

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

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A627691-B

**APPENDIX TO PETITION  
FOR WRIT OF  
PROHIBITION OR  
MANDAMUS  
RE MARCH 27, 2013  
ORDER**

**Volume V of XIII  
(PA700 – 752)**

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**APPENDIX TO EMERGENCY PETITION FOR WRIT OF  
PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER  
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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER** to be served as indicated below, on the date and to the addressee(s) shown below:

### **VIA HAND DELIVERY**

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

### **Respondent**

### **VIA ELECTRONIC AND U.S. MAIL**

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Todd L. Bice  
Debra Spinelli  
Pisanelli Bice  
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Las Vegas, Nevada 89169

**Attorneys for Steven C. Jacobs, Real Party in Interest**

DATED this 5th day of April, 2013.

By: /s/ PATRICIA FERRUGIA

Electronically Filed  
09/11/2012 11:06:29 AM

**ORIGINAL**

*Alan D. Quinn*

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

**TELEPHONE CONFERENCE**

WEDNESDAY, AUGUST 29, 2012

COURT RECORDER:

TRANSCRIPTION BY:

SANDRA PRUCHNIC  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RECEIVED  
SEP 11 2012  
CLERK OF THE COURT

33

PA700

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.

FOR HOLLAND & HART:

CHARLES H. McCREA, JR., ESQ.  
SAMUEL LIONEL, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 29, 2012, 4:37 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon, everyone, including our  
4 new arrival. This is Judge Gonzalez. Can you all identify  
5 yourselves for purposes of my record.

6 MR. MCCREA: Good afternoon, Your Honor. This is  
7 Sam Lionel and Charles McCrea.

8 MR. LIONEL: Good afternoon, Your Honor.

9 THE COURT: That would be my new arrivals. Welcome  
10 to our case.

11 MR. MCCREA: Thank you.

12 MR. PEEK: Good afternoon, Your Honor. And, Your  
13 Honor, this is Stephen Peek on behalf of Las Vegas Sands Corp.

14 MR. BRIAN: Brad Brian on behalf of Sands China  
15 Limited.

16 MR. BICE: Good afternoon, Your Honor. Todd Bice,  
17 Jim Pisanelli, and Debbie Spinelli and Eric Aldren on behalf  
18 of Mr. Jacobs.

19 THE COURT: All right. So, Mr. McCrea, you asked  
20 for this call.

21 MR. MCCREA: Yes, Your Honor. We were retained a  
22 little over an hour ago to represent Las Vegas Sands and Sands  
23 China Limited in the hearing tomorrow. We were advised I  
24 think today that their lawyers were going to be put under oath  
25 tomorrow and questioned by not only yourself, but opposing

1 counsel. And we have -- we have some very serious concerns  
2 concerning attorney-client privilege that they have  
3 specifically retained us to address. And we don't feel that  
4 we have an adequate background in this case at this point to  
5 proceed tomorrow. We would respectfully request a short  
6 continuance to allow us to familiarize ourselves with the  
7 pleadings that have been filed and to meet with our client and  
8 their representatives. There's some very serious issues that  
9 are raised by these proceedings, and we want to make sure that  
10 our clients are adequately represented.

11 THE COURT: Mr. Bice.

12 MR. BICE: Yes, Your Honor. I agreed -- Mr. McCrea  
13 called me and he had asked for a continuance. I talked with  
14 my team, as well as my client, who has just flown in. I told  
15 Mr. McCrea that I would not agree to his request for a  
16 continuance, but out of respect for the Court I would agree to  
17 this phone call, because I didn't want you getting surprised  
18 by his request tomorrow. So I understand that's why we're all  
19 here on the phone.

20 My position, Your Honor, and I'm sure it's not going  
21 to surprise you, is that there is no grounds for a  
22 continuance. The fact that the lawyers will be put under oath  
23 is an issue of insignificance. They had a duty of candor  
24 regardless of whether they're under oath. The fact that you  
25 informed them today that they were going to be under oath



1 could in no way really change or alter the issues that were  
2 going to arise at this hearing and any claims of privilege  
3 that were going to arise at this hearing.

4           We have scheduled this hearing now I think more than  
5 a month ago to accommodate everybody's schedules, and set it  
6 aside for two days so we can conduct this. You had always  
7 indicated that we were going to be able to ask questions at  
8 this hearing and that the Court was going to ask questions at  
9 this hearing. They have a large group of lawyers already for  
10 these two clients, who have asserted privileges at the  
11 depositions of another lawyer that was deposed, Mr.  
12 Kostrinsky, and they will -- no doubt are fully prepared to  
13 assert their privileges tomorrow to the extent that they are  
14 applicable and that we can deal with them. And -- you know,  
15 and they already have filed their 31-page brief explaining  
16 this.

17           The significance of people being put under oath,  
18 especially parties that -- or persons that already owed the  
19 Court a duty of candor by officers of the Court is  
20 insignificant, and certainly in our view does not justify  
21 completely derailing this when we have been preparing eagerly  
22 to proceed with this function and it has largely sort of --  
23 you know, it's occupied this case, and we would like to get on  
24 with it.

25           THE COURT: Anybody else want to say anything before

1 I go back to Mr. McCrea?

2 MR. PEEK: Yes, Your Honor. I would like to say  
3 something. This is Stephen Peek.

4 When the Court first ordered this hearing its  
5 comment was that it wanted to hear from Michael Kostrinsky and  
6 wanted the data that was transferred into the U.S. to be  
7 available at the hearing, and that was set for I think two  
8 weeks hence. It then expanded a little bit more as time went  
9 on into, I want to hear from Peek, I want to hear from Glaser,  
10 to now, I want to put these folks under oath and there will be  
11 additional witnesses who may or may not have said something to  
12 me and I want to hear from those individuals who made any  
13 representation to me, I want to put them under oath, I'm going  
14 to ask him questions, Mr. Bice will be allowed to ask them  
15 questions and the rest of you -- you said to Mr. Brian, you  
16 will also be allowed to ask questions. And I think that was  
17 directed at me, as well.

18 As I left I began to think about the potential  
19 issues that were raised by that. One is that I'm now  
20 potentially adverse to my client based on some of the comments  
21 the Court made this morning as to whether representations were  
22 by me or representations were by the client and how those came  
23 about. That certainly is attorney-client issues, as well.  
24 But if the Court wants to inquire into that, I'm going to need  
25 somebody there to tell me when to assert the privilege.

1           It also raises the witness advocates, as well,  
2 issue, which I hadn't thought about until this morning when  
3 you said that to me about being put under oath. Those are the  
4 reasons why after consultation with the client Mr. Brian and I  
5 recommended that they seek independent counsel. And they did.

6           THE COURT: And they hired your good friend Mr.  
7 McCrea from the Newton case.

8           MR. PEEK: Yes, sir, I did -- or, yes, ma'am, I did.

9           MR. BRIAN: Your Honor, this is Brad Brian. I don't  
10 want to repeat what Steve Peek said, but let me just weigh in  
11 briefly.

