

1 I don't think that's true, and that's why I ask Your  
2 Honor -- we're not talking about relevance, we're not talking  
3 about admissibility, we're talking about discovery, a far  
4 broader standard than we should be looking at, before we just  
5 close the window and say, no, you don't get to look down that  
6 alley.

7 THE COURT: But it's limited discovery in  
8 conjunction with the order -- or, I'm sorry, the writ the  
9 Nevada Supreme Court has issued to me.

10 MR. PISANELLI: Right.

11 THE COURT: Okay. We have to be mindful of that,  
12 because there is a stay that's in place. And so I am limited  
13 significantly in what might generally be allowed as discovery.  
14 But I think I narrowed it when I did the order --

15 MR. PISANELLI: As did I.

16 THE COURT: -- whether you guys like it or not.

17 MR. PISANELLI: And if there is anything that you  
18 have doubt about, about being accurate and fair, all filtered  
19 through the fact that we're talking about discovery, not  
20 admissibility for purposes of contact, then, of course, I'd be  
21 happy to address the point. But I think we know where we're  
22 going. It is a sham to say we were confused. Nobody in this  
23 room is confused. We all sought clarification at the moment,  
24 and you told us what you wanted --

25 THE COURT: I even stayed after 5:00 to give you

1 clarification.

2 MR. PISANELLI: Right. You asked all of us, you  
3 exhausted all the questions. There was nobody confused when  
4 we walked out of here.

5 THE COURT: All right. Ms. Glaser.

6 MS. GLASER: Your Honor, I don't mean to be too cute  
7 about this, but there was no meet and confer with respect to  
8 the motion for discovery, and Mr. Pisanelli actually admits  
9 that in writing. He says it wouldn't have mattered anyway  
10 because we would never have been able to agree. So I'm --

11 THE COURT: Well, you guys told me you wouldn't  
12 agree in open court.

13 MS. GLASER: I'm not --

14 MR. PISANELLI: And she told me on the telephone, as  
15 well. Perhaps she forgot that.

16 THE COURT: Well, no. You told me in open court,  
17 which to me is a pretty big deal. When you guys tell me in  
18 open court you're not going to reach an agreement, I say, then  
19 I guess you're going to have to file a motion.

20 MS. GLASER: All I'm saying, Your Honor, is there  
21 was a specific effort to meet and confer by us. Mr. Pisanelli  
22 filed his motion with a meet and confer, and I'm just -- I  
23 think what's good for the goose is good for the gander in any  
24 event.

25 THE COURT: I'm happy to discuss that with you at

1 the time of that hearing. Today we're here on a motion for  
2 clarification because you want me to limit the scope of what I  
3 ordered beginning on page 43 of the transcript --

4 MS. GLASER: Right, Your Honor.

5 THE COURT: -- at the hearing I did on the day at  
6 4:00 o'clock because Judge McKibben asked me to because Mr.  
7 Peek had to be at his trial.

8 MS. GLASER: Okay. And, Your Honor, I want to say  
9 it as clearly as I can --

10 THE COURT: September 27th.

11 MS. GLASER: -- the best reason for clarification is  
12 found in the opposition papers, because the Nevada Supreme  
13 Court has limited the jurisdictional evidentiary hearing to  
14 general jurisdiction, not specific jurisdiction. And I won't  
15 bore you with quoting from the --

16 THE COURT: Actually what the Nevada Supreme Court  
17 says, just so we're entirely all clear, because I am bound to  
18 do what they tell me to when they issue a write --

19 MS. GLASER: I have it right here, but go ahead.

20 THE COURT: "Order that petition granted and direct  
21 the clerk of this court to issue a writ of mandamus  
22 instructing the District Court to hold an evidentiary hearing  
23 on personal jurisdiction, to issue findings of fact and  
24 conclusions of law stating the basis for its decision  
25 following that hearing, and to stay the action as set forth in



1 this order until after entry of the District Court's personal  
2 jurisdiction decision."

3 MS. GLASER: Your Honor, if you go up 11 lines above  
4 that, it clearly says to hold -- "by holding an evidentiary  
5 hearing and issuing findings regarding general jurisdiction."  
6 Because I'm telling Your Honor, and Your Honor can check the  
7 briefs --

8 THE COURT: I'm not checking the briefs, Ms. Glaser.

9 MS. GLASER: I understand. No question --

10 THE COURT: I'm going with what the Supreme Court  
11 told me to do in the writ that they issued.

12 MS. GLASER: And it says "general jurisdiction," not  
13 specific jurisdiction. Because counsel -- prior counsel,  
14 albeit, waived their argument with respect to specific  
15 jurisdiction both before Your Honor and again in front of the  
16 Nevada Supreme Court.

17 THE COURT: Anything else?

18 MS. GLASER: No, there is not, Your Honor.

19 THE COURT: Thank you.

20 The motion for clarification is granted in part. I  
21 am going to clarify again what I have said repeatedly since  
22 this case has been sent back sort of by the Nevada Supreme  
23 Court.

24 We are only going to do discovery related to  
25 activities that were done for or on behalf of Sands China.



1 That was an overriding limitation on all of the specific items  
2 that were requested in the motion for discovery.

3 Is there any further clarification that you would  
4 like to ask me at this time? Okay.

5 MS. GLASER: I would like the Court to be clear that  
6 with respect to specific jurisdiction it's a separate analysis  
7 that was not before the Nevada Supreme Court. And by  
8 definition not only do they articulate it in their order, but  
9 they clearly also say they can't be ordering an evidentiary  
10 hearing on issues that weren't before it and there's nothing  
11 discussed about specific jurisdiction.

12 THE COURT: Anything else?

13 MS. GLASER: I do -- I understand Your Honor's  
14 argument, and I think you're not agreeing with me on the  
15 agency theory.

16 THE COURT: I'm going to actually read you the writ,  
17 which is much more important than any other document from the  
18 Supreme Court.

19 MS. GLASER: Okay.

20 THE COURT: The writ says -- and it's directed to  
21 me. This is the second paragraph. "Now, therefore, you are  
22 instructed to hold an evidentiary hearing on personal  
23 jurisdiction, to issue findings of fact and conclusions of law  
24 stating the basis for your decision following that hearing,  
25 and to stay the action as set forth in the order until after

1 entry of your personal jurisdiction decision, in the case  
2 entitled Steve C. Jacobs versus Las Vegas Sands Corp., Case  
3 Number A-10-627691-C." Love and kisses, Nevada Supreme Court.

4 MS. GLASER: Your Honor, I did properly quote from  
5 the order above that.

6 THE COURT: I know. But what I'm trying to tell you  
7 is what matters more isn't what they say in their opinions,  
8 it's what the issue in the writ instructing me what to do.  
9 That's what I have to do. And I'm going to do it. And  
10 there's going to be a good order this time, instead of a lousy  
11 order that goes up, even if I have to draft it myself.

12 All right. Let's go to Item Number 3 on my agenda,  
13 which is --

14 MR. PEEK: I assume you mean by that your order  
15 denying jurisdiction. Well, I'm just trying to --

16 THE COURT: Okay. Let me -- instead of saying "good  
17 order," I will say a well-drafted and complete order. How's  
18 that?

19 MR. PEEK: Yeah. Because you don't have to  
20 necessarily find that there's jurisdiction.

21 THE COURT: No.

22 MR. PEEK: Okay.

23 THE COURT: I have to make a decision following an  
24 evidentiary hearing on the issue that a writ has been sent to  
25 me saying, you are specifically commanded to do this. And I

1 intend to do what they told me to do.

2 MR. PISANELLI: Quick question on the clarification  
3 issue.

4 THE COURT: Yes.

5 MR. PISANELLI: It was our understanding when we  
6 left this courtroom that we presented to Your Honor categories  
7 of discovery that we wanted, you granted many, you tailored  
8 some. We walk out now prepared to receive discovery and start  
9 noticing depositions. I have not had a discussion, so I don't  
10 know there's a debate in hand. But because of the silence  
11 we've heard since that last time I'm fearful that they're not  
12 intending to comply with that order unless they're receiving  
13 formal discovery requests, things of that sort. And I  
14 understood you not to be expecting that.

15 THE COURT: No, no. You're going to have to do  
16 formal discovery requests. Don't -- please, let's not assume  
17 that just because I said you can do these things --

18 MR. PISANELLI: Okay. Fair enough.

19 THE COURT: -- which is what I said, that that means  
20 they have to immediately respond. They don't.

21 MR. PISANELLI: But --

22 THE COURT: You have to do something affirmatively  
23 to put them in a position where they get it, which is one of  
24 the reasons I vacated the hearing, because there was no way  
25 we're ever going to get through it all by the time I had set



1 aside for November 21st, 22, and 23.

2 MR. PISANELLI: Well, in that regard do you want us,  
3 then -- I'll tell you the reason I thought you were expecting  
4 immediate compliance was because of the hearing, 30 days to  
5 respond and things of that sort just didn't fit. And so do  
6 you want us to go down that path pursuant to the rules as  
7 they're stated with response dates as --

8 THE COURT: That's Item Number 4 on my agenda.

9 MR. PISANELLI: Okay. I'll wait, then. I'm sorry  
10 to interrupt.

11 THE COURT: I'm on Number 3 right now, which is your  
12 ESI protocol. I understand that there's been a draft of an  
13 ESI protocol perhaps circulated. And, unfortunately, I've not  
14 had an opportunity to review the multiple competing drafts of  
15 the ESI protocol. Does anybody want to say anything about it  
16 while we're all here together?

17 MR. PISANELLI: I do, Your Honor --

18 MS. GLASER: Sure do, Your Honor. It was our draft,  
19 so maybe we should say it.

20 MR. PISANELLI: -- and I'll tell you what it is that  
21 I would like to say.

22 THE COURT: Okay. Why don't I let Ms. Glaser start?

23 MR. PISANELLI: I'll leave Colby Williams's email  
24 for her to see so she'll know exactly what it is I'm --

25 THE COURT: The July email? The one that -- the

1 July email that I started with on September 16th?

2 MR. PISANELLI: That's the one.

3 MS. GLASER: May I have just one moment, Your Honor?

4 THE COURT: Sure. It's really handy, because I've  
5 been harping on that particular email now for a month.

6 MS. GLASER: Well, we've spent a lot -- a lot of  
7 time drafting it.

8 (Pause in the proceedings)

9 MS. GLASER: Your Honor, I actually I think it's --  
10 doesn't matter, but it's Exhibit C to one of the 5,000 motions  
11 that have been before Your Honor.

12 MR. PEEK: It's Exhibit C to the reply, Your Honor.

13 THE COURT: Thank you.

14 MS. GLASER: It's called "Proposed Document Review  
15 Protocol." And what it literally does is agrees to -- the  
16 parties are required to agree to an ESI vendor. It really  
17 takes out of our hands and the other side's hands these  
18 documents. Just so I'm clear, Mr. Peek --

19 THE COURT: That's the hope.

20 MS. GLASER: No, it is. I mean --

21 THE COURT: I'm just telling you, Ms. Glaser, from  
22 past experience it's the hope.

23 MS. GLASER: Well, you know what --

24 THE COURT: Sometimes the ESI vendors make mistakes.

25 MS. GLASER: -- you're scaring me a little bit. But

1 agreement because Steve Jacobs refused to be bound by that  
2 agreement, he refused to have his life and his contract  
3 governed by Macau law, and he said, it's okay, Mr. Leven did,  
4 don't worry about that, our deal is the terms sheet. We put  
5 sworn testimony from the actual principals. Of all the people  
6 that are scattered throughout the courtroom I don't believe  
7 Mr. Leven's one of them, but I sure would have liked to have  
8 seen a declaration from him if they wanted to say that there's  
9 a legitimate issue under debate here as to whether Steve  
10 Jacobs had agreed to be an employee, something I guess at the  
11 same parallel or equation of the valet parker or a bellman or  
12 somebody else and therefore he's subject to that same  
13 handbook. It's an absurd argument, and it's a desperate  
14 argument. Las Vegas Sands had an opportunity to bargain, and  
15 they did. And they have to live with that bargain.

16 Now, the elephant in the room for Sands China, of  
17 course, Your Honor, is something that I foreshadowed last time  
18 we were here. And that, of course, is the issue of waiver.  
19 Let's assume for the sake of debate that there was some  
20 legitimate argument that Sands China had that no matter what  
21 these documents are they're entitled to be the sole party that  
22 possesses them. What did Sands China do -- and we have to ask  
23 that question because the law mandates that we do -- what did  
24 Sands China do to protect its rights? For that matter, what  
25 did LVSC do to protect its rights? Well, first of all, they



1 unceremoniously escorted Mr. Jacobs -- on the day they claim  
2 he downloaded documents they escorted him from Mr. Leven's  
3 office with security guards to his room to pack, and took him  
4 to the border. Can I go to my office, Mr. Jacobs asked. No,  
5 you cannot. They escorted him to the border with his laptop  
6 and presumably with the thumb drives he uses and that Sands  
7 China gave to him with information on them, escorted him to  
8 the border and said, hope to never see you again. A year or  
9 so ago, more, escorted him to the border and did nothing.

10 Then they get sued. What did they do when they got  
11 sued? Same exact thing. Nothing. Sands China apparently  
12 starts going through his computer. Matter of fact, we have  
13 reason to believe they went through his computer that day.  
14 That's why I can't wait to depose the IT people to see who  
15 exactly was downloading that day. They went through his  
16 computer the day of his termination, and they let their  
17 counsel know, oh, boy, he's got some stuff, he's got some  
18 reports on Macau officials, we need to get those investigative  
19 reports back. They didn't say, we want everything back; they  
20 didn't say, we want the email back; they didn't say, we want  
21 the memos back; they didn't say, we want all of the financial  
22 stuff back; they didn't say they wanted every single thing  
23 that this man carried with him on a daily basis because his  
24 job required him to be so mobile. They said, give us that  
25 really incriminating, inflammatory stuff. A letter campaign,

1 some of it is a little humorous, between Ms. Glaser and Mr.  
2 Campbell ensued, and nothing happened other than Mr. Campbell  
3 saying, you can have the originals, but, in so many words,  
4 you've got to be crazy if you think I'm giving you everything  
5 back, you have no right to it back and why in the world would  
6 he do it. And he didn't.

7           So what did they do then? Crickets. Nothing.  
8 Absolutely nothing. Colby Williams tells them in July of this  
9 year -- he didn't say, there's privileged communications in  
10 here and so I'm going to stop reviewing. Thank God he wrote  
11 that so we can stop debating about what he really said. What  
12 he really said was, I see that there's privileged  
13 communications in here that might have nothing to do with this  
14 case and I'm not interested in wasting my time reading that  
15 stuff so why don't we enter into this very simple protocol.  
16 He didn't say, I'm raising my hands and stopping reading  
17 because there's privileged communications. He said the  
18 opposite. He said that Steve Jacobs was entitled to possess  
19 these privileged -- otherwise privileged communications  
20 because he had access them, he was the CEO and he was the  
21 president. That's what Colby Williams said. And what did  
22 they do protect their rights then? Nothing.

23           It is only until Mr. Peek in a frenzy that I had  
24 somehow committed ethics violations files a motion for  
25 sanctions for the very first time, a year later, that we see

1 these people getting off their hands and claiming outrage and  
2 prejudice and, oh, my God, we need this stuff back  
3 immediately. "Criminal behavior" was the phrase used.  
4 "Unethical behavior" is the words used against me after a year  
5 of knowing what he had. This is not a fact that can be  
6 overlooked. They would like you to. They will say, we didn't  
7 really know the magnitude until Colby's email. Well,  
8 discovery as I predict will show that they both will have to  
9 retract from that position when we find out when they were  
10 going through Steve's computer, which we already know was the  
11 day of, we will find out just when all of this came to light  
12 that it was only in July -- as if that's a good enough excuse,  
13 by the way, but it's only in July that they finally realize  
14 the magnitude. Well, that's utter nonsense. They knew from  
15 the day he left what he had and all they cared about was  
16 getting back these investigative reports from -- about  
17 government officials. That's what they knew about.

18           So where does it take us full circle? And I'm  
19 sorry, I know I'm going on a little longer than you would  
20 prefer.

21           Where does it take us? We started with a motion in  
22 limine over ethics charges.

23           THE COURT: It's okay. I just finished a two-day  
24 hearing that took fifteen days. So, you know, give you an  
25 extra fifteen minutes --



1 MR. PISANELLI: I appreciate that.

2 THE COURT: -- for both of you.

3 MR. PISANELLI: Thank you.

4 So where do we find ourselves? When I was banging  
5 my head last night wondering what do I argue, do I argue the  
6 open motion, do I argue the reply motion or brief -- I should  
7 call it a reply motion, because that's what it is -- do I  
8 reply to the new arguments that are being presented today.  
9 And I think the only thing I really can do is say that we must  
10 end where we started, a motion in limine based upon ethics  
11 charges that had no -- no meet and confer -- I was going to  
12 say 2.34, but I think this one is 2.47 -- and a motion that  
13 has nothing to do with relevance, prejudice, and things of  
14 that sort that you weigh on a daily basis when you have a  
15 trial to determine the probative value of information. They  
16 have not now, they will not ever tell you that these records  
17 have no probative value. They only tell you in fancy words  
18 that have nothing to do with reality that they are somehow  
19 prejudiced and they get to be the gatekeeper.

20 Well, the law doesn't say you get to be a  
21 gatekeeper, and the law certainly doesn't say you get to get  
22 an order directing you to be the gatekeeper over something  
23 called a motion in limine. For all those reasons, Your Honor,  
24 we ask that it summarily be denied. And we'll take up this  
25 issue of where we are on the protocol whenever you tell me to.

1 THE COURT: Item 3 on today's agenda.

2 Ms. Glaser.

3 MS. GLASER: Thank you, Your Honor.

4 Your Honor, the policies of nondisclosure and of  
5 confidentiality were signed by Mr. Jacobs. The motion in  
6 limine was filed to get back documents that he took with me.

7 THE COURT: A motion in limine is not used to get  
8 back documents. It's used the limit the evidence that is  
9 admitted or to allow evidence to be admitted during a  
10 particular hearing.

11 MS. GLASER: We could not -- and I want to be very  
12 candid with the Court, which I think I have been. And if Your  
13 Honor for a moment -- I mean, that's more important to me than  
14 anything else I can say to Your Honor. At no time was there  
15 ever, ever an effort to do anything other than be a hundred  
16 percent candid with this Court by me or anybody else in my law  
17 firm or -- and I certainly can speak for Mr. Peek. So if -- I  
18 want to get that out of the way.

19 Mr. Pisanelli -- there was three efforts to meet and  
20 confer. I can't meet and confer with myself, and I'm saying  
21 to you as an officer of the court -- and maybe I should put  
22 everything in writing, some of which is in writing -- we did  
23 try to meet and confer, and we were unsuccessful. I am not  
24 suggesting it was nefarious. It simply wasn't possible.  
25 That's number one.

1           Number two, there is no legal authority for the  
2 proposition that a document return policy must be in an  
3 employment agreement in order to be enforceable, number one.  
4 Number two -- and I -- we actually have, and I'm glad to at  
5 some point pursuant to your Court -- the Court's supervision,  
6 we have a IT report, and there were over 11 gigabytes of  
7 documents downloaded about a half an hour before Mr. Jacobs  
8 was fired on July 23, 2010. And they were downloaded from his  
9 computer when he was in his office. Maybe somebody else did  
10 it. That's possible. I can't -- I am not here to tell you  
11 that I know he didn't do it or he did do it, either way. I  
12 know that they were downloaded from his computer and he was in  
13 his office and it was a half an hour before he met to be  
14 fired, period. Those documents that he took should not be  
15 used in an evidentiary hearing in connection with  
16 jurisdiction.

17           Yes, we made a motion in limine because we can't ask  
18 -- and I'm -- no hiding the ball here. We can't ask for  
19 affirmative relief. We are asking to be out of this case on  
20 jurisdictional grounds as quickly as humanly possible. We  
21 asked for that November 21st hearing, and Your Honor is right,  
22 we have discovery issues that require to be put off. And I  
23 understand that. Not because we're trying to delay. We want  
24 to move forward as quickly as we can. And I'll get to the  
25 discovery motion in a moment.



1 THE COURT: That's Item Number 2 on my agenda.

2 MS. GLASER: I understand that, Your Honor, very  
3 clearly.

4 There are downloaded documents that should not be  
5 used until the Court, period, makes a determination about  
6 which documents should be used and which documents should not,  
7 if any of them should. It is -- we have provided you caselaw  
8 -- I was surprised to hear Mr. Pisanelli say this, that  
9 there's no caselaw that says you can't use these documents.  
10 Contrary to what is -- the cases we did provide you, you're  
11 not allowed to use documents. You're supposed to return  
12 documents that you improperly took. You're right, hundred  
13 percent. All we get with the motion in limine is you can't  
14 use them at the hearing. I understand that. There's an  
15 argument, well, you didn't specify which documents you're  
16 talking about. Your Honor, you can't specify what you don't  
17 know. There's no -- you have been provided no declaration  
18 that we know what was taken. If we knew what was taken, we  
19 wouldn't be here. We have no idea what was taken by Mr.  
20 Jacobs -- excuse me, by who we believe to be Mr. Jacobs the  
21 morning, July 23, 2010, that somebody in his office from his  
22 computer downloaded over 11 gigabytes of documents. Nobody  
23 has played fast and loose with this Court. Whether we were  
24 here by pro hac vice or we were here because we are otherwise  
25 members of this bar, nowhere at no time do we ever deal with

1 anything other than complete candor with this Court.

2 Documents were taken by appears to be Mr. Jacobs.  
3 His lawyer has admitted -- Mr. Campbell has admitted, his  
4 prior lawyer, that he has these documents. We don't know what  
5 they are. We want those documents to be excluded from  
6 evidence at the time of the evidentiary hearing. The protocol  
7 is a separate -- I acknowledge that to you, is a separate  
8 vehicle to determine what documents are appropriately used and  
9 what documents are not, both in the litigation generally, but  
10 certainly in the evidentiary hearing.

11 So, Your Honor, we ask -- at worst this motion  
12 should be put off because perhaps it's premature until there's  
13 a determination made by Your Honor with respect to the body of  
14 these documents, whether they can be used at all and/or  
15 whether some of them, many of them are privileged. The fact  
16 that he came into possession of them as the CEO of the company  
17 and has privileged documents in no way takes -- does that take  
18 away from the fact that they're privileged and can't be  
19 provided to either counsel or third parties or the Court.

20 Your Honor, if you have any questions, I'm glad to  
21 answer them.

22 THE COURT: Mr. Sedlock has a note for you. Isn't  
23 the Mr. Sedlock?

24 MS. GLASER: No. That's Mr. Marcus.

25 THE COURT: Oh. I recognize him from other

1 hearings.

2 MR. MARCUS: Good to see you, Your Honor.

3 THE COURT: I'm sorry I can't remember your name.

4 MS. GLASER: Your Honor, we did not -- the reports  
5 that we asked for don't come from this 11 gigabytes. I want  
6 to be clear about that. These reports were given -- they're  
7 watermarked reports to prevent obvious things, and they were  
8 given to Mr. Jacobs, we learned in our investigation, after he  
9 filed the lawsuit, and we ask for them back. That has nothing  
10 to do with the download on July 23, 2010, nothing to do with  
11 it. They weren't part of that. And I assume Mr. Pisanelli  
12 doesn't know that, but certainly his client knows that. Our  
13 investigation with respect to what occurred was after  
14 plaintiff's counsel disclosed plaintiff's possession of over  
15 11 gigabytes of documents. That's when we did our  
16 investigation and made the determination that these documents  
17 were taken without our knowledge. We then learned about the  
18 download on July 23. We do not have any record with respect  
19 to what was taken. We can't reconstitute that. And I'm here  
20 to tell you that. And I'm glad to have our IT expert examined  
21 at a deposition under penalty of perjury and to testify about  
22 exactly what I'm saying to Your Honor.

23 Again, I think at worst this motion should be  
24 deferred, because we intend to be making a motion in limine to  
25 prevent documents that are improperly in Mr. Jacobs's



1 possession from being used in connection with the evidentiary  
2 hearing without authorization from this Court. Thank you,  
3 Your Honor.

4 THE COURT: Thank you.

5 The motion is limine is denied without prejudice for  
6 failure to comply with EDCR 2.47. The motion may be renewed  
7 upon good-faith efforts to confer. If counsel are concerned  
8 about accurately documenting the conversations that occur  
9 during the 2.47 conference or any future 2.34 conference, I  
10 would recommend the use of a court reporter for in-person  
11 meetings. If it is a telephone call and someone decides to  
12 record the telephone call, you must disclose the fact that you  
13 recording the telephone call.

14 Anything else related to this motion before I go to  
15 Motion Number 2?

16 MS. GLASER: Your Honor, I do have a question, if I  
17 might. With respect to the denial --

18 THE COURT: I am not denying any substantive basis  
19 in the motion at all.

20 MS. GLASER: That's what I'm asking. Thank you,  
21 Your Honor.

22 THE COURT: Purely procedural.

23 MS. GLASER: Understood.

24 MR. PISANELLI: And for this motion, Your Honor,  
25 just so the record's clear, I will accept Ms. Glaser's

1 invitation to depose her IT personnel.

2 THE COURT: I'm not there yet. That's Item 4 on my  
3 agenda.

4 All right. Let's go to your motion for  
5 clarification. And I apologize the other day for vacating a  
6 hearing without you present, Ms. Glaser. But it became  
7 apparent during our hearing that there was no way we were  
8 going to be able to be ready, given the issues that had to be  
9 accomplished and the position the Nevada Supreme Court took  
10 with respect to the extraordinary relief that I instructed Mr.  
11 Peek's firm to accomplish.

12 MS. GLASER: I have to say, Your Honor, I have never  
13 had a judge be as candid as you have been with respect to  
14 that. And it is not lost on me, and it's very much  
15 appreciated. So thank you for that.

16 THE COURT: But I apologize, because Mr. Ma was  
17 here, so I took the opportunity to have him come up to  
18 participate and then let him go back while I dealt with the  
19 other case so you weren't making an affirmative appearance in  
20 that case.

21 MS. GLASER: Not a problem. Thank you.

22 THE COURT: All right. Now we're on your motion for  
23 clarification.

24 MS. GLASER: Your Honor, I don't think anything  
25 speaks better about why we need a clarification than the

1 opposition to the motion for clarification. Your Honor may  
2 recall, and we keep harping on this, there were two things in  
3 the reply papers -- excuse me, the opposition papers that in  
4 our view are simply wrong. We've been up to the Nevada  
5 Supreme Court and -- as Your Honor well knows, and in -- I  
6 want to just address -- I want to address two points. Your  
7 Honor will recall that in the opposition they talk about, hey,  
8 we get discovery with respect to specific jurisdiction. And I  
9 want to remind the Court of three things. In their answer in  
10 the Nevada Supreme Court with respect to what was before the  
11 Nevada Supreme Court and what had been before Your Honor on  
12 the motion to dismiss Mr. Jacobs says, and I'm quoting from  
13 page 1 of his brief -- this is the answer in the Nevada  
14 Supreme Court, "Jacobs asserted two grounds for personal  
15 jurisdiction -- 'transient' and 'general' jurisdiction,"  
16 number one.

17           Number two, on plaintiff's motion to conduct  
18 jurisdictional discovery the first page of the motion, "Jacobs  
19 has already shown this Court that there is more than good  
20 reason to believe that Sands China is subject to general  
21 jurisdiction here."

22           Third, the order granting petition for writ of  
23 mandamus from the Nevada Supreme Court, if you go, Your Honor,  
24 to the third page, this court says, "We therefore direct the  
25 District Court to revisit the issue of personal jurisdiction



1 over petitioner by holding an evidentiary hearing and issuing  
2 findings regarding general jurisdiction." There is no  
3 reference to specific because it was dropped by prior counsel.  
4 The court didn't have it to review, the court didn't consider  
5 it, and the court didn't order an evidentiary hearing in  
6 connection with it. So that's number one.

7           Then for the first time -- actually, it's not the  
8 first time. It was raised in oral argument when we were last  
9 before Your Honor. There's now suddenly a theory apparently  
10 attributable to general jurisdiction that talks about agency.  
11 And I want to address agency for a moment. Because, again,  
12 that's why the discovery is too broad, in our view, and why it  
13 needs --

14           THE COURT: Are you referring to the quote I gave  
15 from the transcript of the original motion to dismiss, or are  
16 you referring to something else?

17           MS. GLASER: With respect to what I just said?

18           THE COURT: The agency issue. The new issue that  
19 you're talking about. I as part of our hearing recently went  
20 back and read part of the transcript during our hearing about  
21 what my finding really was --

22           MS. GLASER: Correct.

23           THE COURT: -- related to the board members.

24           MS. GLASER: Yes. Yes.

25           THE COURT: Okay. I just want to make sure that --

1 that's always been an issue to me.

2 MS. GLASER: Okay. And I want to address that.

3 THE COURT: Okay.

4 MS. GLASER: Thank you for asking the question.

5 What is said at page 17 of its opposition to the  
6 motion to dismiss, "Mr. Jacobs," I'm quoting, "seeks to  
7 establish jurisdiction over SCL based on SCL's contacts with  
8 the forum --" it goes on to say, and Counsel tries to take  
9 advantage of this "-- not just those attributable to Las Vegas  
10 Sands Corporation."

11 In the answer to the petition, in their answer to  
12 the petition at page 5, and I'm quoting, "SCL is subject to  
13 personal jurisdiction based on its own," based on its own,  
14 "contacts with Nevada." That's their -- that's the position  
15 that they presented to Your Honor, and that's what went up to  
16 the Nevada Supreme Court, not any so-called agency theory.  
17 And by agency, just so we're not oblique here, they're  
18 essentially saying that -- I guess that Las Vegas Sands acted  
19 as -- or an officer or director acted as an agent for Sands  
20 China in connection with actions taken in Nevada. I guess  
21 that's the theory. And what we're saying is that wasn't  
22 briefed, it wasn't the position they took before Your Honor on  
23 the motion to dismiss, and it certainly wasn't reviewed by the  
24 Nevada Supreme Court when they issued their writ.

25 Now, they have acknowledged that they are not

1 alleging personal jurisdiction over SCL by virtue of any  
2 conduct of SCL's parent, LVSC. Now -- and again I'm quoting  
3 from the -- from the answer, "As Jacobs explicitly stated to  
4 the District Court, he never sought to drag SCL into Nevada on  
5 LVSC's coattails. Instead, he asserted personal jurisdiction  
6 over SCL based on SCL's own contacts," own contacts, "with  
7 Nevada. SCL is subject to personal jurisdiction based on its  
8 own contacts with Nevada. For purposes of this dispute the  
9 affiliation between SCL and LVSC is the reddest of herrings."

