three days about this, so I want the Court
14 to understand what I was told, because you can imagine my
15 reaction when I heard this information. I won't use the same
16 tone that I used over the phone, but I'll try and recall
17 exactly what I said.

18 "How long have you known about this and why weren't
19 we and the Court told about it"; and this is the response I
20 was given, we were under no duty to disclose this to you or
21 the Court. That was the answer I got. I was never told, oh,
22 we've been working with the Macau Government, you know, we
23 didn't know what to do, we've been trying to solve this. The
24 answer was that simple. Ms. Spinelli was also on the phone,
25 and I believe Mr. Pisanelli was in the room. "We had no duty

1 to disclose this to you or the Court." That's why we weren't
2 told about it. It wasn't because of Macau Data Privacy
3 problems.

4 And I love this argument from Mr. Brian, well, we
5 wanted to move the hearing quickly, we wanted to move forward
6 with the hearing. You're darn right he did. That's exactly
7 what they were trying to do. They were trying to cram that
8 hearing down our throat without the facts ever coming to
9 light. And only when you said, we're not going to do that,
10 guess what happens. Now their hands are tied, they have to
11 'fess up that for two years they have been sitting on these
12 documents and even to this day haven't searched them for
13 purposes of this case. They've apparently been searching them
14 for other purposes, I'm sure to deal with the United States
15 Government, but they haven't searched them for purposes of
16 this case. You ordered jurisdictional discovery last year,
17 and they still haven't searched these documents.

18 Your Honor, Mr. Jacobs has a saying, and I can now
19 see how it is in play here. Mr. Adelson told Mr. Jacobs in
20 response to several complaints by Mr. Jacobs about the
21 inappropriate activities that were going on at Sands, it's not
22 what they know, it's what they can prove. And we've now seen
23 that is exactly what's going on in this case. It's not what
24 Mr. Jacobs knows, it's what Mr. Jacobs can prove, so we want
25 to make sure we see Mr. Jacobs's documents before he sees

1 ours. And that was the whole excuse for the sequencing that
2 was going on, and that became crystal clear. And when you
3 called them out and said, you're not permitted to do that,
4 what did they do in the last 30 days relative to producing Mr.
5 Jacobs's emails and the like to us? Nothing. They haven't
6 even searched them by their own acknowledgements. Because,
7 guess what, Your Honor, guess when they get Mr. Jacobs's ESI
8 under our agreement. They get it next week. That's what this
9 is about. This is about stalling as long as they can. They
10 didn't have a duty, to use their exact words, a duty to
11 disclose this to us or to the Court, and now they'll start
12 looking at Mr. Jacobs's emails. And I love this. You know,
13 they've got their resources. They're going to man up now or
14 they're going to get lots of personnel and they're going to
15 start searching through Mr. Jacobs's ESI. Guess when they're
16 going to do that. Just as soon as they get Mr. Jacobs's from
17 Advance Discovery so that they know what he can prove, not
18 what he knows. And that's what -- that's why I took the
19 position, and I ask the Court to do it now, they be directed
20 to immediately deposit all ESI with Advance Discovery. Not
21 that they can search it after they get Mr. Jacobs's documents
22 to determine what he can prove, not what he knows, so that
23 then documents don't get sanitized. And that's what the
24 purpose of his affidavit is.

25 And I'll be happy to address why is affidavit is --

1 was submitted with the status report. Because what has gone
2 on and what we found out about two days ago is they've been
3 holding onto a bunch of documents and they're sanitizing them.
4 They produce a few things. I love this argument, they've
5 produced everything about Ed Tracy. We've responded to that.
6 They've produced duplicates of I think his resume and an email
7 forwarding it. That is it.

8 THE COURT: And those were produced yesterday?

9 MR. BICE: No. Those were produced before then, two
10 days ago.

11 THE COURT: Two days ago.

12 MR. BICE: Right. And that's all they've produced.
13 And then they come to you and say, well, see, we're
14 responding. No. What they're doing is they're trying to just
15 leak out a little information so that they can say to you, oh,
16 we're responding; because they are cherry picking what they
17 don't want to be known. And then they come to us and say,
18 well, you should tell us, tell us what Mr. Jacobs knows, and
19 then we'll go look for additional documents. Again, this one-
20 sided attempt, we want to know what Jacobs can prove before we
21 respond to discovery. Just like they -- how in the world can
22 they stand here and tell you they were not under a duty to
23 disclose to us and to you that for two years they have had
24 Jacobs's emails in the United States? I mean, I can't
25 remember the number of times we were in this courtroom, people

1 from -- they were represented by separate counsel because they
2 couldn't even look at the documents. That was the story. Mr.
3 Peek's firm couldn't even look at the documents. Now it turns
4 out his client is the one that has possessed them all along.

5 Now, I asked point blank questions about this. And
6 you're right, I was -- I was agitated on the phone. I don't
7 deny it. I asked them point blank, how did they get here and
8 when did they get here; the first answer was, well, we'll need
9 to confer with our client about whether or not we're going to
10 answer that question.

11 So then the response came back in a subsequent phone
12 call, they were brought here by a lawyer. They won't tell us
13 who. They claim it was none of them, but they won't tell us
14 who brought them here, and they don't say exactly when they
15 were brought here, just sometime in 2010.

16 Then we started asking followup questions, of
17 course, and then we were accused of conducting an inquisition
18 against them over this stuff, such as, what's been done with
19 them; well, nothing has been done with them. And that's why,
20 Your Honor, we ask you to now take control of those documents
21 and place them with Advance Discovery just like Mr. Jacobs had
22 to do. These people have lost the right -- when I say these
23 people, Sands and Sands China have lost the right to tell us
24 and to tell this Court, trust us, we're going to be forthright
25 with you in discovery, trust us. For two years they kept a

1 secret, a whopper from you and from us, and there is no excuse
2 for it anywhere. They can't be trusted, they've demonstrated
3 they can't be trusted, and the documents need to be placed
4 with Advance Discovery now so that we don't run into more
5 selective sanitizing of the documentation with the assurances
6 of trust us. Tell us, Mr. Jacobs, what else would you like to
7 know, you let us know what you're looking for and then we'll
8 see if we can find it for you. That's not the way it's
9 supposed to be working.

10 And what Mr. Jacobs knows, Your Honor, which is why
11 we submitted this declaration is if they were legitimately
12 running the search terms that they have told us that they ran
13 to pull out these documents about Ed Tracy, Mr. Jacobs knows
14 for a fact other documents would have surfaced. And they
15 didn't. Why is that? Who's making the selection process
16 internally or amongst this group to not find the documents and
17 not produce them? Somebody is. You know, this is the -- this
18 is the problem for them, is that Mr. Jacobs knows the
19 documentation that exists. Again, they want to know what
20 could he prove exists. He knows what exists. And it's not
21 showing up if they were legitimately running these search
22 terms like they claim that they were. And that's why they've
23 lost the right to claim, trust us.