12           I raised the issue at the end of the hearing today  
13 because I had understood until very recently that -- as Mr.  
14 Peek said, that Your Honor was interested in hearing from Mr.  
15 Kostrinsky and then from Mr. Singh. You expressed interest in  
16 hearing from Mr. Peek and Ms. Glaser, and we arranged that,  
17 although I --

18           THE COURT: I don't think I just expressed interest  
19 in hearing from Ms. Glaser. It was pretty definite.

20           MR. BRIAN: I'm sorry, Your Honor. I don't mean to  
21 misstate it. I just -- the people you've identified, they  
22 were Mr. Kostrinsky, eventually Mr. Singh, Mr. Peek, and Ms.  
23 Glaser. And I asked the question this morning because I know  
24 Mr. Bice was being [unintelligible] that they've not formed a  
25 view that they're accusing Munger, Tolles & Olson of having

1 any -- acting improperly, but he said he's going to inquire.  
2 That, coupled with the prospect of being put no notice, we  
3 talk to our in-house general counsel, and our firm has a  
4 concern, and we therefore advised the client that we're in a  
5 position where -- I don't know that we're adverse to the  
6 client yet, but it does an issue. And we felt that it was  
7 important to advise the client so that the client could get  
8 independent representation so that we're not being asked to  
9 decide essentially whether to answer a question or to assert  
10 privilege at the same time when you're wearing two hats as a  
11 witness and lawyer.

12 I don't think anybody's asking for a lengthy  
13 continuance. The hearing was continued once not at our  
14 request. I think people were thinking about the week of  
15 September 10th. So no one's thinking about a lengthy  
16 continuance. It's a very serious issue, and everybody on this  
17 side is taking it very seriously, as the Court is and as Mr.  
18 Bice and his team are.

19 THE COURT: Well, it just so happens that yesterday  
20 Mr. Peek and Mr. McCrea made that week available, huh?

21 MR. MCCREA: Yes, we did, Your Honor.

22 MR. PEEK: Yes, we did, Your Honor.

23 THE COURT: All right. Mr. Bice, what else do you  
24 want to tell me?

25 MR. BICE: I understand and I can recognize some of

1 the concerns that are being expressed; but, nonetheless, these  
2 issues exist regardless of whether or not these people are put  
3 under oath. They have this exact same duty of candor and to  
4 disclose all the material facts to the Court whether they're  
5 under oath or not under oath. The fact that the Court  
6 revealed today that the reference came up to them being under  
7 oath, which was I believe was prompted by a question by Mr.  
8 Brian, really doesn't have anything to do with why they are  
9 suddenly desiring to have separate counsel.

10           They have now decided to have separate counsel, it  
11 seems to me, because they don't want to be the ones to be  
12 deciding whether or not they should be answering certain  
13 questions or not. Having made representation to the Court, I  
14 don't believe that it would be permissible to start invoking  
15 privileges in which to withhold information from the Court on  
16 the very same subject matters that they've already made  
17 representations on. You can't have it both ways.

18           So I don't believe that there really can be any  
19 grounds to say, well, now that because the Court has indicated  
20 that people will be put under oath that they somehow now need  
21 to have separate counsel and that there needs to be a  
22 continuance in order to accommodate that.

23           THE COURT: Okay. Well, let me just make the record  
24 clear. Nobody ever asked me before today whether it was my  
25 intention to have counsel sworn when they testified in an

1 evidentiary hearing. When I was asked the question today I  
2 answered as I had anticipated the proceeding would always  
3 occur. I'm certainly sorry, Mr. Brian, that you didn't  
4 realize that previously. I certainly understand that it can  
5 put counsel in a difficult position. But this really isn't  
6 that complicated a hearing. It's why were misrepresentations  
7 made to me for a year and a half. That's really all it is.  
8 And I've got a bunch transcripts and I've got a bunch of  
9 affidavits where people told me stuff that has turned out to  
10 be clearly untrue. And I'm going to get to the bottom of it.

11           The question is should I give Mr. McCrea and Mr.  
12 Lionel a break and give them a week or two to straighten it  
13 out. And that's really what the issue is. Because I think  
14 this is engineered, personally, but I don't want to put  
15 anybody in a bad situation.

16           MR. MCCREA: Your Honor, this is Charles McCrea. We  
17 are not trying to derail these proceedings in any way. All we  
18 want to do is be given the opportunity to come up to speed on  
19 what it is that is exactly before you and to be able to  
20 properly assert whatever privileges we have to assert in this  
21 proceeding.

22           As you know, I believe, there are a lot of other  
23 actions pending involving our clients, including investigative  
24 proceedings by governmental authorities both here and in  
25 China, and the information that is going to be delved into in

1 tomorrow's proceeding, or what is presently scheduled for  
2 tomorrow, is -- concerns issues that are implicated in all  
3 those other -- or many of those other investigations. And we  
4 feel that our client truly needs prepared and appropriate  
5 representation in those proceedings. They would be greatly  
6 prejudiced without that.

7 THE COURT: Okay. Anything else, Mr. Bice?

8 MR. BICE: Yes, Your Honor. I mean, everything that  
9 Mr. McCrea has stated they have known about since the day that  
10 this Court convened this evidentiary hearing. None of this  
11 information is new. These investigations have not just been  
12 opened. This investigations have been pending for many, many  
13 months, in fact in some of the instance over a year. So this  
14 isn't new information that warrants a delay, an additional  
15 delay. This information has been known to them all along.  
16 And to now come and say, well, the -- what's going to be  
17 discussed tomorrow is going to implicate those things, it may  
18 very well be the case that it's going to. But it's always  
19 been going to. Nothing has changed between the opening of  
20 those investigations and the scheduling of this hearing.

21 THE COURT: All right.

22 MR. BRIAN: Your Honor, this is -- Your Honor, this  
23 is Brad Brian. Just briefly. Your Honor made a comment that  
24 -- I think I heard it right, that you commented that possibly  
25 this has been engineered, and I didn't quite understand that.

1 But I can assure the Court that this is not something that  
2 anybody is trying to engineer. We really are not. And for  
3 precisely the reason that Mr. Bice stated, that you have a  
4 situation where the Court and counsel are going to inquire as  
5 to representations into the court and the witness lawyer may  
6 well have an interest in answering questions that the company  
7 may choose to assert privilege. And it puts the witness  
8 lawyer in a position of conflict of having to decide whether  
9 he or she wants to answer or a question but the company may  
10 want to assert the privilege. That's the issue. And the fact  
11 that it's under oath makes a difference in the level of  
12 formality. I agree with Mr. Bice, of course there's a duty of  
13 candor. But it does create more starkly the issue that I just  
14 raised. It's not a question of counsel trying to engineer  
15 anything. It's trying to do the best job for our client. And  
16 all that's being asked for is I think a continuance to the  
17 week of September 10th, which I think is just a two-week  
18 continuance.

19 MR. LIONEL: If Your Honor pleases. Mr. Lionel.  
20 This request for a short continuance is made in absolute good  
21 faith. Mr. McCrea and I are not prepared to go in there and  
22 represents the clients tomorrow. We need at least until week  
23 of the 10th so that we can properly prepare.

24 THE COURT: And it's really handy. I vacated the  
25 Newton hearing yesterday.



1 MR. BICE: Your Honor, this is Todd Bice. I do have  
2 some additional points that I do need to make, because --

3 THE COURT: Then please make them before I tell you  
4 what we're going to do.

5 MR. BICE: There is a lot of things that are afoot  
6 relative to Mr. Jacobs, more so than just this case and  
7 something that the Sands and its counsel are well aware of.  
8 And they are well aware that there are ongoing proceedings in  
9 Florida that Mr. Adelson instituted where he claimed that the  
10 affidavit filed in your court was defamatory.