10 That's where we start. I believe it's quite clear  
11 that that's a new theory. But, in any event, we're not here  
12 to reargue. We obviously respectfully disagree, but we're not  
13 here to reargue discovery. That ship has sailed. What we're  
14 saying is that you don't need to take Mr. Kay's deposition,  
15 and we outlined, I thought quite well, but perhaps not, why  
16 that was inappropriate. Mr. Kay was the CFO and executive  
17 vice president of Las Vegas Sands. I don't know if Your Honor  
18 remembers, and I'm -- and I'm not going to correctly quote  
19 you, but Your Honor was -- when we had this discovery issue  
20 before Your Honor on whether there should be discovery or not  
21 you were talking about, look -- you said it perhaps nicer  
22 than --

23 THE COURT: It's on page 43 of the transcript.

24 MS. GLASER: You were a little nicer than I'm saying  
25 it now, but you said, look, they have a title here that they



1 are chairman of Las Vegas Sands and chairman of Sands China.  
2 And then you went on to -- and Mr. Leven, no question, was a  
3 special consultant to the board of Sands China, and he's also  
4 an officer of Las Vegas Sands. And that was significant. And  
5 I'm not -- whether I agree or disagree, Your Honor was quite  
6 clear about that. I'm distinguishing, Mr. Goldstein, who's  
7 the president of Global Gaming at Las Vegas Sands Corporation,  
8 and he's been that since January 1, 2011. He's also executive  
9 vice president, and he had a prior management position with  
10 Las Vegas Sands, not with Sands China. Never an officer or  
11 director of Sands China, period. Mr. Kay is the CFO and  
12 executive vice president of Las Vegas Sands China [sic] since  
13 December 1, 2008. He's never been employed by anybody  
14 connected with Sands, anybody before that date. And he has  
15 always been an officer of Las Vegas Sands Corporation, never  
16 of Sands China.

17           So if you go to, for example, the next point, the  
18 Request Number 15, that is, quote, "Services performed by Las  
19 Vegas Sands on behalf of Sands China --" I think I'm directly  
20 quoting or something close to that, "-- regard site  
21 development, recruiting of executives, marketing Sands China's  
22 properties, negotiation of the joint venture with Harrah's,  
23 negotiation of Macau real estate to Stanley Ho." Your Honor,  
24 just too broad if you're considering general jurisdiction, the  
25 contacts that Sands China through its representatives has

1 here, whether that is sufficiently pervasive to justify the  
2 Court exercising jurisdiction over Sands China.

3 Request Number 18, "Reimbursement to Las Vegas Sands  
4 China's executives for work related to Sands China." Again,  
5 we don't -- we have always taken the position, and it's a  
6 matter of public record, Las Vegas Sands owns 70 percent of  
7 Sands China has, period. We've also emphasized to the Court  
8 it's a separate Hong Kong entity on the Hong Kong Stock  
9 Exchange, and no question it's required to be independent.  
10 They don't have bank accounts here, et cetera. We went  
11 through all this. I won't bore you with that again.

12 What we're asking the Court to clarify quite  
13 clearly, and, frankly, we were accused of -- this actually  
14 being a motion for consideration. I think there's nothing  
15 more obvious than a reconsideration when now we're being told  
16 that you're supposed to allow discovery with respect to  
17 specific jurisdiction, which was clearly not the position and  
18 not what was ordered by the Nevada Supreme Court. That's  
19 reconsideration. But having said that, we're not -- we're  
20 simply trying to demonstrate to the Court that specific  
21 jurisdiction clearly is out. Agency was not addressed before  
22 Your Honor, nor was it addressed in the Nevada Supreme Court,  
23 and we think that one's out, and therefore the limitations on  
24 the categories and the people being deposed ought to be more  
25 significant than it is right now.

1 THE COURT: Thank you.

2 Mr. Pisanelli.

3 MR. PISANELLI: Here we go again. Motion for  
4 clarification. I'm assuming underlying the word  
5 "clarification" is Ms. Glaser's concession that she's  
6 confused.

7 Now, what she did just tell you in relation to our  
8 position I guess is that she was confused that there were a  
9 longer list of grounds for hauling Sands China into court here  
10 than she had realized at that hearing. Or is she confused  
11 that we actually were quite crystal clear about our position  
12 at the hearing but later went back and took a word or two out  
13 of context and said because an argument was being made about  
14 general jurisdiction everything else was eliminated? For  
15 instance, Your Honor, never had to get to transient  
16 jurisdiction. Neither did the Supreme Court. But neither  
17 Your Honor nor the Supreme Court ever said transient  
18 jurisdiction's off the table. She tried that one and lost  
19 that one before.

20 So, you know, all I ask on this topic is just let's  
21 be forthright here, right. I didn't throw out any procedural  
22 hurdles, I didn't say that there's time limits that were  
23 missed in our opposition. I just said, let's just please be  
24 honest with each other, there's no confusion, there's no  
25 confusion as to whether Mr. Kay gets to be deposed or not.



1 She knew what your order was. She even sought clarification  
2 at the hearing. There's no confusion, there's no  
3 clarification needed here.

4 If she wants me to say it again, I'll say it again.  
5 If she wants to hear the different theories we have of why  
6 this company is subject to personal jurisdiction, I'll say  
7 them again. General jurisdiction based upon Sands China's  
8 contacts with Nevada. General jurisdiction based upon the  
9 agency role that LVSC played on behalf of Sands China. And  
10 I'm sure it's not lost on Ms. Glaser that agency goes along  
11 with subagency. We're not here to have a debate over form  
12 over substance, we're here to figure out whether Sands China  
13 had contacts with Nevada, its agents, that were performing  
14 services for Sands China in Nevada that Sands China otherwise  
15 would have had to perform for themselves. That's what the  
16 Ninth Circuit told us to do, that's what the Ninth Circuit  
17 says is the question to be asked, not form over substance.  
18 Doesn't say, well, was the agent from LVSC -- did it have a  
19 title in performing those agency functions. No. Neither did  
20 Your Honor. The only party that comes forward saying that  
21 agency goes hand in hand with title is Ms. Glaser.

22 Agency has nothing to do with title. Matter of  
23 fact, Sands China can have agents in Nevada working on its  
24 behalf which would be minimum contacts that would be taken  
25 into consideration for purposes of personal jurisdiction even

1 if they don't work for LVSC. It doesn't matter whether  
2 Sheldon Adelson had one or two titles. It's certainly an  
3 issue for you to consider of what his role was, but it doesn't  
4 matter whether he could or could not have been acting as an  
5 agent.

6 Same thing with Mr. Kay. We know what he was doing.  
7 We've already had this debate. This isn't clarification.  
8 This is reconsideration. They know what Mr. Kay does. He was  
9 in charge of the financing, financing which occurred in  
10 Nevada, financing for Sands China that was negotiated and  
11 executed here on Las Vegas Boulevard with the agent of Sands  
12 China, Mr. Kay.

13 Same thing with Rob Goldstein. The issues are  
14 identical. It doesn't matter if he has a title, and Ms.  
15 Glaser has never been confused about that topic. I'm certain  
16 she wasn't confused.

17 To somehow run from specific jurisdiction also is an  
18 odd position to take that that is off the table of whether  
19 Sands China had contacts with Nevada relating to the actual  
20 wrongful termination of Mr. Jacobs, whether Mr. Adelson, the  
21 person who by all measures from everything we've seen made the  
22 decision to terminate Mr. Jacobs, made the instruction to tell  
23 Mr. Leven to give him an ultimatum, give him a half hour to  
24 decide whether he will quit or be terminated and have him  
25 escorted to the border. That decision, she says, shouldn't

1 come before you despite that that decision occurred here on  
2 Las Vegas Boulevard, despite that that's where those  
3 instructions came from, that's too specific and we shouldn't  
4 have anything to do with it.

5 And I won't be redundant on her attempts to run from  
6 the transient jurisdiction, which really could and very well  
7 may at the end of the day be more important than all of this  
8 other stuff that we're going to debate. The bottom line is  
9 they're not confused about anything.

10 Now, she also claims to be confused about the dates  
11 for the discovery that you told us about, although she hasn't  
12 really touched upon it much, if at all, in oral argument.  
13 What's that confusion about? Your Honor rightly put the end  
14 date at the filing of the complaint. And a theory that I just  
15 can't understand where it comes from and what authority  
16 supports it, Ms. Glaser would have you pull the discovery back  
17 to the time of termination despite that virtually every case  
18 which talks about -- either at the United States Supreme Court  
19 or at the State Court levels, any case that talks about this  
20 issue says over and over and over that the filing of the  
21 complaint is relevant for purposes of determining contacts  
22 with the state on a jurisdictional purpose -- or basis, and  
23 she wants to tell you, no, no, no, no, let's just have it when  
24 Steve Jacobs was terminated. And why does she say that, Your  
25 Honor? Because she knows that Mike Leven took over the



1 position as president and CEO, she knows that he was running  
2 the company from Las Vegas Boulevard here in Nevada, the  
3 Venetian's headquarters, and she doesn't want the evidence to  
4 come in about those very substantial contacts. Why else would  
5 she say, no, let's push it back to the date of his  
6 termination?

7           There's no confusion. She's not confused what you  
8 said. There wasn't new evidence, wasn't new law, there's no  
9 confusion. It's a request for a do over, telling you you got  
10 it wrong. That's all it is, you got it wrong, Judge.

11           Same thing, she says, on the start date, that it  
12 should be from the IPO. What? The IPO, because it could not  
13 logically without money have been doing anything. Well, how  
14 about some evidence about that? I think we're going to find  
15 that it had lots and lots and lots going on, lots of contracts  
16 were being put in place for its benefit or even being executed  
17 on its own. And this concept that we shouldn't -- we should  
18 turn a blind eye and again have a fictitious debate over what  
19 happened by turning our head against relevant evidence during  
20 a time period for reasons -- I don't know, public policy? I  
21 can't even think of what the logic would be to intentionally  
22 turn our back on evidence and start at the IPO, rather than  
23 sometime earlier when Sands China, either in its official  
24 capacity or its predecessor entities or its promoters, the  
25 people that were creating it, were actually having contact

1 with Nevada.

2           The long and short of it is this, Your Honor. You  
3 already decided all these things. And I don't need to rest on  
4 that simple issue, Bob, I don't need to rest on the simple  
5 issue that you've already decided, though I could. The issue  
6 is you decided it because you thought about it and you  
7 considered the debate and you considered the arguments and you  
8 considered the evidence and the law. That's why we shouldn't  
9 change this whatsoever. Sands China was not thought up as an  
10 afterthought.

11           THE COURT: You agree, though, that if I think I was  
12 wrong I should change it?

13           MR. PISANELLI: Well, that depends if you're right  
14 about being wrong. So we'll have to see exactly what it is  
15 that you're talking about.

16           MR. PEEK: That's a good concession, Jim.

17           MR. PISANELLI: But if there is an issue that you're  
18 considering, I'd be happy to address it. But I just don't see  
19 it, Your Honor. The only argument -- I'll be frank with you.  
20 I think the only argument even worthy of discussion, though it  
21 is not clarification, it is indeed still a motion for a  
22 reconsideration, is whether we should go pre incorporation on  
23 Sands China. They say that, you know, we're going to have an  
24 argument about contacts Sands China had before its  
25 organizational documents were filed in the Cayman Islands.

1 And I would suggest to Your Honor -- again, I'll concede that  
2 at least that's a fair debate. But it shouldn't -- you  
3 shouldn't change it. We should go back to January 1st for a  
4 few reasons. One, they've already stipulated to that window.  
5 I think she forgot about that when they filed this opposition.  
6 That's a window they've already stipulated to.

7           And secondly, and it was the last point I was going  
8 to make, that is it is a fiction to say that in an  
9 organization of complexity that LVSC is that Sands China was  
10 an afterthought that came about in a spur of the moment and  
11 there really was nothing going on pre incorporation -- and by  
12 incorporation we're talking about filing of documents. This  
13 army of lawyers and accountants and executives were doing a  
14 lot. They were doing a lot in Nevada for the benefit of that  
15 entity and for the benefit of the preexisting entities that  
16 would become Sands China. And we're entitled to analyze to  
17 see whether it actually was an entity that had its name  
18 changed, was merged into another one. We're entitled to  
19 analyze to see if it was, as they claim now, a brand-new  
20 entity that had no contacts with anything. If that latter  
21 conclusion is found, then the discovery's going to be easy,  
22 won't it. You don't have any contacts, it didn't have  
23 anything that was going on in Nevada, it didn't have any  
24 business dealings that were occurring, well, then the  
25 discovery's going to be pretty simple.



1 you in one sentence, and then I'm going to not say another  
2 word about it. The effort was -- no good deed goes  
3 unpunished. What we tried to do was we simply wanted to see  
4 if the Court was available. We did not represent that Mr.  
5 Pisanelli had agreed. I would never do that. If the Court  
6 were available in the afternoon, then we simply were going to  
7 ask the Court -- ask Mr. Pisanelli, okay, should we meet and  
8 confer this morning on the protocol. If that was misconstrued  
9 or we misspoke, I want to be very clear. The direction from  
10 my office was, just find out if the Court's even available on  
11 Thursday afternoon. That was the issue. Then when -- then  
12 Your Honor generated a phone call. But at no time --

13 THE COURT: No. I asked counsel to generate a phone  
14 call because it appeared that there was an issue after my  
15 staff had been contacted requesting a hearing be moved. And  
16 the person who was saying it was requesting be removed wasn't  
17 the person calling, which always gives us cause for concern.

18 MS. GLASER: I want to be clear. If your clerk  
19 understood us to be asking for the hearing to be moved without  
20 Mr. Pisanelli on the phone, that was a huge, inappropriate  
21 mistake, and we did not intend that at all. All we intended,  
22 and I want to be very clear, was to see if the Court were  
23 available, and then we were going to call Mr. Pisanelli.  
24 Without his agreement we wouldn't -- it wouldn't occur to us  
25 and it wouldn't occur to me to change a hearing in front of

1 Your Honor. And if we put your court staff remotely in the  
2 middle, I want to apologize right now. That was not the  
3 intention. The intention was simply to determine if Your  
4 Honor were even available this afternoon. If the Court were  
5 available, we then intended to call Mr. Pisanelli and ask him  
6 to participate in a call to continue this so we could have a  
7 meeting and confer regarding the protocol. I want to be as  
8 clear as I can be about that. And if there was a -- if we  
9 miscommunicated, I apologize to Your Honor. It was not  
10 intended to misrepresent anything, because we had not spoken  
11 to Mr. Pisanelli at that point, and I want to be very clear.

12 THE COURT: The point I was making -- and I just  
13 want you to be real honest with me, and if somebody else needs  
14 to answer the question because you're not sure of the answer,  
15 please have that person answer the question. There was no  
16 protocol that was discussed with anyone related to what is now  
17 a motion in limine before me on September 28th, other than  
18 what Mr. Williams had proposed last summer and I've repeatedly  
19 suggested people should talk about.

20 MS. GLASER: Correct.

21 THE COURT: Okay. So --

22 MR. PEEK: Your Honor, I will say, though, that on  
23 the 20th, after we came to the hearing before the Court --

24 THE COURT: Hold on. Let me look at my calendar so  
25 I can figure out what day that was. Okay.

1 MR. PEEK: September 20th. Remember -- you recall  
2 that I was here on --

3 THE COURT: And I want to apologize to you, Mr.  
4 Peek. You have been scolded by the Nevada Supreme Court  
5 inappropriately. I am the one who told you to file that writ  
6 because I believe their stay order is ambiguous and unclear.  
7 And so I'm sorry that you got criticized. And if there was a  
8 way for me to take the blame, I would. But, you know, I  
9 apologize. So --

10 MR. PEEK: My shoulders are broad. As I get older,  
11 Your Honor, they get broader. But, Your Honor --

12 THE COURT: Okay. So Justin Jones was here on the  
13 16th --

14 MR. PEEK: Correct.

15 THE COURT: -- for a TRO application, and then you  
16 guys were here on --

17 MR. PEEK: No, not on the TRO application. He was  
18 here on the motion for protective order, and that's the case  
19 in which -- in that main case -- in this main case on the 16th  
20 he was here, and you said, guys, I've been stayed --

21 THE COURT: Yeah.

22 MR. PEEK: -- go ask the Supreme Court for relief.

23 THE COURT: Please.

24 MR. PEEK: So -- and I don't want to get --

25 THE COURT: And then you filed a new case.



1 MR. PEEK: Filed a new case. I don't want to get  
2 into that. I just -- what I'm talking about is on the 20th we  
3 did come before you, and at the conclusion of the hearing on  
4 the 20th I did step outside, did speak with Mr. Pisanelli and  
5 Ms. Glaser. As you know, I was in trial, so --

6 THE COURT: Yeah, in Federal Court, because Judge  
7 McKibben asked me to move my hearing back so you wouldn't have  
8 to miss your jury closing arguments.

9 MR. PEEK: So I spoke briefly with Mr. Pisanelli  
10 about the protocol that had been proposed by Mr. Williams in  
11 his July 8th email, and I know that at the conclusion of that  
12 I said to both Ms. Glaser and to Mr. Pisanelli -- and I know  
13 that it was followed up, because I spoke to Ms. Glaser -- that  
14 she was going to give Mr. Pisanelli a call and work on my  
15 behalf to try to work through what kind of discovery -- what  
16 the extent of the discovery would be on the jurisdictional  
17 issue. I wasn't involved in that, but I -- I just -- I know  
18 that at least there was that moment. And I get what Mr.  
19 Pisanelli is saying, and I know that Ms. Glaser did call Mr.  
20 Pisanelli after that to try to set up that meet and confer.  
21 Beyond that, that's all I know. But I just wanted to just  
22 clarify that, that there was an effort at least on that  
23 jurisdictional issue and what the scope and -- the nature,  
24 scope, and extent of that discovery would be.

25 THE COURT: Okay. So two of my specific instances

1 that are discussed in Mr. Ma's affidavit relate to the court  
2 appearances that we had here and discussions in the hallway  
3 after those.

4 MS. GLASER: And we did make an attempt by email and  
5 by phone to discuss both issues, the scope of the discovery  
6 and -- before the motion was filed -- and also the return of  
7 the documents that is the subject of our motion in limine. We  
8 believe -- I know there've been a flurry of documents, but on  
9 the motion in limine we think that there are two documents  
10 signed by Mr. Jacobs. One document he says wasn't applicable  
11 to him, that he didn't deem in force against another  
12 individual at the company that was indeed applicable to the  
13 company as a whole. He says it wasn't applicable to him. We  
14 have the law, we have documents he himself signed which he  
15 does not back away from, and we have an 11-gigabyte download  
16 the day he was fired that is not explained and not addressed  
17 in any of his papers.

18 We ask the Court in our motion in limine to not  
19 allow those documents to be used, and then Your Honor --  
20 before the motion in limine was filed Your Honor had  
21 suggested, because you thought it was a discovery issue --  
22 we're not entirely in agreement with that, to be honest, but,  
23 nonetheless, that's when last Friday we sent them a protocol.  
24 It was not attached to our original motion in limine, because  
25 that protocol suggestion which was originally made by opposing

1 -- prior opposing counsel and Your Honor, when it was -- when  
2 Mr. Jones was here, you -- at that hearing you had suggested  
3 that the parties -- I think it was Mr. Jones or Mr. Peek, I'm  
4 frankly not remembering entirely, but Your Honor had suggested  
5 at that point let's think about a protocol because it was  
6 actually pointed out to you that Mr. Campbell's partner, Mr.  
7 Williams, had actually suggested a protocol, an ESI provider,  
8 et cetera.

9           So what we're saying is as follows. You're right  
10 that the ESI protocol wasn't part of the motion in limine  
11 'cause it wasn't -- wasn't the thrust of our motion. The  
12 thrust of our motion was quite simply, look, kiddo, in so many  
13 words, idiomatically, you took a lot of documents from us,  
14 there are privileged documents in there, Mr. Williams  
15 acknowledged there were privileged documents, that's when he  
16 stopped looking at the documents. There are trade secret  
17 information in there, there are Macau Privacy Act -- documents  
18 implicating the Privacy Act in there, no question about it.  
19 There has to be, there's so many of them. And we simply said,  
20 give those -- you cannot use those at the evidentiary hearing  
21 because in order for you to get ready for an evidentiary  
22 hearing you've got to review those documents. We don't want  
23 those documents reviewed, we don't think counsel has any right  
24 to look at those documents. Your Honor I think even made a  
25 suggestion -- I don't want to say more than it was. Obviously



1 everybody's bound by the code of professional conduct in terms  
2 of reviewing documents, and anybody looking at documents that  
3 are privileged is obviously subject to a motion to disqualify.  
4 We don't want to get to that.

5 THE COURT: And we actually now know what the rules  
6 are in Nevada for that --

7 MS. GLASER: We do, sort of.

8 THE COURT: -- because of a decision last week.

9 MS. GLASER: Yes. Although it's sort of an  
10 interesting decision, because there it was an anonymous source  
11 for the documents. There's no anonymity here. We know  
12 exactly --

13 THE COURT: No. I understand exactly what you're  
14 saying. But at least we now have a framework for the  
15 analysis.

16 MS. GLASER: We do. And that's what I wanted -- if  
17 you look at the Zahodnik case and the In Re Marketing case,  
18 and the Bumble case, which I guess some people call it the  
19 Merits Incentive case. I call it the Bumble case, but I think  
20 Your Honor knows to what I'm addressing myself --

21 THE COURT: I know what case you're talking about.

22 MS. GLASER: The Zahodnik case, plaintiffs sued IBM  
23 for wrongful discharge. There was a nondisclosure policy and  
24 return all the documents when you leave the employ policy. He  
25 retained the documents there, and he forwarded them to his

1 counsel. And the court said, no, you can't do that, you're  
2 enjoined from disclosure to third parties, and he ordered the  
3 return of the documents to the employer. In Re Marketing --  
4 that's a Fourth Circuit 1997 case.

5 In the In Re Marketing case a former president, he  
6 took documents and he -- I don't know if Your Honor's had a  
7 chance to look at that, but he returned the originals, but he  
8 kept copies, and he refused to agree not to use them. The  
9 court said, no, you've got to return those documents. In that  
10 case counsel was disqualified because the documents weren't  
11 returned. And that is a Texas Appeals Court decision of 1998.

12 And then you have the Bumble case. Documents were  
13 from an anonymous source, didn't know where they came from,  
14 and nobody was prepared, and certainly I'm not prepared, to  
15 attribute any bad motives to counsel who said, guess what,  
16 I've got these documents that came from an anonymous source.  
17 There were no documents there that were privileged, except for  
18 one, which the -- everybody conceded, and there the issue was  
19 was counsel to be disqualified or not, not was there a  
20 requirement the documents be returned or not returned.

21 There is clearly a heightened standard when an  
22 attorney receives documents from his own client, and that's  
23 clearly what happened here. What we're saying, Your Honor --  
24 and, by the way, Counsel says, well, you can't look at  
25 Zahodnik and you can't look at In Re Marketing, not because

1 they aren't well reasoned, but because Mr. Jacobs didn't sign  
2 anything. Well, there's at least four problems with that. He  
3 did sign two documents that required him to keep the documents  
4 confidential, and we've provided those to Your Honor. We've  
5 provided Your Honor also with a policy from 2004 of VML. He  
6 says he was above that policy. He enforced that very policy  
7 against another employee, and we have Amy Lee's declaration,  
8 Your Honor, which isn't refuted, that goes to that issue  
9 specifically.

10       So we know he signed a document -- documents,  
11 plural, requiring them to be kept confidential, we asked him  
12 to return the documents. We're not -- and the reason why Your  
13 Honor's suggestion, frankly, about the protocol, which was not  
14 attached to the motion, is you don't have to worry about what  
15 we're going to do with those documents. We'll give them to a  
16 neutral ESI provider, have everything Bates stamped, and have  
17 an orderly process for determining what's appropriate to be  
18 used, if anything, and what's not appropriate to be used. In  
19 other words, if Your Honor makes a determination at some later  
20 point, wait a minute, this guy did take these documents  
21 inappropriately and he needs to return them all, then what  
22 normal plaintiffs do is they file a request to produce  
23 documents. We're perfectly okay with that. But instead, out  
24 of an abundance of caution, we have suggested this protocol  
25 which says even more than that. If Your Honor doesn't buy --



1 which we believe strongly you should -- based on his own  
2 admissions that he shouldn't use these documents at all, then  
3 at least they have to be reviewed, not by counsel, to  
4 determine what's a trade secret, what's attorney-client  
5 privilege, what's subject to the Macau Privacy Act, and  
6 counsel for plaintiffs are not -- plaintiff is not qualified  
7 to do that. That would just be a complete, in our view,  
8 turning the law on its head.

9           So, yes, our motion in limine doesn't include the  
10 protocol. It says we want the documents back. We're willing  
11 -- and if the Court is inclined, we're willing to -- and we've  
12 got -- let me go back one step.

13           We did get some responses on the protocol last  
14 night. At 8:11 there was a surreply brief filed which lays  
15 out plaintiff's response to our detailed protocol that we'd  
16 sent the prior Friday and attempted to meet and confer about.  
17 I'm not saying he's entirely wrong. We are perfectly prepared  
18 to sit down and confer about that before Your Honor decides  
19 that he's not entitled to anything. That requires further  
20 briefing. He gave us a declaration yesterday that we don't  
21 think is totally accurate -- I'm talking about Mr. Jacobs now,  
22 not Counsel, of course -- and we are glad to respond to that.  
23 But it was filed last night -- or, excuse me, 5:47, when we  
24 were in the air flying here to Las Vegas.

25           My only point is we believe there's plenty in front

1 of Your Honor to grant our motion. At worst case the motion  
2 should be held in abeyance while we sit down and really do  
3 meet and confer. And to the extent we can agree, great. If  
4 we cannot agree, Your Honor will decide what's appropriate for  
5 the protocol and what's not. We think that's the way to  
6 resolve this issue as it stands right now. And I'm glad to  
7 answer any questions Your Honor has.

8 THE COURT: Thank you. I don't have any questions.  
9 Mr. Pisanelli.

10 MR. PISANELLI: Thank you, Your Honor.

11 Your Honor, I must say there's only been one time in  
12 my 20-plus years of practicing that I have had to regrettably  
13 reduce and limit my communications with opposing counsel to  
14 writing, where I just had to insist that I will no longer  
15 communicate face to face with this particular counsel because  
16 it was a constant and consistent exercise of having to refute  
17 misrepresentations about what occurred, and it was with great  
18 disappointment and sadness that I think I find myself in that  
19 place for the second time. I will get to the many, and there  
20 are many, misrepresentations that are made to you almost on a  
21 minute-by-minute basis. I cannot express -- I don't think if  
22 have the vocabulary to express to you how frustrating it is to  
23 sit here and listen to these tales woven before you as if they  
24 were gospel simply because you throw adjectives like "really"  
25 and "clearly" and "absolutely" that, well, then they must have

1 been true.

2 We have a body of rules and law that govern this  
3 proceeding. And if you put them together -- and I'm just --  
4 I'm not talking about a case, I'm talking about rules, whether  
5 it be rules of civil procedure, rules of appellate procedure,  
6 rules of professional responsibility, on and on, and if I --

7 THE COURT: Local rules.

8 MR. PISANELLI: Those, too. And I think if Your  
9 Honor were pressed to find the single most important rule that  
10 governs all of them, I think at least I can make a compelling  
11 argument to you that it comes down to one single, most  
12 important rule that every other rule is filtered through, and  
13 that is the duty of candor to this Court. Candor in all we  
14 do, not just these oral arguments that are his word against  
15 her word, things of that sort, but candor in all we do.

16 We have been experiencing in this case a constant  
17 exercise of duplicitousness, even in the labels given to  
18 documents. You'll recall, Your Honor, we have dealt with this  
19 and this other sister rogue case documents that are called  
20 motions for sanctions, when at their heart they're motions for  
21 injunctions. We've seen reply briefs, including this one,  
22 that are not replies at all, but new, supplemental briefs with  
23 new ideas. And today, of course, here we are again with a  
24 motion in limine. Why in the world did we come up with the  
25 topic motion in limine? Could it be that a motion for



1 injunction wouldn't work because you've already rejected it  
2 several times, or could it be that Sands China doesn't want to  
3 be open and up front with this Court on what it's really  
4 asking for because it might get in the way of its  
5 jurisdictional argument?

6           When someone comes into this court asking for an  
7 injunction, the benefits and protections of the laws of the  
8 state of Nevada and this Court, not just the defense of the  
9 case, not just a jurisdictional debate, but an injunction,  
10 then perhaps that's going to be one of those elements on the  
11 checklist we're going to talk about at the evidentiary hearing  
12 of why Sands China has subjected itself to the jurisdiction of  
13 this Court. Is that why it was called a motion in limine? I  
14 don't know. I doubt we're going to get anyone to stand up and  
15 tell you that was why we used that label.

16           But let me take a few minutes and talk about what it  
17 is that's before us. And I've got to tell you that's not an  
18 easy exercise, either. We started this debate -- I'm sure Ms.  
19 Glaser at this point wishes we would all forget, but we  
20 started this motion with a very simple foundation, that being  
21 ethics charges, ethics charges against me. Ms. Glaser stood  
22 up in this courtroom, said that I was telling you an untruth,  
23 she referenced thousands of pages of documents that I had been  
24 going through, the Jacobs records, and reading them and now I  
25 have put them in the record. Her words to Your Honor were,

1 "In making these disclosures Jacobs's counsel," that's me,  
2 "has made clear that he has no compunction with violating  
3 basic ethic and professional standards that preclude the use  
4 of stolen and/or confidential information belonging to an  
5 adverse party. Neither Jacobs nor his counsel appear to have  
6 any intention of ceasing their activity or making an effort to  
7 comply with the most fundamental tenets of ethical standards."  
8 That was the foundation, that was the introductory remark, the  
9 very first remark of the motion in limine. And let's not  
10 forget, Your Honor, that remark was supported by a sworn  
11 affidavit of Counsel. One certainly would think that when you  
12 come in under the privilege of pro hac vice privileges to  
13 practice in another jurisdiction any communication with the  
14 Court is going to be perfectly accurate, sworn statements to  
15 the Court are going to have that added extra level of  
16 carefulness before we put that into the record.

