EXHIBIT A

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Las Vegas Dev. Assoc. v. District Ct. (KB Home Nev.)

Case No. 62512

Date: 10/16/2013

Time: 10:00 a.m. [Case called at 10:04 a.m.]

Location: Las Vegas

Before the Southern Nevada Panel, Justice Gibbons Presiding

Appearances:

Michael K. Wall, as counsel for the Petitioners
Todd L. Bice, as counsel for the Real Party in Interest

Justice Gibbons: Our first case is case number 62512 Las Vegas Development Associates vs. District Court, KB Homes is the third party in interest. Mr. Wall is for the petitioners. Mr. Bice is for the real party in interest. Mr. Wall I do not know if you are aware that we argued a very similar case en banc last week. Mr. Bice participated in -- unrelated parties to this case and also I just want to let you know that…that many of the issues were kind of squared up to the en banc court so then we had wish that this case as well, so perhaps you might want to look at that oral argument if you hadn't done so, its Las Vegas Sands vs. District Court and it was argued last week. Okay, in the meantime we'll go ahead and – I think it's the same judge too so it's an

interesting point. With that in mind, Mr. Wall you may proceed on behalf of the petitioners. Do you wish to reserve any time for . . .

Mr. Wall: I would like to reserve about four minutes.

Justice Gibbons: Very well.

Mr. Wall: Thank you.

Justice Gibbons: Thank you.

Mr. Wall: My name is Michael Wall for the record. I have with me Kennedy Barnes and Deborah Deitsch-Perez and Patricia Lee, who are also counsel on this case. We thank you on behalf of our clients for taking time to hear this today. I hope I am not at a disadvantage not having heard the other arguments but your honors are certainly called upon today to perform the highest function. We are not here today to ask you to correct some error, we are here today to ask you to determine what the policy of the state of Nevada is and should be with respect to probably the oldest and most vulnerable privilege and one of the most important doctrines of our juris prudence in this country, in common law and in particularly in Nevada and that's attorney-client privilege. It also impacts work-product provision overwhelm in this case but there separate privileges in both (inaudible) in today's question. The defendants interpret the statute this way and according (inaudible) answer to the petition, and in

fact the statement is made multiple times and the answer – this is the statement: the statute isn't ambiguous, documents used by a witness to refresh his memory must be produced. There are no exceptions, that's their position. If that is not true, their petition for writ has to be granted this – we suggested that simply cannot be remedied in the state of Nevada with respect to matters of (inaudible). Entrenched and is important as privileged.

Justice: Mr. Wall, (inaudible) discussion as to why or why not we should look at our statutes and taking credence from FRCP 612 which is somewhat different concerns also as to issues as to waiver.

Mr. Wall: That is correct your honor, there are differences in the statutes. The federal rules adopted and our rule -- our statute was adopted just shortly before the amendment to that rule. And there are some slight changes in the rule. Defendants argue that because there is a change in rule that we have to interpret our statute to have no discretion whatsoever. That's exactly the entire argument isn't that there is any discretion in the statute, they argue that because NRS 50.125 does not say an exception there can be no exception. But from the beginning this whole matter has been addressed upside down. The statutes are on their heads. Specific statutes

generally control over general statutes and this has always been approached as the discovery statute. NRS 50.125 being the specific statute. Privilege statute being the general statute and that's really not the case. NRS 50.125 is a discovery statute and general application. It does not address privilege. The reason it doesn't address – it simply doesn't address privilege. Defendants say because it doesn't address privilege you have to reach the conclusion that there is – that privilege isn't an exception but it doesn't address any exception.

Justice: Mr. Wall, perhaps we should go over some of the things that we talked about last week even though you weren't here but we wanted to let you listen to that argument but some of the concerns the en banc court had – how would, if the document doesn't have to be produced, how would that impede cross-examination of the witness not knowing what documents they referred to refresh their recollection?