11 Now, set aside for the moment that Mr. Adelson, of  
12 course, has claimed that everything he says is absolutely  
13 privileged. He still filed an action in Florida over the  
14 filing of that affidavit, claiming it was defamatory. Of  
15 course, we have responded to that and in fact had scheduled  
16 Mr. Adelson's deposition for September the 14th. We believe  
17 that there are some games going on and suddenly Mr. Jacobs's  
18 deposition was then scheduled by them for September the 7th,  
19 and they are insisting that it has to go forward and that Mr.  
20 Adelson, of course, wasn't -- we had originally scheduled his  
21 deposition here in August, and he wasn't available at all  
22 until after this -- at the end of August, which just happened  
23 to coincide with this Court's evidentiary hearing.

24 So I think, again -- you know, I'm not trying to  
25 accuse counsel of scheduling or rigging events here so as to

1 postpone this, but I do have to think that this is playing a  
2 role in this sudden desire to now have new counsel appear  
3 while at the same time everything that they are pointing out  
4 is something that they have known about for the last two  
5 months.

6 MR. PEEK: Your Honor, you know what my schedule has  
7 been. And so when he says that I just wasn't available -- or  
8 that Mr. Adelson wasn't available, it was that I wasn't  
9 available, and I said we could do Mr. Adelson in September.  
10 And we picked dates in September. We still had a little bit  
11 of -- something to work out, whether it's going to be on the  
12 6th or the 7th. They chose the 6th, and I said, I'm not  
13 available -- Mr. Adelson's not available on the 6th, and we do  
14 have the 7th. I haven't heard back from them. But Mr.  
15 Adelson is available and plans on giving his deposition on the  
16 7th.

17 MR. BICE: And the reason -- and the reason, Your  
18 Honor, that Mr. Adelson is only available on the 7th I'm sure  
19 has nothing to do with the fact that his Florida counsel is  
20 insisting that Mr. Jacobos's deposition has to go on the 7th.

21 MR. PEEK: I'm not involved in the Florida action,  
22 Your Honor.

23 MR. BICE: See, this whole thing is there's this  
24 game playing going on with respect to scheduling, Your Honor.  
25 And --

1 MR. BRIAN: Todd, that's just not true. That's not  
2 true.

3 MR. BICE: Brad, that is true. I know what's going  
4 on in the Florida case. If you don't, then don't say it's not  
5 true. And if you do, however -- if you do know what's going  
6 on, then you know it is true. So --

7 THE COURT: I'm not really worried about the Florida  
8 case right now. I'm worried about the sanctions hearing which  
9 I sua sponte set as a result of learning that  
10 misrepresentations had been made to me in court and in  
11 pleadings.

12 The question that I have is, Mr. Bice, how much have  
13 you spent prepping for this hearing?

14 MR. BICE: Oh. I don't know.

15 THE COURT: Come on. Give me your best estimate.

16 MR. BICE: Well, certainly the last -- certainly the  
17 last two days or probably three days, not a full three days  
18 for me, certainly the last three full days for Ms. Spinelli  
19 and Mr. Pisanelli, and the last two days for me. And Mr.  
20 Jacobs, you know, has flown here, and --

21 THE COURT: Well, those are the questions I'm now  
22 asking, Mr. Bice. So tell me. Ho much? Because I'm going to  
23 give some people some information before I tell them what  
24 we're going to do.

25 MR. BICE: I apologize, Your Honor. People here in

1 the office are asking me questions. I mean -- hold on, Your  
2 Honor. I apologize.

3 THE COURT: It's all right.

4 The defendants' firm is going to pay for the  
5 overtime. The reason the defendants' firm is paying for the  
6 overtime is this is Steve Peek's fault. And I don't care if  
7 the firm or the party, but that's how we're going to have to  
8 do it; because otherwise I can't finish today.

9 Did you hear me, Mr. Went? Because Mr. Peek is the  
10 one keeping me from hearing the closing arguments, you guys  
11 have to pay the overtime. I don't care how it gets allocated  
12 back at your office, but I have to have the overtime billed to  
13 a party or I can't finish your case today.

14 MR. WENT: We'll figure it out, Your Honor. Thank  
15 you.

16 THE COURT: I know you will. That's why I'm just  
17 telling you while Mr. Peek's on the phone.

18 MS. LOVELACE: Absolutely.

19 MR. WENT: Thank you, Your Honor.

20 MR. PEEK: I got that, Your Honor.

21 THE COURT: I know you did. I was just taking care  
22 of my part here in the courtroom that I've been trying to  
23 finish, too. Because these guys don't want to have to come  
24 back tomorrow.

25 MR. PEEK: I don't want them to come back, either,

1 Your Honor.

2 THE COURT: Best estimate, Mr. Bice.

3 MR. BICE: Well, attorneys' fees that we've incurred  
4 over the last -- course of the last three days are going to be  
5 about \$21,000. I have no idea what Mr. -- well, that's not  
6 really true, because I've got another one of my associates --  
7 it's going to be more than \$25,000, and my client's travel  
8 expenses, I don't know what they are.

9 THE COURT: So they're probably about two grand;  
10 right?

11 MR. BICE: Probably.

12 THE COURT: Okay. So my best guess is Mr. Peek, Mr.  
13 Lionel, Mr. McCrea, Mr. Brian, that I will be happy to grant  
14 this short extension. Although it smells bad to me, I think  
15 it is the right thing to do. But because of the delay, I will  
16 require that the reasonable attorneys' fees and travel  
17 expenses incurred by Mr. Jacobs and his counsel be reimbursed.  
18 Mr. Bice will have to file a separate motion related to that,  
19 but I wanted you to have an idea about what that dollar value  
20 was before I told you what my ruling was.

21 MR. PEEK: But you're not -- you're not saying, Your  
22 Honor, the twenty-five, \$27,000. We at least get to say, you  
23 haven't lost all of that time, you certainly had the benefit  
24 of that?

25 THE COURT: Yes.

1 MR. PEEK: As to the separate motion.

2 THE COURT: Yes. That's a separate motion Mr. Bice  
3 will file, but I wanted you to know whether he thought it was  
4 \$100,000 or \$5,000 before I got to that point.

5 MR. BICE: All right. And just so we're clear, to  
6 the extent I have to file a motion, that would be included in  
7 that request, Your Honor?

8 THE COURT: Yes. You will add that to your request.  
9 But I wanted them to have an idea of the area in which you  
10 will be asking for that reimbursement, okay.

11 Anybody else have a question? Who's calling all the  
12 TV crews to tell them not to come?

13 MR. PEEK: What days, Your Honor, of the week of the  
14 10th you're going to hear this? Because I know Mr. Brian has  
15 to be in New Orleans on the 14th.

16 MR. BRIAN: And, Your Honor, my only comment -- and  
17 Mr. Bice -- this is Mr. Brian -- was I was just trying assure  
18 the Court that the request for a continuance has nothing to do  
19 with polishing up the case in Florida. I wasn't speaking  
20 about depositions. It was simply we're not trying to affect  
21 that case in any way by asking for this short continuance,  
22 that's all.

23 THE COURT: I'm going to let the Florida judge  
24 figure that out. I've already dealt with the defamation claim  
25 that was filed against Mr. Adelson in this case and dismissed

1 it because of the privilege that is associated with those kind  
2 of disclosures in litigation. But I'll let the Florida judge  
3 decide what the issues are in his case or her case.

4 So we will start at 1:00 o'clock on September the  
5 10th, and go until we're finished. I am hopeful that we'll  
6 only be two days. Right? So that means we may go into the  
7 Wednesday. But Mr. Brian should be able to make his  
8 appointment in New Orleans.

9 MR. BRIAN: I appreciate that, Your Honor. Thank  
10 you.

11 THE COURT: All right.

12 MR. LIONEL: Thank you, Your Honor.

13 THE COURT: All right. And will you please  
14 apologize to Mr. Jacobs for me that the late notice of this --  
15 I'm going to have to find somebody to call all the TV crews  
16 who had already inquired about what time they could come set  
17 up in the morning.