17 Now, we saw a bit of a schizophrenic approach,  
18 didn't we, to this motion in limine? Having, I'm presuming,  
19 the opportunity to go back and actually read the exhibits that  
20 they were incensed about, the exhibits that were the  
21 foundation of the ethics charges, the foundation of the motion  
22 in limine, I'm sure there was a uh-oh moment, these are not  
23 those records, these are not thousands of pages of, quote, end  
24 quote, "stolen documents," these are Internet documents, these  
25 are even Sands China's records they put in the public record,

1 and these are even the exact exhibits Sands China put in their  
2 own exhibit list. That was the foundation of the ethics  
3 charge, that was the foundation, the introductory, opening  
4 remark of this motion.

5           We saw other schizophrenic moments throughout this  
6 briefing, including the very clever attempt to disguise what  
7 it was they're asking for. We saw, Your Honor, where they  
8 said at one page in their brief that they were asking for  
9 limited relief to preclude the evidence at the hearing. And  
10 in the very next page, on page 8 of their opening brief,  
11 immediately after saying that they only wanted the limited  
12 relief, and I'll quote it, "expressly limits its requested  
13 relief -- SCL expressly limits its requested relief to prevent  
14 the use of these materials in connection with the evidentiary  
15 hearing." One page later, "Accordingly," quote, "SCL now  
16 moves for an order precluding Jacobs and his counsel from  
17 using any of the stolen documents for purpose of preparing."

18           Now, if there is any debate, any discussion that  
19 Sands China has subjected itself to the jurisdiction of this  
20 Court, we need only go to the reply, when they confirmed that  
21 they're really asking for a TRO, this just won't be honest  
22 with this Court and say so, where they say that by granting  
23 their motion, quote, "Doing so will preserve the status quo."

24           I don't know that there's a lawyer that hasn't been  
25 practicing for 25 minutes that doesn't recognize that phrase



1 "preserving the status quo." And so, you know, if we really  
2 are going to be honest with one another, if we're really going  
3 to live up to the single most important cardinal rule of  
4 practicing law in this court, and that is to be honest with  
5 you, let's be fair. This is a motion for an injunction. It's  
6 a motion for an injunction that doesn't satisfy any particular  
7 standard for injunctions, but it's hidden and embedded,  
8 thinking that no one in this room would possibly pick up on  
9 the subtle distinctions between a motion in limine and a TRO.

10 Well, guess what. We all did. We all remember that  
11 we started with an ethics charge, and we all remember that we  
12 ended up with a TRO. So what do we do? I was preparing last  
13 night, Your Honor, and I was thinking to myself, I actually  
14 wrote the words down in my notes, what in the world are we  
15 doing here, what is this exercise. And I finally just had to  
16 come down to the simple concept of let me answer what they are  
17 claiming to be prosecuting, a motion in limine. What is a  
18 motion in limine? Your Honor has undoubtedly dealt with more  
19 motions in limine in your time on the bench than all of us put  
20 together, so I don't need you -- I don't need to educate you  
21 on the point. But just for the record, we all know that a  
22 motion in limine is an exercise to exclude irrelevant and  
23 immaterial matters or it's a motion to exclude matters where  
24 the probative value is outweighed by the danger of unfair  
25 prejudice.

1           Another standard that goes hand in hand with motions  
2 in limine, of course, is this categorical approach, right.  
3 You don't come in and say that there's an entire body of  
4 evidence without saying anything about it, just saying, let's  
5 leave that body of evidence out over here and let's have a  
6 limited fictitious debate on what really happened, pretending  
7 that that body of evidence doesn't exist. Case after case,  
8 jurisdiction after jurisdiction says that's not what a motion  
9 in limine is intended to do, you have to be specific in what  
10 you want. All of these problems, of course, the fact that  
11 they've never attached or addressed any issue about prejudice,  
12 about immateriality, about irrelevance, the fact that they do  
13 this thing categorical, these issues in and of themselves are  
14 reasons to deny their motion.

15           But, of course, we don't end there. And in  
16 connection with the categorical issue what did we hear, Your  
17 Honor? Another exercise of duplicitousness. They say that in  
18 very carefully worded language that we are being criticized,  
19 poor Sands China, because we're asking for categorical  
20 exclusions of evidence and all the while Jacobs isn't giving  
21 us what he has. Notice what was missing from that sentence,  
22 Your Honor, notice what was missing through all of this  
23 briefing was a statement, even an unsubstantiated statement  
24 that we constantly get from counsel without any evidence, we  
25 don't get a statement from anyone that they don't know what we

1 have.

2           It is unfathomable to think that they don't know  
3 what we have. Recall all of this unsubstantiated testimony  
4 from Ms. Glaser. She herself told Don Campbell, I know you  
5 have these three different reports and I'd like them back.  
6 She now comes in without sworn testimony telling you about  
7 what's been downloaded. They now even make the suggestion  
8 that they know what Mr. Jacobs was Googling. Okay. Well,  
9 let's have the evidence about that, let's give me a deposition  
10 of their IT personnel, and I promise I'm going to show you  
11 what really happened at that computer, not Ms. Glaser's  
12 statement, not take my word for it, forget the evidence. They  
13 know exactly what's at issue here, Your Honor. And so this  
14 claim that they're somehow handcuffed, that they can't  
15 identify specific documents that should be excluded because  
16 they don't know what's at issue is utter nonsense. They know  
17 exactly what it is. And that is yet another reason this  
18 motion in limine cannot be granted.

19           Now let's talk for just a moment about the  
20 procedural defects. We start off with an ethics charge,  
21 right. That's what the motion in limine was about, where is  
22 the meet and confer. We get a single moment of candor through  
23 all of these briefings where we do see someone who wrote the  
24 brief, and I'm assuming it was Ms. Glaser or she approved it,  
25 on page 3 of their reply where they say there was none. And I



1 think she confirmed it again today, there was no meet and  
2 confer for this brief. But, of course, shockingly, that was  
3 my fault. It was my fault that subsequent to the filing of  
4 this disguised TRO these efforts to contact me to have meet  
5 and confers about a whole variety of different issues, some of  
6 which we talked about, some of which we didn't, was somehow my  
7 fault, it is my obligation to make sure they follow the rules  
8 on meet and confers, including going through the actual  
9 substance of a meet and confer, actually performing not just  
10 form over substance, but performed what you and the drafters  
11 of that rule require of us, to meet and actually talk and  
12 negotiate your respective positions.

13           Mr. Peek rightly said that in this hallway right  
14 outside your door here all of us huddled after one of these  
15 issues about Colby Williams's protocol, and this was within  
16 seconds of you saying something to the effect that you found  
17 it to be reasonable and you want us to discuss it. Ms.  
18 Glaser, during what she now characterizes or Steve Ma puts in  
19 as sworn testimony, that was a meet and confer, yet she'll  
20 also concede to you, I know because we're going to see some  
21 honesty from her, that she didn't even know what I was talking  
22 about, she didn't know what the email was or where it was. We  
23 had to point it to her. And she had a positive reaction to  
24 it. But to claim, oh, that's what that is, we should talk  
25 about it, was somehow the meet and confer under our Nevada

1 rules is once again an absurdity.

2 Now, Steve Ma and others are putting declarations  
3 in, and I have to concede to Your Honor I don't know who all  
4 the cast of characters are from the Glaser firm. I see a  
5 courtroom where they've all spread themselves out, Team --  
6 whatever, is the game of Risk here, you know, that's got  
7 different [inaudible] on it? They've spread themselves out in  
8 the courtroom. I don't know how many of them are the actual  
9 declarants that are giving this sworn testimony to you. I  
10 don't think Steve Ma is there. I have met him once. I'm  
11 certain I don't see him. But I don't know this gentleman in  
12 the front. He might be one of the declarants, as well, on the  
13 ethics charges. I'm not sure who he is, I just know he's part  
14 of Team Sands.

15 My point is this --

16 THE COURT: It doesn't matter.

17 MR. PISANELLI: It doesn't.

18 THE COURT: Okay.

19 MR. PISANELLI: What does matter, however, is this  
20 sworn false testimony to you that meet and confers have  
21 occurred and if they didn't occur then blame Pisanelli because  
22 he's just putting up a stone wall.

23 Remember -- I'll throw this out. How logical is  
24 that position to begin with? My case is stalled over these  
25 false allegations of stolen documents. My case is stalled

1 over this frivolous concept that Sands China has nothing --

2 THE COURT: Actually your case is stalled by the  
3 Nevada Supreme Court.

4 MR. PISANELLI: Over the concept of jurisdiction;  
5 right?

6 THE COURT: Yes.

7 MR. PISANELLI: I am the one with an incentive to  
8 get through all of it, to get through all this document noise,  
9 to get through the personal jurisdiction. And so to claim  
10 that I am somehow wanting and taking action to stall this  
11 entire process is a little bit of an absurdity.

12 So where does this all lead us? A motion in limine  
13 that's not supported by law, a motion in limine that didn't  
14 comply with the meet and confer requirements, a motion in  
15 limine that never addresses actual materiality and relevance  
16 of evidence itself. Really this is a discovery motion, the  
17 same discovery issues that were the basis of Your Honor  
18 denying Mr. Peek's motions for injunctions, Mr. Peek's motions  
19 for sanctions, the repeated different labels that were given  
20 to a motion for an injunction. It's the same exact issue.  
21 And to the extent there's any debate about that, Your Honor,  
22 remember what Mr. Peek's reply brief was in the motion to  
23 sanction. It was the opening brief in this case. Remember I  
24 told you there was a cut and paste and it was the same  
25 highlighting and the same commas and all that stuff? That's



1 what his argument was on reply, the reply that was filed  
2 before our opposition, and now that same brief finds its way  
3 here, but now it's called a motion in limine.

4 I'm banging my head trying to figure out what to do  
5 about this thing, whether to the misrepresentations to this  
6 Court, the lack of candor of what this motion is really trying  
7 to accomplish, the series of representations to Your Honor  
8 claiming evidence as gospel even though the only testimony  
9 we're getting is from Ms. Glaser herself, I am banging my head  
10 against the wall trying to figure out what is this exercise  
11 really about. It is not about the motion in limine -- I'm  
12 sorry. It's not about the protocol. That's easy. So let me  
13 just take a moment right now. That's easy.

14 You will see, Your Honor, if you even want to talk  
15 about the protocol, because it is a reply issue --

16 THE COURT: Protocol is Item 3 on the agenda for  
17 today.

18 MR. PISANELLI: Okay.

19 THE COURT: It's an add-on item. But I'm not  
20 talking about it right now.

21 MR. PISANELLI: I will talk about it now or talk  
22 outside the context --

23 THE COURT: I don't want to talk about it right now.

24 MR. PISANELLI: Okay. Good. Good. Because neither  
25 do I, because I don't think it's properly part of this motion.

1 THE COURT: Well, it is Part 3 of my agenda for  
2 today, though.

3 MR. PISANELLI: And I'm prepared to talk about it  
4 when you tell me to talk about it.

5 So the issue before us, then, if it's not a  
6 protocol, yet it's not an injunction because I think they've  
7 moved away from that, I don't think the issue of proper -- of  
8 whether Mr. Jacobs is properly in possession of these  
9 documents is before you, either, right. We have Ms. Glaser  
10 again giving some testimony, asking you to take her word for  
11 it because of the long history of forthright communications  
12 from her and her colleagues in this case that what she's  
13 telling you is gospel and that Mr. Jacobs has signed an  
14 agreement. Well, we were forced to address those issues in  
15 our surreply. And I apologize to you and your staff. It is  
16 not lost on us how hard you work generally and how hard you  
17 work simply because of this case, and to give a brief that  
18 late in the night is something I do with caution.

19 THE COURT: I read it this morning. I didn't read  
20 it last night.

21 MR. PISANELLI: Either way, it is only because the  
22 reply brief became, like Mr. Peek's exercise, a new motion.  
23 They had abandoned the ethics because I think they got caught  
24 and probably felt foolish about it, and so they came up with a  
25 new theory now, talking about the contracts. And so I'll take

1 just a few moments to talk about the contracts, and then I'll  
2 sit down and see what questions you may have for us.

3 First of all, the simple issue is what did the  
4 parties agree to. At the end of the day it is the very simple  
5 issue. Sands China has a contract with Steve Jacobs. No  
6 matter how much they want to hide from it, they can't get away  
7 from their Mr. Leven's own remarks to investors on a  
8 conference call, on an earnings call. He has a contract, we  
9 agree that it's a contract, it's called the terms sheet. We  
10 have some other documents -- excuse me, Your Honor.

11 (Pause in the proceedings)

12 MR. PISANELLI: I'm sorry. They're jumping down my  
13 throat because I'm talking faster than I'm thinking. Of  
14 course the terms sheet is with Las Vegas Sands. So we have  
15 the contract with them, and they don't -- Las Vegas Sands does  
16 not bargain for all of these rights that they want. They  
17 don't ask for them, and they don't get them. And so what do  
18 they do with that? They say, well, you used to have  
19 contracts, the Vagus Group used to have a contract, VML, a  
20 consulting contract, right, we're stuck with VML.

21 Well, there's lots of problems there. First of all,  
22 the terms sheet with Las Vegas Sands supersedes everything.  
23 The parties said so in writing in their side letter, they  
24 agreed to it. Second of all, where's VML? I haven't heard  
25 Ms. Glaser say that she represents VML. I haven't heard Mr.



1 Peek say he represents VML. VML can't come in here under --  
2 I'm sorry. These two parties can't come in here enforcing  
3 VML's rights, if it even has any, and Vagus Group isn't a  
4 party to this case, either. So, you know, these are parties  
5 that have nothing to do with anything. They were superseded  
6 in the first place, and they're not even parties to this case,  
7 so we can't and should not even talk about them.

8 And then we have this absurd argument supported by a  
9 declaration from someone I have no idea what her title is or  
10 why she would purport to have personal knowledge, saying that  
11 somehow, some way --

12 THE COURT: She was the lady who appeared at the  
13 Rule 16.1 conference by videoconference; correct?

14 MR. PEEK: No. That was Ann Salt, Your Honor.

15 THE COURT: Oh. That was a different lady. Okay.  
16 Sorry.

17 MR. PISANELLI: We have a different affiant  
18 testifying that Steve Jacobs as president, CEO, is bound by  
19 the employee manual with VML because, to her knowledge, he  
20 didn't object to it. He didn't sign it. You don't see a  
21 signed agreement there about what that document says, and  
22 you'll never see a signed agreement there. I'm not sure Ms.  
23 Glaser is being forthright about that, either. And what she  
24 hid from you on the point is the fact that Mike Leven  
25 specifically told Steve Jacobs that he is not bound by that

1 MR. PISANELLI: Okay.

2 THE COURT: And if you decide after communicating  
3 with your client that you are not going to need to have the  
4 search terms run to make a determination as to whether there  
5 are any independent documents protected by attorney-client  
6 privilege or a privilege that would be held by Mr. Jacobs, as  
7 opposed to Sands China, then you will tell us on October 19th.  
8 You're either going to have the search terms available to the  
9 ESI vendor who will then run the search in their fashion and  
10 give you the results, or you will say, I don't need to have  
11 the search run.

12 And then Sands China will have how long to give me  
13 your search terms? Oh. No. You want to review them all.

14 MR. PEEK: We want to look at all the documents,  
15 Your Honor.

16 MS. GLASER: Believe me, I'm not looking forward to  
17 it, Your Honor.

18 THE COURT: Then the ESI vendor will have to post  
19 them and make them available on a remote site, and they will  
20 keep a log of every document that is reviewed and by whom,  
21 which means they have to assign user identification numbers to  
22 everyone who is involved in the process.

23 And how long will it take Sands China to review the  
24 documents, assuming there's about 11 gigs?

25 MS. GLASER: I need to know --

1 THE COURT: The answer is "longer."  
2 MR. PEEK: Yeah. It's longer than 45 days, Your  
3 Honor.  
4 THE COURT: Do you like how I added that part?  
5 MR. PEEK: Yeah, I get that, Your Honor. It's not  
6 six months.  
7 THE COURT: Mr. Pisanelli, you think if you're doing  
8 this you get 30 days' review period if you get to that point?  
9 MS. GLASER: Your Honor, we would request 90 days,  
10 because it will take that long to do this properly.  
11 And I do have a clarification request.  
12 THE COURT: Okay. Hold on. Let me finish writing  
13 notes here.  
14 (Pause in the proceedings)  
15 THE COURT: All right. You had a question?  
16 MR. PISANELLI: I do, as well.  
17 THE COURT: I don't care who goes first.  
18 MS. GLASER: I've got a couple of questions, Your  
19 Honor. I need to make sure -- I'm being told I need to make  
20 sure --  
21 THE COURT: We need your people who are IT people  
22 and specialists who have done this before to communicate with  
23 me. Please feel free -- even if you're not admitted in Nevada  
24 or you're not a lawyer, please feel free to come up to the  
25 table so that when Ms. Glaser is telling me what you want her



1 to tell me she tells me what you mean. Because I --

2 MS. GLASER: Ninety days. When do we count the 90  
3 days from? That's the big issue.

4 THE COURT: We'll count the 90 days from the date  
5 either on which you get the notification from Mr. Pisanelli on  
6 October 19th that he does not need to run search terms to  
7 determine if there's any privileged material on behalf of Mr.  
8 Jacobs that would be separate and apart, or, alternatively,  
9 upon the time that he gives you the list of privileged  
10 material and the ESI vendor can then begin making other  
11 materials that are not on his privilege log available to  
12 you --

13 MR. PEEK: Your Honor --

14 THE COURT: -- while I am in the process of  
15 reviewing the materials that are on the privilege log that Mr.  
16 Pisanelli identifies typically through motion practice.

17 Yes.

18 MS. GLASER: Your Honor, we may finish it shorter  
19 than 90 days, and we want to be able to move this process  
20 along, too.

21 THE COURT: If you finish short of 90 days, you  
22 know, you give it to me.

23 MR. PEEK: Well, I -- here's my question.

24 THE COURT: But I doubt you're going to.

25 MR. PEEK: Because the 90 days is starting from the

1 19th of October, I think is what --  
2 THE COURT: Not necessarily.  
3 MR. PEEK: Okay. That's what I'm trying to get --  
4 THE COURT: You have a moving target on when the  
5 90 days starts.  
6 MR. PEEK: Because we have to -- we have to get the  
7 documents loaded, Bate numbered --  
8 THE COURT: That's not you. Here's what happens --  
9 MR. PEEK: That's my question.  
10 THE COURT: Mr. Pisanelli has electronic data.  
11 The electronic data within 48 hours of today, which is by --  
12 48 judicial hours, which is by Monday, will be given to the  
13 ESI vendor, which typically means you upload it to their site.  
14 MR. PISANELLI: I think it's already done.  
15 THE COURT: All right.  
16 MR. PISANELLI: I think it's already Bates numbered,  
17 .tif, and it's ready to be produced.  
18 THE COURT: So if that's the case and the vendor  
19 already has it --  
20 MR. PISANELLI: And I believe the vendor to be  
21 QUiVX, so outside institutional company --  
22 MS. GLASER: Don't we have to agree?  
23 MR. PEEK: But the --  
24 THE COURT: Wait, wait, wait. Let's --  
25 MR. PEEK: The issue that we have -- and I'm not

1 questioning Mr. Pisanelli's assertion here -- is we have a  
2 much broader protocol as to what it is that he has in his  
3 possession. So when he says --

4 THE COURT: You're asking for exactly the same thing  
5 that's already in the ESI protocol that I've signed. Isn't it  
6 nice that you were consistent?

7 MS. GLASER: May I --

8 MR. PEEK: Your Honor, there's a broader -- if you  
9 looked at our -- if you look in our ESI protocol, which is a  
10 broader one of everything that he ever had, that he got during  
11 the course of his employment, that's not --

12 THE COURT: I've limited the discovery on these  
13 issues to a specific period of time. My recollection, and I  
14 will refer to the ESI protocol, since I was wrong the last  
15 time I said it, was that time frame ran from January 1st,  
16 2009, to October 20th, 2010.

17 MR. PEEK: Right. I agree with that one.

18 MS. GLASER: This is a clarification --

19 MR. PEEK: May I see that, Your Honor, just for a  
20 moment.

21 THE COURT: Yes. I just punched it. Max has been  
22 very good at going to the --

23 MR. PEEK: Go ahead, Ms. Glaser. I'm sorry.

24 MS. GLASER: Because Your Honor rightfully has not  
25 ruled on the appropriateness of Mr. Jacobs having these



1 documents, and I appreciate that, we want a representation,  
2 which we will take to Your Honor, from Counsel that there will  
3 be nothing done -- our protocol that we had -- the special  
4 protocol that we had suggested made everybody turn over all  
5 the documents, and the ESI vendor is sort of the neutral who  
6 has everything. If he chooses not to do that or Your Honor  
7 doesn't order it and we think Your Honor should, then at  
8 minimum there should be a representation to the Court that  
9 there will be no use of the documents and/or the information  
10 in the documents absent further order of the Court.

11 THE COURT: Well, until the process is completed.  
12 The process is -- the anticipated path is that the electronic  
13 images are provided by Mr. Pisanelli to the ESI vendor, and I  
14 haven't determined that the one he's already picked is the  
15 one, but we'll have that discussion in a minute. He provides  
16 that. The understanding is he's not looking at those  
17 documents anymore, which is why I'm making him use search  
18 terms to review the documents.

19 MS. GLASER: And I appreciate that.

20 THE COURT: The reason he's having to review search  
21 terms is my goal was to keep him from getting further down a  
22 path where there may be a document that is protected by the  
23 attorney-client privilege, the Macau Privacy Act, or a trade  
24 secret that Mr. Jacobs has that I later determine he shouldn't  
25 have and I don't get into a position later where I have to

1 disqualify counsel because he was looking at documents when he  
2 shouldn't be.

3 MS. GLASER: Understood.

4 THE COURT: I don't want to be in that position,  
5 because it will make my case take longer.

6 MS. GLASER: Fair enough.

7 THE COURT: And it also screws things up  
8 procedurally.

9 MR. PEEK: And, Your Honor, I apologize. You are  
10 correct. Because our protocol did capture this, because it  
11 says that, "The parties must accurately identify and produce  
12 responsive non-privileged, active ESI stored [unintelligible]  
13 that is in their possession, custody, or control  
14 notwithstanding its location."

15 THE COURT: True.

16 MR. PEEK: So --

17 THE COURT: And that's already an order I issue,  
18 although it's stayed for all purposes except this.

19 MR. PEEK: Yeah. I guess it's really the "identify  
20 and produce responsive," but if he's just giving me everything  
21 that he has, that's what Mr. Pisanelli is telling me, is that  
22 everything that Mr. Jacobs has I'm going to give to the ESI  
23 vendor.

24 MS. GLASER: Your Honor --

25 THE COURT: And that's a yes, not just a nod. Come

1 on. Nods don't come out on my record, Mr. Pisanelli. Say  
2 yes.

3 MR. PISANELLI: I'm just waiting till he's finished.

4 THE COURT: Well, the nodding was -- say yes.

5 MR. PISANELLI: Yes.

6 THE COURT: Okay. Thank you.

7 MS. GLASER: Your Honor, the other clarification --  
8 and we did -- if you looked at -- and I can hand it up to the  
9 Court if it's easier. At paragraph 6 we actually --

10 THE COURT: Of yours?

11 MS. GLASER: Of our protocol. Do you want me to  
12 hand it up to you?

13 THE COURT: No. I have it.

14 MS. GLASER: Oh. I'm sorry.

15 THE COURT: I have all this stuff. Okay. And I've  
16 dealt with ESI issues many times.

17 MS. GLASER: We actually provide a mechanism for  
18 what Mr. Jacobs might determine to be his attorney-client  
19 privilege, as opposed to --

20 THE COURT: Well, but you understand that what  
21 paragraph 6 says is he's giving the search terms. That's what  
22 paragraph 6 says. I already told him that.

23 MS. GLASER: Okay. As long as we're in the same  
24 boat. Thank you.

25 THE COURT: But the search terms doesn't have to



1 necessarily be only those items that you've identified in 6,  
2 because there may be other items that the search terms Mr.  
3 Pisanelli believes are appropriate to elicit a response as to  
4 a document he believes Mr. Jacobs would hold the attorney-  
5 client privilege for may be something which isn't an attorney,  
6 but there's a particular subject that is an unrelated legal  
7 issue that's captured on there.

8 MS. GLASER: Okay. I'm --

9 THE COURT: Do you understand what I'm saying?

10 MS. GLASER: Fair enough. Fair enough.

11 THE COURT: He hired a lawyer to help him with a  
12 special LLC called, for instance, Sagebrush, so he wants to  
13 run "Sagebrush" as one of the search terms, so he'll make sure  
14 he pulls all that stuff.

15 MS. GLASER: Now, this is my question, because I  
16 just need to understand this. He goes through that process  
17 just as Your Honor's outlined, and now he identifies -- I'm  
18 making up a number -- 10 documents that he feels outside -- he  
19 wants to make sure they're protected from his standpoint. How  
20 does Your Honor then make the determination whether that's  
21 justified?

22 THE COURT: He does a privilege log. You get a copy  
23 of the privilege log from him, because he serves it upon you.  
24 If you look at it and you think there is a problem, then you  
25 talk to him, because that's what Rule 2.34 requires you to do.

1 MS. GLASER: I'm never going to be before Your Honor  
2 again --  
3 THE COURT: And then --  
4 MS. GLASER: -- without doing that.  
5 THE COURT: -- after you talk to him -- or you could  
6 talk to Ms. Spinelli or Mr. Bice or whoever it is in their  
7 office they designate to respond to you, after you've had that  
8 communication in good faith to try and resolve the issue on  
9 the privilege log, then you're going to file a motion to  
10 require the production.  
11 MS. GLASER: Understood.  
12 THE COURT: And then he's going to say, this is the  
13 basis. And what almost always happens, unfortunately, is I  
14 then do an in-camera review.  
15 MS. GLASER: Understood.  
16 THE COURT: Almost always.  
17 All right. Yes.  
18 MR. PISANELLI: Perhaps -- I have to confess to you  
19 I'm a little confused.  
20 THE COURT: You've done ESI before. You can't be  
21 confused.  
22 MR. PISANELLI: I have done it before, and I'm still  
23 -- I always get confused.  
24 THE COURT: Mr. Peek can be confused, 'cause he's  
25 older than us.

1 MR. BICE: On that we concur, Your Honor.

2 MR. PISANELLI: I have --

3 THE COURT: But he brought Mr. Anderson, who  
4 understands it.

5 MR. PEEK: I brought Brian with me today, Your  
6 Honor, to help me.

7 MR. PISANELLI: I have a body of documents that are  
8 stored electronically. And I'm going to do this broad strokes  
9 just to make sure I'm where you want me to be on this, okay.  
10 I have a body of evidence that is stored electronically. It  
11 has been identified by Bates number and whatever .tif means is  
12 what it is. I am going to take that body of evidence in  
13 electronic form, not hard copies, and I'm going to give it to  
14 the defendants. The only thing I expect to extract from that  
15 body of evidence is -- are the documents, if any, that I  
16 believe they are not entitled to see.

17 THE COURT: Correct.

18 MR. PISANELLI: And that will not be made a secret  
19 to them or you or anyone else. They will know by Bates number  
20 document, et cetera. In order to determine what of that body  
21 of evidence I am not going to give to them, I'm going to give  
22 the ESI vendor --

23 THE COURT: Well, not that you're not going to give  
24 to them, to which you are making a claim of privilege.

25 MR. PISANELLI: Yes.



1 MR. PEEK: Privilege log.

2 MR. PISANELLI: Yes. Of course. And in order  
3 to find them I'm not going to do what they are going to do  
4 and read every document and pull them out. I am going to  
5 give search terms to the vendor to say, here is the body of  
6 evidence, find me documents that have these words. And  
7 then --

8 THE COURT: And that search terms, the search terms  
9 that are communicated to the vendor get circulated to  
10 everyone. So if there is a dispute as to whether the search  
11 terms are too broad or they think your search term is going to  
12 pull information to which they will claim a privilege, then I  
13 have a different issue I have to resolve.

14 MR. PISANELLI: That's actually where I was headed  
15 with the confusion. So I'm there.

16 THE COURT: Are we done now?

17 MR. PISANELLI: I think so.

18 THE COURT: Any other questions on my Item Number 3,  
19 which was the ESI protocol issue?

20 MR. PEEK: Maybe Number 4 is going to capture it,  
21 because I certainly have questions, Your Honor.

22 THE COURT: 4 is my depo issue.

23 MR. PEEK: Yeah. But I even have more questions.  
24 What I'm concerned about is are we receiving in native format  
25 with metadata attached in those 11 gigabytes that will let us

1 know or give us insight as to when the documents were --

2 THE COURT: Hold on. Let me ask the question for  
3 Mr. Pisanelli.

4 How did the documents get converted into their  
5 current .tif format with Bates numbering on them?

6 MR. PISANELLI: I didn't do it, so I would be  
7 guessing.

8 THE COURT: I don't want you to guess.

9 MR. PISANELLI: I don't know.

10 THE COURT: How do I find out?

11 MR. PISANELLI: That was handled by outside counsel  
12 -- by outside I mean out side of me --

13 THE COURT: Correct.

14 MR. PISANELLI: -- and I have kept myself away from  
15 the process.

16 THE COURT: Frequently people hire Dennis Kennedy to  
17 do that, for some reason, and I have no idea why he's the one  
18 who always gets hired.

19 MR. PISANELLI: I did not hire Dennis Kennedy.

20 MR. PEEK: Oh. You're shocking me.

21 MR. PISANELLI: But it was handled by counsel for  
22 Mr. Jacobs, and I have maintained distance --

23 THE COURT: Okay.

24 MR. PISANELLI: -- with that process.

25 THE COURT: Here's the question that I need

1 answered. And it may be that the ESI vendor will have to be  
2 the one who tells me the answer to this question. If they get  
3 information and it appears to them that the .tif files they  
4 are receiving are files that were, for lack of a better term,  
5 printed and scanned, then I'm going to have a problem.

6 MR. PISANELLI: Okay. I'll find that out.

7 MR. PEEK: Yeah. Because you've seen in our  
8 protocol what we talk about is the metadata attached to the  
9 .tif file. That's --

10 THE COURT: It's not in -- it's in the order. It's  
11 in an order. I assume that the order that is currently in  
12 place, dated June 23rd, 2011, was complied with.

13 Here, Mr. Pisanelli. I'm going to give you a copy,  
14 because you weren't here then.

15 MR. PISANELLI: And by the way, if it was not  
16 complied with, can't even represent to you that this was done  
17 before or after this order, but I will do this. I mean, if --  
18 if we don't have the metadata, for instance, and that is  
19 something you want, then we're just going to have to --

20 THE COURT: Well, no. It's something I ordered.

21 MR. PISANELLI: I'm sorry?

22 THE COURT: It's something I ordered.

23 MR. PISANELLI: Okay.

24 THE COURT: It's not something I want.

25 MR. PISANELLI: My point is, then, maybe money has



1 been wasted and we have to start over.