Mr. Wall: Well, the document . . . we are not here to argue that no document that has been turned to a witness ever needs to be produced, and the question is privilege. Any arguments here is really about whether or not those documents are privileged are misplaced because both the discovery commissioner and the district judge took the position that these were

privileged documents and privileged was waived. So we are talking about privileged documents and we have the exact same safeguards we would have in any other case. Documents named to be privileged are produced to the district court – that's where the district court judges are. This is where they review in camera to make a determination of which parts are appropriate for discovery and which parts are not appropriate for discovery. That's what district court . . .

Justice Douglas: Commissioner Bulla I believe said that they had to be produced and the district court agreed. Am I correct on that?

Mr. Wall: Commissioner Bulla has taken the position . . . the position that she takes is that there is a presumption that if you've looked at the document you have refreshed your recollection therefore every document that is looked at has to be produced under the statute because there is no exception. There is no such presumption in the law. This is a presumption that she has created in her mind. The problem and the reason that she has created this presumption is because she is approaching this from the mind . . . from the wrong statement. That the term "refreshed recollection" is a legal term of art and when it's used in the statute its used with its legal meaning not with the current meaning that the

district court and Commissioner Bulla have given to it. We are not talking about sharpening up your memory or getting line…your thoughts facts straight. Refresh recollection is a specific situation where once a witness has...doesn't have a particular memory…it has been demonstrated that the memory does not exist then you show them a document which refreshes their recollection … the reason that its important is because whatever is refreshing their recollection might be a false memory and so the other side should have an opportunity to see that. The statute doesn't use the term in a proverbial sense and we shouldn't either and that brings me back to Justice Douglas's question which is the federal rule. The federal rule does have that language in it because they recognized the … the advisory committee and Congress recognized that the potential problem if you just have a blanket rule, especially even before the time of testifying … not at testifying but before that time that any document that is looked at can be discovered. Because the rule their asking for is tell your clients don't prepare for a deposition or don't show your clients documents – read them to them because if you read the document you retain its privilege but if you show it to them it would not – that is just a form over substance argument.

Subcommittee for the federal rule which we based our rule on recognized that there is a problem with … it would be fishing expedition. So the committee says specifically the committee intends that nothing in the rule be construed as violating the section of the privilege with respect to the writings. I think that our statute which was adopted in the same year was not a waiver of the privilege rules. Because the statutes say NRS – sorry – NRS 47.020 says the provisions of Chapter 49, the privilege statutes, with respect to privileges apply to all stages of all proceedings. It couldn't be broader – all stages of all proceedings – and then there is one caveat in there, except where relaxed by a specific statute or rule. Respondents here have argued – Defendants have argued that NRS 50.125 is that rule that relaxes it. But it doesn't. It would have to be specific – you have a specific statute about privilege which – and that specific statute has another specific statute about the exceptions to privilege and we have case law going back decades and centuries about how important the privilege is and (inaudible) that privilege and that alerts us because there is no specific exception for privilege in the discovery statute. To determine what the discovery statute has no exceptions whatsoever.

Female Justice: Mr. Wall.

Mr. Wall: the statute didn't intend that -- there is no basis for assuming that . . .

Female Justice: Mr. Wall, a couple of questions. You keep referring to the statute as the discovery statute. I am not sure I agree with that but that is not as important to me as my next question that I am going to ask and that is … you suggest that to . . . if we were to adopt these and I believe Respondents in this case it would be a wide open opportunity for everything that an attorney and their client speaks about to be discoverable. I think that's what I hear you say. And yet my concern is that isn't it also possible that if we go the other way that we might be encouraging a line of communication whereby attorneys communicate with their clients – let's just use meeting as an example in anticipation of testifying at trial or testifying at deposition and then can hide behind the use of what the … how they prepped for their testimony as being privileged. So...so I'm just concerned about both far ends on that spectrum.