24 After two years of silence while we sat here -- you
25 know, Mr. Brian's firm wasn't involved at that point in time,

1 but we had argument after argument after argument in this
2 courtroom, we had motions for sanctions leveled against us
3 over all this. And while that was ongoing the people in this
4 courtroom sat here with knowledge that they had large volumes
5 of those documents in Sands's possession here in Las Vegas.
6 Can anyone sit here with a straight face and say, we didn't
7 feel that it was appropriate or we were under any duty to
8 inform the Court of that fact? They knew it. And they
9 deceived us. And it wasn't an oversight. You were here, I
10 was here, Mr. Pisanelli was here. It was no oversight.

11 What happened is they wanted to cram that hearing
12 down our throat without ever revealing this fact to us. And
13 when you called them out on the attempt to sequence discovery,
14 that forced their hand. And now the excuse has come out,
15 well, now they've tried to negotiate -- I can't -- really, I
16 can't keep the stories straight. Are you now claiming that
17 you've been negotiating with the Macau Government for the last
18 two years, or are you claiming that you only started that
19 process within the last 30 days? I'm confused.

20 As we've cited to you, Your Honor, in --

21 THE COURT: Let's talk about your discovery.

22 MR. BICE: I'm happy to do that. There's a couple
23 of more points about theirs I'd like to know.

24 They make a reference that there were -- because,
25 again, I learned something new with the status report. Now it

1 turns out that it wasn't just Mr. Jacobs's documents that were
2 transferred to the United States, apparently two other unnamed
3 people. Well, who are they? Why isn't that disclosed to us?
4 Was one of them Eric Chu [phonetic]? I'd like them to explain
5 on the record who those people are, because that may explain
6 to us where there are some additional documents. Is it Eric
7 Chu and Yvonne Mau whose data they transported into the United
8 States and have possessed for the last two years without
9 telling us?

10 That's why we asked, Your Honor -- that's why we
11 submitted an affidavit with the status report. We recognize
12 that affidavits with status reports aren't the norm. And I
13 told them yesterday that we were going to submit it in light
14 of this revelation and what is going on in this case; because
15 there's two things, they've demonstrated that they can't be
16 trusted to produce the information because they've been
17 sitting on it for two years, and they've demonstrated that
18 they can't be trusted to respond to our discovery requests
19 because documentation that Mr. Jacobs knows exists that would
20 be -- would surface in these search terms is also not being
21 produced. Something is afoot here, and it's not oversight.

22 Now, to respond to Her Honor's question, our
23 discovery. Our discovery has been placed with Advance
24 Discovery. Mr. Jacobs was given 10 days in order to review
25 it. That's what we find fascinating. He's got hundreds of

1 thousands of pages, and we agreed to have 10 business days to
2 review it. But they have had this documentation for two
3 years, and, of course, they're just not going to get to it
4 until, guess when, until they get to see Mr. Jacobs's
5 documents, because this case is about what Steve Jacobs can
6 prove, not what he knows. That's why I ask you to force them
7 to now, before they get Mr. Jacobs's data, deposit their
8 documentation with Advance Discovery so that we won't have a
9 dispute down the road when more documents go missing or there
10 are new revelations that the Court didn't need to know and
11 that we didn't need to know about for the last two years.

12 And as we cite to the caselaw for you, Your Honor,
13 we think that there's a little selective interpretation going
14 on of the Macau Data Privacy Act. Whoever these unnamed
15 lawyers are that made the decision that the data could be
16 shipped -- and, of course, it only demonstrates Mr. Jacobs's
17 point all along about who really controls Sands China. It's
18 being controlled from Las Vegas by the Las Vegas executives.
19 Who went and got the documents and pulled them out of Macau?
20 Las Vegas Sands did. Why? Because they're in control. Who
21 are the lawyers that made that decision? When did the Macau
22 Data Privacy Act suddenly become the defense? It seems like
23 it only became the excuse after this Court started saying,
24 we're going to do jurisdictional discovery. It apparently
25 wasn't any obstacle before then.

1 So what we've got going on is when Sands wants to
2 pull information out of Macau for its own purposes it's not an
3 obstacle to it or even its legal team. But when they have to
4 have the burden of responding to discovery in litigation in
5 the United States, whoa, Macau Data Privacy Act, we can't --
6 we can't comply and we can't even tell you, Your Honor, that
7 we've interpreted it and applied it differently for the last
8 two years before our sudden revelation that it applied and
9 precluded us from responding to discovery.

10 That's why we cite the caselaw to you, Your Honor,
11 in our status brief. And I understand again it's a status
12 brief, but we're still trying to move this forward and that
13 the Federal Courts have taken the position that these blocking
14 statutes, especially how it's being invoked in this matter by
15 Sands, do not obstruct discovery and they are still required
16 to respond. That's why we are asking that they be forced to
17 place both the documentation that they have here in Nevada
18 with Advance Discovery so that nothing else happens to it, and
19 that all documentation in Macau that they claim to have
20 preserved also be deposited with Advance Discovery
21 immediately. That way we can work out a protocol that it can
22 legitimately be searched, just like they insisted Mr. Jacobs
23 had to do, legitimately be searched to determine what is in
24 there, not sanitized by people who have an agenda here of not
25 having the bad facts come out, just spoon feeding us what

1 they'd like us to see.

2 And if the Court doesn't have any further questions
3 for me, I will sit down.

4 THE COURT: So your discovery is back on track and
5 the -- Mr. Jacobs is currently reviewing the information that
6 was gathered by the search terms when Advance Discovery ran
7 them --

8 MR. BICE: That is correct.

9 THE COURT: -- and that should be returned to
10 Advance Discovery for them to make any determinations as to
11 personal or private information that Mr. Jacobs has designated
12 and then be produced to the defendants next week?

13 MR. BICE: What Mr. Jacobs has done is he has gone
14 through the documents, he is comparing the search terms that
15 are going to be then run against the database, that those
16 search terms will then pull out those documents, they will get
17 to see the search terms. When that is done they can either
18 agree or disagree. We've agreed that if in the event that
19 there's disagreement that will hold up the process the search
20 terms will be run, the documents will be pulled out and
21 segregated, they will then be given access on a secured server
22 to what remains of the documentation. It's already been de-
23 duped. All that process has already occurred. That's what's
24 obviously --

25 THE COURT: The removal of the documents especially

1 related to Mr. Jacobs's children, which was of a --

2 MR. BICE: Yes.

3 THE COURT: -- significant concern to me when this
4 issue first came up about a year ago --

5 MR. BICE: Yes.

6 THE COURT: -- are going to be pulled out --

7 MR. BICE: That is correct, Your Honor.

8 THE COURT: -- through the search term use.

9 MR. BICE: That is correct, Your Honor.

10 THE COURT: Okay.

11 MR. BICE: And that process has been underway now
12 for a period of time, and it will be done. We agreed that he
13 would have 10 business days to complete that, and he will be
14 done with it.