2 THE COURT: That may be.

3 All right. So next question. The vendors.

4 MR. PISANELLI: All I know is that QUIVX was used,  
5 contracted directly with the law firm. I understand there to  
6 be a confidentiality obligation in relation to their work.  
7 That's all I can represent to you.

8 MR. PEEK: Don't know anything about them, Your  
9 Honor. I just want the opportunity to --

10 THE COURT: Other people have used them in other  
11 cases.

12 MR. PEEK: They're not familiar to me, and --

13 THE COURT: They aren't one that I've had a problem  
14 with yet.

15 MR. PEEK: Oh. That's a good sign, then.

16 MS. GLASER: Are not, or are?

17 THE COURT: Have not yet had a problem with.

18 MS. GLASER: Your Honor, we probably will have no  
19 problem, because --

20 THE COURT: But I want you to look and decide if you  
21 have a problem.

22 MR. PEEK: We want to check to vet them, that's all.

23 THE COURT: How long do you need? Because I ordered  
24 Mr. Pisanelli to give it to them by Monday, and I'm not going  
25 to make you give it, since they already have it.

1 MR. PEEK: In an abundance of caution, Your Honor,  
2 I'll give him till Tuesday, if it's okay with the Court, so  
3 that we can vet them, because it's already Thursday.

4 THE COURT: How long do you need to vet is what I'm  
5 trying to find out.

6 MS. GLASER: By the end of the day on Monday we  
7 should be able to get back to Mr. Pisanelli, and if you -- if  
8 Your Honor wishes, Your Honor, as well.

9 THE COURT: I don't care. But if you don't pick  
10 QUIVX, then I need to see you.

11 MR. PEEK: Then we need to pick somebody --

12 THE COURT: Unless you agree, I need to see you.

13 So the 48 hours that I gave you is tolled pending a  
14 decision on either they agree to QUIVX or I order a particular  
15 person to be your vendor.

16 MS. GLASER: Thank you, Your Honor.

17 MR. PEEK: Thank you, Your Honor.

18 THE COURT: So none of the dates are going to start  
19 moving until you hit that, till you know who your vendor is.

20 MS. GLASER: Understood.

21 THE COURT: All right. Does anybody have any  
22 questions, including those people who are more technically  
23 oriented than the rest of us, about what I have ordered, which  
24 are simply modifications to the prior ESI order?

25 MR. PISANELLI: I have a non-technical question on

1 cost.

2 MS. GLASER: We do not, Your Honor.

3 THE COURT: Okay. So Mr. -- your cost question, Mr.  
4 Pisanelli?

5 MR. PISANELLI: What do we do about it?

6 THE COURT: I don't know. What's it say in the  
7 order?

8 MR. PISANELLI: I don't know. I haven't read it.

9 THE COURT: I gave you my copy. Hold on a second.

10 MR. PISANELLI: I gave it back to you.

11 THE COURT: I think we addressed that in the  
12 original order.

13 MR. PEEK: Yeah.

14 THE COURT: "Each party expressly reserves its right  
15 to petition the Court to shift the cost of the production of  
16 the ESI to the requesting party." That's what it says.

17 MR. PEEK: Yeah. I agree. That's what my  
18 recollection was, too, Your Honor.

19 THE COURT: You want it back?

20 MR. PISANELLI: No, we've got one.

21 THE COURT: Anything else?

22 MR. PISANELLI: I don't think so.

23 MS. GLASER: No. Thank you, Your Honor.

24 MR. PEEK: Well, but what do we do in the short run  
25 of paying, paying QUIVX? Because certainly we have that cost



1 shifting.

2 THE COURT: He's the producing party.

3 MR. PEEK: So he's paying for it, he can shift it  
4 back to me later if he wants?

5 THE COURT: On that part. He can shift it later.

6 MR. PEEK: Okay.

7 THE COURT: But when you then are accessing your  
8 however many documents it ends up being, you're paying for all  
9 of that and the logging that has to be done. And I will tell  
10 you that there have been occasions where I've had to review  
11 the log that the ESI vendor keeps to make a determination as  
12 to whether anything fishy happened.

13 MR. PEEK: Okay. So, if I understand correctly,  
14 what you have suggested as a protocol for review of document  
15 by document with SCL is not contained within the body of the  
16 protocol, I don't believe, where we keep a log, as you're  
17 suggesting --

18 THE COURT: You don't keep a log. That's part of  
19 what the ESI vendor does. They issue user names. They  
20 typically keep a log of everybody who accesses each document.

21 MR. PEEK: But that -- but we wouldn't have that,  
22 for example, Your Honor --

23 THE COURT: You don't get it. We only get it when  
24 there's trouble.

25 MR. PEEK: Right.

1 THE COURT: And hopefully we won't have trouble.

2 MR. PEEK: My point is, Your Honor, that I don't  
3 recall seeing that in the protocol, that there is, as you say  
4 -- because I know, for example, when I'm reviewing the  
5 documents right now -- when I reviewed them before the stay  
6 and produced them to Jacobs, I had folks reviewing on my  
7 system where I had uploaded them. And I would assume that Jim  
8 would have done the same thing on his system had we gone  
9 through the normal process without this dispute.

10 THE COURT: Hold on.

11 MR. PEEK: So I just want to make -- I just want to  
12 have that clarification.

13 THE COURT: You're absolutely right that it is not  
14 covered in this order.

15 MR. PEEK: Right. So we just need to -- and I get  
16 what you're saying, Your Honor --

17 THE COURT: Typically the ESI vendors keep that.  
18 That's why they make you have user names that are independent  
19 for everyone who accesses it. I'm trying to see if I can find  
20 -- you had a proposal from a vendor that was a contractual  
21 document, didn't you?

22 MS. GLASER: No. Ours --

23 MR. PEEK: I don't recall that we did, Your Honor,  
24 have a proposal from a vendor.

25 MS. GLASER: No. Our proposal is not from a vendor,

1 it's from a bunch of lawyers.

2 THE COURT: Oh. Okay.

3 MS. GLASER: I can hand that up to Your Honor if you  
4 don't have a copy.

5 MR. PEEK: Because I -- you know, we have to have a  
6 protocol about, okay, you're going to keep this log, but I  
7 don't --

8 THE COURT: They keep the log.

9 MR. PEEK: They keep a log. If I access Bate range  
10 of --

11 MS. GLASER: They know.

12 MR. PEEK: -- they know how long I'm there, what I  
13 do. I'm okay with --

14 THE COURT: They don't typically know how long  
15 you're there. They know if you reviewed it or if you  
16 downloaded it. That's typically the things that are recorded  
17 on those logs.

18 MR. PEEK: And we are going to be downloading --

19 THE COURT: Some.

20 MR. PEEK: -- some. So I'm going to just look on  
21 the screen. Okay.

22 THE COURT: Depends whether you hire a hundred law  
23 students to help you with your 11-gig review like some of the  
24 people do.

25 MR. PEEK: I know. To get it done in the 90 days.

1 Okay.

2 MS. GLASER: Thank you, Your Honor.

3 MR. PEEK: So we'll have to -- we'll have to put  
4 that into place somehow, Your Honor. We'll put that protocol  
5 into place.

6 THE COURT: That needs to be in whatever order we  
7 use adopting and approving the ESI vendor.

8 MR. PEEK: We'll work on that, Your Honor.

9 THE COURT: Okay. Because there will have to be  
10 either a stip and order for the ESI vendor for their  
11 protection, as well as yours, or, if it's a contested issue,  
12 we'll issue an order from me.

13 MR. PEEK: And I'll work with Mr. Pisanelli on  
14 getting that work -- on getting that done, Your Honor.

15 THE COURT: Anything else?

16 MR. PISANELLI: On this topic, or others?

17 THE COURT: On the ESI protocol issues.

18 MR. PISANELLI: No.

19 THE COURT: All right. My next topic listed on mine  
20 is depositions of IT folks, depositions of Jacobs, requests for  
21 productions of documents.

22 MR. PISANELLI: That's my actual -- that was the  
23 question I had for you. While we are doing this process I'd  
24 like to be productive, right. I'm going to have an argument  
25 coming our way about whether we have an entitlement to any of



1 them. We're going to have that big global debate again. And  
2 so I would like to conduct discovery and take Ms. Glaser up on  
3 her offer of their IT folks and find out what exactly they  
4 know about what they've been doing, et cetera, et cetera, et  
5 cetera.

6 THE COURT: Okay. Since we are stayed and limited  
7 to purely discovery related to this jurisdictional issue which  
8 the Supreme Court has given me a writ ordering me to do  
9 certain things, I am not going to compel what would typically  
10 be Rule 16 disclosures related to that. I am going to require  
11 you to serve an interrogatory to identify those folks, or,  
12 alternatively, you may identify them through a 30(b)(6)  
13 deposition notice.

14 MR. PISANELLI: Will do.

15 THE COURT: Next?

16 MR. PEEK: Well, similarly, Your Honor, there's the  
17 corresponding -- I don't know whether Las Vegas Sands is  
18 entitled to be involved in this process, because --

19 THE COURT: I'm not clear, either.

20 MR. PEEK: Yeah. But certainly I'll speak for Las  
21 Vegas Sands, and Ms. Glaser can speak for herself, and it may  
22 get to the same point, is that we would want to take the  
23 deposition of Mr. Jacobs for that discrete subject matter  
24 related to when he -- what he came into possession, how he  
25 came into possession of it, when he came into possession of

1 it, what he did with it, where did it get stored, what thumb  
2 drive.

3 THE COURT: How about I say it this way? I believe  
4 Mr. Jacobs should be deposed if you think it's appropriate, or  
5 Ms. Glaser did, related to all issues that are the subject of  
6 the issues that are currently not stayed, rather than deposing  
7 him on four separate occasions on sub issues. And that would  
8 be the same for every witness. I would prefer to have each  
9 individual not inconvenienced overly and to try and  
10 consolidate all of the issues for their deposition at one  
11 time, because it's just polite and well-mannered practice.

12 MR. PEEK: The only reason I would -- I would agree  
13 with that under normal circumstances. Why I have a little bit  
14 of a concern here is that the issue of a substantive  
15 deposition of Mr. Jacobs on jurisdiction would normally follow  
16 after the review of all of the documents. One would want, I  
17 think perhaps -- and I'm not saying this is what Ms. Glaser  
18 will do -- that the issues of how he came into possession of  
19 those might be taken -- or learned or discovered earlier than  
20 that substantive deposition. And I'm not trying to take two  
21 depositions. I agree with the Court. I don't want to  
22 inconvenience Mr. Jacobs. But we'll --

23 THE COURT: I understand what you're saying, but I  
24 really don't think Mr. Jacobs's testimony is relevant to the  
25 privileges that are going to be asserted after those folks

1 review the 11 gigs or so of documents. There's going to be  
2 somebody who says that the document violates the Macau Privacy  
3 Act by it being removed from Macau, there's going to be an  
4 objection that says it might be attorney work product, there  
5 might be an objection that says it's an accountant-client  
6 privilege, it might be an attorney-client privilege, or it  
7 might be a trade secret. I think that's the entire universe  
8 of --

9 MR. PEEK: No. There's one more, Your Honor.

10 THE COURT: What is it?

11 MR. PEEK: You came into the possession of them  
12 wrongfully.

13 THE COURT: That's the broader issue.

14 MR. PEEK: That's the broader issue, and it's  
15 certainly --

16 THE COURT: I am merely at this point in time on the  
17 11 gigs looking for the privilege issues.

18 MR. PEEK: Correct. But in order to get to that  
19 last, much broader issue of did you come into possession of  
20 them in a manner that I don't consider proper, that would be  
21 the subject of, as I said, how, when, what, where did you get  
22 -- come into the possession.

23 THE COURT: I am not seeing -- that discussion,  
24 which I certainly understand we will have, I do not see that  
25 at the same time as my decision on the what I'm characterizing

1 as privilege issues. You understand what I'm saying?

2 MR. PEEK: I do. I do.

3 THE COURT: I intend to resolve the privilege issues  
4 first, and then I know you're going to argue that there's a  
5 lot more that aren't on that list that you claim he shouldn't  
6 have.

7 MR. PEEK: Correct.

8 THE COURT: And we're going to have a discussion  
9 about it after you take his depo.

10 MR. PEEK: Okay. After I take his depo.

11 MS. GLASER: So, if I'm understanding Your Honor,  
12 because this is important to us, we obviously have to depose  
13 him on all the privilege issues, but we also have to depose  
14 him on jurisdictional issues, not just privilege issues.

15 THE COURT: You don't have to. You can.

16 MS. GLASER: But we -- yes. But, Your Honor, we are  
17 -- he's taken the position that he's not subject to our  
18 confidentiality and return document --

19 THE COURT: He is taking that position.

20 MS. GLASER: Yeah. I heard that loud and clear,  
21 read it loud and clear. We need to --

22 THE COURT: That doesn't mean he's right.

23 MS. GLASER: I understand that.

24 THE COURT: It's a factual issue I will make a  
25 determination on at some point in time.



1 MS. GLASER: That's one issue that is pre before you  
2 get to the evidentiary hearing on jurisdiction.

3 THE COURT: Absolutely. I will make that  
4 determination I assume when you renew your motion in limine  
5 after having a conference under 2.47 and after you've taken  
6 his deposition and after I've ruled on the privilege issues.

7 MS. GLASER: I have memorized now -- if I haven't, I  
8 will memorize 2.47.

9 THE COURT: You should read the whole bunch of local  
10 rules. Some of them will actually amuse you, because they're  
11 funny.

12 MS. GLASER: Last thing, the two issues that sort of  
13 pre -- are before Your Honor determines jurisdiction are going  
14 to be his claim that he's not subject to the policies, which  
15 we've just articulated, and, two, how he came into possession  
16 of what we believe to be greater than 11 gigabytes of  
17 documents. I'm not saying that that deposition -- I haven't  
18 thought it through, honestly, but there can be all one  
19 deposition, but it might be two. And we're going to try as  
20 best we can not to inconvenience Mr. Jacobs for sake of  
21 inconvenience, because it inconveniences everyone.

22 THE COURT: How's this? I bet if you ask for -- if  
23 you don't to it all in the first depo, you're going to get a  
24 fight on whether you get the second depo. So I'd be really  
25 careful.

1 MS. GLASER: I'm not -- I'm not arguing with you.  
2 We're going to think that through carefully.

3 THE COURT: Okay. Here's what I'm trying to make  
4 sure we all understand. There's going to be an ESI  
5 production, there's going to be an ESI search, there's going  
6 to be reviews of documents that are separate and apart,  
7 there's going to be a ruling on any privilege issues related  
8 to particular documents, you're going to take depositions,  
9 some may be going on during this process, some may occur after  
10 the process. You are then going to, if you want, file a  
11 motion in limine again to prevent the use of the documents at  
12 the evidentiary hearing. But we will now have a framework  
13 which I had hoped we would be able to have through a different  
14 process than we're doing now on which documents would be used  
15 at the evidentiary hearing. Does that make sense?

16 MS. GLASER: It totally makes sense. And it's  
17 appreciated. And I, for one, would represent to the Court and  
18 to Mr. Pisanelli that I'm hopeful that we can work things out.  
19 I don't want to be in a position, nor do I think he does, of  
20 me being concerned that he's not -- he's saying one thing to  
21 the Court and one thing to me and vice versa. And we hope to  
22 avoid that at all costs, and I'm sure I can speak for both of  
23 us in that regard, Your Honor.

24 THE COURT: I certainly hope I don't get in the  
25 middle of those things.

1 Anything else you want to tell me, Mr. Peek?

2 MR. PEEK: The only thing I have, Your Honor, is  
3 that the hearings for next week --

4 THE COURT: On October 18th at 9:00 a.m., motion for  
5 leave to file an amended counterclaim, motion for protective  
6 order, and motion to compel. The last two probably are  
7 premature, but I'm happy to deal with them if you want, and  
8 I'll --

9 MR. PEEK: I think that those were all --

10 THE COURT: -- probably say they're premature.

11 MR. PEEK: -- those are all the ones that the Court  
12 asked us to withdraw.

13 THE COURT: Are they?

14 MR. PEEK: Yes.

15 THE COURT: Are you going to file an amended  
16 counterclaim, though?

17 MR. PEEK: I would love to. But I -- but that was  
18 one of the motions that you said to us that we couldn't go  
19 forward on that.

20 THE COURT: I can't rule on that. I can't rule on  
21 it. I'm stayed.

22 MR. PEEK: Right. So you asked us to withdraw those  
23 motions. So the fact that there's a hearing still on calendar  
24 for those withdrawn motions --

25 THE COURT: Can you vacate those hearings.

1 THE CLERK: I can do that, Judge.  
2 MR. PEEK: And I think we've actually done that,  
3 Your Honor, by a pleading.  
4 THE COURT: But the Clerk's Office doesn't vacate  
5 them. I have to tell them.  
6 MR. PEEK: I know. So I wanted to just have it here  
7 clear that --  
8 THE COURT: All right.  
9 MR. PEEK: -- those are the ones you asked us to  
10 withdraw and we did withdraw.  
11 THE COURT: What else can I do to help you, since I  
12 am now through my four agenda items and it's 11:25?  
13 MR. PISANELLI: I feel -- I feel compelled only to  
14 make a reservation on the record, you don't have to rule on  
15 it, that if the decision after thought, as we heard, is to  
16 depose Mr. Jacobs before we have gotten through this ESI  
17 exchange and before I can and will go through and start  
18 studying it myself, I will reserve the right to come back to  
19 you for a protective order, because I do I think it --  
20 THE COURT: Sure. I'm not stopping anybody --  
21 MR. PISANELLI: -- will be inherently unfair to have  
22 him deposed --  
23 THE COURT: -- from filing motions for protective  
24 order or anything. I assume you will file whatever is  
25 appropriate if you think it's appropriate. I just have a



1 general policy that it is appreciated by witnesses to only  
2 have to be deposed once. And if you can finish him in one  
3 sitting, great. If it takes more than one sitting and you're  
4 doing your best and not harassing him, okay, we all understand  
5 and we try and work together.

6 I also really like it when counsel can work  
7 together, although I know that doesn't always happen.

8 Anything else?

9 MR. PEEK: I was just going to say we agree with Mr.  
10 Pisanelli that we all are going to reserve whatever we have.  
11 So it goes without saying. We'll work on this.

12 MS. GLASER: Thank you for your time, Your Honor.

13 THE COURT: Anything else?

14 MR. PISANELLI: Nope.

15 THE COURT: All right.

16 (Off-record colloquy)

17 THE PROCEEDINGS CONCLUDED AT 11:27 A.M.

18 \* \* \* \* \*

19

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

  
\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

10/17/11

\_\_\_\_\_  
DATE



CLERK OF THE COURT

**MEMO**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

CASE NO.: A627691-B  
DEPT NO.: XI

**MEMORANDUM IN SUPPORT OF  
DEFENDANT SANDS CHINA LTD.'S  
STATUS CONFERENCE STATEMENT**

**Date: November 22, 2011  
Time: 9:00 am.**

LAS VEGAS SANDS CORP., a Nevada  
corporation,

Counterclaimant,

v.

STEVEN C. JACOBS,

Counterdefendant.

///

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1 Defendant Sands China Ltd. ("SCL") hereby submits the following Memorandum in  
2 Support of its Status Conference Statement for purposes of the November 22, 2011 Status  
3 Conference.

4 **I. INTRODUCTION**

5 On October 13, 2011, the Court entered an order to facilitate resolution of the dispute  
6 between the parties over Jacobs' right, if any, to retain and use certain documents taken by Jacobs  
7 (the "Subject Documents") from Sands China Ltd. ("SCL") and/or Las Vegas Sands Corp.  
8 ("LVSC"). As part of that October 13 Order, the Court contemplated the following:

- 9 • Jacobs' transfer of the Subject Documents (with all metadata intact) to an  
10 independent ESI vendor to allow Defendants to review the materials to identify  
11 documents that are protected from disclosure;
- 12 • A limited search of the Subject Documents by the independent ESI vendor to  
13 identify documents claimed by Jacobs to be privileged on the basis of agreed  
14 search terms, without allowing Jacobs' counsel to review any of the Subject  
15 Documents;
- 16 • After Defendants had full opportunity to review the Subject Documents within 90  
17 days of Jacobs' transfer of the Subject Documents to the ESI vendor, the parties  
18 shall engage in full briefing of SCL's anticipated motion in limine seeking the  
19 exclusion of documents to be used at the jurisdictional hearing ordered by the  
20 Nevada Supreme Court (which was originally scheduled for the week of  
21 November 21, but subsequently continued once the Court determined that Jacobs'  
22 retention and use of the Subject Documents needed pre-hearing resolution);
- 23 • The Court kindly offered to be available to resolve any disputes regarding the  
24 above approach to the extent the parties cannot resolve such disputes after meet  
25 and confer discussions.

26 Since that October 13 hearing, Defendants have diligently attempted to agree to a protocol  
27 for the review of the Subject Documents. However, Plaintiff and his counsel have admittedly and  
repeatedly violated the Court's October 13 Order, including as follows:



- Unilaterally conducting searches of the Subject Documents to identify documents contended by Jacobs to be privileged – without knowledge or consent by Defendants – and using unilaterally selected search terms without any effort to meet and confer with Defendants;
- Improperly allowing Jacobs' own consultant, Quivx, to perform such privilege searches – again, without knowledge or consent by Defendants – rather than having an independent ESI vendor conduct such searches;
- Refusing to produce the original hard drives, thumb drives, and other media containing the Subject Documents to ensure that full and reliable data is provided to Defendants for review with full metadata intact as required by the June 23, 2011 ESI protocol previously ordered by the Court.

Additionally, Jacobs has created delays and obstacles to the implementation of the Court's October 13 Order, including:

- Refusing to allow the parties to jointly engage Quivx as an independent ESI vendor (despite previously offering to do so at the October 13 hearing);
- Refusing to comply with SCL's written discovery requests in advance of the jurisdictional hearing;
- Demanding that Defendants must sign written "consents" before the Subject Documents are provided to an independent ESI vendor on the basis that certain documents relate solely to certain of Defendants' "affiliated entities or subsidiaries" – despite the Court's October 13 Order requiring that Jacobs transfer the entirety of the Subject Documents to an independent ESI vendor.

More troubling still, Jacobs' counsel recently informed Defendants on November 14 (more than one month after the October 13 hearing) that the Subject Documents in Jacobs' possession amount to over 40 gigabytes of data, i.e., almost 4 times the amount of the approximately 11 gigabytes of data previously revealed.

The sheer volume of material and continuous delay by Jacobs forces the parties to seek guidance from the Court, including but not limited to requesting the Court's appointment of an

1 independent ESI vendor to take immediate possession from Jacobs and his counsel of the Subject  
2 Documents (with all original data and metadata intact) in order to allow Defendants to begin their  
3 review of the Subject Documents as previously ordered by the Court.

4 **II. PLAINTIFF NOW REVEALS THAT HE POSSESSES OVER 40 GIGABYTES OF**  
5 **DATA**

6 In his original July 8, 2011 e-mail disclosing his possession of the Subject Documents,  
7 Plaintiff's counsel referenced 11 gigabytes of documents. *See* July 8, 2011 E-Mail (attached  
8 hereto as **Exhibit A**). Plaintiff's counsel referenced the same 11 gigabyte figure at the October  
9 13, 2011 hearing. *See* October 13, 2011 Reporter's Transcript (attached hereto as **Exhibit B**),  
10 71:11-17. Therefore, Defendants estimated that it would take approximately 90 days to review  
11 the Subject Documents (estimated at approximately one million pages<sup>1</sup>), and the Court adopted  
12 Defendants' estimate as its order.

13 On November 14, 2011, Plaintiff disclosed for the first time that the Subject Documents  
14 are actually over 40 gigabytes in volume (approximately four million pages).<sup>2</sup> *See* Quivx Report  
15 (attached hereto as **Exhibit C**), Section 2.5<sup>3</sup>. As such, the scope of the document review has  
16 increased dramatically and altered the scope of work to be performed by Defendants. Based on  
17 the foregoing, Defendants reserve their rights to seek further relief, including but not limited to  
18 imposing the burden on Plaintiff either of paying for the additional review by Defendants or to  
19 demonstrate his right to any documents taken from the Defendants or even additional time, if  
20 necessary, to complete the Defendants' review of this additional data.

21 **III. PLAINTIFF VIOLATED THE OCTOBER 13 ORDER BY REFUSING TO**  
22 **DISCLOSE OR VET HIS PROPOSED SEARCH TERMS BEFORE**  
23 **UNILATERALLY CONDUCTING HIS PRIVILEGE SEARCH**

24  
25 <sup>1</sup> *See*, [www.lexisnexis.com/applieddiscovery/lawlibrary/whitePapers/ADI\\_FS\\_PagesInAGigabyte.pdf](http://www.lexisnexis.com/applieddiscovery/lawlibrary/whitePapers/ADI_FS_PagesInAGigabyte.pdf).

26 <sup>2</sup> Quivx also reports that the Subject Documents are not limited to e-mails, as previously  
27 suggested, but rather, also include a variety of other files, including Word documents, Excel  
28 spreadsheets, and PDFs. *See* Quivx Report (Exh. C), Section 2.5.

29 <sup>3</sup> Even after Quivx's deduplication, there are over 31 gigabytes of documents (over three million  
30 pages).



1 On October 13, 2011, the Court expressly ordered the following procedure for Plaintiff's  
2 search of the Subject Documents for material that might be privileged as to Plaintiff:

- 3 • Plaintiff must provide Defendants with a proposed list of search terms for his  
4 privilege search;
- 5 • the parties must meet and confer with respect to Plaintiff's proposed search terms,  
6 and agree to the actual search terms to be used (or seek the Court's assistance if an  
7 agreement cannot be reached); and
- 8 • after the parties have agreed to search terms, the Joint ESI Vendor will search the  
9 Subject Documents using the agreed search terms, and generate a list of  
10 responsive documents.

11 See October 13, 2011 Reporter's Transcript (Exh. B), 78:18-24, 80:8-16, 86:22-25, 87:1-10, 89:8-  
12 13.

13 In both an October 17, 2011 e-mail, and during an October 19, 2011 meet and confer  
14 telephone conference, Plaintiff's counsel repeatedly confirmed the procedure ordered by the Court  
15 for Plaintiff's privilege search. See Reporter's Transcript from October 19, 2011 Meet and  
16 Confer (attached hereto as **Exhibit D**), 12:2-17, 14:17-15:15, 32:8-33:22; October 17, 2011 E-  
17 Mail (attached hereto as **Exhibit E**);.

18 On November 10, 2011, Plaintiff advised Defendants for the first time that he disregarded  
19 and violated the above procedure ordered by the Court; and Plaintiff instead, without notice to or  
20 approval from Defendants or the Court, provided his unilaterally selected and undisclosed search  
21 terms to his own, individually retained and personal ESI consultant, Quivx, who performed the  
22 privilege search in lieu of the Joint ESI Vendor. See Reporter's Transcript from November 10,  
23 2011 Meet and Confer (attached hereto as **Exhibit F**), 3:8-4:10; 6:3-18.

24 Plaintiff concedes that the manner in which he conducted the privilege search, without  
25 first vetting the search terms, deviated from the October 13 Order. See Reporter's Transcript  
26 from November 10, 2011 Meet and Confer (Exh. F), 3:8-21. Nevertheless, Plaintiff refuses to  
27 conduct a new privilege search in compliance with the October 13 Order.

1 Plaintiff's violation of the October 13 Order is significant because Plaintiff's search terms  
2 are overly broad and designed to segregate documents that are not privileged as to Plaintiff. By  
3 way of example, Plaintiff's list of search terms includes "Jackie Jacobs," "Sophie Karl,"  
4 "Heather/David/Karl/Atos Origin/Atos Origins" and "Crescent Resources." None of these listed  
5 individuals are Plaintiff's attorney, nor his spouse, and Plaintiff does not claim any form of  
6 privilege with respect to his communications with these individuals. Moreover, it is entirely  
7 possible that Plaintiff communicated information or documents to one or more of these  
8 individuals, from his work computer, that are privileged, confidential and/or trade secret as to  
9 Defendants, and precisely of the nature that Defendants seek to protect.

10 Therefore, these search terms cannot be included in Plaintiff's privilege search, and the  
11 privilege search unilaterally conducted by Plaintiff, without first vetting the search terms, is  
12 defective.

13 **IV. PLAINTIFF FURTHER VIOLATED THE OCTOBER 13 ORDER BY**  
14 **DIRECTING QUIVX, RATHER THAN THE JOINT ESI VENDOR, TO**  
15 **CONDUCT HIS PRIVILEGE SEARCH**

16 As set forth above, the Court ordered that Plaintiff's privilege search be conducted by the  
17 Joint ESI Vendor. *See* October 13, 2011 Reporter's Transcript (Exh. B), 74:19-25; 75:1-18.  
18 Plaintiff instead used his own, personal ESI consultant, Quivx, to conduct the privilege search,  
19 without first telling Defendants. *See* Reporter's Transcript from November 10, 2011 Meet and  
20 Confer (Exh. F), 3:8-4:10; 6:3-18. Plaintiff concedes that this deviated from the October 13  
21 Order. *Id.* Nevertheless, Plaintiff now refuses to permit the Joint ESI Vendor to conduct the  
22 privilege search.

23 Defendants cannot be required to rely upon services performed by Plaintiff's personal ESI  
24 consultant, who has no relationship, loyalty or ethical duties to Defendants. Rather, precisely as  
25 ordered by the Court, Defendants are entitled to have all services relating to the Subject  
26 Documents performed by an independent, impartial entity jointly retained by the parties, with  
27 obligations to both parties, so as to ensure the integrity and impartiality of the work product.



1     **V.     PLAINTIFF VIOLATES THE OCTOBER 13 ORDER BY REFUSING TO**  
2     **PRODUCE THE ORIGINAL MEDIA TO THE JOINT ESI VENDOR FOR**  
3     **EXTRACTION OF THE NATIVE FILES**

4             On October 13, 2011, the Court ordered Plaintiff to tender the Subject Documents to the  
5     Joint ESI Vendor in their original/native file formats (either the original file formats as they were  
6     originally copied by Plaintiff or, in the case of hard document scans, the original scanned  
7     computer images), along with all of the unaltered original metadata (collectively, the "Native  
8     Files").<sup>4</sup> See October 13, 2011 Reporter's Transcript (Exh. B), 90:25-92:2. The only way to  
9     ensure that the Joint ESI Vendor receives the Native Files, including all associated metadata,  
10    without any alteration, distortion or loss of integrity, is for Plaintiff to provide the Joint ESI  
11    Vendor with the Original Media (e.g., thumb drives, portable hard drives, CDs, laptops, etc.) that  
12    Plaintiff originally used to save the Native Files (or, in the case of scanned documents, the  
13    original media that Plaintiff originally used to save the computer image files). The Joint ESI  
14    Vendor can then use the appropriate software and procedures to extract the Native Files directly  
15    from the Original Media, including the original metadata, in a forensically sound manner, without  
16    any alteration or loss of integrity, and without any intervening duplication.