Mr. Wall: Absolutely, that's always been the tension. It's not…that is not unique to this statute. That's unique to all discovery – there has always been the practice of attorneys to do whatever they can to get anything into a document that will be attorney-

client privileged and to try to hide facts in those documents. And courts have always had to deal with that issue of is this factual? Or is it maybe in contemplation of litigation. Is it factual, should it be discoverable? Or is it not? The district courts review documents routinely in every other context to determine that issue and there is no reason that we shouldn't be able to do the exact same thing in this context …that…because the statute doesn't suggest otherwise. It simply says that these documents are discoverable and is silent on the issue of privilege. If it is silent on the issue of privilege it is because the legislature did not discuss the issue of privilege with respect to the statute. It's a different one, they say that the fact that NRS 50.125 is silent on privilege means that there is no exception but I suggest that if it is silent on privilege its because it doesn't address the privilege. There certainly is not a specific statute which makes the exception that is referred to in the NRS 47.020 because privilege applies to all stages of all proceedings unless there is a specific statute otherwise and this isn't that specific statute. It simply doesn't address that issue. So let me get back to Justice Douglas's question and that's the federal rule. Mostly because the federal rule has a specific provision in there that allows for a

(inaudible) process. That's an indication that this court simply cannot weigh in in. Even (inaudible) think that that's a logical fallacy. There is no evidence that the legislature considered this. There is nothing in the statute that supports that conclusion nor is it suggested anywhere that the legislature intended to entirely overrule privilege in this area.

Justice: Isn't the legislature...at least we are trying to look at the statute coming into play. It is silent as to what they intended...the legislative history?

Mr. Wall: There is nothing specific that we were able to find in the legislative history or anything has been suggested to this court about that. About this issue and I believe that that's because this statue – nobody was attempting to overrule privilege when the enacted this statute instead they were addressing the very specific...

Justice: That's the basis to some argument that you are making in essence when privilege to be an absolute with no qualifications whatsoever.

Mr. Wall: That is not the rule that we would suggest.

Justice: What would you suggest then?

Mr. Wall: What we would suggest is that just with any other area documents be produced that have claim to have privilege be produced to the district court for in camera inspection. Factual matter in the

documents have to be produced. This is the way it has been, we have already produced the document that has all the factual matters. Privileged communications, on the other hand, should be protected. Work-product needs to be protected. Everywhere in the federal cases regardless of how you read. . .

Justice: Mr. Wall, you said "needs to be" but does it have to be? Again, is it absolute or is it a review, as you said. We have an in camera review of this document by judicial officers. They conclude one thing and you are here arguing another. Tell us why they were incorrect as to the issue you are trying to make as to privilege and work-product in this case.

Mr. Wall: Yes, your honor. (Inaudible) questions, opinions and legal theories of counsel are always protected. If you read all of these federal cases regardless of...

Justice: We understand that but the court in this particular case seemed to find that not in play.

Mr. Wall: The lower court…if the district court didn't make a determination that those things were not in play and therefore ordered discovery, we would have a different issue. The district court is determined that we are in play and nevertheless there is an exception . . . there is no exception to the rule...if there is any exception to the rule this has to be sent

back to the district court to be able to consider that exception.

Justice: In this case, shouldn't the court look at a redacted version as well as the original version and decide if they want the original version used in this case?

Mr. Wall: That...the discovery commissioner did that and made that recommendation to the district court but because the determination was not ... the determination was there are no exceptions and that's why we went the route that we did. This isn't a...we are not here to argue about this particular piece of this document is factual or non factual because that determination was never made. And that's not in the recommendation. What was made was there is no exception.

Justice Douglas: Thank you Mr. Wall. We gave you three minutes from the bell since we had quite a few questions for you and let's add two minutes, Tracy, to Mr. Bice's time to equalize the time for the parties.

Mr. Bice: May it please the court, Todd Bice on behalf of real party in interest, KB Homes. As you have mentioned, justices this is a bit of déjà vu for me since I was here a week ago on the exact same statute and largely the exact same sort of arguments. As I indicated then and I will reiterate. The point of NRS 50.125 is it's a statute that concerns itself with ascertaining the truth which is