15 Obviously, Your Honor, in that regard just
16 demonstrating our frustration with this recent revelation is
17 even though they've had this data for two years they haven't
18 even run it to compare it against their own database in Macau
19 to determine what's missing or what isn't missing or what's
20 even left in Macau. They haven't even done that process.
21 Why? Because they want to see what Steve Jacobs has before
22 they produce anything from Steve Jacobs. And that sequencing
23 is what you told them was forbidden, and all they have -- they
24 have granted it to themselves by now just simply using time as
25 the means in which to accomplish it once you told them they

1 weren't allowed to do that.

2 THE COURT: Okay. Before you leave the podium let's
3 talk about scheduling.

4 MR. BICE: Yes, Your Honor.

5 THE COURT: The volume of documents that is going to
6 be provided on the secured server for the defendants to review
7 beginning next week is probably going to take them three to
8 four weeks to get through?

9 MR. BICE: Yes.

10 THE COURT: Okay. Assuming some day you get some
11 more documents from the defendants, how much longer do you
12 think you're going to need before you're ready for the
13 hearing?

14 MR. BICE: We will not need much time. Once we get
15 the documents we will take the depositions within 30 days of
16 our possession of those documents, and we will proceed.

17 THE COURT: Okay. So you're talking about another
18 60 to 90 days basically.

19 MR. BICE: We would think 60. I mean, if Mr. Jacobs
20 -- you know, you had said three to four weeks for them to
21 review it. I wouldn't think it would really take that long.
22 I mean, Mr. Jacobs is reviewing them in 10 business days.
23 They have a far larger army than Mr. Jacobs has. He's doing
24 this -- has to do it, by agreement, all by himself. They
25 could certainly get through those documents a whole heck of a

1 lot faster if the -- and by the way, I'm quite sure they will,
2 Your Honor. I'm quite sure they're going to get through those
3 documents real fast, because they want to see what's in them
4 before the Court tells them what they have to give to me. And
5 that's what's inappropriate.

6 THE COURT: Okay.

7 MR. BICE: Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Brian.

10 MR. BRIAN: I think I can be really brief, Your
11 Honor, unless you have more questions.

12 Let me address very briefly Mr. Bice's request that
13 we be required to deposit these documents with Advance
14 Discovery. I understand there's a big difference, that the
15 Court ordered that of Mr. Jacobs because, contrary to what is
16 normally done, Mr. Jacobs did not take an image of his hard
17 drive, and continued to use it. There was concern, and we had
18 concerns and the Court had concerns, that caused that
19 procedure to be raised.

20 Now, Mr. Bice tries to equate that by saying there's
21 evidence of sanitizing of documents, but that's the issue that
22 just got conjured up yesterday in connection with the status
23 conference report, has never been the subject of meet and
24 confers, and the issue that I think many things they say are
25 wrong. If they have evidence that they think documents exist

1 that were not produced, we're happy to sit down and go back
2 and look at them and try to produce more documents. So I
3 don't -- I don't think the situations are at all -- at all
4 equal.

5 THE COURT: And the documents you're going to look
6 at are the electronically stored information that was taken
7 out of Macau?

8 MR. BRIAN: We're going to -- we are -- on those
9 documents we heard Your Honor loud and clear. We are going to
10 double and redouble and go through those documents. I'm
11 talking about the other documents that are now in his
12 declaration that he says have -- that are just essentially Las
13 Vegas Sands type documents that he says have not been
14 produced. On those documents we should sit down across the
15 room and figure out are there documents that exist that Mr.
16 Jacobs thinks exist that have not been produced, and we'll go
17 back and look at them.

18 THE COURT: Okay. So let's switch gears for a
19 minute.

20 MR. BRIAN: There's no intention to sanitize the
21 documents, certainly by nobody in this room, Your Honor.

22 As to the hearing date, I --

23 THE COURT: Are you finished?

24 MR. BRIAN: Pardon?

25 THE COURT: I have a point, if I could make it,

1 please.

2 MR. BRIAN: Go ahead. Please.

3 THE COURT: I'm inclined to schedule an evidentiary
4 hearing to make a determination as to the failure of the
5 defendants to disclose the existence of the information that
6 was removed from Macau, and at that hearing I want the
7 attorney who was involved in the transporting of the
8 electronically stored information, I want the actual
9 electronic storage devices on which the information was
10 disclosed. When will you be able to provide that information
11 for me so I can conduct a hearing and make a determination as
12 to whether any sanctions are appropriate?

13 MR. BRIAN: I don't know. I may have to ask Mr.
14 Weissman that, Your Honor. I think the individual --

15 THE COURT: I'm going to let you take a chance and
16 make a -- take a short break while I finish up the rest of the
17 cases, and then I'll get to you.

18 MR. BRIAN: We'll do that, Your Honor. Thank you.

19 (Court recessed at 10:28 a.m., until 10:41 a.m.)

20 THE COURT: Gentlemen, we were talking about dates.

21 MR. PEEK: Your Honor, if I understand correctly,
22 what the Court has asked us to do is to have available the
23 individual who took the data from Macau in 2010. I will tell
24 the Court that was former in-house counsel Michael Kastrinski
25 who did that. He no longer is an employee. However, I

1 believe he lives in Las Vegas, so he certainly is available
2 whenever we can get a date, because I'm sure he's within the
3 subpoena power of the Court, and I'm sure he will more than
4 likely cooperate with us. We'll certainly request that he
5 cooperate.

6 THE COURT: He's always cooperated whenever we've
7 asked him to do anything before in other cases.

8 MR. PEEK: So that's the issue with respect to that
9 removal of data by Mr. Kastrinski in 2010. And I don't know
10 when you want to do something -- when you want to have that
11 hearing.

12 THE COURT: Where are the electronic storage
13 devices?

14 MR. PEEK: They are at the Sands, Your Honor.

15 THE COURT: Okay.

16 MR. PEEK: At the Las Vegas Sands Hotel & Casino.

17 THE COURT: They're still preserved?

18 MR. PEEK: They are still preserved, Your Honor.
19 They have been preserved. They have not --

20 THE COURT: That's a good thing, Mr. Peek.

21 MR. PEEK: Yes, Your Honor. They are preserved,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PEEK: They're in the same --

25 THE COURT: Does somebody want to call Mr.

1 Kastrinski? Is he --

2 MR. PEEK: I don't know if he's found new
3 employment. I don't know what he's doing. I've not been in
4 touch with Mr. Kastrinski, Your Honor, for some time. But I
5 can certainly -- I'll reach out to him.