17            Plaintiff has refused to produce the Original Media to the Joint ESI Vendor, thereby  
18    violating the October 13 Order. Instead, Plaintiff insists that Defendants and the Joint ESI  
19    Vendor rely upon an image of certain data – not the Native Files – created by Plaintiff's personal  
20    ESI consultant, Quivx ("Quivx Image"), even though Quivx admittedly did not have access to the  
21    Original Media and relied on intervening, unreliable duplications in order to create the Quivx  
22    Image.

23            As explained below, Plaintiff's demand that the Joint ESI Vendor rely on the Quivx  
24    Image, rather than the original Native Files extracted directly from the Original Media, is  
25    improper for two separate and distinct reasons.

26  
27            

---

  
28            <sup>4</sup> The June 23, 2011 Notice of Entry of Stipulation and Order Regarding ESI Discovery ("ESI  
29            Protocol") sets forth the precise metadata that must be included with the Native Files.

1           A.     **The Quivx Image is Derived From Unreliable Sources Many Steps Removed**  
2                     **From the Original Media and, Therefore, Inherently Flawed and Inadequate**

3           On November 14, 2011, Plaintiff provided Defendants with a 19 page report from Quivx  
4           which included numerous previously undisclosed facts regarding the Subject Documents. *See*  
5           Quivx Report (Exh. C):

- 6           • Quivx received **four separate media** – two “external hard drives” and two “flash  
7           drives” – on which different portions of the Subject Documents were stored, which  
8           Quivx identifies as “HDD1, HDD2, HDD3 and HDD4.” *See* Quivx Report (Exh.  
9           C), Sections 2.4, 3.1, 3.2, 3.10, 3.29. However, at best, only one of these four  
10          media – HDD3 – purports to be Original Media, and even that is not clear. *Id.*
- 11          • Quivx’s report reveals that the data received by Quivx is many steps removed from  
12          the Original Media and wholly unreliable:
  - 13               ▪ **Quivx’s “HDD1”** is an external hard drive that Quivx brought to  
14               the offices of Plaintiff’s prior counsel, Campbell and Williams  
15               (“C&W”), on August 24, 2011, in order to copy files located on J.  
16               Colby Williams’ personal computer at C&W (“C&W Computer”).  
17               *See* Quivx Report (Exh. C), Sections 3.1, 3.2, 4.3 and 4.4. The  
18               C&W Computer from which the data was transferred to HDD1 was  
19               not Original Media, but rather, J. Colby Williams’ personal  
20               computer at C&W on which the data was being stored; thus further  
21               distancing HDD1 from the Original Media. *Id.* The Quivx report  
22               does not provide any information regarding the C&W Computer,  
23               nor how and from what source the data was transferred to the C&W  
24               Computer. *Id.*
  - 25               ▪ **Quivx’s “HDD2”** is an external hard drive that C&W itself used in  
26               an admittedly failed attempt to copy data from the same C&W  
27               Computer (C&W’s copy attempt failed because of the formatting of  
28               HDD2). *See* Quivx Report (Exh. C), Sections 3.1, 3.2, 4.3 and 4.4.



1 Therefore, HDD2 also is indisputably not Original Media, and is  
2 multiple steps removed from the Original Media. Moreover, HDD2  
3 suffers from all the same defects as HDD1, set forth above, and  
4 more. HDD2 is derived from the same C&W Computer from  
5 which HDD1 was copied (J. Colby Williams' personal computer),  
6 and no information is provided regarding the source of the data on  
7 that C&W Computer. Additionally, no information is provided  
8 regarding the procedures or software employed by C&W in its  
9 failed attempt to copy files onto HDD2.

- 10 ■ **Quivx's "HDD3"** is a "thumb drive" that was received by Quivx  
11 from Plaintiff on October 14, 2011 (the day after the October 13  
12 hearing). *See* Quivx Report (Exh. C), Sections 3.10, 4.5. HDD3  
13 *might* be the only Original Media in Quivx's possession. However,  
14 Quivx's report provides no information whatsoever regarding the  
15 source of the data saved on HDD3 (as distinct from Plaintiff  
16 delivering the thumb drive to Quivx). *Id.*
- 17 ■ **Quivx's "HDD4"** is a "flash drive" that Quivx used on *November*  
18 *9, 2011 (one week ago)* to download documents that Plaintiff  
19 allegedly uploaded to a third party document storage website  
20 ([www.box.net](http://www.box.net)). *See* Quivx Report (Exh. C), Section 3.29.

21 Therefore, HDD4 also is indisputably not Original Media. *Id.* It is  
22 unclear whether the documents uploaded to the third party website,  
23 box.net, came from the Original Media, or whether there were one  
24 or more additional duplications and intervening media.

1 Accordingly, the Quivx Image is inherently flawed and unreliable, and cannot be used in  
2 lieu of the Joint ESI Vendor extracting the Native Files directly from the Original Media.<sup>5</sup>

3 **B. Plaintiff's Attempt to Have Quivx Perform Tasks in Lieu of the Joint ESI**  
4 **Vendor Is Improper And A Clear Violation Of The Court's October 13 Order**

5 The Court ordered the parties to retain a Joint ESI Vendor so that all tasks relating to the  
6 Subject Documents and Native Files, including extraction from the Original Media, are performed  
7 by an independent, impartial entity jointly retained by the parties, with obligations, loyalties and  
8 ethical duties to both parties, so as to ensure the integrity and impartiality of the work product.  
9 Pursuant to Plaintiff's insistence, Quivx is not the Joint ESI Vendor. Rather, Quivx was retained  
10 exclusively by Plaintiff, and Plaintiff has precluded Defendants from communicating with Quivx.  
11 See October 17, 2011 E-Mail (Exh. E); see also Reporter's Transcript from October 19, 2011  
12 Meet and Confer (Exh. D), 3:19-4:1, 23:10-24:25, 34:7-20. Tellingly, Plaintiff asserts that all of  
13 Quivx's services are protected by Plaintiff's work product privilege. *Id.* In other words, Quivx is  
14 solely and exclusively Plaintiff's ESI consultant, with no relationship, loyalty or ethical duties to  
15 Defendants.

16 Therefore, Defendants cannot be forced to rely on services performed by Quivx, in its  
17 capacity as Plaintiff's exclusive consultant, with whom Defendants are not even allowed to  
18 communicate, rather than the Joint ESI Vendor. Plaintiff's attempt to have Quivx perform tasks  
19 in lieu of the Joint ESI Vendor is a clear violation of the Court's October 13 Order.

20 **VI. BOTH PLAINTIFF AND DEFENDANTS ARE ENTITLED TO CONDUCT**  
21 **JURISDICTIONAL DISCOVERY**

22 On October 13, 2011, the Court ordered that both Plaintiff and Defendants may conduct  
23 jurisdictional discovery in order to determine whether Plaintiff may use the (non-privileged)  
24 Subject Documents at the jurisdictional evidentiary hearing. See October 13, 2011 Reporter's

25 <sup>5</sup> Production of the Original Media does not impose an undue burden on Plaintiff. He admittedly  
26 has already gathered the data. All Plaintiff has to do now is designate the specific folders on the  
27 Original Media containing the Subject Documents/Native Files (so as to ensure that irrelevant  
material that might exist on the same media is not copied), and the Joint ESI Vendor will  
thereafter extract the Native Files. Given that the Joint ESI Vendor works for both parties,  
Plaintiff can be assured that the extraction will be conducted in a manner that protects his rights.



1 Transcript (Exh. B), 99:20-104:15. Plaintiff's recent revelations regarding the uncertain and  
2 suspicious chain of custody of the Subject Documents and Native Files, discussed above, further  
3 support the critical need for jurisdictional discovery regarding the Subject Documents.<sup>6</sup>

4 On October 24, 2011, SCL propounded jurisdictional discovery to Plaintiff pursuant to the  
5 October 13 Order. *See* SCL's Document Requests and Interrogatories (**Exhibits G and H**).  
6 SCL's discovery requests are narrowly tailored to the issues underlying the Court's determination  
7 of whether Plaintiff may use the subject documents at the jurisdictional hearing. For example,  
8 SCL seeks information regarding Plaintiff's acquisition, retention and transfer of the subject  
9 documents, the chain of custody of the subject documents, certain confidentiality policies and  
10 contract terms applicable to the subject documents, and related issues. *Id.* Plaintiff has not  
11 identified any individual discovery requests that exceed the issue of whether Plaintiff may use the  
12 subject documents at the jurisdictional evidentiary hearing. Rather, Plaintiff objects to SCL's  
13 discovery as a whole. Therefore, Defendants respectfully request that Plaintiff be ordered to  
14 respond to Plaintiff's jurisdictional discovery.

15 **VII. PLAINTIFF IS DELAYING IMPLEMENTATION OF THE OCTOBER 13**  
16 **ORDER WITH AN UNWARRANTED DEMAND FOR CONSENT**

17 On November 11, 2011 – nearly one month after the October 13 hearing – Plaintiff  
18 claimed for the first time that he needs to secure written signatures from LVSC, SCL and several  
19 of their “affiliated entities or subsidiaries” before he can deliver the Subject Documents to the  
20 Joint ESI Vendor. *See* November 11, 2011 E-mail (**Exhibit I**).<sup>7</sup> Plaintiff's eleventh hour request  
21 is problematic for several reasons.

22 <sup>6</sup> By way of example only, the fact that Plaintiff was supplying data to Quivx on November 9,  
23 almost a month after the October 13 hearing wherein Plaintiff's counsel represented that Quivx  
already had all the data, is also highly suspicious and warrants exploration.

24 <sup>7</sup> In this regard, Plaintiff's counsel demanded as follows: “Counsel – We've been informed that  
25 some of the documents that Mr. Jacobs possesses concern solely VML, VMS, VOL, Sands China,  
26 LVSC, and/or various other affiliated entities or subsidiaries, most of which are not parties to this  
27 action. Thus, please confirm in writing that each of these entities consents to the production of  
documents in this case to Sands China and LVSC. Since we (Jacobs' counsel) are unable to  
review the documents to ascertain a complete list of the entities, there must also be some written  
consent on behalf of subsidiaries and affiliated entities not listed herein. In addition, this request  
includes written consent that Sands China and LVSC each consents to the production of  
documents that may concern one but not the other.”

1 First, it suggests that Plaintiff's counsel is reviewing and analyzing the Subject Documents  
2 (including by identifying the subject matter of certain documents as well as possibly the authors  
3 or recipients of such documents), which directly contradicts the Court's explicit admonition that  
4 Plaintiffs' counsel cannot review the Subject Documents. *See* October 13, 2011 Reporter's  
5 Transcript (Exh. B), 75:11-21; 83:11-84:2.

6 Second, the Court has already ordered Plaintiff to produce the entirety of the Subject  
7 Document to the Joint ESI Vendor, without any "consent" requirement, and Plaintiff may not  
8 unilaterally impose additional obstacles to the production. *See* October 13, 2011 Reporter's  
9 Transcript (Exh. B), 76:5-18.

10 Third, Plaintiff's insistence upon written "consents" from LVSC, SCL and other entities  
11 threatens to further delay Defendants' review of the Subject Documents. As described above, this  
12 process has already been improperly and significantly delayed by Plaintiff. Accordingly,  
13 Plaintiff's last-minute "consent" request should be rejected.

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1 **VIII. CONCLUSION**

2 In light of the ongoing delays and disputes addressed above, Defendants respectfully  
3 request that the Court appoint an independent ESI vendor to take immediate possession of the  
4 Subject Documents consistent with the Court's October 13, 2011 Order to allow the Defendants  
5 to move forward with the review of the Subject Documents.<sup>8</sup>

6  
7 DATED November 18, 2011.

8   
9 Patricia Glaser, Esq. (Pro Hac Vice Admitted)  
10 Stephen Ma, Esq. (Pro Hac Vice Admitted)  
11 Andrew D. Sedlock, Esq. (NBN 9183)  
12 GLASER WEIL FINK JACOBS  
13 HOWARD AVCHEN & SHAPIRO, LLP  
14 3763 Howard Hughes Parkway, Suite 300  
15 Las Vegas, Nevada 89169  
16 Telephone: (702) 650-7900  
17 Facsimile: (702) 650-7950  
18 E-mail:  
19 [pglaser@glaserweil.com](mailto:pglaser@glaserweil.com)  
20 [sma@glaserweil.com](mailto:sma@glaserweil.com)  
21 [asedlock@glaserweil.com](mailto:asedlock@glaserweil.com)

22 *Attorneys for Sands China, Ltd.*

23  
24  
25  
26 <sup>8</sup> At the October 13, 2011 hearing, the Court indicated that, if Quivx was not selected as the Joint  
27 ESI Vendor, the parties should advise the Court of their selected ESI vendor. At Plaintiff's  
insistence, Quivx will not serve as the Joint ESI Vendor. Instead, the parties have selected  
Advanced Discovery as their agreed Joint ESI Vendor. Therefore, Defendants request that the  
Court approve Advanced Discovery as the parties' Joint ESI Vendor for the Subject Documents.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD  
3 AVCHEN & SHAPIRO LLP, and on November 18, 2011, I hand-delivered and deposited a true  
4 and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT**  
5 **SANDS CHINA LTD.'S STATUS CONFERENCE STATEMENT** via U.S. Mail at Las  
6 Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to  
7 the following:

8  
9 VIA HAND-DELIVERY & U.S. MAIL

10 James J. Pisanelli, Esq.  
11 Todd L. Bice, Esq.  
12 Debra L. Spinelli, Esq.  
13 PISANELLI BICE PLLC  
14 3883 Howard Hughes Parkway, Suite 800  
15 Las Vegas, NV 89169  
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16 VIA U.S. MAIL

17 J. Stephen Peek, Esq.  
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23  
24 

25 An Employee of GLASER WEIL FINK JACOBS  
26 HOWARD AVCHEN & SHAPIRO LLP



**DECLARATION OF ANDREW D. SEDLOCK**

I, ANDREW D. SEDLOCK, under penalty of perjury, state as follows:

1. I have personal knowledge of the matters set forth in this Declaration except as to those matters stated upon information and belief, and I believe those matters to be true.

2. I am at least 18 years of age and am competent to testify to the matters stated in this Declaration.

3. I am an attorney with the firm of Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP, counsel of record for Defendant Sands China Ltd. ("SCL") in this action.

4. I make this Declaration in support of the Memorandum in Support of Defendant Sands China Ltd.'s Status Conference Statement (the "Memo and P's & A's").

5. Attached to the Memo and P's & A's as Exhibit A is a true and accurate copy of the July 8, 2011 E-Mail from Plaintiff's former counsel, Colby Williams.

6. Attached to the Memo and P's & A's as Exhibit B is a true and accurate copy of the October 13, 2011 Reporter's Transcript.

7. Attached to the Memo and P's & A's as Exhibit C is a true and accurate copy of the Quivx Report, provided to Defendants on November 14, 2011.

8. Attached to the Memo and P's & A's as Exhibit D is a true and accurate copy of the Reporter's Transcript from the October 19, 2011 Meet and Confer.

9. Attached to the Memo and P's & A's as Exhibit E is a true and accurate copy of the October 17, 2011 E-Mail from Plaintiff's counsel.

10. Attached to the Memo and P's & A's as Exhibit F is a true and accurate copy of the uncertified and rough draft of the Reporter's Transcript from the November 10, 2011 Meet and Confer.

11. Attached to the Memo and P's & A's as Exhibit G is a true and accurate copy of SCL's First Set of Requests for Production of Documents to Plaintiff Steven C. Jacobs.

12. Attached to the Memo and P's & A's as Exhibit H is a true and accurate copy of SCL's First Set of Interrogatories to Plaintiff Steven C. Jacobs.



# EXHIBIT A



---

**Justin Jones**

---

**From:** Colby Williams [jcw@campbellandwilliams.com]  
**Sent:** Friday, July 08, 2011 4:30 PM  
**To:** Justin Jones; Stephen Ma  
**Subject:** Document Production

Dear Justin/Steve,

As we approach the end of the week, I thought it would be a good idea to update you on the status of our document production. As you know, I have been out of the office all week on vacation but have, nevertheless, been dealing with various work matters including the Jacobs document production.

Steve electronically transferred to our office a significant number of e-mail communications he received during his tenure with Defendants. That file transfer was completed last weekend after I left for vacation. I believe the amount of material constitutes approximately 11 gigs. In addition, Steve has sent us hard copies of various documents that also arrived at our office this week. I have not reviewed those documents and do not yet know the amount of material contained therein.

In anticipation of Bates Stamping and producing these documents to Defendants, I wanted to address a couple of issues.

First, as it relates to the production of communications that Steve may have had with Macau residents, we believe we are authorized to produce those documents to you despite any potential application of the Macau Data Privacy Act. Our basis for that conclusion is that Steve is a U.S. Citizen, he resides in and is located in the U.S. presently, the information is located in the U.S., and the documents are being produced pursuant to the rules governing procedures in a U.S. lawsuit. Given that the Privacy Act permits the "processing" of personal information to effectuate "compliance with a legal obligation to which the controller is subject" see, Art. 6, § (2), it appears to us that all parties in the litigation would be authorized to produce documents therein. Nonetheless, since Defendants have raised the issue, we would like to include a provision in the SPD to be submitted to the Court whereby Judge Gonzalez confirms that the Macau Data Privacy Act does not provide a basis for withholding documents in this litigation at least insofar as Steve's production is concerned. With respect to whether the act has any impact on Defendants' production, the parties can debate that issue at a later date if it becomes necessary.

Second, in beginning our review of the e-mails, it appears that Steve was the recipient of a number of e-mails from various attorneys employed by LVSC and SCL during the normal course and scope of his duties with Defendants. While we are certainly entitled to e-mails from attorneys that were sent to Steve during his tenure that are relevant to the claims/defenses in the litigation, we likewise recognize that there may be a number of e-mails from attorneys to Steve that are likely not relevant to this action. Frankly, we have neither the time nor interest to review any attorney authored e-mails that are irrelevant to this action. Thus, after initially reviewing a small portion of the material transferred by Steve in order to determine what it comprises, we have stopped the review process so that we may address this issue with you before discovery begins.

We propose the following: We send the material to our third-party ESI vendor for Bates Stamping. We will then produce all of the documents to you (less any documents for which Steve maintains a privilege, which will be identified in an appropriate log). Defendants will then have a certain amount of time (to be agreed upon by the parties) to advise us as to their position as to the relevance/irrelevance of the attorney-authored communications to Steve and whether any should be withheld and logged by Defendants. In the meantime, we will simply continue the suspension of any review of additional emails between Steve and company lawyers. By engaging in this proposed process, we are, of course, not waiving our right to contest Defendants' positions on relevance and/or the application of any privileges, all of which are expressly reserved.



Please let me know your thoughts about our proposals on these two issues so that we may commence with discovery.  
I'll be back in the office on Monday and we can talk then.

Have a good weekend.

Regards,  
Colby

J. Colby Williams, Esq.  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, Nevada 89107  
Tel. 702.382.5222  
Fax. 702.382.0540  
email [jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)

# EXHIBIT B

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 SANDS CHINA'S MOTION IN LIMINE  
AND MOTION FOR CLARIFICATION OF ORDER**

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD BICE, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 13, 2011, 9:00 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Jacobs versus Sands.  
4 And I assume that everybody in the courtroom is here as a  
5 interested observer, because otherwise I have things on the  
6 calendar I don't know about it.

7 MS. GLASER: Good morning, Your Honor. Patricia  
8 Glaser for Sands China.

9 MR. PEEK: And Stephen Peek for Las Vegas Sands  
10 Corp., Your Honor.

11 MR. PISANELLI: Good morning, Your Honor. James  
12 Pisanelli on behalf of plaintiff, Mr. Jacobs.

13 MR. BICE: Todd Bice on behalf of plaintiff, Your  
14 Honor.

15 MS. SPINELLI: Debra Spinelli on behalf of Mr.  
16 Jacobs.

17 THE COURT: Okay. Let's start with the motion in  
18 limine.

19 MS. GLASER: May I?

20 THE COURT: Please.

21 MS. GLASER: Thank you. Good morning, Your Honor,  
22 again.

23 THE COURT: Good morning.

24 MS. GLASER: Your Honor, it's actually a little bit  
25 of a dilemma that we're here on today. We think that there



1 are three different bases for the position that we take and  
2 that Mr. Jacobs is not entitled to any of the documents he's  
3 possessed that he obtained as an employee of ours. We think  
4 it's the '04 policy. He says that wasn't applicable to him.  
5 We say there's a March 14, '09, side agreement he signed that  
6 said he was going to keep these documents confidential, and,  
7 of course, there is the consulting agreement in May of '09  
8 that he has to return documents that he got in connection with  
9 his employment.

10           Having said that, we've asked for them back. We  
11 event went to the trouble -- because I think Your Honor had an  
12 extremely good suggestion and one that was frankly beneficial  
13 to both sides when you suggested at one of our hearings, I'd  
14 like you to come up with a protocol, originally suggested by  
15 counsel for the plaintiff, which I concede, prior counsel for  
16 the plaintiff. We came up with that protocol because we  
17 thought it was an excellent idea to sort of get past sort of  
18 certain obstacles that had been put forth. And I need to  
19 emphasize one thing. Now, all of the papers that were filed,  
20 and you've seen, unfortunately, too many of them, I know, in  
21 all the papers that were filed nowhere does Mr. Jacobs  
22 dispute, because he cannot, that more than 11 gigabytes of  
23 documents were downloaded by Mr. Jacobs the day he was  
24 terminated by Sands China, the day he was terminated. And  
25 those are the documents primarily we are most interested in

1 not having him to disclose to his attorneys. Many of them are  
2 attorney-client, many, by their own admission, trade secrets,  
3 and certainly many of them were subject to the Macau Privacy  
4 Act.

5 Now, I want to get back to the protocol in just --  
6 in one moment. There is -- appears to be some dispute about,  
7 well, who was he really employed by. Under Macau law only  
8 Macau residents are entitled to work and provide services in  
9 Macau. And a Macau entity must apply for a work permit for  
10 that employee. That was done, and he signed a consulting  
11 agreement or document in order for us to get the work permit  
12 so he could work in Macau, which nobody contests he both did  
13 work in Macau and he both signed this document. That document  
14 that he signed has a confidentiality provision.

15 Now, to work in Macau without the work permit and  
16 therefore to work without the written agreement is a violation  
17 -- it's a crime in Macau. And everybody complied with the  
18 law, including Mr. Jacobs, by signing a document that allowed  
19 us to get a work permit.

20 Now, what do we do about this? I don't think that  
21 the Court necessarily has to adopt our position or plaintiff's  
22 position. I think what the Court frankly, in our view --

23 THE COURT: At the moment, Counsel, we are  
24 discussing a motion in limine, and that's all we're talking  
25 about. I certainly understand there is an overlap, and I will

1 be happy to get to that at a later point. Right now all I'm  
2 discussing is a motion in limine and, arguably, whether  
3 there's been compliance with the Eighth Judicial District  
4 Court rules, which I mentioned in our conference call the  
5 other day.

6 MS. GLASER: You did. And we supplied a  
7 declaration, Your Honor, by Mr. Steve Ma in response to the  
8 Court's inquiry about whether there had been a meet and  
9 confer. I want to say to Your Honor I'm an officer of the  
10 court, and on repeated occasions, both in writing and by  
11 telephone call, we requested a meet and confer not just with  
12 respect to the protocol which Your Honor had suggested was a  
13 good way to get past this, not just --

14 THE COURT: Protocol has nothing to do with your  
15 motion in limine, Ms. Glaser.

16 MS. GLASER: Agreed. What we did was we -- the day  
17 -- that day that we were in court we asked to meet and confer  
18 with Mr. Pisanelli in the hallway. He didn't have time, which  
19 is perfectly okay, and he would get back to us both with  
20 respect to returning the documents, what documents could be  
21 used and what could not, and the discovery that was -- the  
22 Court was talking about. And if you recall, Your Honor said,  
23 if you want discovery you have to make a motion. So we've  
24 attempted on repeated occasions -- it's in Mr. Ma's  
25 declaration -- to meet and confer with respect to --



1           THE COURT: Actually, I didn't say if you want  
2 discovery you have to make a motion. What I said was if you  
3 cannot reach an agreement as to the discovery you will have to  
4 make a motion.

5           MS. GLASER: Hundred percent correct. I apologize.  
6 That's exactly what you said. We could -- there was an effort  
7 to meet with prior counsel with respect to both discovery and  
8 with respect to return of the documents, both of which are  
9 addressed by the motion in limine. We -- Mr. Pisanelli  
10 actually admitted that he filed the motion without meeting and  
11 conferring on discovery. He admitted it. He said he just  
12 didn't have time to deal with us. That's okay. We then -- we  
13 attempted to -- continued to attempt to meet and confer, both  
14 with respect to this motion in limine precluding the use of  
15 documents at our hearing, whenever it may be, and we continued  
16 to attempt to discuss what documents could be used at the  
17 evidentiary hearing. And we were not met with anything other  
18 than -- and I say this as candidly as I can -- a stone wall.

19           Now, I can't confer -- meet and confer with myself.  
20 And, yes, we did not have a meeting and confer session because  
21 Mr. Pisanelli did not either have the time or desire to meet  
22 with us, but we made every reasonable effort to meet and  
23 confer, Your Honor. And I need to represent that again as an  
24 officer of the court.

25           I would like to address the merits of the motion in



1     limine or continue to --

2             THE COURT:   Sure.  But I don't want you to address  
3     the discovery issue, which is a separate issue.

4             MS. GLASER:  Well, it's actually interesting.  It's  
5     not entirely, because our -- and I -- and I want to make sure  
6     -- the Court may ultimately disagree with me, but I at least  
7     want to make sure that I'm clear.  The protocol takes into  
8     account a continuing dispute with respect to how Mr. Jacobs  
9     got these documents and whether he's entitled to them for  
10    purposes of the evidentiary hearing.

11            THE COURT:  Let me stop you.  Where is the protocol  
12    attached to your motion in limine?

13            MS. GLASER:  It's attached to our reply brief, Your  
14    Honor.

15            THE COURT:  That's not what I'm asking, Counsel.  
16    Where's the protocol attached to your motion in limine?

17            MS. GLASER:  It's not attached to the motion in  
18    limine because it --

19            THE COURT:  Thank you.

20            MS. GLASER:  -- by the time we filed our -- when we  
21    filed our motion in limine -- there've been so many hearings I  
22    can't be a hundred percent correct, but there's no question --

23            THE COURT:  Including one day before yesterday;  
24    right?

25            MS. GLASER:  Correct.

1 THE COURT: A telephonic hearing when somebody said  
2 Mr. Pisanelli wanted to move a hearing and turned out not to  
3 be true.

4 MS. GLASER: No. That is not correct.

5 THE COURT: That's not what people told my law  
6 clerk?

7 MS. GLASER: I want to be -- and I want to be very  
8 clear. This is what the -- what we understand. What was told  
9 was Mr. Pisanelli's office by email -- and Your Honor has the  
10 email -- offered -- specifically said, we can't meet until  
11 Thursday, today, to discuss the protocol. So we --

12 MR. PISANELLI: And I have to object, since she's  
13 now making representations of what I said. It's in the record  
14 what I said, which doesn't even resemble what she just said.

15 THE COURT: I am --

16 MR. PISANELLI: So I just offer that objection.

17 THE COURT: -- at the point where I have little  
18 patience with representations from counsel that are not based  
19 on written documents or heard in court. And if I don't have  
20 an affidavit from people at this point, it is causing me  
21 graver concern. I don't need counsel and putting my staff in  
22 the middle of a situation between the rest of you guys.

23 MS. GLASER: Okay. I want to -- we sent an email to  
24 Mr. Pisanelli yesterday, because he asked for an explanation  
25 of what happened with Your Honor. And I'm going to give it to

1 of Your Honor to grant our motion. At worst case the motion  
2 should be held in abeyance while we sit down and really do  
3 meet and confer. And to the extent we can agree, great. If  
4 we cannot agree, Your Honor will decide what's appropriate for  
5 the protocol and what's not. We think that's the way to  
6 resolve this issue as it stands right now. And I'm glad to  
7 answer any questions Your Honor has.

8 THE COURT: Thank you. I don't have any questions.  
9 Mr. Pisanelli.

10 MR. PISANELLI: Thank you, Your Honor.

11 Your Honor, I must say there's only been one time in  
12 my 20-plus years of practicing that I have had to regrettably  
13 reduce and limit my communications with opposing counsel to  
14 writing, where I just had to insist that I will no longer  
15 communicate face to face with this particular counsel because  
16 it was a constant and consistent exercise of having to refute  
17 misrepresentations about what occurred, and it was with great  
18 disappointment and sadness that I think I find myself in that  
19 place for the second time. I will get to the many, and there  
20 are many, misrepresentations that are made to you almost on a  
21 minute-by-minute basis. I cannot express -- I don't think if  
22 have the vocabulary to express to you how frustrating it is to  
23 sit here and listen to these tales woven before you as if they  
24 were gospel simply because you throw adjectives like "really"  
25 and "clearly" and "absolutely" that, well, then they must have

1 been true.

2 We have a body of rules and law that govern this  
3 proceeding. And if you put them together -- and I'm just --  
4 I'm not talking about a case, I'm talking about rules, whether  
5 it be rules of civil procedure, rules of appellate procedure,  
6 rules of professional responsibility, on and on, and if I --

7 THE COURT: Local rules.

8 MR. PISANELLI: Those, too. And I think if Your  
9 Honor were pressed to find the single most important rule that  
10 governs all of them, I think at least I can make a compelling  
11 argument to you that it comes down to one single, most  
12 important rule that every other rule is filtered through, and  
13 that is the duty of candor to this Court. Candor in all we  
14 do, not just these oral arguments that are his word against  
15 her word, things of that sort, but candor in all we do.