of course, as this court knows that's the entire purpose of a trial is to ascertain the truth. There are certain facts about this case that bear mentioning before we get into the meat of the particular ordinances...or the particular statutes again. This is a particular case where at the deposition the witness admitted under oath that he had reviewed these documents and that these documents had, in fact, refreshed his recollection. He even confirmed that he reviewed the documents in order to get the facts straight in this mind and then he testified to them. He confirmed that in a later declaration in response to a motion to compel, again confirming that they had refreshed his recollection. Interestingly after that motion to compel was granted and he was ordered to produce the documents, he then executed an errata sheet, under penalty of perjury, where he struck out the words yes in response to questions -- had he refreshed his recollection with these documents -- and wrote in the word no. That is exactly why the importance of NRS 50.125 is at issue in a case like this. We have a witness who was admitted under oath that he used the documents to refresh his recollection, having made that admission and the court ordered their production he then completely rewrote his testimony striking the word yes from his deposition transcript and putting the

word no in its place. One would be a little hard pressed I think to find a more compelling circumstance where a witness's credibility is strongly at issue and he should be subject to challenge by examining these documents. Interestingly, also an admission of fact that bears mentioning is when the discovery commissioner had ordered the redacted documents produced and they were produced, it became crystal clear, I think that this was, as we had characterized it, largely scripted testimony from the witness. If you look at the appendix and at document 82 and on, this is an email that specifically states this is what he claimed refreshed his recollection. Statements such as without the infrastructure there would be no deal and KB needed to budget and schedule is critical to components of any deal moving forward. All sorts of affirmative statements that then this witness is using as the basis for his testimony and that is why both Judge Denton, originally, the discovery commissioner thereafter and Judge Gonzalez, thereafter, ordered the production of this information. This is a witness who is using this what we have characterized as a script -- I know that they don't like that characterization -- but we deem this as largely a scripted testimony from a witness. Now, let's turn to how the statutes operate

in circumstances like this. The federal statute does make a distinction between when a witness is on the stand, in the presence of the finder of fact and when they are not on the stand in the presence of the finder of fact. The Nevada statute doesn't draw that distinction and I don't think that that can just sort of brushed aside as some inadvertence on the part of the Nevada legislature. The federal statute was amended in 1974 and the Nevada statute was adopted originally in 1971. In the forty years since the Nevada legislature has not seen fit to amend the Nevada statute to add this sort of exception that the plaintiff here is asking you to graft into the Nevada statute about documents used to refresh recollection when the witness is not actually on the stand. Let's deal with this for just a minute about the question -- the overall question -- is privilege an exception to NRS 50.125? The answer to that has to be no. As a general proposition it has to be no because if it's not no as I said to you last week that's not (inaudible). The privileges in Chapter 49 are quite extensive. Attorney-client privilege. I know we lawyers…

Justice: Time.

Todd Bice: (inaudible) are (inaudible) the attorney-client privilege and the important of societal role that we play in the system but the reality is if there is ever a group in Chapter 49 that has a privilege, as I

indicated to you last time, chancellors, clergy, marriage therapists, they all claim the importance of those privileges. Those privileges -- you can see where this heads -- if privileged communications are exempt from disclosure when a witness is using them and let's use the scenario when they are on the stand because that's the easiest one for right now, you can just see where this quickly spirals out to -- you basically have a witness on the stand with that document and they are using that to testify -- is there any court that would say that is not required to be disclosed so that the veracity of the witness's testimony can be challenged. As I said when we were here last time, think about the confrontation complications for this -- we have a witness on the witness stand claiming that … that their testimony . . . their recollection has changed since they previously gave a statement and now they want to alter their testimony and their defense is ... well my recollection was refreshed by a document that I claim is privileged so therefore you are not entitled to see it and you are not entitled to challenge the veracity of my new story. That cannot be. The legislature did not intend that absurdity to occur and that's why when you look at NRS 50.125 it doesn't start out with except as otherwise provided under Chapter 49. Many caveats have been