6 THE COURT: I have the week of July 9th fairly open
7 because the CityCenter people moved back a week and Mr. Bice
8 settled his other case and you guys didn't go, so the July
9 stack is more open than it was. So I was looking at the week
10 of July 9th. I figure this as almost a full day, knowing the
11 people involved in this case, and by that I mean the lawyers.

12 MR. PEEK: I have very intense hearings on the 10th.
13 I have I think four or five motions on the 10th.

14 THE COURT: Is that in the Wayne Newton case?

15 MR. PEEK: It is, Your Honor. I also have the
16 deposition of Mr. Kennedy scheduled for the 9th, and also the
17 Harbers scheduled for followup after our motion practice. So
18 certainly towards the end of that week I would --

19 THE COURT: So you're looking at Friday, the 13th?

20 MR. BRIAN: Not a good day to pick, but -- Your
21 Honor, unfortunately, I'm in Washington on some intense
22 confidential negotiation through the 13th, for the next two
23 weeks, starting on Monday.

24 THE COURT: Well, then I guess we can move up to the
25 week before.

1 MR. BRIAN: Can we do it that following week?

2 THE COURT: No, I can't. We can move up the week
3 before, which is the week of the Fourth of July.

4 MR. BRIAN: I can't. See, I start this week, and
5 it's going to run for two weeks.

6 THE COURT: I'm not moving it past my CityCenter,
7 Wayne Newton, and kids fighting over the business with parents
8 cases.

9 MR. PEEK: What was the last one, kids fighting over
10 what?

11 THE COURT: Kids fighting over the business with the
12 parents. It's called CD Construction versus ERC Investments.
13 Max just tells me it's the son fighting with the parents case.

14 MR. PEEK: Doesn't sound like a pleasant one, Your
15 Honor.

16 MR. BRIAN: May we have a moment, Your Honor?

17 MR. PEEK: I'd be available, Your Honor.

18 THE COURT: Now, if you can get the CityCenter folks
19 to resolve their issue on the Harmon, then I could go back to
20 doing regular stuff, and they could get ready for trial.

21 MR. PEEK: So, Your Honor, we're just talking about,
22 what, a half a day, one with Mr. --

23 THE COURT: I'm thinking it's a little more than a
24 half a day knowing the people --

25 MR. PEEK: Okay. So --

1 THE COURT: -- knowing the lawyers involved in this
2 case. And I'm not criticizing you --
3 MR. PEEK: I know you're not, Your Honor.
4 THE COURT: -- and I'm not criticizing Mr. Bice.
5 But you're both very, very thorough. And I am criticizing Mr.
6 Pisanelli. Forty-five minutes on the can I take a deposition
7 motion.
8 MR. PEEK: I was here, Your Honor, listening to --
9 MR. BRIAN: Perhaps, Your Honor, if -- what date
10 works the week of July 9th? I don't know if I can do it, but
11 Mr. Weissman will be here if I can't do it. Is the 13th the
12 best day?
13 THE COURT: Well, your friend here has Wayne
14 Newton's stuff most of that week, he said.
15 MR. BRIAN: Let's set it for the 13th, and somebody
16 from our office will be here. I don't know -- I don't know
17 that it can be me.
18 THE COURT: Okay. Friday, the 13th, at 9:30.
19 MR. BRIAN: That's fine, Your Honor.
20 MR. BICE: Fine with us.
21 MR. PEEK: That's fine, Your Honor.
22 THE COURT: Okay.
23 MR. PEEK: We'll have Mr. Kastrinski here. I
24 assume, Your Honor, you're not asking for outside counsel with
25 respect to what its conversations were with the client to

1 testify --

2 THE COURT: No, I'm not.

3 MR. PEEK: -- Ms. Glaser or myself.

4 THE COURT: I'm not asking for any attorney-client
5 privilege. I am asking for the how did the stuff get out of
6 Macau. You guys have told me why you didn't tell me. I take
7 you at your word. I may disagree with the judgment call that
8 you made, but I have very serious concerns about what happened
9 and the data and what the data actually is and how that
10 impacts the jurisdictional discovery that I've been trying to
11 oversee for almost a year.

12 MR. BRIAN: We understand, Your Honor.

13 MR. PEEK: We understand, Your Honor.

14 THE COURT: Mr. Bice, is there something you want to
15 say, since you're standing up? Or are you just tired of
16 sitting?

17 MR. BICE: Well, I'm tired of sitting, but -- I
18 think I'd like more information about --

19 THE COURT: About what?

20 MR. BICE: About -- you know, I'm not going to just
21 accept the premise that Mr. Kastrinski did this on his own.
22 Maybe he --

23 THE COURT: Well, I'm sure somebody's going to ask
24 him, who told you to do this, or, why'd you do it.

25 MR. BICE: So would it be productive to see if we

1 cannot depose Mr. Kastrinski before the -- we're going to have
2 an evidentiary hearing. I --

3 THE COURT: Sure, you can depose Mr. Kastrinski if
4 you want to.

5 MR. BICE: And that way we can perhaps find out who
6 all has known about this, how long they've known, which is all
7 relevant, it seems to me, to your question.

8 THE COURT: And if there's going to be privilege
9 issues, that somebody's going to set up so we have them and
10 can deal with them.

11 MR. BICE: Yes. And I know he is residing in Las
12 Vegas, so we can work with him to try and set up --

13 THE COURT: For some reason I thought he was still
14 at Harrah's.

15 MR. BICE: He is not --

16 MR. PEEK: No, no. He was at Harrah's, and then he
17 came to us after Harrah's, Your Honor.

18 THE COURT: Okay.

19 MR. BICE: He is not, Your Honor.

20 MR. PEEK: I don't know where he is now. Maybe Mr.
21 Bice does.

22 MR. BICE: Well, since he and I went to law school
23 together, I do -- he is working at a firm. I don't know the
24 name of it.

25 THE COURT: But you're going to find out --

1 MR. BICE: Yeah.

2 THE COURT: -- and you're going to set him for depo
3 and perhaps notify him that I picked the day of July 13th at
4 9:30 to talk with him.

5 MR. BICE: I'm sure he will be very happy, Your
6 Honor.

7 MR. PISANELLI: And, Your Honor, from what we learn
8 from that deposition will we be permitted to subpoena other
9 people from Sands if we find out that they're at the heart of
10 this action?