18 MR. BICE: Well, we will, Your Honor. But we need  
19 -- we need an opportunity to confer with Mr. Jacobs. I don't  
20 know what his schedule is.

21 THE COURT: Okay. Is he there with you?

22 MR. BICE: He is not. Can we go on hold here for  
23 just one second?

24 THE COURT: Yes, you can.

25 MR. BICE: Thank you, Your Honor.

1 (Pause in the proceedings)

2 THE COURT: All right. What, Mr. Bice?

3 MR. BICE: After having my client yell at me, he  
4 will adjust his schedule and be here on the 10th.

5 THE COURT: All right. Thank you. See you guys  
6 then.

7 MR. BRIAN: Thank you, Judge.

8 MR. PEEK: Thank you, Your Honor.

9 THE PROCEEDINGS CONCLUDED AT 5:03 P.M.

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**CERTIFICATION**

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

**AFFIRMATION**

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

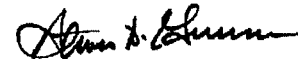
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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

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 ON DEFENDANTS' MOTION TO QUASH SUBPOENAS**

WEDNESDAY, AUGUST 29, 2012

COURT RECORDER:

TRANSCRIPTION BY:

SANDRA PRUCHNIC  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

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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.

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 29, 2012, 9:14 P.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 Mr. Peek, this is your motion.

5 MR. PEEK: Thank you, Your Honor.

6 MR. BRIAN: Your Honor, Mr. Peek, maybe because he's  
7 been working so hard, he's asked me to argue this one this  
8 morning. Brad Brian.

9 (Off-record colloquy)

10 MR. BRIAN: Your Honor, aside from the plaintiff's  
11 continuing harsh rhetoric, their opposition really offers no  
12 substantive response to the points we make in our motion to  
13 quash.

14 Let me start with the Rule 30(b)(6) subpoena. We  
15 cite --

16 THE COURT: Though Rule 30(b)(6) is only for  
17 depositions, not for trial.

18 MR. BRIAN: It's a discovery rule.

19 THE COURT: Yeah, it's a discovery rule. Okay.

20 MR. BRIAN: It's a discovery rule, and there's no  
21 case that says that it can be used to subpoena people to trial  
22 or an evidentiary hearing. They don't cite one. What they do  
23 is they complain about the 30(b)(6) of Mr. Sing, who I would  
24 say was deposed until I think about 4:40 p.m., answered  
25 hundreds of questions, was pretty forthright when he was

1 unable to answer questions. We said we'd bring him back.  
2 It's just not an issue. You can't use a 30(b)(6) to bring  
3 somebody to the Court's hearing tomorrow.

4 I should say that as to Mr. Sing Your Honor has  
5 expressed desire to have Mr. Sing here tomorrow, and he'll be  
6 here. There's no need to subpoena Mr. Singh. He will be at  
7 the court. We've said that to Your Honor because you asked  
8 for it, and he'll be here.

9 So let me turn to some of the witnesses. And I want  
10 to start with Mike Leven. The Court --

11 THE COURT: Hold on. Before you do that, Max  
12 mentioned that there was a letter that was sent by Mr.  
13 Kostrinsky's counsel. I'm sorry to interrupt, it's just I'm  
14 afraid I'm going to forget. I haven't read it, because I  
15 don't read letters from counsel. But have you all gotten it?

16 MR. PEEK: I have gotten it, and I have read it,  
17 Your Honor, yes.

18 THE COURT: So can somebody tell me if there's a  
19 plan with respect to Mr. Kostrinsky like where we want to  
20 [unintelligible]?

21 MR. BRIAN: Here's the plan as we understand it,  
22 Your Honor. His -- Mr. Kostrinsky -- we found out about this  
23 when we got the letter. We advised him of the two-day hearing  
24 and asked that he be available. We got the letter which says  
25 that Mr. Kostrinsky's not available Thursday morning and asked

1 if he could appear either Thursday afternoon or Friday.

2 THE COURT: Is that okay with everybody?

3 MR. BRIAN: Well, our view is -- and we've actually  
4 gotten back to his lawyer and we said we'd really like him to  
5 be here Thursday. It's our hope that we'll finish this in a  
6 day, so we'd like him to come here Thursday. That was our  
7 view. And I don't know if he's responded to that or not.

8 MR. PEEK: Your Honor, Mr. Owens and I were together  
9 yesterday, and Mr. Owens spoke to David. He blames the  
10 schedule on you because of your triple tracking in the MGM,  
11 Your Honor. He's apparently one of the --

12 THE COURT: CityCenter.

13 MR. PEEK: On the CityCenter, yeah.

14 THE COURT: Yes. And Mr. Kostrinsky's working on  
15 that case.

16 MR. PEEK: He is. So he was --

17 THE COURT: He comes into court.

18 MR. PEEK: He was like, I'm in depositions the Court  
19 said I had to do.

20 THE COURT: He is.

21 MR. PEEK: So we got that, Your Honor --

22 THE COURT: As is everybody else in town.

23 MR. PEEK: -- and we said, we're fine in the  
24 afternoon as long as it's okay with the Court. But we --

25 THE COURT: Here's the only caveat I will give you.

1 As yesterday, sometimes things don't go as planned. And  
2 yesterday my motion calendar started 15 minutes late because  
3 of a traffic issue, which really isn't Mr. Peek's fault, but  
4 he was the one who was the victim of it. And I didn't finish  
5 with my Planet Hollywood motions for summary judgment before  
6 noon. And so I didn't finish their motions, I had to send  
7 them away. I'm not having them come back on Thursday, because  
8 I didn't want them to interrupt your hearing and further throw  
9 me off track. But I do have several other cases that are on  
10 calendar on Thursday. So you all know I do my best to be  
11 ready when I tell you I will, but sometimes it's things that  
12 are out of my control.

13 One of the potential problems that I have is a case  
14 that I call brothel wars.

15 MR. BRIAN: I'm not sure I want to ask why you call  
16 it that.

17 THE COURT: And if that case is resolved as they  
18 told me it's resolved, then it's not a problem. If it's not  
19 resolved, it's a time-consuming issue that they have  
20 presented.

21 The other problem I have is a preliminary injunction  
22 hearing on a merger. It either is going to go bad or it's  
23 going to go quick. So, I mean, I'm just telling you. So when  
24 you tell people, please tell them that, you know, be flexible  
25 with their time, because it is difficult scheduling.

1 MR. BRIAN: Are those hearings all set for the  
2 morning, Your Honor?

3 THE COURT: Everything's set for 8:30 tomorrow. I  
4 have seven or eight things coming up.

5 MR. PEEK: Are you going to do Planet Hollywood as a  
6 trail-over, too, Your Honor, or not?

7 THE COURT: No. Planet Hollywood's not coming back  
8 till next Tuesday at 8:30 in the morning.

9 MR. BICE: Your Honor, we had subpoenaed Mr.  
10 Kostrinsky to be here. We don't have any objections telling  
11 Mr. Kostrinsky and his counsel, Mr. Lee, that he should not  
12 show up until after 1:00 o'clock on Thursday, if that works  
13 for him.

14 THE COURT: I think that's probably our best plan.  
15 And the reason I think that's our best plan is there's going  
16 to be some housekeeping issues that I'm going to want to  
17 address.