(inaudible), quite the contrary, it says in black and white, if a witness uses their writing to refresh his or her memory, which this witnesses admitted under oath he did until they were ordered produced and then he changed his testimony. Even to further while testifying an adverse party is entitled to this document. And the reason that you are entitled to the document is because the witness's testimony...the veracity of the witness is at question here. So again, sticking with the easy scenario, when they are on the stand and they are using this document to justify or to retrieve their testimony or to justify -- they are basically telling the finder of fact my story is backed up by this document when I claim that that document refreshed my recollection, basically insinuating to the finder of fact this supports what I am telling you, you just can't see it. And that is why the courts, I believe consistently, even in the federal rules ... that's why the federal rule says there's no exception if the witness is on the stand, it's a mandatory disclosure and federal courts are definitely have ... they wrote it all on claims are somehow privilege is an exception to that requirement. But where the federal courts have somewhat deviated is a circumstance where the witness uses the document before testifying to refresh their recollection and then the federal courts

have taken the position because of the specific wording of Rule 612 ... the wording which is quite different than what Nevada's provides -- Nevada does not distinguish, the statute doesn't distinguish between the witness on the stand or the witness using the document prior to taking the stand and prior to testifying to refresh their recollection. So under that scenario I don't believe that there is any appropriate basis for this court to now graft an amendment into NRS 50.125 under the guise of judicial interpretation because if the legislature had intended to create that exception ... the federal rule has been in existence now since 1974 on that...

Justice: What point in time has the legislature seen fit to adopt it?

Mr. Bice: I think I would submit to the court even if this court were to say let's just apply the federal rule, let's disregard the exact wording of our statute and let's apply the federal rule. What are the circumstances in this case, we had three different judges look at this matter and concluded that the documents needed to be produced and there is a lot of basis for all of us to understand why that is the case. The documents of those that we have seen are clearly affirmative statements that this witness is using by which to advocate his position from. The witness changed his sworn testimony once the district court

order the production of the documents. There are a lot of reasons to understand why the district courts would conclude under the facts and circumstances of this case, they should be produced. And again, Justice Douglas, coming back to one of your questions in this particular case we had the discovery commissioner look at the documents in camera to discern...well we have heard the argument (inaudible) impressions and importance of (inaudible), I'm not quarrelling with the importance of any privilege -- the attorney-client, the work-product, the patient-client, the accountant-client, I am not quarrelling with all those privileges serve a valuable societal purpose, but this court has long ago said that privileges are an obstacle to the truth and so therefore they are narrowly construed and doubts about their application are resolved in the favor of disclosure not in favor of concealment. When you consider the limited purpose of a privilege and what is transpiring in this case, I think it's quite reasonable to understand why both Judge Denton, Judge Gonzalez and the discovery commissioner came to the conclusion that they did. The Discovery Commissioner look at these documents, determined that there was no way to somehow say that certain information in it could be separated out as somehow opinion or highly

protected work product or anything of that sort. After conducting her in camera examination she concluded that the entirety of the documents need to be produced. And under the circumstances of this case I don't believe anyone can say on this record that she or the district judge ... the two district judges who looked at this somehow abused their discretion in that regard.

Justice: [26:32] Mr. Bice, I just have one question on the timing on the case here. My understanding is that the deposition of the witness was on May 1st and May 2nd of 2012.

Mr. Bice: Correct.

Justice Gibbons: The motion to compel was filed June 1st. I assume you were waiting to get the transcript and all from the depositions...

Mr. Bice: That is correct.

Justice Gibbons: ...and attach that to the motion to compel.

Mr. Bice: That is what we were doing, Justice Gibbons, and the district court ... the discovery commissioner had ruled that we were entitled to continue the deposition on the basis of the documents being ordered to produce.

Justice Gibbons: Okay.

Mr. Bice: [27:04] So again, this is a little bit different than some of the arguments that were being made in front of you last week that the witness is off the stand and the

	witness veracity is no longer subject to any form of challenge. That certainly is not the case here, we don't have the timing issue that we had last week.
Justice Gibbons:	I understand.
Mr. Bice:	And I know you gave me additional time but I believe I have addressed what I wanted to say if the court doesn't have questions for me.
Justice:	I have one question.
Mr. Bice:	Sure.
Justice:	I felt I told Mr. Wall about the hearing last week which obviously, you were here since you argued it.
Mr. Bice:	Yes.
Justice: [27:37]	Would you have any objection if the court clerk told Mr. Morris that we had the argument today on the similar issue.
Mr. Bice:	Absolutely not and I know Mr. Morris myself and I am happy to inform him of it as well.
Justice:	Actually you can do it, keep us out of the middle of it.
Mr. Bice:	I will do that. I will alert Mr. Morris today that we had this argument and I will give him the case number and so advise him.
Justice:	We appreciate that.
Mr. Bice:	Alright.
Justice:	Thank you very much.
Mr. Bice:	I think the court for its time.
Justice:	Okay, Mr. Wall.