11 THE COURT: How about we have a conference call if
12 you discover that.

13 MR. BICE: Brief.

14 MR. PISANELLI: Very good.

15 THE COURT: If you want to do anything more than
16 talk to more than talk to Mr. Kastrinski, we have a conference
17 call.

18 MR. BICE: Thank you, Your Honor.

19 MR. BRIAN: We'll ben touch with Mr. Kastrinski and
20 see what his schedule's like for the deposition, Your Honor.

21 THE COURT: Mr. Bice, don't talk to him about
22 anything about this case other than scheduling.

23 MR. BICE: I will not, Your Honor.

24 THE COURT: Thank you. Because I don't want any of
25 us to get into the situation of having a potential

1 disqualification issue raise its ugly head yet again.

2 MR. BICE: Absolutely, Your Honor.

3 MR. PEEK: Your Honor, so --

4 THE COURT: Mr. Williams, thank you very much, by
5 the way for your ESI protocol that was drafted over a year
6 ago, which actually ended up being used.

7 MR. WILLIAMS: I can see it's done a lot of good,
8 Your Honor.

9 THE COURT: I've moved so far forward.

10 MR. PEEK: Your Honor, so that I can be prepared
11 from a briefing standpoint and an argument standpoint --

12 THE COURT: Hold on. Let me get my rule book out so
13 I can tell you what the rules that I'm concerned about.

14 MR. PEEK: -- and what the --

15 THE COURT: There's this rule called Rule 37, but
16 the rule that I think is more important for purposes of this
17 hearing is an infrequently used rule. The last time I believe
18 it was cited in a published decision was the Nevada Power-
19 Fluor case, which should give you an idea.

20 MR. PEEK: I remember Mr. McPike's case well.

21 THE COURT: It was EDCR 7.60.

22 MR. BRIAN: What is it, Your Honor?

23 THE COURT: EDCR 7.60.

24 MR. PEEK: I don't think that's what it was at the
25 time of the -- but I'm sure the rule was there at time of the

1 Nevada Power.

2 THE COURT: No, it was the exact same rule.

3 MR. PEEK: It was the same rule. I was trying to
4 remember --

5 THE COURT: It's never been cited any other time
6 except then.

7 MR. PEEK: Are you looking for those same similar
8 sanctions? Because that's really what I'm -- that's really
9 where I'm going, Your Honor. I understand the violation, but
10 I'm trying to understand where the Court is going with its --

11 THE COURT: I'm not going to put anybody in jail, so
12 I'm not doing this as a contempt proceeding. I'm doing it as
13 a potential sanctions hearing. There are issues related to --
14 monetary sanctions related to attorneys' fees necessitated by
15 this situation.

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

17 THE COURT: There's potential sanctions that might
18 go to a charitable organization, and it is unlikely that there
19 will be evidentiary sanctions unless it appears to me there
20 has been data lost as a result of the removal and
21 transportation. And I won't know that until we do more stuff
22 and probably won't occur at this hearing.

23 MR. PEEK: Okay.

24 THE COURT: You understand what I'm saying?

25 MR. PEEK: I do, Your Honor.

1 THE COURT: Okay.

2 MR. PEEK: I just wanted to be clear on it so that I
3 could be prepared to make the arguments.

4 THE COURT: Okay.

5 MR. BICE: Your Honor, may I -- there are a couple
6 points. One, we haven't really addressed my request that they
7 be forced to deposit this data with Advance Discovery prior to
8 their receipt of Mr. Jacobs's data, which we are very
9 concerned is going --

10 THE COURT: You're right. I didn't grant that
11 request.

12 MR. BICE: Okay. I didn't -- well, I didn't hear
13 you deny it, either. That's why I'm asking for the --

14 THE COURT: No. I set this hearing instead and I
15 asked where the originals were, and I was told, and I'm taking
16 Mr. Peek at his word, since he knows I'm rather irritated at
17 the moment.

18 MR. BICE: I understand that. But do they get Mr.
19 Jacobs's data next week?

20 THE COURT: Absolutely.

21 MR. BICE: All right.

22 THE COURT: Anything else?

23 MR. BICE: And I don't want my silence to your
24 comments to be deemed that we will not be seeking other
25 sanctions other than what the Court has detailed.

1 THE COURT: Since this was set sua sponte by me, as
2 opposed to a motion by you --
3 MR. BICE: Yes.
4 THE COURT: -- I always try and give people the
5 opportunity to have a hearing before I sanction them, unless
6 it's for something that's obvious, like rolling their eyes,
7 yelling at me, calling me names, or something like that.
8 MR. BICE: Understood, Your Honor. I just didn't
9 want my silence to somehow be --
10 THE COURT: Ten days sometimes is enough for those
11 kind of hearings, but this one will be shorter.
12 MR. BICE: Understood, Your Honor.
13 MR. PEEK: Ten days in jail, Your Honor, for --
14 THE COURT: Ten days for a hearing, Mr. Peek.
15 MR. PEEK: I was concerned about --
16 THE COURT: You never went to jail during that
17 hearing.
18 MR. PEEK: No, I know.
19 THE COURT: And your client ended up never going to
20 jail here in the U.S., for that matter.
21 MR. PEEK: And you know he passed away, Your Honor.
22 THE COURT: Yeah, he did.
23 Anything else?
24 MR. BRIAN: No. Thank you, Your Honor.
25 THE PROCEEDINGS CONCLUDED AT 10:52 A.M.

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 HOYT, TRANSCRIBER

6/29/12

DATE



CLERK OF THE COURT

STMT

J. Stephen Peek, Esq.
Nevada Bar No. 1759
Robert J. Cassity, Esq.
Nevada Bar No. 9779
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600
(702) 669-4650 – fax
speck@hollandhart.com
bcassity@hollandhart.com

*Attorneys for Las Vegas Sands Corp.
and Sands China, LTD.*

Brad D. Brian, Esq. (*pro hac admission*)
Henry Weissmann, Esq. (*pro hac admission*)
John B. Owens, Esq. (*pro hac admission*)
Bradley R. Schneider, Esq. (*pro hac admission*)
Munger Tolles & Olson LLP
355 S. Grand Avenue
Los Angeles, California 90071
213-683-9100
brad.brian@mto.com
henry.weissmann@mto.com
john.owens@mto.com
bradley.schneider@mto.com

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.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

Date: July 13, 2012
Time: 9:30 a.m.

**DEFENDANTS' STATEMENT
REGARDING DATA TRANSFERS**

///

///

1 In advance of the hearing scheduled for July 13, 2012, Defendants Las Vegas Sands
2 Corporation ("LVSC") and Sands China Ltd. ("SCL") respectfully submit this statement
3 regarding data transfers from Macau to the United States and related issues. In providing this
4 statement, Defendants do not intend to and do not disclose any communications protected by the
5 attorney-client privilege, and Defendants do not intend to and do not waive any attorney-client or
6 attorney work product privileges.