18 MR. BICE: Understood.

19 THE COURT: We, that would be my staff and I and,  
20 unfortunately, members of my family, have gotten sucked into  
21 reviewing the transcripts related to prior representations  
22 that were made to me. And for me that is a big deal, and  
23 that's why -- as this is my hearing that is set, those are  
24 things I'm going to concentrate on. So as you finish your  
25 argument, separate and apart from Mr. Kostrinsky, who never



1 made a representation to me other than what was in the  
2 affidavit, you know -- okay.

3 MR. BRIAN: Okay.

4 THE COURT: So keep going with your argument.

5 MR. BRIAN: Okay. So let me --

6 THE COURT: And was sorry to interrupt, but I was  
7 afraid of that issue getting away from us.

8 MR. BRIAN: No. I think we're all in accord on  
9 that. I think Mr. Bice's idea of the 1:00 o'clock is fine  
10 with us, Your Honor, for Mr. Kostrinsky.

11 So I've covered the 30(b)(6) issue, and I've covered  
12 Mr. Singh, who will be here tomorrow.

13 With respect to the other witnesses, Your Honor, let  
14 me start with Mr. Leven. Mr. Leven is the number two ranking  
15 officer of the Las Vegas Sands Corporation. And, as we say in  
16 our brief, the courts have erected a very high standard before  
17 a senior executive can be called into court to testify. So  
18 the question is has the plaintiff met that very high standard.  
19 And the only thing he says in his brief to try to meet that  
20 standard is on the first line of page 8, where he says, and I  
21 quote, "No major action or decision in legal takes place  
22 without Leven's direction and authorization," unquote. No  
23 citation, no authority. There is nothing to support that.  
24 That is not enough under the caselaw to justify bringing in  
25 that Las Vegas of officer for this hearing.

1           Your Honor has not been shy in saying what you're  
2 interested in talking about. Mr. Leven did not make any  
3 representations to the Court about Macau documents, about the  
4 transfers of documents, not anything. He's not a party to  
5 this action, and I would respectfully submit that they have  
6 come woefully short of meeting their burden of justifying  
7 bringing somebody like Mr. Leven to the court tomorrow.

8           So let me talk about the lawyers, Gayle Hyman,  
9 Andrew Sedlock, and Justin Jones.

10           THE COURT: Ms. Hyman is in house. Everyone is  
11 outside counsel.

12           MR. BRIAN: Ms. Hyman is in house. The other two  
13 are outside counsel. We've dealt with Ms. Hyman before when  
14 they sought to take her deposition. And you'll recall -- Mr.  
15 Peek actually argued that motion, Your Honor. You'll recall  
16 we brought -- we cited the Club Vista case, a recent Nevada  
17 Supreme Court case that sets, again, a very high standard for  
18 opposing -- for deposing opposing counsel and adopts expressly  
19 the framework of the Eighth Circuit case Shelton versus  
20 American Motors, which dealt with a deposition of in-house  
21 counsel. And the Club Vista case adopts that standard. And  
22 the standard is extraordinarily high.

23           You'll recall that Mr. Peek -- he can correct me if  
24 I'm wrong -- Mr. Peek represented to the Court last time we  
25 were here on this that Ms. Hyman was one of the supervising

1 attorneys to whom he reported in the 2011 time period on this  
2 very lawsuit. So under the Club Vista standard and the  
3 Shelton versus American Motors standard, the Court properly  
4 rejected their attempt to take her deposition.

5 Now, they say, well, this is different, that this is  
6 not a deposition, this is the Court's hearing. I recognize  
7 there are different interests and different policies, but some  
8 of those policies are the same. There should certainly be a  
9 high standard before someone is permitted to bring that  
10 lawyer, the in-house lawyer who was the supervising -- one of  
11 the supervising attorneys on the case, into court to testify.  
12 The only thing they really say in their brief to justify that  
13 is that she sat in the courtroom in one or more hearings while  
14 representations were made to the Court by Mr. Peek and Ms.  
15 Glaser. And I would respectfully submit, Your Honor, that  
16 that's simply not enough.

17 Mr. Sedlock, who was a lawyer at the time -- I don't  
18 think he still is, but I think he was a lawyer then at the  
19 Glaser Weil firm.

20 THE COURT: I think he's at Lewis and Roca now.

21 MR. BRIAN: I'm not sure, Your Honor.

22 MR. PEEK: I have Gordon & Silver, Your Honor.

23 THE COURT: Okay. Well, he's around, because he  
24 comes in.

25 MR. BRIAN: Yeah. He's been subpoenaed -- we

1 understand he has been subpoenaed. The basis that's offered  
2 in the brief to bring him before the Court is a declaration  
3 that he filed with respect to Macau documents. What he says  
4 in essence in that declaration -- I'm not saying it's the only  
5 thing, but it's the thing at issue, I think, is that, quote,  
6 "The overwhelming majority of documents were in Macau." That  
7 was a true statement then, it's a true statement now. Ms.  
8 Glaser will be here to answer the Court's questions. There's  
9 no reason that Mr. Sedlock has to be here, as well.

10 With respect to Justin Jones, he is one of Mr.  
11 Peek's partners. Mr. Peek, of course, will be here to answer  
12 the Court's questions. I think that's enough. But if Your  
13 Honor wants Mr. Jones here, he will be available. I defer  
14 completely to Your Honor with respect to that.

15 THE COURT: Okay. Let me tell you what I wrote down  
16 yesterday, and Mr. Bice doesn't even need to argue this,  
17 because I know what Mr. Bice's position is, and he and I have  
18 a slight disagreement as to how this hearing's going to be  
19 conducted. But he's going to have his own hearing someday  
20 when he files his own motion.

21 I expect that any attorney who made a representation  
22 to me about the Macau documents or the Macau Data Privacy Act  
23 will be present here in court to answer questions, whether  
24 their representation was made in an affidavit or whether their  
25 representation was made in open court. That's my expectation.

1 I have been told by you guys that certain witnesses  
2 have been directed not to answer questions on the basis of  
3 attorney-client privilege. That's fine. However, each  
4 attorney who made a statement to me will answer to me as to  
5 why they made those statements. If they don't come, that's  
6 fine. I will assume whatever I need to based upon the other  
7 evidence that is presented to me, and make appropriate  
8 inferences about what was going on. But if people don't come,  
9 then they're not going to be able to tell me anything else  
10 about what their actions were than what I will be left to  
11 infer based upon the transcripts that I've had pulled together  
12 and reviewed and my recollection. And, you know, frankly,  
13 gentlemen, the hours that have been spent by me and my staff  
14 related to these issues over the last couple years is a very  
15 disturbing amount of time, especially given what's happened  
16 here.

17 MR. BRIAN: Your Honor, the only -- and we take  
18 seriously, Your Honor, your statement. The only person -- as  
19 you're making those comments the only person I'm thinking of,  
20 and I may need help from Mr. Peek or Mr. Weissman, is Mr. Ma  
21 from the Glaser Weil firm. He's in Los Angeles. He's beyond  
22 subpoena power. We thought it was adequate to have Ms. Glaser  
23 here. Mr. Ma was not planning on coming. I don't know if  
24 Your Honor's requesting that he be here or not.

25 THE COURT: I don't -- at this point I can't tell

1 you whether Mr. Ma made any representations to me in court or  
2 in an affidavit. If it turns out he did and he doesn't come,  
3 that's okay, I'm going to listen to the evidence that is  
4 presented to me, and I will make appropriate inferences based  
5 upon the evidence that is presented to me.

6 MR. BRIAN: We'll look at that, Your Honor. In  
7 reviewing the record I recall Mr. Ma made -- made certain --  
8 made at least one appearance, maybe more. I don't know if it  
9 was on those issues. I just have to go back and look at that  
10 time. And I don't know whether we could prevail upon Mr. Ma  
11 to get here.