Mr. Wall: Thank you, your honors. First, if you look at their reply on pages 13 and 14 you will see the decision….the basis the judge, Commissioner Bulla gave for her decision. It was not that she felt like she was going to...that there was she was going to have some discovery and some not. She reached the conclusion that it's an absolute statute and I absolutely…I expected to hear opposing counsel argue exactly what he said, that the statute is absolute because it doesn't have any language in it. We'd like to concede that there's no language in NRS 50.125 that has exceptions. That's because it's a general statute. That fact alone should not move to the conclusion that the statute is intended to abrogating privilege. It simply wasn't intended for that, it does not express . . .

Justice: Why don't we talk about and Justice Douglas maybe was allerging to this too about statutory construction and this is one of many cases where you have this gray area here and each side has a different interpretation in terms of the statute. Tell us why the statutory construction, that we should interpret it in the way you suggest.

Mr. Wall: In the statutes would have to be considered together in order to reach that policy decision (inaudible) and that policy decision cannot be that privileges is always waived. That is just a

(inaudible) decision it's a trap (inaudible). It's something that has to be taught to all the lawyers that you have to be very careful about what you ... you can talk about it but you can't write it down, you can't show it to somebody. Counsel talked about privilege should be narrowly construed, we agree with that. (Inaudible) construe privilege because that's not the issue before this court. Privilege has already been construed by the district court, that hasn't been challenged here and it is not the issue. Once a privilege has been found to exist as in this case, then you have to determine whether or not it's (inaudible). That's the issue. So most of what counsel said about the purposes of a trial for ascertaining the truth (inaudible) so we can challenge creditability, etc. – that's…of course that's true but a privilege always works against that regardless of the context that (inaudible) it. Certainly it's that way in this context. There is no indication that the legislature didn't know or anticipate what this privilege and other privileges and other rules of evidence might impact the primary statute -- they simply didn't address those in this statute, they addressed those in the privilege statute, that's where those were addressed. He talked about the credibility of the witness and he made some affirmative...some statements which he

said were affirmative statements of fact. The reason he wants you to believe those things is because those have been produced. The factual material has been produced but why does he need the legal conclusions of counsel? The legal strategies and their opinions for strategy or to test the credibility of a witness, he doesn't. That is the part of the document that is protected and should be protected and wasn't protected.

Justice Gibbons: Thank you very much. Thank you to both of you, as always for your excellent arguments and briefs and the case is have submitted at this time.

END OF HEARING

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 22 2013 03:49 p.m.
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, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 62489

District Court Case Number A627691-B

SUPPLEMENTAL AUTHORITY IN RESPONSE TO THE COURT'S INVITATION DURING ORAL ARGUMENT ON OCTOBER 16, 2013 IN CASE 62512

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At the October 16, 2013 oral argument in *Las Vegas Dev. Assoc. v. District Court (KB Home Nev.)*, Case 62512 ("*KB Home*"), this Court directed Respondent to inform the undersigned counsel that *KB Home* involved a "similar issue" to *Las Vegas Sands Corp. v. District Court (Steven C. Jacobs)*, Case 62489 ("*Las Vegas Sands*"), in which the undersigned counsel represents Petitioners. (10/16/13 Tr. 21 [27:37])[1]. In response, Petitioners now submit this Notice of Supplemental Authority to explain the factual and legal distinctions between *KB Home* and *Las Vegas Sands*.