7 **I. INTRODUCTION**
8

9 Defendants take seriously the Court's comments at the June 28, 2012 Status Conference
10 and will be prepared to discuss further with the Court the issues involving the Macau documents.
11 In the interim, and as discussed in the July 3, 2012 telephonic conference, Defendants make this
12 submission to present the facts as currently developed regarding the transfers from Macau to the
13 U.S. of data potentially discoverable in this litigation. Although the focus of the discussion with
14 the Court on June 28, 2012 was on the transfer of data for which Mr. Jacobs was the custodian,
15 Defendants are also analyzing other transfers of data from Macau to the U.S. that are potentially
16 discoverable in this case. Defendants and their counsel have worked hard over the past 8 days to
17 present these facts, but this work is not yet complete. This submission presents Defendants' best
18 efforts at this time.

19 **II. TRANSFERS OF PLAINTIFF'S DATA**
20

21 **A. Transfers in August 2010**

22 Plaintiff was terminated on July 23, 2010. Following a communication with Gayle
23 Hyman, then General Counsel of LVSC, on or about August 5, 2010, Michael Kostrinsky, who
24 was then LVSC's Deputy General Counsel, contacted the SCL legal department to request a
25 transfer to LVSC of electronic images of Mr. Jacobs' email and the hard drive of his computer.
26 After an initial effort to transfer some or all of this data via an FTP was unsuccessful, IT
27 personnel in Macau copied Jacobs' data onto a new hard drive. That hard drive was received by
28 LVSC on or about August 16, 2010 and is referred to herein as the "August 16 Hard Drive."

1 The August 16 Hard Drive contains ghost images of hard drives of three computers, as
2 well as emails (Outlook PSTs). According to LVSC's records, the images of the hard drives were
3 created on July 26 and 27, 2010, and the PST files were created on August 5, 2010. LVSC has
4 maintained the August 16 Hard Drive since August 16, 2010. An image of the August 16 Hard
5 Drive was created by Stroz Friedberg (a data forensics firm) on March 22, 2011.¹ LVSC still has
6 the August 16 Hard Drive and, as Plaintiff's counsel was informed on July 2, 2012, is providing it
7 to Advanced Discovery, the Court-appointed ESI vendor.

8 Starting no later than August 25, 2010, LVSC IT personnel arranged for Mr. Kostrinsky to
9 have access to Mr. Jacobs' emails that had been transferred on the August 16 Hard Drive through
10 Mr. Kostrinsky's work laptop computer in order to enable him to review this data.²

11 Mr. Kostrinsky reviewed some of the emails. Stephen Peek and another attorney from his
12 law firm also reviewed certain emails on Mr. Kostrinsky's computer. Some of Jacobs' emails
13 were printed and provided to or shared with outside and inside counsel. It is possible that these
14 emails were shared with other LVSC employees.

15 **B. Other Transfers**
16

17 Mr. Kostrinsky visited Macau in November 2010. During that trip, he may have been
18 given a hard drive or other data storage device and brought that item back to Las Vegas. It
19 appears that Mr. Kostrinsky instructed LVSC IT to load data from a device onto a computer so
20 that he could review the data. LVSC is attempting to locate this device and ascertain its content.

21 In connection with the Jacobs matter, Mr. Kostrinsky caused LVSC IT to create a shared
22 drive in late 2010. In addition, in connection with a subpoena from the United States Securities
23 and Exchange Commission ("SEC") received on February 9, 2011, Mr. Kostrinsky caused LVSC
24 IT to create another shared drive. The "shared drives" were document repositories that allowed
25

26 ¹ The role of Stroz Friedberg is more fully described below.

27 ² At the May 24, 2012 Status Conference, counsel stated that defendants had not searched Mr. Jacobs' data. Tr. at 9-
28 10, 14. The context of this discussion was the review of Mr. Jacobs' data for purposes of responding to Plaintiff's
jurisdictional discovery requests. Mr. Kostrinsky and other counsel have reviewed the data, though not in connection
with responding to Plaintiff's jurisdictional discovery requests.

1 authorized personnel, such as inside and outside counsel, to review images of documents that had
2 been collected and to add documents for review. It appears that at least one in house attorney in
3 Macau, Anne Salt, had access to one or both of these shared drives and could upload documents
4 to one or both of them. Defendants are continuing to investigate whether data was uploaded in
5 Macau, and if so, whether copies of any such data currently exist in the U.S. Defendants are also
6 attempting to determine the current status and content of these shared drives.

7 In addition, at various times, Mr. Kostrinsky received emails from Macau consisting of
8 information potentially relevant to the Jacobs litigation.³ Such data has been preserved and will
9 be reviewed for responsiveness to Plaintiff's jurisdictional discovery requests, subject to
10 appropriate privilege objections.

11 **III. TRANSFERS IN FEBRUARY-MARCH 2011**
12

13 On February 9, 2011, LVSC received a subpoena from the SEC. LVSC personnel
14 requested that SCL personnel transmit copies of responsive data to LVSC. It appears that Ms.
15 Hyman, Mr. Kostrinsky, Anne Salt of SCL, and probably others were involved in these
16 communications.

17 In March 2011, LVSC received two hard drives from Macau. One of these hard drives
18 (received in approximately mid-March) contained images of hard drives of computers used by
19 two employees in Macau, and the other hard drive (received on March 4) contained images of
20 hard drives of computers used by three other employees in Macau, as well as two PST files
21 containing Jacobs emails (one believed to contain 2010 emails, and one 2009 emails). These hard
22 drives are referred to herein as the "March Hard Drives." LVSC's records indicate that the PST
23 files on the hard drive received on March 4 were created on February 18, 2011.

24 LVSC has maintained the March Hard Drives since their receipt and, also as described to
25 Plaintiff's counsel on July 2, 2012, is providing them to Advanced Discovery. In March 2011,
26 Stroz Friedberg was retained by counsel to the Audit Committee and Special Litigation

27
28 ³ As discussed below, other LVSC employees, as well as inside and outside counsel, also received emails from
Macau containing information potentially relevant to the Jacobs litigation.

1 Committee of LVSC's Board of Directors to collect and process data in connection with the SEC
2 subpoena. One of the first steps taken by Stroz Friedberg was to image data that LVSC had
3 already collected. It appears that on March 22, 2011, Stroz Friedberg imaged the March Hard
4 Drives (as well as the August 16 Hard Drive, as noted above).

5 In connection with this litigation, Defendants have retained FTI as their data processing
6 vendor. Accordingly, on or about May 28, 2012, FTI received from Stroz Friedberg a copy of the
7 data imaged from the August 16 and March Hard Drives (including the Jacobs data described
8 above), in order to enable Defendants to search and review such data for this case.