12 THE COURT: The issues were pervasive.

13 MR. BRIAN: I know they were. I know. I understand  
14 that. But that sort of goes to my -- I think your comment  
15 kind of goes to my last point, which is we fully recognize  
16 that Your Honor has certain concerns. You've set them forth.  
17 Tomorrow is your hearing.

18 THE COURT: Most of you know that I'm not shy about  
19 telling you when there's a problem.

20 MR. BRIAN: You've not been shy, Your Honor. And we  
21 understand this. But the one thing we do think, and I think  
22 it goes to your comment about a difference between you and Mr.  
23 Bice about the scope of the hearing, tomorrow is your hearing.  
24 It's not the plaintiff's hearing, it's not the plaintiff's  
25 counsel's hearing.

1 THE COURT: But I'm going to let Mr. Bice ask  
2 questions.

3 MR. BRIAN: I understand that.

4 THE COURT: I'm going to limit him if he seems to be  
5 going too far afield for the purpose I'm conducting the  
6 hearing, but, you know, he and I will have those discussions  
7 as we get there.

8 MR. BRIAN: Yeah. I --

9 THE COURT: I don't think you can do this hearing in  
10 a day given the number of transcripts that exist.

11 MR. BRIAN: Maybe, Your Honor. We'd like to do it  
12 -- you know, we want to get through it, we want to get to the  
13 merits as fast as we can. My only point is that it's your  
14 hearing, it's not theirs. If and when they file a motion,  
15 we'll have to deal with that.

16 THE COURT: That's correct. Then we'll have a  
17 different hearing.

18 MR. BRIAN: That's a different hearing. And  
19 tomorrow is your hearing, and I think this -- these subpoenas  
20 that they have served, the 30(b)(6), the request for Ms.  
21 Hyman, the request for Mr. Leven really go to issues that are  
22 of concern to them. I think they go beyond what the Court has  
23 indicated an interest in.

24 THE COURT: Well, what their position is, and I  
25 clearly understand their position, the Sands and the lawyers

1 are lying to me, you guys have been lying to me for two years,  
2 and you're still lying to me. And that's what their position  
3 is, and I understand that. And, you know what, I have kids, I  
4 know when people are lying. I can't tell you I know every  
5 time somebody's lying, but I've got a history of being able to  
6 identify issues and try and point out inconsistencies and try  
7 to work through there. That's why I'm telling you if you  
8 don't bring people I will make appropriate inferences based  
9 upon the evidence that is presented to me.

10 MR. BRIAN: Well, I guess on that last point, Your  
11 Honor, if anybody thinks that we're, quote, "still lying" to  
12 the Court, I guess I'd like to know that.

13 THE COURT: I think people like your client, you or  
14 your client, and I don't know which of these people, is still  
15 lying to us. I can tell you from reading Mr. Bice's brief.  
16 He's putting it in his brief.

17 THE COURT: Well, I guess we need to know that,  
18 because --

19 THE COURT: Mr. Bice, do you think there's a lack of  
20 candor occurring, whether it's counsel or the client?

21 MR. BICE: I do.

22 THE COURT: Okay.

23 MR. BRIAN: Then I --

24 THE COURT: See? Just so we're all clear.

25 MR. BICE: As of today, and that's what we intend to



1 show you in the next two days.

2 MR. BRIAN: Then we need to know that. We need to  
3 know that --

4 THE COURT: I've known that since he asked me to do  
5 discovery.

6 MR. BRIAN: We need to know that, because we --

7 THE COURT: How did you miss it?

8 MR. BRIAN: Let me -- let me be specific, Your  
9 Honor. We were -- we have come in here, we being Mr. Weissman  
10 and myself, we have -- we made a disclosure, we did an  
11 investigation, we made a further disclosure. If there are  
12 issues that Mr. Bice wants to raise, he should let us know  
13 specifically, because at that point I'm going to tell my  
14 client that an issue has been raised with respect to us. If  
15 there's past conduct, there's a different issue for my client  
16 to consider. That's all I'm saying.

17 THE COURT: Well, that's why I phrased the question  
18 as either counsel or the client --

19 MR. BRIAN: I understand that.

20 THE COURT: -- because this point I do not know  
21 where the issues are being alleged to come from. But I can  
22 tell you from reading Mr. Bice's briefs -- and I read the  
23 briefs, that I know that he thinks somebody's not being honest  
24 about what happened.

25 MR. BRIAN: I'm going to say it again, Your Honor --

1 THE COURT: Whether it's about what's happening now  
2 is a different issue. But what's happened in the past, Mr.  
3 Bice clearly thinks that people aren't being honest with him.

4 MR. BRIAN: I understand that, Your Honor. And to  
5 the extent we're dealing with past conduct I understand that.

6 THE COURT: But it's a continuing to disclose what  
7 happened. I'm at the point --

8 MR. BRIAN: Well --

9 THE COURT: I am frankly at the point that I am  
10 disturbed with the lack of candor that has occurred in this  
11 courtroom, and nobody's 'fessed up about what really happened.  
12 I'm waiting to hear it. I think I might hear some of it in  
13 the next couple of days. But to say that there's nothing  
14 that's ongoing I think is -- you can't do that, because  
15 there's something that happened in the past and nobody's come  
16 clean about it yet. Someday somebody's going to come clean  
17 about it, and then we're going to know. But at this point I  
18 still have serious concerns about what has occurred. And each  
19 time there has been a filing there's a different spin. And  
20 that's okay. Lawyers are hired to do spin. It's part of what  
21 you guys do. But I'm conducting an evidentiary hearing to  
22 make determinations as to misrepresentations that were made to  
23 me.

24 MR. BRIAN: I understand that, Your Honor. And I  
25 don't agree with the word "spin." What we do as lawyers is we

1 advocate the legal conclusions based on the facts. If a  
2 lawyer or a client has misrepresented a fact, obviously that  
3 is wrongful conduct. There is a difference between mistakes  
4 in judgment and a violation of the duty of candor. And we're  
5 happy to answer the Court's inquiries and the facts.

6 But my only point now -- I understand the point  
7 that, Your Honor, you're going to address tomorrow. But if  
8 somebody -- if Mr. Bice or anybody thinks that I'm sitting up  
9 here now and making misrepresentations to the Court, I need to  
10 know that, because I need to tell my client that, because they  
11 may well want to consult with a new lawyer.

12 THE COURT: Okay.

13 MR. BRIAN: Very simple.

14 THE COURT: I understand what you're saying.

15 Mr. Bice, anything you want to say?

16 MR. BICE: Yes, Your Honor. It is interesting that  
17 you made the observation about spin, because actually in my  
18 notes to make my presentation to you today I specifically  
19 wrote down that, unlike Fox News and the O'Reilly Factor, this  
20 is not a spin zone, this is a true no spin zone. It is a  
21 court of law. You scheduled a two-day --

22 THE COURT: That's not how it works, though, in  
23 reality. You know that, Mr. Bice. You've been --

24 MR. BICE: Well, I do know that, except with respect  
25 to this issue -- and I'll -- I will answer Mr. Brian's

1 question in part. Do we believe that the lack of disclosure,  
2 i.e., the lack of candor to the Court, whether it's coming  
3 from the defense counsel or whether it is coming from their  
4 clients, is continuing up to and through today? The answer  
5 is, yes, we do believe that. And, quite frankly, I think  
6 their pleadings, their so-called mea culpa when they  
7 supposedly came clean, we know lack many facts that their  
8 clients certainly knew and we know that Mr. Peek knew. Now,  
9 whether the lawyers at MTO knew it when they made those  
10 disclosures to you I don't know, but that's one of the things  
11 we intend to find out in this next two days, when they knew  
12 and what they knew and when it was disclosed to the Court,  
13 which is a big deal.