16 We have been experiencing in this case a constant  
17 exercise of duplicitousness, even in the labels given to  
18 documents. You'll recall, Your Honor, we have dealt with this  
19 and this other sister rogue case documents that are called  
20 motions for sanctions, when at their heart they're motions for  
21 injunctions. We've seen reply briefs, including this one,  
22 that are not replies at all, but new, supplemental briefs with  
23 new ideas. And today, of course, here we are again with a  
24 motion in limine. Why in the world did we come up with the  
25 topic motion in limine? Could it be that a motion for



1 injunction wouldn't work because you've already rejected it  
2 several times, or could it be that Sands China doesn't want to  
3 be open and up front with this Court on what it's really  
4 asking for because it might get in the way of its  
5 jurisdictional argument?

6           When someone comes into this court asking for an  
7 injunction, the benefits and protections of the laws of the  
8 state of Nevada and this Court, not just the defense of the  
9 case, not just a jurisdictional debate, but an injunction,  
10 then perhaps that's going to be one of those elements on the  
11 checklist we're going to talk about at the evidentiary hearing  
12 of why Sands China has subjected itself to the jurisdiction of  
13 this Court. Is that why it was called a motion in limine? I  
14 don't know. I doubt we're going to get anyone to stand up and  
15 tell you that was why we used that label.

16           But let me take a few minutes and talk about what it  
17 is that's before us. And I've got to tell you that's not an  
18 easy exercise, either. We started this debate -- I'm sure Ms.  
19 Glaser at this point wishes we would all forget, but we  
20 started this motion with a very simple foundation, that being  
21 ethics charges, ethics charges against me. Ms. Glaser stood  
22 up in this courtroom, said that I was telling you an untruth,  
23 she referenced thousands of pages of documents that I had been  
24 going through, the Jacobs records, and reading them and now I  
25 have put them in the record. Her words to Your Honor were,

1 "In making these disclosures Jacobs's counsel," that's me,  
2 "has made clear that he has no compunction with violating  
3 basic ethic and professional standards that preclude the use  
4 of stolen and/or confidential information belonging to an  
5 adverse party. Neither Jacobs nor his counsel appear to have  
6 any intention of ceasing their activity or making an effort to  
7 comply with the most fundamental tenets of ethical standards."  
8 That was the foundation, that was the introductory remark, the  
9 very first remark of the motion in limine. And let's not  
10 forget, Your Honor, that remark was supported by a sworn  
11 affidavit of Counsel. One certainly would think that when you  
12 come in under the privilege of pro hac vice privileges to  
13 practice in another jurisdiction any communication with the  
14 Court is going to be perfectly accurate, sworn statements to  
15 the Court are going to have that added extra level of  
16 carefulness before we put that into the record.

17 Now, we saw a bit of a schizophrenic approach,  
18 didn't we, to this motion in limine? Having, I'm presuming,  
19 the opportunity to go back and actually read the exhibits that  
20 they were incensed about, the exhibits that were the  
21 foundation of the ethics charges, the foundation of the motion  
22 in limine, I'm sure there was a uh-oh moment, these are not  
23 those records, these are not thousands of pages of, quote, end  
24 quote, "stolen documents," these are Internet documents, these  
25 are even Sands China's records they put in the public record,

1 and these are even the exact exhibits Sands China put in their  
2 own exhibit list. That was the foundation of the ethics  
3 charge, that was the foundation, the introductory, opening  
4 remark of this motion.

5 We saw other schizophrenic moments throughout this  
6 briefing, including the very clever attempt to disguise what  
7 it was they're asking for. We saw, Your Honor, where they  
8 said at one page in their brief that they were asking for  
9 limited relief to preclude the evidence at the hearing. And  
10 in the very next page, on page 8 of their opening brief,  
11 immediately after saying that they only wanted the limited  
12 relief, and I'll quote it, "expressly limits its requested  
13 relief -- SCL expressly limits its requested relief to prevent  
14 the use of these materials in connection with the evidentiary  
15 hearing." One page later, "Accordingly," quote, "SCL now  
16 moves for an order precluding Jacobs and his counsel from  
17 using any of the stolen documents for purpose of preparing."

18 Now, if there is any debate, any discussion that  
19 Sands China has subjected itself to the jurisdiction of this  
20 Court, we need only go to the reply, when they confirmed that  
21 they're really asking for a TRO, this just won't be honest  
22 with this Court and say so, where they say that by granting  
23 their motion, quote, "Doing so will preserve the status quo."

24 I don't know that there's a lawyer that hasn't been  
25 practicing for 25 minutes that doesn't recognize that phrase

1 "preserving the status quo." And so, you know, if we really  
2 are going to be honest with one another, if we're really going  
3 to live up to the single most important cardinal rule of  
4 practicing law in this court, and that is to be honest with  
5 you, let's be fair. This is a motion for an injunction. It's  
6 a motion for an injunction that doesn't satisfy any particular  
7 standard for injunctions, but it's hidden and embedded,  
8 thinking that no one in this room would possibly pick up on  
9 the subtle distinctions between a motion in limine and a TRO.

10 Well, guess what. We all did. We all remember that  
11 we started with an ethics charge, and we all remember that we  
12 ended up with a TRO. So what do we do? I was preparing last  
13 night, Your Honor, and I was thinking to myself, I actually  
14 wrote the words down in my notes, what in the world are we  
15 doing here, what is this exercise. And I finally just had to  
16 come down to the simple concept of let me answer what they are  
17 claiming to be prosecuting, a motion in limine. What is a  
18 motion in limine? Your Honor has undoubtedly dealt with more  
19 motions in limine in your time on the bench than all of us put  
20 together, so I don't need you -- I don't need to educate you  
21 on the point. But just for the record, we all know that a  
22 motion in limine is an exercise to exclude irrelevant and  
23 immaterial matters or it's a motion to exclude matters where  
24 the probative value is outweighed by the danger of unfair  
25 prejudice.



1 Another standard that goes hand in hand with motions  
2 in limine, of course, is this categorical approach, right.  
3 You don't come in and say that there's an entire body of  
4 evidence without saying anything about it, just saying, let's  
5 leave that body of evidence out over here and let's have a  
6 limited fictitious debate on what really happened, pretending  
7 that that body of evidence doesn't exist. Case after case,  
8 jurisdiction after jurisdiction says that's not what a motion  
9 in limine is intended to do, you have to be specific in what  
10 you want. All of these problems, of course, the fact that  
11 they've never attached or addressed any issue about prejudice,  
12 about immateriality, about irrelevance, the fact that they do  
13 this thing categorical, these issues in and of themselves are  
14 reasons to deny their motion.

15 But, of course, we don't end there. And in  
16 connection with the categorical issue what did we hear, Your  
17 Honor? Another exercise of duplicitousness. They say that in  
18 very carefully worded language that we are being criticized,  
19 poor Sands China, because we're asking for categorical  
20 exclusions of evidence and all the while Jacobs isn't giving  
21 us what he has. Notice what was missing from that sentence,  
22 Your Honor, notice what was missing through all of this  
23 briefing was a statement, even an unsubstantiated statement  
24 that we constantly get from counsel without any evidence, we  
25 don't get a statement from anyone that they don't know what we

1 have.

2           It is unfathomable to think that they don't know  
3 what we have. Recall all of this unsubstantiated testimony  
4 from Ms. Glaser. She herself told Don Campbell, I know you  
5 have these three different reports and I'd like them back.  
6 She now comes in without sworn testimony telling you about  
7 what's been downloaded. They now even make the suggestion  
8 that they know what Mr. Jacobs was Googling. Okay. Well,  
9 let's have the evidence about that, let's give me a deposition  
10 of their IT personnel, and I promise I'm going to show you  
11 what really happened at that computer, not Ms. Glaser's  
12 statement, not take my word for it, forget the evidence. They  
13 know exactly what's at issue here, Your Honor. And so this  
14 claim that they're somehow handcuffed, that they can't  
15 identify specific documents that should be excluded because  
16 they don't know what's at issue is utter nonsense. They know  
17 exactly what it is. And that is yet another reason this  
18 motion in limine cannot be granted.

19           Now let's talk for just a moment about the  
20 procedural defects. We start off with an ethics charge,  
21 right. That's what the motion in limine was about, where is  
22 the meet and confer. We get a single moment of candor through  
23 all of these briefings where we do see someone who wrote the  
24 brief, and I'm assuming it was Ms. Glaser or she approved it,  
25 on page 3 of their reply where they say there was none. And I

1 think she confirmed it again today, there was no meet and  
2 confer for this brief. But, of course, shockingly, that was  
3 my fault. It was my fault that subsequent to the filing of  
4 this disguised TRO these efforts to contact me to have meet  
5 and confers about a whole variety of different issues, some of  
6 which we talked about, some of which we didn't, was somehow my  
7 fault, it is my obligation to make sure they follow the rules  
8 on meet and confers, including going through the actual  
9 substance of a meet and confer, actually performing not just  
10 form over substance, but performed what you and the drafters  
11 of that rule require of us, to meet and actually talk and  
12 negotiate your respective positions.

13           Mr. Peek rightly said that in this hallway right  
14 outside your door here all of us huddled after one of these  
15 issues about Colby Williams's protocol, and this was within  
16 seconds of you saying something to the effect that you found  
17 it to be reasonable and you want us to discuss it. Ms.  
18 Glaser, during what she now characterizes or Steve Ma puts in  
19 as sworn testimony, that was a meet and confer, yet she'll  
20 also concede to you, I know because we're going to see some  
21 honesty from her, that she didn't even know what I was talking  
22 about, she didn't know what the email was or where it was. We  
23 had to point it to her. And she had a positive reaction to  
24 it. But to claim, oh, that's what that is, we should talk  
25 about it, was somehow the meet and confer under our Nevada

1 rules is once again an absurdity.

2 Now, Steve Ma and others are putting declarations  
3 in, and I have to concede to Your Honor I don't know who all  
4 the cast of characters are from the Glaser firm. I see a  
5 courtroom where they've all spread themselves out, Team --  
6 whatever, is the game of Risk here, you know, that's got  
7 different [inaudible] on it? They've spread themselves out in  
8 the courtroom. I don't know how many of them are the actual  
9 declarants that are giving this sworn testimony to you. I  
10 don't think Steve Ma is there. I have met him once. I'm  
11 certain I don't see him. But I don't know this gentleman in  
12 the front. He might be one of the declarants, as well, on the  
13 ethics charges. I'm not sure who he is, I just know he's part  
14 of Team Sands.

15 My point is this --

16 THE COURT: It doesn't matter.

17 MR. PISANELLI: It doesn't.

18 THE COURT: Okay.

19 MR. PISANELLI: What does matter, however, is this  
20 sworn false testimony to you that meet and confers have  
21 occurred and if they didn't occur then blame Pisanelli because  
22 he's just putting up a stone wall.

23 Remember -- I'll throw this out. How logical is  
24 that position to begin with? My case is stalled over these  
25 false allegations of stolen documents. My case is stalled



1 over this frivolous concept that Sands China has nothing --

2 THE COURT: Actually your case is stalled by the  
3 Nevada Supreme Court.

4 MR. PISANELLI: Over the concept of jurisdiction;  
5 right?

6 THE COURT: Yes.

7 MR. PISANELLI: I am the one with an incentive to  
8 get through all of it, to get through all this document noise,  
9 to get through the personal jurisdiction. And so to claim  
10 that I am somehow wanting and taking action to stall this  
11 entire process is a little bit of an absurdity.

12 So where does this all lead us? A motion in limine  
13 that's not supported by law, a motion in limine that didn't  
14 comply with the meet and confer requirements, a motion in  
15 limine that never addresses actual materiality and relevance  
16 of evidence itself. Really this is a discovery motion, the  
17 same discovery issues that were the basis of Your Honor  
18 denying Mr. Peek's motions for injunctions, Mr. Peek's motions  
19 for sanctions, the repeated different labels that were given  
20 to a motion for an injunction. It's the same exact issue.  
21 And to the extent there's any debate about that, Your Honor,  
22 remember what Mr. Peek's reply brief was in the motion to  
23 sanction. It was the opening brief in this case. Remember I  
24 told you there was a cut and paste and it was the same  
25 highlighting and the same commas and all that stuff? That's

1 what his argument was on reply, the reply that was filed  
2 before our opposition, and now that same brief finds its way  
3 here, but now it's called a motion in limine.

4 I'm banging my head trying to figure out what to do  
5 about this thing, whether to the misrepresentations to this  
6 Court, the lack of candor of what this motion is really trying  
7 to accomplish, the series of representations to Your Honor  
8 claiming evidence as gospel even though the only testimony  
9 we're getting is from Ms. Glaser herself, I am banging my head  
10 against the wall trying to figure out what is this exercise  
11 really about. It is not about the motion in limine -- I'm  
12 sorry. It's not about the protocol. That's easy. So let me  
13 just take a moment right now. That's easy.

14 You will see, Your Honor, if you even want to talk  
15 about the protocol, because it is a reply issue --

16 THE COURT: Protocol is Item 3 on the agenda for  
17 today.

18 MR. PISANELLI: Okay.

19 THE COURT: It's an add-on item. But I'm not  
20 talking about it right now.

21 MR. PISANELLI: I will talk about it now or talk  
22 outside the context --

23 THE COURT: I don't want to talk about it right now.

24 MR. PISANELLI: Okay. Good. Good. Because neither  
25 do I, because I don't think it's properly part of this motion.

1 THE COURT: Well, it is Part 3 of my agenda for  
2 today, though.

3 MR. PISANELLI: And I'm prepared to talk about it  
4 when you tell me to talk about it.

5 So the issue before us, then, if it's not a  
6 protocol, yet it's not an injunction because I think they've  
7 moved away from that, I don't think the issue of proper -- of  
8 whether Mr. Jacobs is properly in possession of these  
9 documents is before you, either, right. We have Ms. Glaser  
10 again giving some testimony, asking you to take her word for  
11 it because of the long history of forthright communications  
12 from her and her colleagues in this case that what she's  
13 telling you is gospel and that Mr. Jacobs has signed an  
14 agreement. Well, we were forced to address those issues in  
15 our surreply. And I apologize to you and your staff. It is  
16 not lost on us how hard you work generally and how hard you  
17 work simply because of this case, and to give a brief that  
18 late in the night is something I do with caution.

19 THE COURT: I read it this morning. I didn't read  
20 it last night.

21 MR. PISANELLI: Either way, it is only because the  
22 reply brief became, like Mr. Peek's exercise, a new motion.  
23 They had abandoned the ethics because I think they got caught  
24 and probably felt foolish about it, and so they came up with a  
25 new theory now, talking about the contracts. And so I'll take

1 just a few moments to talk about the contracts, and then I'll  
2 sit down and see what questions you may have for us.

3 First of all, the simple issue is what did the  
4 parties agree to. At the end of the day it is the very simple  
5 issue. Sands China has a contract with Steve Jacobs. No  
6 matter how much they want to hide from it, they can't get away  
7 from their Mr. Leven's own remarks to investors on a  
8 conference call, on an earnings call. He has a contract, we  
9 agree that it's a contract, it's called the terms sheet. We  
10 have some other documents -- excuse me, Your Honor.

11 (Pause in the proceedings)

12 MR. PISANELLI: I'm sorry. They're jumping down my  
13 throat because I'm talking faster than I'm thinking. Of  
14 course the terms sheet is with Las Vegas Sands. So we have  
15 the contract with them, and they don't -- Las Vegas Sands does  
16 not bargain for all of these rights that they want. They  
17 don't ask for them, and they don't get them. And so what do  
18 they do with that? They say, well, you used to have  
19 contracts, the Vagus Group used to have a contract, VML, a  
20 consulting contract, right, we're stuck with VML.

21 Well, there's lots of problems there. First of all,  
22 the terms sheet with Las Vegas Sands supersedes everything.  
23 The parties said so in writing in their side letter, they  
24 agreed to it. Second of all, where's VML? I haven't heard  
25 Ms. Glaser say that she represents VML. I haven't heard Mr.



1 Peek say he represents VML. VML can't come in here under --  
2 I'm sorry. These two parties can't come in here enforcing  
3 VML's rights, if it even has any, and Vagus Group isn't a  
4 party to this case, either. So, you know, these are parties  
5 that have nothing to do with anything. They were superseded  
6 in the first place, and they're not even parties to this case,  
7 so we can't and should not even talk about them.

8 And then we have this absurd argument supported by a  
9 declaration from someone I have no idea what her title is or  
10 why she would purport to have personal knowledge, saying that  
11 somehow, some way --

12 THE COURT: She was the lady who appeared at the  
13 Rule 16.1 conference by videoconference; correct?

14 MR. PEEK: No. That was Ann Salt, Your Honor.

15 THE COURT: Oh. That was a different lady. Okay.  
16 Sorry.

17 MR. PISANELLI: We have a different affiant  
18 testifying that Steve Jacobs as president, CEO, is bound by  
19 the employee manual with VML because, to her knowledge, he  
20 didn't object to it. He didn't sign it. You don't see a  
21 signed agreement there about what that document says, and  
22 you'll never see a signed agreement there. I'm not sure Ms.  
23 Glaser is being forthright about that, either. And what she  
24 hid from you on the point is the fact that Mike Leven  
25 specifically told Steve Jacobs that he is not bound by that

1 agreement because Steve Jacobs refused to be bound by that  
2 agreement, he refused to have his life and his contract  
3 governed by Macau law, and he said, it's okay, Mr. Leven did,  
4 don't worry about that, our deal is the terms sheet. We put  
5 sworn testimony from the actual principals. Of all the people  
6 that are scattered throughout the courtroom I don't believe  
7 Mr. Leven's one of them, but I sure would have liked to have  
8 seen a declaration from him if they wanted to say that there's  
9 a legitimate issue under debate here as to whether Steve  
10 Jacobs had agreed to be an employee, something I guess at the  
11 same parallel or equation of the valet parker or a bellman or  
12 somebody else and therefore he's subject to that same  
13 handbook. It's an absurd argument, and it's a desperate  
14 argument. Las Vegas Sands had an opportunity to bargain, and  
15 they did. And they have to live with that bargain.

16 Now, the elephant in the room for Sands China, of  
17 course, Your Honor, is something that I foreshadowed last time  
18 we were here. And that, of course, is the issue of waiver.  
19 Let's assume for the sake of debate that there was some  
20 legitimate argument that Sands China had that no matter what  
21 these documents are they're entitled to be the sole party that  
22 possesses them. What did Sands China do -- and we have to ask  
23 that question because the law mandates that we do -- what did  
24 Sands China do to protect its rights? For that matter, what  
25 did LVSC do to protect its rights? Well, first of all, they

1 unceremoniously escorted Mr. Jacobs -- on the day they claim  
2 he downloaded documents they escorted him from Mr. Leven's  
3 office with security guards to his room to pack, and took him  
4 to the border. Can I go to my office, Mr. Jacobs asked. No,  
5 you cannot. They escorted him to the border with his laptop  
6 and presumably with the thumb drives he uses and that Sands  
7 China gave to him with information on them, escorted him to  
8 the border and said, hope to never see you again. A year or  
9 so ago, more, escorted him to the border and did nothing.

10 Then they get sued. What did they do when they got  
11 sued? Same exact thing. Nothing. Sands China apparently  
12 starts going through his computer. Matter of fact, we have  
13 reason to believe they went through his computer that day.  
14 That's why I can't wait to depose the IT people to see who  
15 exactly was downloading that day. They went through his  
16 computer the day of his termination, and they let their  
17 counsel know, oh, boy, he's got some stuff, he's got some  
18 reports on Macau officials, we need to get those investigative  
19 reports back. They didn't say, we want everything back; they  
20 didn't say, we want the email back; they didn't say, we want  
21 the memos back; they didn't say, we want all of the financial  
22 stuff back; they didn't say they wanted every single thing  
23 that this man carried with him on a daily basis because his  
24 job required him to be so mobile. They said, give us that  
25 really incriminating, inflammatory stuff. A letter campaign,

1 some of it is a little humorous, between Ms. Glaser and Mr.  
2 Campbell ensued, and nothing happened other than Mr. Campbell  
3 saying, you can have the originals, but, in so many words,  
4 you've got to be crazy if you think I'm giving you everything  
5 back, you have no right to it back and why in the world would  
6 he do it. And he didn't.

7           So what did they do then? Crickets. Nothing.  
8 Absolutely nothing. Colby Williams tells them in July of this  
9 year -- he didn't say, there's privileged communications in  
10 here and so I'm going to stop reviewing. Thank God he wrote  
11 that so we can stop debating about what he really said. What  
12 he really said was, I see that there's privileged  
13 communications in here that might have nothing to do with this  
14 case and I'm not interested in wasting my time reading that  
15 stuff so why don't we enter into this very simple protocol.  
16 He didn't say, I'm raising my hands and stopping reading  
17 because there's privileged communications. He said the  
18 opposite. He said that Steve Jacobs was entitled to possess  
19 these privileged -- otherwise privileged communications  
20 because he had access them, he was the CEO and he was the  
21 president. That's what Colby Williams said. And what did  
22 they do protect their rights then? Nothing.

23           It is only until Mr. Peek in a frenzy that I had  
24 somehow committed ethics violations files a motion for  
25 sanctions for the very first time, a year later, that we see



1 these people getting off their hands and claiming outrage and  
2 prejudice and, oh, my God, we need this stuff back  
3 immediately. "Criminal behavior" was the phrase used.  
4 "Unethical behavior" is the words used against me after a year  
5 of knowing what he had. This is not a fact that can be  
6 overlooked. They would like you to. They will say, we didn't  
7 really know the magnitude until Colby's email. Well,  
8 discovery as I predict will show that they both will have to  
9 retract from that position when we find out when they were  
10 going through Steve's computer, which we already know was the  
11 day of, we will find out just when all of this came to light  
12 that it was only in July -- as if that's a good enough excuse,  
13 by the way, but it's only in July that they finally realize  
14 the magnitude. Well, that's utter nonsense. They knew from  
15 the day he left what he had and all they cared about was  
16 getting back these investigative reports from -- about  
17 government officials. That's what they knew about.

18               So where does it take us full circle? And I'm  
19 sorry, I know I'm going on a little longer than you would  
20 prefer.

21               Where does it take us? We started with a motion in  
22 limine over ethics charges.

23               THE COURT: It's okay. I just finished a two-day  
24 hearing that took fifteen days. So, you know, give you an  
25 extra fifteen minutes --

1 MR. PISANELLI: I appreciate that.

2 THE COURT: -- for both of you.

3 MR. PISANELLI: Thank you.

4 So where do we find ourselves? When I was banging  
5 my head last night wondering what do I argue, do I argue the  
6 open motion, do I argue the reply motion or brief -- I should  
7 call it a reply motion, because that's what it is -- do I  
8 reply to the new arguments that are being presented today.  
9 And I think the only thing I really can do is say that we must  
10 end where we started, a motion in limine based upon ethics  
11 charges that had no -- no meet and confer -- I was going to  
12 say 2.34, but I think this one is 2.47 -- and a motion that  
13 has nothing to do with relevance, prejudice, and things of  
14 that sort that you weigh on a daily basis when you have a  
15 trial to determine the probative value of information. They  
16 have not now, they will not ever tell you that these records  
17 have no probative value. They only tell you in fancy words  
18 that have nothing to do with reality that they are somehow  
19 prejudiced and they get to be the gatekeeper.

20 Well, the law doesn't say you get to be a  
21 gatekeeper, and the law certainly doesn't say you get to get  
22 an order directing you to be the gatekeeper over something  
23 called a motion in limine. For all those reasons, Your Honor,  
24 we ask that it summarily be denied. And we'll take up this  
25 issue of where we are on the protocol whenever you tell me to.

1 THE COURT: Item 3 on today's agenda.

2 Ms. Glaser.

3 MS. GLASER: Thank you, Your Honor.

4 Your Honor, the policies of nondisclosure and of  
5 confidentiality were signed by Mr. Jacobs. The motion in  
6 limine was filed to get back documents that he took with me.

7 THE COURT: A motion in limine is not used to get  
8 back documents. It's used the limit the evidence that is  
9 admitted or to allow evidence to be admitted during a  
10 particular hearing.

11 MS. GLASER: We could not -- and I want to be very  
12 candid with the Court, which I think I have been. And if Your  
13 Honor for a moment -- I mean, that's more important to me than  
14 anything else I can say to Your Honor. At no time was there  
15 ever, ever an effort to do anything other than be a hundred  
16 percent candid with this Court by me or anybody else in my law  
17 firm or -- and I certainly can speak for Mr. Peek. So if -- I  
18 want to get that out of the way.

19 Mr. Pisanelli -- there was three efforts to meet and  
20 confer. I can't meet and confer with myself, and I'm saying  
21 to you as an officer of the court -- and maybe I should put  
22 everything in writing, some of which is in writing -- we did  
23 try to meet and confer, and we were unsuccessful. I am not  
24 suggesting it was nefarious. It simply wasn't possible.  
25 That's number one.

1           Number two, there is no legal authority for the  
2 proposition that a document return policy must be in an  
3 employment agreement in order to be enforceable, number one.  
4 Number two -- and I -- we actually have, and I'm glad to at  
5 some point pursuant to your Court -- the Court's supervision,  
6 we have a IT report, and there were over 11 gigabytes of  
7 documents downloaded about a half an hour before Mr. Jacobs  
8 was fired on July 23, 2010. And they were downloaded from his  
9 computer when he was in his office. Maybe somebody else did  
10 it. That's possible. I can't -- I am not here to tell you  
11 that I know he didn't do it or he did do it, either way. I  
12 know that they were downloaded from his computer and he was in  
13 his office and it was a half an hour before he met to be  
14 fired, period. Those documents that he took should not be  
15 used in an evidentiary hearing in connection with  
16 jurisdiction.

17           Yes, we made a motion in limine because we can't ask  
18 -- and I'm -- no hiding the ball here. We can't ask for  
19 affirmative relief. We are asking to be out of this case on  
20 jurisdictional grounds as quickly as humanly possible. We  
21 asked for that November 21st hearing, and Your Honor is right,  
22 we have discovery issues that require to be put off. And I  
23 understand that. Not because we're trying to delay. We want  
24 to move forward as quickly as we can. And I'll get to the  
25 discovery motion in a moment.



1 THE COURT: That's Item Number 2 on my agenda.

2 MS. GLASER: I understand that, Your Honor, very  
3 clearly.

4 There are downloaded documents that should not be  
5 used until the Court, period, makes a determination about  
6 which documents should be used and which documents should not,  
7 if any of them should. It is -- we have provided you caselaw  
8 -- I was surprised to hear Mr. Pisanelli say this, that  
9 there's no caselaw that says you can't use these documents.  
10 Contrary to what is -- the cases we did provide you, you're  
11 not allowed to use documents. You're supposed to return  
12 documents that you improperly took. You're right, hundred  
13 percent. All we get with the motion in limine is you can't  
14 use them at the hearing. I understand that. There's an  
15 argument, well, you didn't specify which documents you're  
16 talking about. Your Honor, you can't specify what you don't  
17 know. There's no -- you have been provided no declaration  
18 that we know what was taken. If we knew what was taken, we  
19 wouldn't be here. We have no idea what was taken by Mr.  
20 Jacobs -- excuse me, by who we believe to be Mr. Jacobs the  
21 morning, July 23, 2010, that somebody in his office from his  
22 computer downloaded over 11 gigabytes of documents. Nobody  
23 has played fast and loose with this Court. Whether we were  
24 here by pro hac vice or we were here because we are otherwise  
25 members of this bar, nowhere at no time do we ever deal with

1 anything other than complete candor with this Court.

2 Documents were taken by appears to be Mr. Jacobs.  
3 His lawyer has admitted -- Mr. Campbell has admitted, his  
4 prior lawyer, that he has these documents. We don't know what  
5 they are. We want those documents to be excluded from  
6 evidence at the time of the evidentiary hearing. The protocol  
7 is a separate -- I acknowledge that to you, is a separate  
8 vehicle to determine what documents are appropriately used and  
9 what documents are not, both in the litigation generally, but  
10 certainly in the evidentiary hearing.

11 So, Your Honor, we ask -- at worst this motion  
12 should be put off because perhaps it's premature until there's  
13 a determination made by Your Honor with respect to the body of  
14 these documents, whether they can be used at all and/or  
15 whether some of them, many of them are privileged. The fact  
16 that he came into possession of them as the CEO of the company  
17 and has privileged documents in no way takes -- does that take  
18 away from the fact that they're privileged and can't be  
19 provided to either counsel or third parties or the Court.

20 Your Honor, if you have any questions, I'm glad to  
21 answer them.

22 THE COURT: Mr. Sedlock has a note for you. Isn't  
23 the Mr. Sedlock?

24 MS. GLASER: No. That's Mr. Marcus.

25 THE COURT: Oh. I recognize him from other

1 hearings.

2 MR. MARCUS: Good to see you, Your Honor.

3 THE COURT: I'm sorry I can't remember your name.

4 MS. GLASER: Your Honor, we did not -- the reports  
5 that we asked for don't come from this 11 gigabytes. I want  
6 to be clear about that. These reports were given -- they're  
7 watermarked reports to prevent obvious things, and they were  
8 given to Mr. Jacobs, we learned in our investigation, after he  
9 filed the lawsuit, and we ask for them back. That has nothing  
10 to do with the download on July 23, 2010, nothing to do with  
11 it. They weren't part of that. And I assume Mr. Pisanelli  
12 doesn't know that, but certainly his client knows that. Our  
13 investigation with respect to what occurred was after  
14 plaintiff's counsel disclosed plaintiff's possession of over  
15 11 gigabytes of documents. That's when we did our  
16 investigation and made the determination that these documents  
17 were taken without our knowledge. We then learned about the  
18 download on July 23. We do not have any record with respect  
19 to what was taken. We can't reconstitute that. And I'm here  
20 to tell you that. And I'm glad to have our IT expert examined  
21 at a deposition under penalty of perjury and to testify about  
22 exactly what I'm saying to Your Honor.

23 Again, I think at worst this motion should be  
24 deferred, because we intend to be making a motion in limine to  
25 prevent documents that are improperly in Mr. Jacobs's

1 possession from being used in connection with the evidentiary  
2 hearing without authorization from this Court. Thank you,  
3 Your Honor.

4 THE COURT: Thank you.

5 The motion is limine is denied without prejudice for  
6 failure to comply with EDCR 2.47. The motion may be renewed  
7 upon good-faith efforts to confer. If counsel are concerned  
8 about accurately documenting the conversations that occur  
9 during the 2.47 conference or any future 2.34 conference, I  
10 would recommend the use of a court reporter for in-person  
11 meetings. If it is a telephone call and someone decides to  
12 record the telephone call, you must disclose the fact that you  
13 recording the telephone call.