In both *KB Home* and *Las Vegas Sands*, Respondents sought production under Nev. Rev. Stat. 50.125 of privileged documents that had been reviewed by a witness prior to giving testimony. However, there is an important factual difference between the two cases: In *KB Home*, Respondent sought the privileged documents at a deposition that was continued pending resolution of the privilege issue (10/16/13 Tr. 20 [26:32]). By contrast, in *Las Vegas Sands*, Respondent did not seek the privileged documents until long after the witness had left the stand and the district court had issued its final ruling (in the form of a sanctions order) that was not appealed.

This critical factual difference is directly relevant to the limited scope of Nev. Rev. Stat. 50.125, which is intended to assist in assessing witness credibility at hearings. To this end, Nev. Rev. Stat. 50.125 provides that if a witness at a hearing relies on a writing to refresh his recollection, the adverse party can request that the writing be "produced ***at the hearing***" so that the adverse party can "***cross-examine the witness*** thereon" and then "***introduce in evidence*** those portions which relate to ***the testimony of the***

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[1] Citation page references are to the informal transcript of the October 16, 2013 proceeding, attached hereto as Exhibit A; the number in brackets refers to the elapsed time on the official audio record of the proceedings.

witness for the purpose of affecting the witness's credibility." Nev. Rev. Stat. 50.125(1)(a)–(d) (emphasis added).[2]

Yet, in *Las Vegas Sands*, the district court ordered the production of privileged documents under Nev. Rev. Stat. 50.125, even though the adverse party did not seek the documents until *months* after the witness (an attorney) had testified, the hearing had concluded and the district court had issued a final ruling. In these circumstances, the sole purpose of Nev. Rev. Stat. 50.125—to assist in the assessment of witness credibility at a hearing—cannot possibly be served by ordering the production of a privileged "writing" because the district court has already issued its final ruling, including the judge's final determinations of credibility. As a result, the witness cannot be "cross-examined on the writing"; the writing cannot be "introduced in evidence" at the hearing; and the witness's credibility is no longer a "live" issue.

On the other hand, in *KB Home*, the underlying deposition was continued pending a decision by this Court on the privilege issue. (10/16/13 Tr. 20 [26:32]). As a result, this Court can rule on the privilege issue while the "hearing" is still underway—*i.e.*, before the "testimony of the witness" has been completed, and before the finder of fact has ruled. Accordingly, if this Court ultimately affirms the production order in *KB Home*, the deposition can then be resumed, the witness can be cross-examined on the writing, and the writing can be introduced into

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[2] These limitations reflect the fact that Nev. Rev. Stat. 50.125 is a rule of evidence, not a rule of discovery. Nev. Rev. Stat. 50.125 appears in Title 4 of the Revised Statutes, titled "Witnesses and Evidence"; within that title, it is part of chapter 50 ("Witnesses") and falls under the heading "Examination of Witnesses." Nev. Rev. Stat. 50.125 does not appear in the Rules of Civil Procedure and it is not one of the discovery tools set forth there.

evidence for purposes of assessing the witness's credibility—all as contemplated by the terms of Nev. Rev. Stat. 50.125.

Thus, the *Las Vegas Sands* case presents a "timing" issue that is not present in *KB Home*—a fact that Respondent's counsel (in both *KB Home* and *Las Vegas Sands*) freely admitted during oral argument in *KB Home*:

> Mr. Bice: So again, this is a little bit different than some of the arguments that were being made in front of you last week [in *Las Vegas Sands*] that the witness is off the stand and ***the witness veracity is no longer subject to any form of challenge. That certainly is not the case here, we don't have the timing issue that we had last week.***

(10/16/13 Tr. 20-21 [27:04]) (emphasis added).

For the foregoing reasons, and the reasons set forth in their Petition, Petitioners respectfully request that this Court grant a writ of prohibition or mandamus directing the district court to set aside its erroneous order.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **SUPPLEMENTAL AUTHORITY IN RESPONSE TO THE COURT'S INVITATION DURING ORAL ARGUMENT ON OCTOBER 16, 2013 IN CASE 62512** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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DATED this 22nd day of November, 2013.

By: /s/ PATRICIA A. FERRUGIA