14           So let me address just a couple of these points.  
15 Here's my point with Ms. Hyman, all right. Ms. Hyman was --  
16 as Mr. Peek says, she's one of the supervising lawyers for the  
17 client on this matter. That's been their characterization of  
18 her. I know her, and I know that she sat right there where  
19 one of my associates is sitting in the back of the courtroom  
20 and listened to many of the representations that were made to  
21 you about the Macau data and the Macau Data Privacy Act. And  
22 I know for a fact she knew those statements were untruthful.  
23 She is a lawyer, and under the rules she is obligated to pull  
24 her counsel aside and demand that they correct those  
25 misstatements to the Court. She didn't do that because she

1 was complicit in the deception of the Court. And that's why  
2 she --

3 THE COURT: And the appropriate -- the appropriate  
4 issue for you if that's really what you believe, Mr. Bice, is  
5 to file a Bar complaint.

6 MR. BICE: Well, if we --

7 THE COURT: And that may be what happens --

8 MR. BICE: It may be.

9 THE COURT: -- as a result of some of these hearing.

10 MR. BICE: It very -- I apologize.

11 THE COURT: But, I mean, I have issues with having  
12 -- and, you know, I used to be a defense lawyer with corporate  
13 clients, and I've dealt with in-house counsel, and I know that  
14 sometimes they're seriously involved in the litigation  
15 strategy. And under the Club Vista case I have to be mindful  
16 of that and not invade that, even though here I may have a  
17 client that was directing the activity. And I may well have  
18 that.

19 MR. BICE: Right.

20 THE COURT: But I'm not at this point going to make  
21 her come forward to testify in my hearing -- not saying what  
22 I'll do in your hearing --

23 MR. BICE: Okay.

24 THE COURT: -- in my hearing, because she did not  
25 make a representation to me in court in either an affidavit or

1 in front of me.

2 MR. BICE: But she did. And this is the way --

3 THE COURT: She sat in court and didn't say  
4 anything.

5 MR. BICE: But this is what -- this is -- Your  
6 Honor, with all due respect, failure to inform the Court of  
7 the truth is a misrepresentation. And when you have a duty to  
8 speak, which is what she had a duty to speak, she is the  
9 client representative that sat in this courtroom. So you  
10 can't sit there and say, you know, it's like the movie,  
11 earmuffs, and then pretend to the Court I don't have to now  
12 inform the Court and it's not a misrepresentation, because I  
13 sat there and let the Court be deceived. That is a  
14 misrepresentation, and it is the same as though she had  
15 understood up in front of you and told you the false  
16 statement. And that's our point with respect to her.

17 THE COURT: And I understand that.

18 MR. BICE: All right. Now let me deal with Mr.  
19 Leven, because I think this one is even a bit more slippery  
20 with respect to the defendants. Here's what we know from Mr.  
21 Singh's testimony, Your Honor. This so-called change in  
22 policy about the Macau Data Privacy Act didn't occur until the  
23 United States issued a subpoena to these defendants. Then all  
24 of a -- this wasn't the Macau Government that came up with  
25 this. This was the defendants coming up with an excuse and

1 then using that excuse not only in dealing with the  
2 government, in dealing with us.

3 THE COURT: And that is going to be an appropriate  
4 issue when you bring a Rule 37 motion for sanctions as a  
5 result of the misconduct that has occurred.

6 MR. BICE: But here's the point with respect to Mr.  
7 Leven and your hearing. Mr. Leven is the chief operating  
8 officer of Las Vegas Sands Corp. He also, if you'll recall,  
9 at the time in which this Macau information was going on, he  
10 was serving as the interim chief executive officer of the  
11 Sands China entity. This is the individual who is the actor  
12 for the client regarding the misrepresentations that were made  
13 to this Court. Mr. Leven should be here to have to explain  
14 what it was he was directing and not directing. You can't  
15 just hide and say, well, you know, these lawyers -- if he  
16 wants to come in and say, listen, I didn't know any of this  
17 that was going on, that's fine. Then let him take the stand,  
18 raise his hand, and swear that that's true. Because I don't  
19 think it is true, and I think that he's going to have a  
20 serious problem. And that's exactly why they're having such a  
21 fit about him showing up. They know exactly what his role was  
22 in this, and they don't want to him dare have to take the  
23 stand and be subject to examination about what he knew and  
24 when he knew it. And there's nothing inappropriate about the  
25 Court getting to the bottom -- because, recall, Your Honor,

1 one of the issues we're having here is who was directing this,  
2 was it just the lawyers that were making those representations  
3 that are in that transcript, or was that being done at either  
4 the direction, explicitly or tacitly, with client's permission  
5 and knowledge. And that's why both Hyman and Leven should  
6 have to be here and you will decide based upon the evidence  
7 that you hear whether or not they should be forced to take the  
8 stand and ask specific -- answer specific questions about  
9 their conduct in that regard. And that's -- Your Honor, I  
10 don't need to say any more about it.

11 I know this. If I were in their shoes and I was  
12 accused of making misstatements to the Court, you couldn't  
13 keep me out of this courtroom. And the fact that they don't  
14 want any of these people in this courtroom I think speaks  
15 volumes.

16 THE COURT: All right. Anything else related to the  
17 motion?

18 MR. BRIAN: No, Your Honor.

19 THE COURT: Okay. The motion is granted in part.  
20 The motion is granted with respect to the 30(b)(6) witness.  
21 30(b)(6) is a discovery device, not a device to compel  
22 attendance at evidentiary hearings or trials.

23 It is also granted with respect to Mr. Leven. While  
24 I certainly understand the issues related to the direction of  
25 the client, I think that there is sufficient attorney



1 involvement that I'm going to make inferences based upon the  
2 responses I get to the questions I intend to ask. It's been a  
3 long time since I've outlined a direct examination, so, you  
4 know --

5           And then with respect to Ms. Hyman it's also  
6 granted. I think I've made clear what I think the potential  
7 problems are with that. There may be a day later when we get  
8 to a Rule 37 motion that is filed by the plaintiffs at which I  
9 may take a different position related to all of these  
10 witnesses. But with respect to the hearing that I've  
11 scheduled, which is primarily centered EDCR Rule 7.60 and the  
12 inherent powers of the Court, I am primarily concentrating on  
13 the statements that were made to me by counsel in documents  
14 that were filed with the Court and in open court, and I  
15 anticipate that anyone who made such a statement will be here  
16 to answer questions. And if they don't, I will draw  
17 appropriate inferences.

18           MR. BICE: And, Your Honor, I just want the record  
19 to be clear. So is it fair to also say that in granting their  
20 motion you're not saying that you also will not draw adverse  
21 inferences if either Mr. Leven or Ms. Hyman or anybody else  
22 doesn't show up and it turns out that the evidence is that  
23 they had knowledge; right?

24           THE COURT: I said appropriate inferences.

25           MR. BICE: Thank you.

1 THE COURT: Appropriate inferences are sometimes  
2 adverse, Mr. Bice.

3 MR. BICE: That's right.

4 MR. BRIAN: I don't think that issue is before the  
5 Court, Your Honor.

6 THE COURT: No, it's not.

7 MR. BRIAN: And we can decide that, and I'd like to  
8 be heard on that tomorrow.

9 Was Your Honor done with the ruling? I do have a  
10 question about tomorrow's hearing.

11 THE COURT: I am done with the ruling on the motion,  
12 and we've discussed Mr. Kostrinsky, which was my other issue  
13 to address today that I was aware of.