14 Anything else related to this motion before I go to  
15 Motion Number 2?

16 MS. GLASER: Your Honor, I do have a question, if I  
17 might. With respect to the denial --

18 THE COURT: I am not denying any substantive basis  
19 in the motion at all.

20 MS. GLASER: That's what I'm asking. Thank you,  
21 Your Honor.

22 THE COURT: Purely procedural.

23 MS. GLASER: Understood.

24 MR. PISANELLI: And for this motion, Your Honor,  
25 just so the record's clear, I will accept Ms. Glaser's



1 invitation to depose her IT personnel.

2 THE COURT: I'm not there yet. That's Item 4 on my  
3 agenda.

4 All right. Let's go to your motion for  
5 clarification. And I apologize the other day for vacating a  
6 hearing without you present, Ms. Glaser. But it became  
7 apparent during our hearing that there was no way we were  
8 going to be able to be ready, given the issues that had to be  
9 accomplished and the position the Nevada Supreme Court took  
10 with respect to the extraordinary relief that I instructed Mr.  
11 Peek's firm to accomplish.

12 MS. GLASER: I have to say, Your Honor, I have never  
13 had a judge be as candid as you have been with respect to  
14 that. And it is not lost on me, and it's very much  
15 appreciated. So thank you for that.

16 THE COURT: But I apologize, because Mr. Ma was  
17 here, so I took the opportunity to have him come up to  
18 participate and then let him go back while I dealt with the  
19 other case so you weren't making an affirmative appearance in  
20 that case.

21 MS. GLASER: Not a problem. Thank you.

22 THE COURT: All right. Now we're on your motion for  
23 clarification.

24 MS. GLASER: Your Honor, I don't think anything  
25 speaks better about why we need a clarification than the

1 opposition to the motion for clarification. Your Honor may  
2 recall, and we keep harping on this, there were two things in  
3 the reply papers -- excuse me, the opposition papers that in  
4 our view are simply wrong. We've been up to the Nevada  
5 Supreme Court and -- as Your Honor well knows, and in -- I  
6 want to just address -- I want to address two points. Your  
7 Honor will recall that in the opposition they talk about, hey,  
8 we get discovery with respect to specific jurisdiction. And I  
9 want to remind the Court of three things. In their answer in  
10 the Nevada Supreme Court with respect to what was before the  
11 Nevada Supreme Court and what had been before Your Honor on  
12 the motion to dismiss Mr. Jacobs says, and I'm quoting from  
13 page 1 of his brief -- this is the answer in the Nevada  
14 Supreme Court, "Jacobs asserted two grounds for personal  
15 jurisdiction -- 'transient' and 'general' jurisdiction,"  
16 number one.

17           Number two, on plaintiff's motion to conduct  
18 jurisdictional discovery the first page of the motion, "Jacobs  
19 has already shown this Court that there is more than good  
20 reason to believe that Sands China is subject to general  
21 jurisdiction here."

22           Third, the order granting petition for writ of  
23 mandamus from the Nevada Supreme Court, if you go, Your Honor,  
24 to the third page, this court says, "We therefore direct the  
25 District Court to revisit the issue of personal jurisdiction

1 over petitioner by holding an evidentiary hearing and issuing  
2 findings regarding general jurisdiction." There is no  
3 reference to specific because it was dropped by prior counsel.  
4 The court didn't have it to review, the court didn't consider  
5 it, and the court didn't order an evidentiary hearing in  
6 connection with it. So that's number one.

7           Then for the first time -- actually, it's not the  
8 first time. It was raised in oral argument when we were last  
9 before Your Honor. There's now suddenly a theory apparently  
10 attributable to general jurisdiction that talks about agency.  
11 And I want to address agency for a moment. Because, again,  
12 that's why the discovery is too broad, in our view, and why it  
13 needs --

14           THE COURT: Are you referring to the quote I gave  
15 from the transcript of the original motion to dismiss, or are  
16 you referring to something else?

17           MS. GLASER: With respect to what I just said?

18           THE COURT: The agency issue. The new issue that  
19 you're talking about. I as part of our hearing recently went  
20 back and read part of the transcript during our hearing about  
21 what my finding really was --

22           MS. GLASER: Correct.

23           THE COURT: -- related to the board members.

24           MS. GLASER: Yes. Yes.

25           THE COURT: Okay. I just want to make sure that --

1 that's always been an issue to me.

2 MS. GLASER: Okay. And I want to address that.

3 THE COURT: Okay.

4 MS. GLASER: Thank you for asking the question.

5 What is said at page 17 of its opposition to the  
6 motion to dismiss, "Mr. Jacobs," I'm quoting, "seeks to  
7 establish jurisdiction over SCL based on SCL's contacts with  
8 the forum --" it goes on to say, and Counsel tries to take  
9 advantage of this "-- not just those attributable to Las Vegas  
10 Sands Corporation."

11 In the answer to the petition, in their answer to  
12 the petition at page 5, and I'm quoting, "SCL is subject to  
13 personal jurisdiction based on its own," based on its own,  
14 "contacts with Nevada." That's their -- that's the position  
15 that they presented to Your Honor, and that's what went up to  
16 the Nevada Supreme Court, not any so-called agency theory.  
17 And by agency, just so we're not oblique here, they're  
18 essentially saying that -- I guess that Las Vegas Sands acted  
19 as -- or an officer or director acted as an agent for Sands  
20 China in connection with actions taken in Nevada. I guess  
21 that's the theory. And what we're saying is that wasn't  
22 briefed, it wasn't the position they took before Your Honor on  
23 the motion to dismiss, and it certainly wasn't reviewed by the  
24 Nevada Supreme Court when they issued their writ.

25 Now, they have acknowledged that they are not



1 alleging personal jurisdiction over SCL by virtue of any  
2 conduct of SCL's parent, LVSC. Now -- and again I'm quoting  
3 from the -- from the answer, "As Jacobs explicitly stated to  
4 the District Court, he never sought to drag SCL into Nevada on  
5 LVSC's coattails. Instead, he asserted personal jurisdiction  
6 over SCL based on SCL's own contacts," own contacts, "with  
7 Nevada. SCL is subject to personal jurisdiction based on its  
8 own contacts with Nevada. For purposes of this dispute the  
9 affiliation between SCL and LVSC is the reddest of herrings."

10 That's where we start. I believe it's quite clear  
11 that that's a new theory. But, in any event, we're not here  
12 to reargue. We obviously respectfully disagree, but we're not  
13 here to reargue discovery. That ship has sailed. What we're  
14 saying is that you don't need to take Mr. Kay's deposition,  
15 and we outlined, I thought quite well, but perhaps not, why  
16 that was inappropriate. Mr. Kay was the CFO and executive  
17 vice president of Las Vegas Sands. I don't know if Your Honor  
18 remembers, and I'm -- and I'm not going to correctly quote  
19 you, but Your Honor was -- when we had this discovery issue  
20 before Your Honor on whether there should be discovery or not  
21 you were talking about, look -- you said it perhaps nicer  
22 than --

23 THE COURT: It's on page 43 of the transcript.

24 MS. GLASER: You were a little nicer than I'm saying  
25 it now, but you said, look, they have a title here that they

1 are chairman of Las Vegas Sands and chairman of Sands China.  
2 And then you went on to -- and Mr. Leven, no question, was a  
3 special consultant to the board of Sands China, and he's also  
4 an officer of Las Vegas Sands. And that was significant. And  
5 I'm not -- whether I agree or disagree, Your Honor was quite  
6 clear about that. I'm distinguishing, Mr. Goldstein, who's  
7 the president of Global Gaming at Las Vegas Sands Corporation,  
8 and he's been that since January 1, 2011. He's also executive  
9 vice president, and he had a prior management position with  
10 Las Vegas Sands, not with Sands China. Never an officer or  
11 director of Sands China, period. Mr. Kay is the CFO and  
12 executive vice president of Las Vegas Sands China [sic] since  
13 December 1, 2008. He's never been employed by anybody  
14 connected with Sands, anybody before that date. And he has  
15 always been an officer of Las Vegas Sands Corporation, never  
16 of Sands China.

17           So if you go to, for example, the next point, the  
18 Request Number 15, that is, quote, "Services performed by Las  
19 Vegas Sands on behalf of Sands China --" I think I'm directly  
20 quoting or something close to that, "-- regard site  
21 development, recruiting of executives, marketing Sands China's  
22 properties, negotiation of the joint venture with Harrah's,  
23 negotiation of Macau real estate to Stanley Ho." Your Honor,  
24 just too broad if you're considering general jurisdiction, the  
25 contacts that Sands China through its representatives has

1 here, whether that is sufficiently pervasive to justify the  
2 Court exercising jurisdiction over Sands China.

3 Request Number 18, "Reimbursement to Las Vegas Sands  
4 China's executives for work related to Sands China." Again,  
5 we don't -- we have always taken the position, and it's a  
6 matter of public record, Las Vegas Sands owns 70 percent of  
7 Sands China has, period. We've also emphasized to the Court  
8 it's a separate Hong Kong entity on the Hong Kong Stock  
9 Exchange, and no question it's required to be independent.  
10 They don't have bank accounts here, et cetera. We went  
11 through all this. I won't bore you with that again.

12 What we're asking the Court to clarify quite  
13 clearly, and, frankly, we were accused of -- this actually  
14 being a motion for consideration. I think there's nothing  
15 more obvious than a reconsideration when now we're being told  
16 that you're supposed to allow discovery with respect to  
17 specific jurisdiction, which was clearly not the position and  
18 not what was ordered by the Nevada Supreme Court. That's  
19 reconsideration. But having said that, we're not -- we're  
20 simply trying to demonstrate to the Court that specific  
21 jurisdiction clearly is out. Agency was not addressed before  
22 Your Honor, nor was it addressed in the Nevada Supreme Court,  
23 and we think that one's out, and therefore the limitations on  
24 the categories and the people being deposed ought to be more  
25 significant than it is right now.

1 THE COURT: Thank you.

2 Mr. Pisanelli.

3 MR. PISANELLI: Here we go again. Motion for  
4 clarification. I'm assuming underlying the word  
5 "clarification" is Ms. Glaser's concession that she's  
6 confused.

7 Now, what she did just tell you in relation to our  
8 position I guess is that she was confused that there were a  
9 longer list of grounds for hauling Sands China into court here  
10 than she had realized at that hearing. Or is she confused  
11 that we actually were quite crystal clear about our position  
12 at the hearing but later went back and took a word or two out  
13 of context and said because an argument was being made about  
14 general jurisdiction everything else was eliminated? For  
15 instance, Your Honor, never had to get to transient  
16 jurisdiction. Neither did the Supreme Court. But neither  
17 Your Honor nor the Supreme Court ever said transient  
18 jurisdiction's off the table. She tried that one and lost  
19 that one before.

20 So, you know, all I ask on this topic is just let's  
21 be forthright here, right. I didn't throw out any procedural  
22 hurdles, I didn't say that there's time limits that were  
23 missed in our opposition. I just said, let's just please be  
24 honest with each other, there's no confusion, there's no  
25 confusion as to whether Mr. Kay gets to be deposed or not.



1 She knew what your order was. She even sought clarification  
2 at the hearing. There's no confusion, there's no  
3 clarification needed here.

4 If she wants me to say it again, I'll say it again.  
5 If she wants to hear the different theories we have of why  
6 this company is subject to personal jurisdiction, I'll say  
7 them again. General jurisdiction based upon Sands China's  
8 contacts with Nevada. General jurisdiction based upon the  
9 agency role that LVSC played on behalf of Sands China. And  
10 I'm sure it's not lost on Ms. Glaser that agency goes along  
11 with subagency. We're not here to have a debate over form  
12 over substance, we're here to figure out whether Sands China  
13 had contacts with Nevada, its agents, that were performing  
14 services for Sands China in Nevada that Sands China otherwise  
15 would have had to perform for themselves. That's what the  
16 Ninth Circuit told us to do, that's what the Ninth Circuit  
17 says is the question to be asked, not form over substance.  
18 Doesn't say, well, was the agent from LVSC -- did it have a  
19 title in performing those agency functions. No. Neither did  
20 Your Honor. The only party that comes forward saying that  
21 agency goes hand in hand with title is Ms. Glaser.

22 Agency has nothing to do with title. Matter of  
23 fact, Sands China can have agents in Nevada working on its  
24 behalf which would be minimum contacts that would be taken  
25 into consideration for purposes of personal jurisdiction even

1 if they don't work for LVSC. It doesn't matter whether  
2 Sheldon Adelson had one or two titles. It's certainly an  
3 issue for you to consider of what his role was, but it doesn't  
4 matter whether he could or could not have been acting as an  
5 agent.

6 Same thing with Mr. Kay. We know what he was doing.  
7 We've already had this debate. This isn't clarification.  
8 This is reconsideration. They know what Mr. Kay does. He was  
9 in charge of the financing, financing which occurred in  
10 Nevada, financing for Sands China that was negotiated and  
11 executed here on Las Vegas Boulevard with the agent of Sands  
12 China, Mr. Kay.

13 Same thing with Rob Goldstein. The issues are  
14 identical. It doesn't matter if he has a title, and Ms.  
15 Glaser has never been confused about that topic. I'm certain  
16 she wasn't confused.

17 To somehow run from specific jurisdiction also is an  
18 odd position to take that that is off the table of whether  
19 Sands China had contacts with Nevada relating to the actual  
20 wrongful termination of Mr. Jacobs, whether Mr. Adelson, the  
21 person who by all measures from everything we've seen made the  
22 decision to terminate Mr. Jacobs, made the instruction to tell  
23 Mr. Leven to give him an ultimatum, give him a half hour to  
24 decide whether he will quit or be terminated and have him  
25 escorted to the border. That decision, she says, shouldn't

1 come before you despite that that decision occurred here on  
2 Las Vegas Boulevard, despite that that's where those  
3 instructions came from, that's too specific and we shouldn't  
4 have anything to do with it.

5 And I won't be redundant on her attempts to run from  
6 the transient jurisdiction, which really could and very well  
7 may at the end of the day be more important than all of this  
8 other stuff that we're going to debate. The bottom line is  
9 they're not confused about anything.

10 Now, she also claims to be confused about the dates  
11 for the discovery that you told us about, although she hasn't  
12 really touched upon it much, if at all, in oral argument.  
13 What's that confusion about? Your Honor rightly put the end  
14 date at the filing of the complaint. And a theory that I just  
15 can't understand where it comes from and what authority  
16 supports it, Ms. Glaser would have you pull the discovery back  
17 to the time of termination despite that virtually every case  
18 which talks about -- either at the United States Supreme Court  
19 or at the State Court levels, any case that talks about this  
20 issue says over and over and over that the filing of the  
21 complaint is relevant for purposes of determining contacts  
22 with the state on a jurisdictional purpose -- or basis, and  
23 she wants to tell you, no, no, no, no, let's just have it when  
24 Steve Jacobs was terminated. And why does she say that, Your  
25 Honor? Because she knows that Mike Leven took over the

1 position as president and CEO, she knows that he was running  
2 the company from Las Vegas Boulevard here in Nevada, the  
3 Venetian's headquarters, and she doesn't want the evidence to  
4 come in about those very substantial contacts. Why else would  
5 she say, no, let's push it back to the date of his  
6 termination?

7           There's no confusion. She's not confused what you  
8 said. There wasn't new evidence, wasn't new law, there's no  
9 confusion. It's a request for a do over, telling you you got  
10 it wrong. That's all it is, you got it wrong, Judge.

11           Same thing, she says, on the start date, that it  
12 should be from the IPO. What? The IPO, because it could not  
13 logically without money have been doing anything. Well, how  
14 about some evidence about that? I think we're going to find  
15 that it had lots and lots and lots going on, lots of contracts  
16 were being put in place for its benefit or even being executed  
17 on its own. And this concept that we shouldn't -- we should  
18 turn a blind eye and again have a fictitious debate over what  
19 happened by turning our head against relevant evidence during  
20 a time period for reasons -- I don't know, public policy? I  
21 can't even think of what the logic would be to intentionally  
22 turn our back on evidence and start at the IPO, rather than  
23 sometime earlier when Sands China, either in its official  
24 capacity or its predecessor entities or its promoters, the  
25 people that were creating it, were actually having contact



1 with Nevada.

2           The long and short of it is this, Your Honor. You  
3 already decided all these things. And I don't need to rest on  
4 that simple issue, Bob, I don't need to rest on the simple  
5 issue that you've already decided, though I could. The issue  
6 is you decided it because you thought about it and you  
7 considered the debate and you considered the arguments and you  
8 considered the evidence and the law. That's why we shouldn't  
9 change this whatsoever. Sands China was not thought up as an  
10 afterthought.

11           THE COURT: You agree, though, that if I think I was  
12 wrong I should change it?

13           MR. PISANELLI: Well, that depends if you're right  
14 about being wrong. So we'll have to see exactly what it is  
15 that you're talking about.

16           MR. PEEK: That's a good concession, Jim.

17           MR. PISANELLI: But if there is an issue that you're  
18 considering, I'd be happy to address it. But I just don't see  
19 it, Your Honor. The only argument -- I'll be frank with you.  
20 I think the only argument even worthy of discussion, though it  
21 is not clarification, it is indeed still a motion for a  
22 reconsideration, is whether we should go pre incorporation on  
23 Sands China. They say that, you know, we're going to have an  
24 argument about contacts Sands China had before its  
25 organizational documents were filed in the Cayman Islands.

1 And I would suggest to Your Honor -- again, I'll concede that  
2 at least that's a fair debate. But it shouldn't -- you  
3 shouldn't change it. We should go back to January 1st for a  
4 few reasons. One, they've already stipulated to that window.  
5 I think she forgot about that when they filed this opposition.  
6 That's a window they've already stipulated to.

7           And secondly, and it was the last point I was going  
8 to make, that is it is a fiction to say that in an  
9 organization of complexity that LVSC is that Sands China was  
10 an afterthought that came about in a spur of the moment and  
11 there really was nothing going on pre incorporation -- and by  
12 incorporation we're talking about filing of documents. This  
13 army of lawyers and accountants and executives were doing a  
14 lot. They were doing a lot in Nevada for the benefit of that  
15 entity and for the benefit of the preexisting entities that  
16 would become Sands China. And we're entitled to analyze to  
17 see whether it actually was an entity that had its name  
18 changed, was merged into another one. We're entitled to  
19 analyze to see if it was, as they claim now, a brand-new  
20 entity that had no contacts with anything. If that latter  
21 conclusion is found, then the discovery's going to be easy,  
22 won't it. You don't have any contacts, it didn't have  
23 anything that was going on in Nevada, it didn't have any  
24 business dealings that were occurring, well, then the  
25 discovery's going to be pretty simple.

1 I don't think that's true, and that's why I ask Your  
2 Honor -- we're not talking about relevance, we're not talking  
3 about admissibility, we're talking about discovery, a far  
4 broader standard than we should be looking at, before we just  
5 close the window and say, no, you don't get to look down that  
6 alley.

7 THE COURT: But it's limited discovery in  
8 conjunction with the order -- or, I'm sorry, the writ the  
9 Nevada Supreme Court has issued to me.

10 MR. PISANELLI: Right.

11 THE COURT: Okay. We have to be mindful of that,  
12 because there is a stay that's in place. And so I am limited  
13 significantly in what might generally be allowed as discovery.  
14 But I think I narrowed it when I did the order --

15 MR. PISANELLI: As did I.

16 THE COURT: -- whether you guys like it or not.

17 MR. PISANELLI: And if there is anything that you  
18 have doubt about, about being accurate and fair, all filtered  
19 through the fact that we're talking about discovery, not  
20 admissibility for purposes of contact, then, of course, I'd be  
21 happy to address the point. But I think we know where we're  
22 going. It is a sham to say we were confused. Nobody in this  
23 room is confused. We all sought clarification at the moment,  
24 and you told us what you wanted --

25 THE COURT: I even stayed after 5:00 to give you

1 clarification.

2 MR. PISANELLI: Right. You asked all of us, you  
3 exhausted all the questions. There was nobody confused when  
4 we walked out of here.

5 THE COURT: All right. Ms. Glaser.

6 MS. GLASER: Your Honor, I don't mean to be too cute  
7 about this, but there was no meet and confer with respect to  
8 the motion for discovery, and Mr. Pisanelli actually admits  
9 that in writing. He says it wouldn't have mattered anyway  
10 because we would never have been able to agree. So I'm --

11 THE COURT: Well, you guys told me you wouldn't  
12 agree in open court.

13 MS. GLASER: I'm not --

14 MR. PISANELLI: And she told me on the telephone, as  
15 well. Perhaps she forgot that.

16 THE COURT: Well, no. You told me in open court,  
17 which to me is a pretty big deal. When you guys tell me in  
18 open court you're not going to reach an agreement, I say, then  
19 I guess you're going to have to file a motion.

20 MS. GLASER: All I'm saying, Your Honor, is there  
21 was a specific effort to meet and confer by us. Mr. Pisanelli  
22 filed his motion with a meet and confer, and I'm just -- I  
23 think what's good for the goose is good for the gander in any  
24 event.

25 THE COURT: I'm happy to discuss that with you at



1 the time of that hearing. Today we're here on a motion for  
2 clarification because you want me to limit the scope of what I  
3 ordered beginning on page 43 of the transcript --

4 MS. GLASER: Right, Your Honor.

5 THE COURT: -- at the hearing I did on the day at  
6 4:00 o'clock because Judge McKibben asked me to because Mr.  
7 Peek had to be at his trial.

8 MS. GLASER: Okay. And, Your Honor, I want to say  
9 it as clearly as I can --

10 THE COURT: September 27th.

11 MS. GLASER: -- the best reason for clarification is  
12 found in the opposition papers, because the Nevada Supreme  
13 Court has limited the jurisdictional evidentiary hearing to  
14 general jurisdiction, not specific jurisdiction. And I won't  
15 bore you with quoting from the --

16 THE COURT: Actually what the Nevada Supreme Court  
17 says, just so we're entirely all clear, because I am bound to  
18 do what they tell me to when they issue a writ --

19 MS. GLASER: I have it right here, but go ahead.

20 THE COURT: "Order that petition granted and direct  
21 the clerk of this court to issue a writ of mandamus  
22 instructing the District Court to hold an evidentiary hearing  
23 on personal jurisdiction, to issue findings of fact and  
24 conclusions of law stating the basis for its decision  
25 following that hearing, and to stay the action as set forth in

1 this order until after entry of the District Court's personal  
2 jurisdiction decision."

3 MS. GLASER: Your Honor, if you go up 11 lines above  
4 that, it clearly says to hold -- "by holding an evidentiary  
5 hearing and issuing findings regarding general jurisdiction."  
6 Because I'm telling Your Honor, and Your Honor can check the  
7 briefs --

8 THE COURT: I'm not checking the briefs, Ms. Glaser.

9 MS. GLASER: I understand. No question --

10 THE COURT: I'm going with what the Supreme Court  
11 told me to do in the writ that they issued.

12 MS. GLASER: And it says "general jurisdiction," not  
13 specific jurisdiction. Because counsel -- prior counsel,  
14 albeit, waived their argument with respect to specific  
15 jurisdiction both before Your Honor and again in front of the  
16 Nevada Supreme Court.

17 THE COURT: Anything else?

18 MS. GLASER: No, there is not, Your Honor.

19 THE COURT: Thank you.

20 The motion for clarification is granted in part. I  
21 am going to clarify again what I have said repeatedly since  
22 this case has been sent back sort of by the Nevada Supreme  
23 Court.

24 We are only going to do discovery related to  
25 activities that were done for or on behalf of Sands China.

1 That was an overriding limitation on all of the specific items  
2 that were requested in the motion for discovery.

3 Is there any further clarification that you would  
4 like to ask me at this time? Okay.

5 MS. GLASER: I would like the Court to be clear that  
6 with respect to specific jurisdiction it's a separate analysis  
7 that was not before the Nevada Supreme Court. And by  
8 definition not only do they articulate it in their order, but  
9 they clearly also say they can't be ordering an evidentiary  
10 hearing on issues that weren't before it and there's nothing  
11 discussed about specific jurisdiction.

12 THE COURT: Anything else?

13 MS. GLASER: I do -- I understand Your Honor's  
14 argument, and I think you're not agreeing with me on the  
15 agency theory.

16 THE COURT: I'm going to actually read you the writ,  
17 which is much more important than any other document from the  
18 Supreme Court.

19 MS. GLASER: Okay.

20 THE COURT: The writ says -- and it's directed to  
21 me. This is the second paragraph. "Now, therefore, you are  
22 instructed to hold an evidentiary hearing on personal  
23 jurisdiction, to issue findings of fact and conclusions of law  
24 stating the basis for your decision following that hearing,  
25 and to stay the action as set forth in the order until after

1 entry of your personal jurisdiction decision, in the case  
2 entitled Steve C. Jacobs versus Las Vegas Sands Corp., Case  
3 Number A-10-627691-C." Love and kisses, Nevada Supreme Court.

4 MS. GLASER: Your Honor, I did properly quote from  
5 the order above that.

6 THE COURT: I know. But what I'm trying to tell you  
7 is what matters more isn't what they say in their opinions,  
8 it's what the issue in the writ instructing me what to do.  
9 That's what I have to do. And I'm going to do it. And  
10 there's going to be a good order this time, instead of a lousy  
11 order that goes up, even if I have to draft it myself.

12 All right. Let's go to Item Number 3 on my agenda,  
13 which is --

14 MR. PEEK: I assume you mean by that your order  
15 denying jurisdiction. Well, I'm just trying to --

16 THE COURT: Okay. Let me -- instead of saying "good  
17 order," I will say a well-drafted and complete order. How's  
18 that?

19 MR. PEEK: Yeah. Because you don't have to  
20 necessarily find that there's jurisdiction.

21 THE COURT: No.

22 MR. PEEK: Okay.

23 THE COURT: I have to make a decision following an  
24 evidentiary hearing on the issue that a writ has been sent to  
25 me saying, you are specifically commanded to do this. And I



1 intend to do what they told me to do.

2 MR. PISANELLI: Quick question on the clarification  
3 issue.

4 THE COURT: Yes.

5 MR. PISANELLI: It was our understanding when we  
6 left this courtroom that we presented to Your Honor categories  
7 of discovery that we wanted, you granted many, you tailored  
8 some. We walk out now prepared to receive discovery and start  
9 noticing depositions. I have not had a discussion, so I don't  
10 know there's a debate in hand. But because of the silence  
11 we've heard since that last time I'm fearful that they're not  
12 intending to comply with that order unless they're receiving  
13 formal discovery requests, things of that sort. And I  
14 understood you not to be expecting that.

15 THE COURT: No, no. You're going to have to do  
16 formal discovery requests. Don't -- please, let's not assume  
17 that just because I said you can do these things --

18 MR. PISANELLI: Okay. Fair enough.

19 THE COURT: -- which is what I said, that that means  
20 they have to immediately respond. They don't.

21 MR. PISANELLI: But --

22 THE COURT: You have to do something affirmatively  
23 to put them in a position where they get it, which is one of  
24 the reasons I vacated the hearing, because there was no way  
25 we're ever going to get through it all by the time I had set

1 aside for November 21st, 22, and 23.

2 MR. PISANELLI: Well, in that regard do you want us,  
3 then -- I'll tell you the reason I thought you were expecting  
4 immediate compliance was because of the hearing, 30 days to  
5 respond and things of that sort just didn't fit. And so do  
6 you want us to go down that path pursuant to the rules as  
7 they're stated with response dates as --

8 THE COURT: That's Item Number 4 on my agenda.

9 MR. PISANELLI: Okay. I'll wait, then. I'm sorry  
10 to interrupt.

11 THE COURT: I'm on Number 3 right now, which is your  
12 ESI protocol. I understand that there's been a draft of an  
13 ESI protocol perhaps circulated. And, unfortunately, I've not  
14 had an opportunity to review the multiple competing drafts of  
15 the ESI protocol. Does anybody want to say anything about it  
16 while we're all here together?

17 MR. PISANELLI: I do, Your Honor --

18 MS. GLASER: Sure do, Your Honor. It was our draft,  
19 so maybe we should say it.

20 MR. PISANELLI: -- and I'll tell you what it is that  
21 I would like to say.

22 THE COURT: Okay. Why don't I let Ms. Glaser start?

23 MR. PISANELLI: I'll leave Colby Williams's email  
24 for her to see so she'll know exactly what it is I'm --

25 THE COURT: The July email? The one that -- the

1 July email that I started with on September 16th?

2 MR. PISANELLI: That's the one.

3 MS. GLASER: May I have just one moment, Your Honor?

4 THE COURT: Sure. It's really handy, because I've  
5 been harping on that particular email now for a month.

6 MS. GLASER: Well, we've spent a lot -- a lot of  
7 time drafting it.

8 (Pause in the proceedings)

9 MS. GLASER: Your Honor, I actually I think it's --  
10 doesn't matter, but it's Exhibit C to one of the 5,000 motions  
11 that have been before Your Honor.

12 MR. PEEK: It's Exhibit C to the reply, Your Honor.

13 THE COURT: Thank you.

14 MS. GLASER: It's called "Proposed Document Review  
15 Protocol." And what it literally does is agrees to -- the  
16 parties are required to agree to an ESI vendor. It really  
17 takes out of our hands and the other side's hands these  
18 documents. Just so I'm clear, Mr. Peek --

19 THE COURT: That's the hope.

20 MS. GLASER: No, it is. I mean --

21 THE COURT: I'm just telling you, Ms. Glaser, from  
22 past experience it's the hope.

23 MS. GLASER: Well, you know what --

24 THE COURT: Sometimes the ESI vendors make mistakes.

25 MS. GLASER: -- you're scaring me a little bit. But

1 okay. The idea was to pick an ESI vendor we both agreed to,  
2 to share the cost 50 percent, 50-50, then what happens is the  
3 ESI vendor then Bates-stamp numbers everything, plaintiff's  
4 counsel is supposed to provide to the ESI -- the ESI vendor  
5 all the documents received by Mr. Jacobs that are in his  
6 possession, custody, or control that he obtained. And I don't  
7 we do not want to get into a debate, because we actually put  
8 in the protocol "he obtained as an employee of SCL." We don't  
9 care about that. It's just he obtained as an employee,  
10 whether it was VML, SCL, Las Vegas Sands, all those documents  
11 of which we all concede are well over 11 gigabytes of  
12 documents. We want all those given to the ESI vendor. The  
13 ESI vendor shall put Bates-stamp numbers on everything so  
14 nobody's confused about what was provided, and I mean the  
15 originals go, so he doesn't keep anything in his possession,  
16 so nobody ever has to worry that somebody is let's just say  
17 even inadvertently reviewing trade secret information, more  
18 importantly, attorney-client privileged information, and, just  
19 as importantly Macau Privacy Act material that should not be  
20 reviewed by anybody.