9
10 **IV. STATUS OF ORIGINAL MEDIA**

11 SCL is aware of two desktop computers that Mr. Jacobs used while employed by SCL. In
12 addition, it appears that Mr. Jacobs may have used two laptop computers issued by SCL, VML,
13 and/or their affiliates in Macau.⁴ For each of these computers, SCL possesses in Macau the
14 original hard drive and/or either a ghost image or forensic image of the hard drive. Ghost images
15 typically contain a copy of all data on the original hard drive, except data that may have been
16 housed in (1) unallocated space and (2) page files. In general, data housed in unallocated space
17 and page files may include deleted files and internet history files.

18 Personnel in Macau were instructed to preserve Mr. Jacobs' original data in Macau. It
19 appears that this instruction was not followed with respect to the original hard drive of the
20 desktop computer that Mr. Jacobs was using at the time of his termination. A ghost image of that
21 hard drive was created on or about July 27, 2010, and a copy of that ghost image is included on
22 the August 16 Hard Drive. It appears that, after the ghost image was created, the original hard
23 drive of the desktop computer that Mr. Jacobs was using at the time of his termination may have
24 been recycled for use by another SCL employee. SCL has secured in Macau the computer
25 assigned to the other SCL employee, which may contain the same hard drive that was in the
26 desktop computer that Mr. Jacobs was using at the time of his termination. SCL also has secured

27
28 ⁴ Mr. Jacobs had a personal laptop computer, which he retained following his termination. Neither LVSC nor SCL made an image of Mr. Jacobs's personal laptop.

1 the other desktop computer, which Mr. Jacobs used until April 2010.

2 SCL has secured in Macau original hard drives from two laptop computers and ghost
3 images of hard drives from two other laptop computers. Further analysis is required to identify
4 which of these hard drives, if any, Mr. Jacobs used. Copies of the ghost images of the hard drives
5 from the two laptop computers are included on the August 16 Hard Drive.

6 **V. OTHER DATA TRANSFERS**

7
8 Defendants have also endeavored to catalog other data that was transferred from Macau to
9 the United States and that is potentially discoverable in this litigation. Today, Defendants can
10 report the following.

11 It appears that starting on or about November 28, 2007, copies of incoming emails to two
12 employees in Macau were automatically transmitted to Ms. Hyman in Las Vegas.⁵ It appears that
13 the employees in question were not informed that their incoming emails were being automatically
14 transmitted to Ms. Hyman. It also appears that the automatic transmittal of the incoming emails
15 continued into the discovery period. Such documents are included within the Stroz dataset.
16 LVSC will review this data to determine if it contains documents responsive to Plaintiff's
17 jurisdictional discovery requests and will produce any unprivileged documents relevant to
18 personal jurisdiction.

19 From 2008-10, the law firm Orrick, Herrington & Sutcliffe LLP performed legal services
20 for LVSC. In connection with that work, it appears that documents were transferred from Macau
21 to the U.S. in 2009. Such documents are included in the Stroz dataset. LVSC will review this
22 data to determine if it contains documents responsive to Plaintiff's jurisdictional discovery
23 requests and will produce any unprivileged documents relevant to personal jurisdiction.

24 In addition, it appears that Mr. Kostrinsky was given a CD in Macau in November 2010,
25 which he also brought back to Las Vegas. LVSC has located a CD that it believes may be the CD
26 that Mr. Kostrinsky brought back from Macau to Las Vegas. LVSC will deliver that CD to
27 Advanced Discovery.

28 ⁵ During this time, Ms. Hyman was LVSC's Deputy General Counsel.

1 Finally, in the ordinary course of business, employees of SCL and VML send emails to
2 employees of LVSC on business matters. Moreover, emails have been sent to, from, and among
3 in-house and outside counsel for VML, SCL, and LVSC in connection with this litigation and
4 other legal work.⁶ LVSC has collected emails from LVSC custodians and searched relevant
5 custodians for documents responsive to Plaintiff's jurisdictional discovery requests. To the extent
6 such documents contain emails from Macau that might be said to contain personal data, LVSC
7 will not withhold them based on Macau's Personal Data Protection Act (although LVSC reserves
8 the right to assert other applicable privileges).

9 **VI. CONCLUSION**

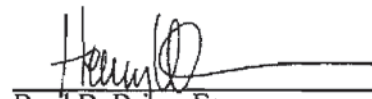
10
11 Defendants are continuing to search for data transferred from Macau to the U.S. that is
12 potentially discoverable in this case. Defendants will review the data in the U.S. for
13 responsiveness to Plaintiff's jurisdictional discovery requests and will not withhold such
14 documents based on Macau's Personal Data Protection Act.

15 DATED July 6, 2012.

16
17 
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
Holland & Hart LLP

18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, Nevada 89134

20 *Attorneys for Las Vegas Sands Corp. and Sands
China Ltd.*

21
22 
Brad D. Brian, Esq.
Henry Weissmann, Esq.
John B. Owens, Esq.
Bradley R. Schneider, Esq.
Munger Tolles & Olson LLP
355 S. Grand Avenue
25 Los Angeles, California 90071

26 *Attorneys for Sands China, LTD.*

27 ⁶ For example, on at least two occasions, in the course of collecting documents that were potentially responsive to
28 Plaintiff's document requests on personal jurisdiction, SCL employees transmitted records containing personal data
to LVSC and/or SCL's outside counsel.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on July 6, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' STATEMENT REGARDING DATA TRANSFERS** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
Debra L. Spinelli, Esq.
Todd L. Bice, Esq.
Pisanelli & Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
214-2100
214-2101 – fax
jjp@pisanellibice.com
dls@pisanellibice.com
tlb@pisanellibice.com
kap@pisanellibice.com – staff
see@pisanellibice.com – staff

Attorney for Plaintiff


An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Friday, July 06, 2012 3:27 PM
To: James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'
Cc: 'Fetaz, Max'
Subject: LV Sands/Jacobs - Defendants' Statement Regarding Data Transfers
Attachments: Untitled.PDF - Adobe Acrobat Pro

Importance: High

Please see attached Defendants' Statement Regarding Data Transfers. A copy to follow by mail.

Have a good weekend, everyone.

Dineen M. Bergsing

*Legal Assistant to J. Stephen Peek,
Justin C. Jones, David J. Freeman
and Nicole E. Lovelock*
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600 - Main
(702) 222-2521 - Direct
(702) 669-4650 - Fax
dbergsing@hollandhart.com



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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP 11 2012

BY
BILLIE JO CRAIG, DEPUTY

STEVEN 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

COURT'S SANCTION HEARING - DAY 1

MONDAY, SEPTEMBER 10, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRAD D. BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

FOR HOLLAND & HART

CHARLES MCCREA, ESQ.
SAMUEL LIONEL, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 10, 2012, 1:18 P.M.