14 MR. PEEK: Did you get our brief, by the way? Do  
15 you have our brief?

16 THE COURT: I have a stack in a binder. I wouldn't  
17 call it a brief.

18 MR. BRIAN: Well, the brief is briefer than the  
19 stack, Your Honor.

20 THE COURT: It's 6 inches.

21 MR. BRIAN: We --

22 THE COURT: I'm in a trial. I'm going to finish  
23 that trial today, and then tonight I will re-review the  
24 transcripts, some of the highlights and markings that have  
25 been made for me on transcripts, and read the briefs that are

1 submitted by counsel in preparation for the hearing. And I'd  
2 really love to know if anybody has any alternative sanction  
3 idea, other than the ones that I have written down and I'm not  
4 going to tell you about.

5 MR. BRIAN: Your Honor, we're actually working on  
6 that now. We had not -- we were planning on dealing with that  
7 orally, which is why it wasn't --

8 THE COURT: That's fine.

9 MR. BRIAN: -- it wasn't in the brief. We're now  
10 actually working up something. We don't know whether we'll be  
11 able to get you something in writing before the hearing or  
12 not, but we have that in mind. We just couldn't do it in  
13 connection with the other brief. We did --

14 THE COURT: It is clearly important, because I will  
15 pull out the Ribiero case even though it technically doesn't  
16 apply because it's a Rule 37 case, and I will go through the  
17 factors to make sure that everybody understands that there are  
18 issues that I have to make findings on. And I don't think  
19 Ribiero controls the analysis I have to make, because it's not  
20 a Rule 37 hearing, but it is instructive.

21 MR. BRIAN: Yes. I understand, Your Honor.

22 Just one -- I'll call it housekeeping, Your Honor.  
23 Actually two things. One, we attached to our brief what we  
24 called an appendix, we could alert the Court's staff if you  
25 can't find it, which actually goes through frankly what we

1 thought were the representations at issue, so to speak. And  
2 we tried to be as complete -- Mr. Bice may disagree with the  
3 list, but we actually tried to be pretty complete in  
4 identifying those. Obviously we have a different take on it  
5 than Mr. Bice and maybe even the Court has, but we did want to  
6 make sure Your Honor had an easy way of looking at those.

7 And secondly, Your Honor, just in terms of the  
8 witnesses, how do you want to proceed?

9 THE COURT: I'm going to ask questions. And then  
10 after I ask questions I'm going to ask Mr. Bice if he has any  
11 questions, and then Mr. Bice is going to hopefully going to  
12 ask -- Mr. Bice, Mr. Pisanelli, and Ms. Spinelli will ask  
13 limited and focused questions on the area that I am concerned  
14 about, and then I will ask you if you have any questions.

15 MR. BRIAN: And, Your Honor, the final thing --

16 THE COURT: I don't need an opening statement,  
17 please.

18 MR. BRIAN: I had -- I had prepared four minutes of  
19 opening remarks, which I'll look at it.

20 THE COURT: Four minutes are okay.

21 MR. BRIAN: It's really short.

22 THE COURT: Four minutes are okay.

23 MR. BRIAN: But I'll keep it short. I understand,  
24 Your Honor.

25 But in terms of the lawyers who are officers of the

1 Court I was making the assumption that they won't be  
2 testifying under oath, that they'll be --

3 THE COURT: Absolutely they're going to be sworn in.

4 MR. BRIAN: They are. Okay.

5 THE COURT: Absolutely. This is a serious  
6 proceeding, and they will be sworn.

7 MR. BRIAN: It's a serious proceeding whether or not  
8 they're sworn, but we hear, Your Honor.

9 MR. PEEK: I take this hearing very seriously, Your  
10 Honor.

11 THE COURT: I know you do, Mr. Peek.

12 MR. PEEK: And I take the accusations coming from  
13 the other side very seriously.

14 THE COURT: Just so everybody's clear, I've known  
15 Mr. Peek for a long time, and I've known Mr. Pisanelli and Mr.  
16 Bice for a long time. And this hearing bothers me, and it  
17 bothers me because of what's happened. And I want to get to  
18 the bottom of what's happened and why it has happened. Mr.  
19 Peek has a number of other cases here. He's done good things  
20 in here, he's done things I've given a really hard time about  
21 in here. Mr. Pisanelli's been on my list for going 45 minutes  
22 on an uncontested motion that should have taken two. So, I  
23 mean, I know all of these people, because we are a small legal  
24 community. And I have to take that into my consideration as I  
25 evaluate this.

1 Mr. Brian, you're new. You don't know us very well.

2 MR. BRIAN: I'm learning.

3 THE COURT: It's a small legal community here, and,  
4 believe me, everybody know everybody else's business. And so  
5 I know that Mr. Peek takes this seriously, because every time  
6 he's in here on something he has to remind me why I can't make  
7 him do certain scheduling things because he was trying to get  
8 ready for this hearing to defend his honor. And I understand  
9 that. But it's not that, you know, this is behind closed  
10 doors or something. Everybody knows about this, and we're  
11 going to do this in the open so everybody hears what happened,  
12 and we're going to get explanations. They may not be  
13 explanations I like, but I'm going to get the explanations.

14 MR. BRIAN: Do you have a preferred order of  
15 witnesses, Your Honor?

16 THE COURT: I'd really like to hear from Mr.  
17 Kostrinsky first, but I'm not going to be able to. So I would  
18 think either Ms. Glaser or Mr. Peek is probably a good person  
19 to start with.

20 MR. BRIAN: Sounds right, Your Honor.

21 THE COURT: I mean, that's -- in my mind they're  
22 probably two of the more frequent participants in the hearings  
23 that are issue.

24 MR. BRIAN: Okay. Thank you for the guidance, Your  
25 Honor.

1 THE COURT: Anything else?

2 MR. BRIAN: Should we be here at 9:00 or 9:30  
3 tomorrow?

4 THE COURT: No. I think we've got you scheduled for  
5 10:00.

6 MR. PEEK: 10:00, yeah. Okay.

7 THE COURT: Because I told you I have some issues in  
8 the morning.

9 MR. BRIAN: Thank you, Your Honor.

10 THE COURT: Okay. Anything else?

11 MR. PISANELLI: Your Honor, made clear you don't  
12 want much, if any, opening statements. Do you want counsel  
13 prepared to make summary arguments after we have all the  
14 evidence put together?

15 THE COURT: I absolutely want you to make arguments  
16 at the end.

17 MR. PISANELLI: Okay. Thank you.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: And you know there's going to be  
20 questions that will ask of counsel, because that's what I do.  
21 I am trying to navigate through a situation that is very  
22 uncomfortable for me, and it is very new to me, because I have  
23 never had one of these hearings. I know other judges have  
24 conducted them and been recently affirmed. But this is  
25 different.

1 MR. PEEK: It's very uncomfortable for me, as well,  
2 Your Honor.

3 THE COURT: I understand. We're going to get  
4 through this, and then we're going to do whatever we're going  
5 to do.

6 MR. PISANELLI: Thank you, Your Honor. See you  
7 tomorrow.

8 MR. BRIAN: Thank you, Your Honor.

9 MR. PEEK: Thank you.

10 THE COURT: Anything else?

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

12 THE PROCEEDINGS CONCLUDED AT 9:48 A.M.

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*  
FLORENCE HOYT, TRANSCRIBER

9/7/12

DATE