2 (Court was called to order)

3 THE COURT: All right. And if all counsel who are
4 participating in my proceeding today, not as a witness, but as
5 a regular participant, please identify themselves and who you
6 are here on behalf of, since there appears to be some
7 confusion, starting over on the end with Ms. Spinelli.

8 MS. SPINELLI: Good afternoon, Your Honor. Debra
9 Spinelli on behalf of Mr. Jacobs.

10 MR. JACOBS: Steve Jacobs, plaintiff.

11 MR. PISANELLI: Good afternoon, Your Honor. James
12 Pisanelli on behalf of Mr. Jacobs.

13 MR. BICE: Todd Bice on behalf of Mr. Jacobs, Your
14 Honor.

15 MR. LIONEL: Samuel Lionel on behalf of the
16 defendants, Your Honor.

17 THE COURT: Now, which defendants, Mr. Lionel?

18 MR. LIONEL: Well, actually this hearing, Your
19 Honor.

20 THE COURT: Okay.

21 MR. MCCREA: Charles McCrea on behalf of both
22 defendants. We're making a limited -- both Mr. Lionel and I
23 are making a limited appearance.

24 MR. BRIAN: Brad Brian of Munger, Tolles & Olson for
25 defendant Sands China Limited.

1 MR. PEEK: Your Honor, I'm here as a witness.

2 THE COURT: Today you're a witness, Mr. Peek.

3 MR. PEEK: Today I'm a witness, but I do represent
4 Las Vegas Sands Corp. and Sands China Limited. But today I'm
5 here as a witness.

6 MR. WEISSMAN: Good afternoon, Your Honor. Henry
7 Weissman for Sands China.

8 MR. OWENS: And John Owens for Sands China, Your
9 Honor.

10 THE COURT: All right. Are there any other counsel
11 who believe you will be participating in my hearing that need
12 to identify themselves for purposes of the record, as opposed
13 to people who may be testifying as witnesses?

14 MR. BRIAN: I don't think so, Your Honor. I would
15 introduce Phil Nichols of our staff, who may help us with
16 document presentation and the like.

17 THE COURT: Not a problem. The more people to make
18 it go smoother the better. You can be seated.

19 As you all know, there's a stay in place from the
20 Nevada Supreme Court pending my completion of an evidentiary
21 hearing related to jurisdictional issues raised in the motion
22 to dismiss by Sands China. As a result of a discovery issue
23 in this case, which in part relates to the jurisdictional
24 discovery I have permitted, I have become familiar with the
25 position of Las Vegas Sands and Sands China related to the

1 Macau Personal Data Privacy Act, which I will try and refer to
2 as MDPA, Jill, for purposes of your record.

3 The MDPA and its impact upon production of documents
4 related to the jurisdictional discovery has been an issue of
5 serious contention between the parties in motion practice
6 before this Court since the spring of 2011. At no time prior
7 to June 28th, 2012, was the Court informed that a significant
8 amount of electronic stored information in the form of a ghost
9 image relevant to this litigation had actually been taken out
10 of Macau in July or August of 2010 by way of portable
11 electronic devices.

12 When it became clear that representatives of the
13 defendants had not been forthright with this Court a sanction
14 hearing was scheduled pursuant to the authority of EDCR 7.60.
15 As I've previously identified, since I had sua sponte
16 scheduled this hearing, I will conduct the initial examination
17 of the witnesses, followed by counsel for Jacobs, counsel for
18 Sands, and counsel for Sands China.

19 I understand, Mr. McCrea and Mr. Lionel -- and when
20 I thought about this earlier I thought you were just
21 additional counsel, as opposed to maybe the entire counsel, so
22 we'll see how this works today. But if you have any issues
23 that you need to raise, I'd appreciate you raising them, and I
24 look forward to hearing from you, since are new participants
25 to my case.

1 MR. McCREA: Thank you.

2 THE COURT: If there are any issues to which an
3 objection needs to be posed by the defendants, I hope that you
4 will please make them. Please -- I've had people object to my
5 questions when I've asked them in bench trials before. It
6 doesn't bother me. It is an important part of the process.
7 So please don't be offended if you need to object to a
8 question I've phrased. I make mistakes, too.

9 There will be no opening remarks. However, just so
10 we're clear, there will be an opportunity for argument at the
11 close of the presentation of the evidence.

12 This hearing is not intended to infect any rights
13 that Mr. Jacobs may have related to Rule 37 sanctions relating
14 to the same issues.

15 I have previously informed all counsel that I
16 anticipate a separate motion will be filed by Mr. Jacobs's
17 counsel. For that reason, if Mr. Jacobs's counsel appears to
18 exceed the scope of the hearing that has been scheduled, I may
19 limit that examination, as it may be more appropriate for the
20 anticipated hearing on the Rule 37 motion which will be
21 scheduled in conjunction with your Rule 37 motion.

22 I understand from my law clerk that Mr. Kostrinsky
23 and Mr. Krum have called, and both are unavailable today. The
24 witnesses I would like to hear from include Ms. Glaser, Mr.
25 Peek, Mr. Justin Jones, Mr. Singh, and Mr. Kostrinsky.

IN THE SUPREME COURT OF THE STATE OF NEVADA

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq. Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: 702.214.2100
Facsimile: 702.214.2101

*Attorneys for Real Party in Interest
Steven C. Jacobs*

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Tracie K. Lindeman
Clerk of Supreme Court

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,
DEPARTMENT 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Supreme Court Case No. 62489

**REAL PARTY IN INTEREST'S
SUPPLEMENTAL APPENDIX**

VOLUME 2 OF 5

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Transcript of Hearing on July 19, 2011, on Defendant Sands China's Motion to Stay Proceedings Pending Writ Petition	07/20/2011	I	0107-0120
Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act	09/13/2011	I	0121-180
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Defendants' Statement Regarding Data Transfers	07/06/2012	II	0254-262
Transcript of Court's Sanctions Hearing on September 10, 2012 – Day 1	09/11/2012	II	0263-425
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Transcript of Court's Sanctions Hearing on September 11, 2012 – Day 2 (Vol. II)	09/12/2012	III	0498-667
Transcript of Court's Sanctions Hearing on September 12, 2012 – Day 3	09/13/2012	IV	0668-847
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, and that on this 19th day of March, 2013, I electronically filed and served a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX VOLUME 2 OF 5** properly addressed to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
300 South Fourth Street, Suite 900
Las Vegas, NV 89101

SERVED VIA HAND-DELIVERY ON 03/20/13

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of Pisanelli Bice, PLLC