21           After the Bates-stamp numbers are put on, then it's  
22 along with searchable -- and I'm a little out of my element,  
23 Your Honor, this is above my pay grade, but I'm going to  
24 describe what we put in the document, "searchable metadata  
25 information where it's available as required to make these



1 documents reasonably usable." And then we literally say,  
2 okay, this is what you do with emails, author, recipient, cc,  
3 bcc, et cetera; this is what you do with other electronic  
4 files, file name, file type or extension, et cetera; and for  
5 all documents the custodian, the Bates-stamp numbers beginning  
6 and the Bates-stamp numbers ending and the family range  
7 beginning and the family range ending; and then .tif images  
8 are produce in a monochrome, single-page format at 300 dpi  
9 resolution with Group 4, blah, blah. I mean, this is  
10 hypertechnical, but it's in an effort to safeguard the  
11 documents. And then what happens is effectively we -- they --  
12 the -- we go through the documents, our documents, nobody  
13 contends they're not --

14 THE COURT: Actually the ESI vendor typically runs a  
15 search, given search terms.

16 MS. GLASER: No problem.

17 THE COURT: You then go through the documents that  
18 are identified with issues related to the search terms. And  
19 then, if there are privileged items or other items I have to  
20 rule on, that's where we start.

21 MS. GLASER: That's the way this is set up. And it  
22 still takes into account full briefing, Your Honor, on the  
23 issue which we have not conceded and which Your Honor says is  
24 -- and it clearly is -- the notion that he shouldn't have had  
25 any of the documents to begin with and that the right way to

1 deal with this is -- it doesn't take them out -- we don't do  
2 anything with the documents, because the ESI vendor has them,  
3 but it doesn't take away from the issue that Your Honor still  
4 gets full briefing on who -- and maybe after discovery, okay  
5 with that, too, who is entitled to these documents, is Mr.  
6 Jacobs required to give them all back and do what normal  
7 plaintiffs do, file requests for production of documents, and  
8 not keep, and not have counsel or anybody else, any third  
9 party, review documents that don't belong to him. And the  
10 notion if something is privileged and he received it in his  
11 capacity as a CEO of the company and it was privileged at the  
12 time, he can waive that privilege, that is not true, and  
13 that's not the law. The law is quite clear that it's the  
14 company's privilege, not his, and the company does not waive  
15 that privilege and never has waived an attorney-client  
16 privilege. Nobody has conceded that, and no one has suggested  
17 that.

18           So what this protocol does -- and it's lengthy, but  
19 it's intended to be detailed because we put a lot of thought  
20 into it, and we are perfectly willing to meet and confer, if  
21 we can get that done, with a court reporter present or  
22 whatever present, telephone recording, doesn't matter to me,  
23 but we need to get this resolved so that the documents  
24 generally can be considered by the Court, should they be used  
25 or not in connection with evidentiary hearing, and to the

1 extent that Your Honor somehow disagrees that he doesn't  
2 improperly have them and shouldn't return them all, then at  
3 least we go document by document and determine what's  
4 privileged, what's subject to trade secret, and what is  
5 subject to the Macau Privacy Act.

6 THE COURT: You're going to go through all  
7 11 gigabytes?

8 MS. GLASER: Yes, ma'am, we are. And we have people  
9 set up to do that.

10 THE COURT: Okay.

11 MR. PEEK: We think there may be more than  
12 11 gigabytes, though, Your Honor. Because in light of the  
13 opposition that we saw from Mr. Pisanelli suggests to me that  
14 there's more than 11 gigabytes. I don't know what it is or  
15 not, and I'm not trying to put words in his mouth, but the  
16 opposition suggests that there's more than 11 gigabytes.

17 MR. PISANELLI: I think there is, but I don't know.

18 THE COURT: Let me ask a question -- let me ask the  
19 question more completely. Is it the intention of Sands China  
20 to go through all of the documents that are delivered to the  
21 ESI vendor and imaged for you to then review to determine if  
22 there is a particular issue and then to provide me with an  
23 item-by-item description as to your position?

24 MS. GLASER: Yes, ma'am, it is.

25 THE COURT: Okay.

1 MR. PEEK: And, Your Honor, as part of that process,  
2 because I'm sort of peripherally involved --  
3 THE COURT: Well, Mr. Kay gave an affidavit about  
4 it, so yeah.  
5 MR. PEEK: Right. Because I'm peripherally  
6 involved, there will be an issue, Your Honor, as to whether or  
7 not any of the documents can rightfully be used. And that'll  
8 be briefed in detail, rightfully be used --  
9 THE COURT: Absolutely.  
10 MR. PEEK: -- because we'll take depositions, we'll  
11 get to the bottom, as Mr. --  
12 THE COURT: And you have a motion for protective  
13 order that's coming up and a motion to compel return of  
14 documents that's coming up. I mean, I've got all sorts of  
15 motion practice coming up.  
16 MR. PEEK: Yeah. But I just didn't want there to be  
17 any question about this, is that, as Mr. Pisanelli wants to  
18 take the deposition of the IT folks in Macau, we likewise want  
19 to take the deposition of Mr. Jacobs --  
20 THE COURT: That's Item Number 4.  
21 MR. PEEK: -- as to how he came into possession.  
22 THE COURT: I'm not into 4 yet.  
23 MR. PEEK: You're right. I thought it was part of  
24 the protocols. But you're right, it is.  
25 THE COURT: That's depos.



1 MR. PISANELLI: I promise --

2 THE COURT: Mr. Pisanelli.

3 MR. PISANELLI: I promise Mr. Peek not --

4 THE COURT: I have the July 8, 2011, email in front  
5 of me, as well as the ESI order that is already in file on  
6 this case dated June 23rd, 2011.

7 MR. PISANELLI: Yep. That last paragraph at the  
8 bottom of page 1 we are prepared to comply with today. There  
9 is a fraction of hyperbole in it, but the point is immediately  
10 or nearly immediately we can give them exactly what Mr.  
11 Williams said in July. They can have in .tif form, Bates  
12 stamped, all of them. There is no reason for delay. We don't  
13 need to go through all of this long basically disguised TRO  
14 that they presented to you, squeezing in the language that  
15 you've rejected time and time again. They want a copy of  
16 everything in .tif form, they want it all Bates numbered so  
17 that there's identifier of exactly what they're in possession  
18 of, I'm telling Your Honor as early as tomorrow I think. And  
19 if it's -- if I can't get that done, it's going to be like  
20 within days. I'm not talking months, weeks, anything of that  
21 sort. We're ready to give it to them and let's get this  
22 process underway.

23 I promise Mr. Peek that I will not claim ever to be  
24 surprised that either of them are going to argue that all of  
25 them should be excluded. I'm very much aware of that

1 position, and I'm very much aware that he's not waived it  
2 today and that I will be hearing this argument again. I get  
3 it. But our position, like Mr. Williams's, has always been,  
4 here, you can have a copy of them, tell us what you think  
5 we're not entitled to see or use and keeping in mind that Ms.  
6 Glaser once again, in our view, said -- told you the exact  
7 opposite of what the law is. That privilege, though they hold  
8 it, cannot be asserted against a party like Mr. Jacobs who was  
9 entitled to these communications in the course of his work.  
10 They cannot assert it, they cannot claim that he doesn't get  
11 to see them. She is dead wrong on the law. But we'll debate  
12 that another day.

13 So we don't need all of this long disguised issue.

14 THE COURT: Okay. So can --

15 MR. PISANELLI: This is what we'll do.

16 THE COURT: Wait. I need to get clarification from  
17 you.

18 MR. PISANELLI: Yes.

19 THE COURT: I assume from your suggestion that the  
20 last paragraph of the July 8th, 2011, email, which I'm marking  
21 as Court's Exhibit 1 for purposes of today's hearing, that you  
22 will transmit an electronic version to the ESI vendor that all  
23 of you agree upon. How, then, do you intend to do the review  
24 to determine if there is privileged material of Mr. Jacobs  
25 separate and apart from any materials that might be for the

1 Sands?

2 MR. PISANELLI: Yeah. We will --

3 THE COURT: How are you going to do that search?

4 MR. PISANELLI: We will -- that's a very good  
5 question.

6 THE COURT: It's a search term question, really.

7 MR. PISANELLI: It is a search term. And we will  
8 work with our client to determine what possibly could be in  
9 there. I remain optimistic and hopeful that that is going to  
10 be minimal, but I don't want to give away that issue.

11 THE COURT: Okay. Here is my concern, because I  
12 certainly agree that is an appropriate procedure. My fear is  
13 I don't want you looking at all 11 gigabytes of information.  
14 I want the vendor to run a search using the search terms  
15 you've identified that are expansive enough to capture all of  
16 the potential documents that may be privileged to Mr. Jacobs  
17 separate and apart from the other documents that are at issue  
18 in this ongoing battle. That is my concern.

19 MR. PISANELLI: I can live with that.

20 THE COURT: I don't want you to go through all the  
21 documents --

22 MR. PISANELLI: I don't want to.

23 THE COURT: -- but I want you to be able to review  
24 the documents that this isolated search that you propose the  
25 search terms to can identify --

1 MR. PISANELLI: Sure.

2 THE COURT: -- and then you have to do the privilege  
3 log and provide that.

4 MR. PISANELLI: That makes perfect sense to me.

5 THE COURT: Then -- then after that happens  
6 typically what I would hope is that the rest of the documents,  
7 since Sands China has indicated an intention to review all  
8 11 gigabytes or more of data, that with the exception of those  
9 that you've identified as attorney-client of Mr. Jacobs and  
10 which I agree with you, they will then begin document by  
11 document reviewing those and making the identification as to  
12 whether there is a privilege or it is protected by Macau law  
13 or it is a trade secret, which are their three things they've  
14 told me are important to them. But I need you to do that  
15 review first, since Mr. Williams specifically identified that  
16 as an issue in the July email. And I need to know what your  
17 position is and your timing related to that, because it will  
18 greatly impact the work I have done.

19 I will tell you, I have a case -- and none of you  
20 guys are involved in this, luckily -- where it took them six  
21 months for the first person to complete the review before the  
22 data could be transmitted to the other people. And that's too  
23 long. And I get grumpy when people don't do their job in a  
24 expeditious fashion.

25 So tell me what your plan is.



1 MR. PISANELLI: My plan would be the following. Of  
2 course, go down the path that you described, give me 30 days.  
3 Trigger whatever it is you will require of the defendants  
4 based upon my production, not the 30 days, so that if I can  
5 hypothetically call back and say, Your Honor, I don't need to  
6 do that, Mr. Jacobs knows exactly what he possesses and is  
7 willing to produce without any redaction, so I'll give it to  
8 them immediately. So I don't know that to be the truth. I  
9 suspect it's probably not the case. But I think 30 days  
10 should work. And if it won't, I will -- the burden will be on  
11 me to come back to you and explain why I need more time and  
12 how much more time. And then I won't -- I'll reserve comment,  
13 but I'll let defendants decide how long they will need.

14 THE COURT: How long do you need to make the  
15 determination as to whether you're going to have the search  
16 terms run?

17 MR. PISANELLI: That I can let you know by the  
18 beginning of the week.

19 MS. GLASER: I'm sorry. I didn't hear that.

20 THE COURT: He said he needs the beginning of next  
21 week.

22 MS. GLASER: Fine.

23 THE COURT: How about I give you a couple extra  
24 days, because I'm always worried when people tell me they can  
25 do things that short, to the 19th.

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

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in

Interest.

Electronically Filed  
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Clerk of Supreme Court

Case Number:

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A627691-B

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

**Volume 2 of 24  
(PA226-450)**

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**APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR  
WRIT OF PROHIBITION OR MANDAMUS TO PROTECT  
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02/24/2013	Appendix of Exhibits in Support of Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery (Part 5 of 8)	14 - 17	PA1817-2116
02/24/2013	Appendix of Exhibits in Support of Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery (Part 6 of 8)	17 - 20	PA2117-2425
02/24/2013	Appendix of Exhibits in Support of Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery (Part 7 of 8)	20 - 23	PA2426-2786
02/24/2013	Appendix of Exhibits in Support of Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery (Part 8 of 8)	23	PA2787-2807
09/14/2012	Decision and Order	4	PA770A-PA770I
12/14/2011	Defendant Sands China Ltd.'s Opposition to Plaintiff's Motion for Protective Order (without exhibits)	4	PA735-53
03/11/2013	Defendants' Motion for Oral Argument on Plaintiff's Motion to Return Remaining Documents from Advanced Discovery	23	PA2891-96
04/15/2013	Defendants' Motion to Strike New Argument Raised for First Time in Reply or, in the Alternative, for Leave to Submit a Sur-Reply	24	PA3029-93

<b>Date</b>	<b>Description</b>	<b>Vol. #</b>	<b>Page Nos.</b>
03/08/2013	Defendants' Opposition to Plaintiff's Motion to Return Remaining Documents from Advanced Discovery – Oral Argument Requested	23	PA2808-90
04/01/2013	Defendants' Supplemental Brief in Opposition to Plaintiff's Motion to Return Remaining Documents from Advanced Discovery	23	PA2914-54
06/12/2013	Defendants' Sur-reply in Opposition to Plaintiff's Motion to Return Remaining Documents from Advanced Discovery	24	PA3106-36
09/13/2011	Las Vegas Sands Corp.'s Motion for Protective Order and for Return of Stolen Documents	1	PA5-48
11/18/2011	Memorandum in Support of Defendant Sands China Ltd.'s Status Conference Statement	2 - 3	PA364-621
05/17/2013	Minute Order Granting Leave for Defendants' to File Sur-reply	24	PA3105
01/03/2012	Minute Order re Motion for Protective Order	4	PA768-70
10/13/2011	Minute Order re Motion in Limine and Motion for Clarification	2	PA254-55
04/12/2013	Minute Order re Plaintiff's Motion to Return Remaining Documents from Advanced Discovery	24	PA3027-28
06/14/2013	Minute Order re Return of Remaining Documents from Advanced Discovery	24	PA3137-38
11/22/2011	Minute Order re Status of ESI Issues	3	PA622-623
12/09/2011	Notice of Entry of Order re November 22, 2011 Status Conference	4	PA728-34

<b>Date</b>	<b>Description</b>	<b>Vol. #</b>	<b>Page Nos.</b>
06/20/2013	Notice of Entry of Order on Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery	24	PA3185-92
05/08/2013	Notice of Entry of Order Regarding Defendants' Motion for Oral Argument	24	PA3101-04
09/19/2011	Notice of Withdrawal of Motions	1	PA62-65
08/26/2011	Order Granting Petition for Writ of Mandamus	1	PA1-4
06/19/2013	Order on Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery	24	PA3180-84
02/15/2013	Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery	4	PA809-27
10/12/2011	Plaintiff Steven C. Jacobs' Sur-Reply in Support of Opposition to Sands China Ltd.'s Motion in Limine	1	PA158-74
12/06/2011	Plaintiff's Motion for Protective Order Regarding His Personal, Confidential, Irrelevant, Undiscoverable, Privileged and/or Protected Information and Documents (without exhibits)	4	PA707-27
12/27/2011	Plaintiff's Reply in Support of Motion for Protective Order Regarding His Personal, Confidential, Irrelevant, Undiscoverable, Privileged and/or Protected Information and Documents (without exhibits)	4	PA754-67



<b>Date</b>	<b>Description</b>	<b>Vol. #</b>	<b>Page Nos.</b>
09/28/2011	Sands China Ltd.'s Motion In Limine to Exclude Documents Stolen by Jacobs in Connection with the November 21, 2011 Evidentiary Hearing Regarding Personal Jurisdiction on Order Shortening Time	1	PA118-57
10/12/2011	Sands China Ltd.'s Reply in Support of Motion In Limine to Exclude Documents in Connection with the Evidentiary Hearing Regarding Personal Jurisdiction	1 - 2	PA175-253
05/02/2013	Steven C. Jacobs' Opposition to Defendants' Motion to Strike New Argument Raised for First Time in Reply or, in the Alternative, for Leave to Submit a Sur-Reply	24	PA3094-3100
04/08/2013	Steven C. Jacobs' Reply in Support of Motion to Return Remaining Documents from Advanced Discovery	23 - 24	PA2955-3026
03/14/2013	Transcript of Hearing on Defendant's Motion for Oral Argument	23	PA2897-2913
12/18/2012	Transcript of Hearing on Motions for Protective Order and Sanctions	4	PA771-808
09/27/2011	Transcript of Hearing on Plaintiff's Motion to Conduct Jurisdictional Discovery	1	PA66-118
10/13/2011	Transcript of Hearing on Sands China's Motion in Limine and Motion for Clarification of Order	2	PA256-363
06/18/2013	Transcript of Proceedings – Status Check	24	PA3139-79
11/22/2011	Transcript of Status Conference	3 - 4	PA624-706
09/16/2011	Transcript of Telephone Conference	1	PA49-61

## **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 IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIILEGED DOCUMENTS - VOLUME 2 of 24 (PA226-450)** 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**

James J. Pisanelli  
Todd L. Bice  
Debra Spinelli  
Pisanelli Bice  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

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

DATED this 21st day of June, 2013.

By: /s/Fiona Ingalls

**Acceptance**

On behalf of VGI, we look forward to working with you and your team to transform LVS. We are confident that our efforts within the first 90 - 120 days will be significant and within 180 days the culture, cost basis and focus of both your North American and Asian operations will be greatly improved. By this time next year, we expect substantial and fundamental change.

To authorize VGI to begin work, please sign below and return an original copy to my attention.

Very Truly Yours,

**Authorization Signature**

VAGUS GROUP, INC.

Las Vegas Sands Corp.

By: Steven C. Jacobs  
President

By: Mike Leven      Date  
President and COO

## **EXHIBIT I**

**From:** Justin Jones [JCJones@hollandhart.com]  
**Sent:** Friday, September 16, 2011 12:16 PM  
**To:** 'James Pisanelli'  
**Subject:** FW: Jacobs stipulation  
**Attachments:** image001.gif; Stip and Order Enjoining Disclosure of Documents.DOCX

Jim,

Following up on our discussion this morning and your prior discussions yesterday with Steve Ma, attached is a stipulation prohibiting disclosure, transfer and/or review of the 11 gigabytes of documents in Jacobs' and Campbell & Williams' possession. Please review and let me know by 2:00 p.m. today if you are agreeable to signing the stipulation in its present. If you have suggested changes, please provide any requested changes immediately. If we are unable to reach an agreeable stipulation regarding the documents by 2:00 p.m., we will have no choice but to seek all appropriate relief, including if necessary the filing of a new action, as mentioned at the status conference with Judge Gonzalez.

Please feel free to call me to discuss at the office at 222-2595 or on my cell at 265-5878.

Thanks,

**Justin C. Jones, Esq.**

*Partner*

Holland & Hart LLP

9555 Hillwood Drive, Second Floor

Las Vegas, NV 89134

Phone (702) 669-4600

Direct (702) 222-2595

Fax (702) 669-4650

E-mail: [jcjones@hollandhart.com](mailto:jcjones@hollandhart.com)



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1 **SAO**  
2 J. Stephen Peek, Esq.  
3 Nevada Bar No. 1759  
4 Justin C. Jones, Esq.  
5 Nevada Bar No. 8519  
6 Brian G. Anderson, Esq.  
7 Nevada Bar No. 10500  
8 HOLLAND & HART LLP  
9 9555 Hillwood Drive, 2nd Floor  
10 Las Vegas, Nevada 89134  
11 (702) 669-4600  
12 (702) 669-4650 – fax  
13 [speek@hollandhart.com](mailto:speek@hollandhart.com)  
14 [icjones@hollandhart.com](mailto:icjones@hollandhart.com)  
15 [bganderson@hollandhart.com](mailto:bganderson@hollandhart.com)

16 *Attorneys for Las Vegas Sands Corp.*

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 STEVEN C. JACOBS,

20 Plaintiff,

21 v.

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

27 Defendants.

28 LAS VEGAS SANDS CORP., a Nevada  
29 corporation,

30 Counterclaimant,

31 v.

32 STEVEN C. JACOBS,

33 Counterdefendant.

CASE NO.: A627691-B  
DEPT NO.: XI

Date: n/a  
Time: n/a

**STIPULATION AND ORDER  
ENJOINING PLAINTIFF'S  
DISCLOSURE OF PROTECTED  
DOCUMENTS AND INFORMATION**

34 **IT IS HEREBY STIPULATED AND AGREED:**

35 Plaintiff Steven C. Jacobs ("Plaintiff" or "Jacobs"), by and through his attorneys of  
36 record, Pisanelli Bice, P.C., Defendant Sands China Ltd. ("SCL"), by and through its attorneys

1 of record, Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLP ("Glaser Weil"), and Defendant  
2 Las Vegas Sands Corp. ("LVSC") by and through its attorney of record, Holland & Hart, LLP  
3 (collectively, the "Stipulating Parties"), hereby stipulate and agree as follows:

4 WHEREAS, counsel for the Stipulating Parties have held several meet and confer  
5 discussions regarding demands by LVSC and SCL for Jacobs to return approximately 11  
6 gigabytes of documents and information in his possession (the "Subject Documents") on the  
7 basis that such documents are, among other things, privileged, confidential, sensitive, protected  
8 from disclosure pursuant to written contracts and established company policies, and protected  
9 from disclosure under the Macau Personal Data Privacy Act (the "Macau Act").

10 WHEREAS, in the course of those meet and confer discussions, Jacobs' prior counsel,  
11 Campbell and Williams, refused to return the Subject Documents to LVSC and SCL, but agreed  
12 to neither produce any of the Subject Documents nor continue to review such Subject Documents  
13 prior to an adjudication by the Court regarding the parties' pending dispute regarding the Subject  
14 Documents.

15 WHEREAS any transfer or review of documents in the possession of Jacobs by new  
16 counsel and/or third parties may result in a violation of the attorney-client privilege and/or  
17 Macau Act.

18 GIVEN THE FOREGOING, THE STIPULATING PARTIES NOW AGREE AS  
19 FOLLOWS:

20 1. Jacobs and his agents, representatives, attorneys, affiliates, and family members  
21 shall not in any way, directly or indirectly, review, disclose or transfer, or allow the review,  
22 disclosure and/or transfer, of the Subject Documents and any information contained therein to  
23 any person or entity, whether in the course of this litigation or in any other context whatsoever.

24 2. Jacobs and his agents, representatives, attorneys, affiliates, and family members  
25 shall not in any way, directly or indirectly, allow the destruction of Subject Documents and any  
26 information contained therein pursuant to applicable law.

27 3. The Stipulating Parties reserve their respective rights, objections and claims  
28 regarding the Subject Documents, including but not limited to rights, objections and claims to be



Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

1 adjudicated by motion practice or other proceedings between the Stipulating Parties.

2 4. This Stipulation is subject to modification by the Court.

3 DATED this \_\_\_\_ day of September, 2011.

DATED this \_\_\_\_ day of September, 2011.

4 HOLLAND & HART LLP

PISANELLI BICE, P.C.

5  
6 By: \_\_\_\_\_  
J. Stephen Peek, Esq.  
7 Justin C. Jones, Esq.  
9555 Hillwood Drive, 2nd Floor  
8 Las Vegas, NV 89134

By: \_\_\_\_\_  
James J. Pisanelli, Esq.  
3883 Howard Hughes Pkwy., Suite 800  
Las Vegas, NV 89169

*Attorney for Steven C. Jacobs*

9 *Attorneys for Las Vegas Sands Corp.*

10 DATED this \_\_\_\_ day of September, 2011.

11  
12 GLASER, WEIL, FINK, JACOBS,  
HOWARD & SHAPIRO, LLP

13  
14 By: \_\_\_\_\_  
Patricia L. Glaser, Esq.  
15 Pro Hac Vice Admitted  
Stephen Ma, Esq.  
16 Pro Hac Vice Admitted  
Andrew D. Sedlock, Esq.  
17 Nevada Bar No.: 9183  
GLASER WEIL FINK JACOBS  
18 HOWARD AVCHEN & SHAPIRO LLP  
3763 Howard Hughes Parkway, Suite 300  
19 Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
20 Facsimile: (702) 650-7950

21 *Attorneys for Sands China, Ltd.*

22  
23 **ORDER**

24 IT IS SO ORDERED.

25 DATED this \_\_\_\_ day of September, 2011.

26  
27 \_\_\_\_\_  
DISTRICT COURT JUDGE

Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

Submitted by:

J. Stephen Peek, Esq.  
Nevada Bar No. 1757  
Justin C. Jones, Esq.  
Nevada Bar No. 8519  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

*Attorneys for Las Vegas Sands Corp.*

## **EXHIBIT J**



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

LAS VEGAS SANDS CORP.	.	
	.	
Plaintiff	.	CASE NO. A-648484
	.	
vs.	.	
	.	DEPT. NO. XI
STEVEN C. JACOBS, et al.	.	
	.	Transcript of
Defendants	.	Proceedings
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON APPLICATION FOR TRO

SEPTEMBER 20, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	J. STEPHEN PEEK, ESQ.
FOR THE DEFENDANTS:	JAMES J. PISANELLI, ESQ.
	TODD BICE, ESQ.
	DEBRA SPINELLI-HAYS, ESQ.

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

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1 MR. PISANELLI: And we waive the bond under those  
2 circumstances. Makes it easier.

3 THE COURT: We'll call it an interim order. Yeah,  
4 you don't need a bond. You don't have to have a bond.

5 MR. PEEK: We'll call it interim order, and we'll  
6 submit it.

7 THE COURT: And you guys will just not distribute  
8 the materials to any third party. And I assume that you will  
9 work on an ESI protocol someday in the other case --

10 MR. PEEK: We have one.

11 THE COURT: -- which we were doing before the stay  
12 was entered.

13 MR. PEEK: We have one, Your Honor.

14 THE COURT: I don't know, Mr. Peek.

15 MR. PEEK: But we didn't -- all right. I'm going to  
16 shut up.

17 THE COURT: See, the reason I don't know is  
18 because --

19 MR. PEEK: I'm going to shut up, because I'm -- you  
20 know, I win, Your Honor, at least. I won enough.

21 THE COURT: You won. Go see Judge McKibben. Give  
22 him my best. I haven't seen him in years.

23 THE PROCEEDINGS CONCLUDED AT 1:52 P.M.

24

25

\* \* \* \* \*

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

9/25/11

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

\_\_\_\_\_  
DATE

## **EXHIBIT K**

---

**From:** James Pisanelli [jip@pisanellibice.com]  
**Sent:** Wednesday, September 21, 2011 9:26 PM  
**To:** Patricia Glaser  
**Subject:** Motion to Compel Discovery

Patty, I am still tied up preparing for a deposition tomorrow so I won't have a chance to talk to you about discovery any further tonight. In light of your remarks about discovery (as well as those by Mr. Peek) it is certain that we will not be able to avoid the filing of the motion to compel discovery. Accordingly, we have gone ahead and filed the motion. If you think there are things we can still work out (that Mr. Peek will agree to as well), please let me know or just set forth your agreement in whatever opposition papers you prepare. If you want to discuss any compromise positions, I will make myself available.

Best,

Jim

James J. Pisanelli  
Pisanelli Bice, PLLC  
3883 Howard Hughes Pkwy, Suite 800  
Las Vegas, NV 89169  
tel 702.214.2100  
fax 702.214.2101  
[jip@pisanellibice.com](mailto:jip@pisanellibice.com)



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## **EXHIBIT L**

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

LAS VEGAS SANDS CORP.	.	
	.	
Plaintiff	.	CASE NO. A-648484
	.	A-627691
vs.	.	
	.	DEPT. NO. XI
STEVEN C. JACOBS, et al.	.	
	.	Transcript of
Defendants	.	Proceedings
	.	
<u>And related cases and parties</u>	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR SANCTIONS

TUESDAY, OCTOBER 4, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	J. STEPHEN PEEK, ESQ.
	BRIAN ANDERSON, ESQ.
	STEPHEN MA, ESQ.

FOR THE DEFENDANTS:	JAMES J. PISANELLI, ESQ.
	DEBRA SPINELLI, ESQ.

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

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1 why I said that was calling that case now.

2           Because of the issue related to the discovery  
3 dispute in A-627691 and the inability of the Nevada Supreme  
4 Court to address the issue related to the stay that was  
5 presented to it on an emergency petition for extraordinary  
6 relief, I am going to vacate the November 21st hearing. That  
7 will require us to go through a process that will be longer  
8 than what we would anticipate to resolve what I'm going to  
9 treat, at least as much as I can, as a discovery dispute  
10 related to the jurisdictional discovery which has been raised  
11 in a motion in limine. To the extent we set up a protocol for  
12 the examination of documents as a result of that motion in  
13 limine, we will do so, or you could all agree to it. But,  
14 knowing how long it takes for those ESI issues to be resolved,  
15 there is no way that you will be able to be ready for a  
16 hearing on November 21st. So, despite my best efforts to make  
17 sure we were able to do this, we are unable to accomplish that  
18 hearing in the time scheduled, and I'm going to unfortunately  
19 grant Mr. Pisanelli's request from a month ago to vacate that  
20 hearing.

21           So we'll talk about rescheduling when I see you at  
22 the motion in limine hearing and hopefully set up a protocol  
23 and --

24           MR. PEEK: That's on the 13th, Your Honor, as I  
25 recall.

## **EXHIBIT M**

## Stephen Ma

---

**From:** Steve Peek [S.Peek@hollandhart.com]  
**Sent:** Friday, October 07, 2011 11:53 AM  
**To:** 'James Pisanelli'; 'dls@pisanellibice.com'  
**Cc:** Stephen Ma; Patricia Glaser  
**Subject:** ESI Protocols for Jacobs Documents  
**Attachments:** IDOCS\_15355003\_4.doc

Jim and Debra:

In accordance with the court's direction, I am attaching a draft of Protocols for the processing and handling of Jacobs' documents, and most particularly, the 11 gb of electronic data that Campbell and Williams disclosed in July and August. Since we are facing a hearing on October 13, 2011 in which the court will most likely be discussing protocols for the processing and handling of the Jacobs documents, Steve Ma and I would like to discuss the Protocols with you this afternoon, if you are available, or sometime early Monday. Please let me know your availability.

Steve

\*Please note address change below effective July 11, 2011\*

**J. Stephen Peek, Esq.**  
**Partner**  
**Holland & Hart LLP**  
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**Reno Office**  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511  
(775) 327-3000 (office)  
(775) 786-6179 (fax)



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Proposed Document Review Protocol  
Draft of October 7, 2011

1. The parties will agree on an ESI vendor. The costs of the ESI vendor for this project will be paid 50% by plaintiff and 50% by defendants. As a condition of retention, the ESI vendor will be required to execute a non-disclosure agreement in a form acceptable to the parties.

2. Within 3 days following the retention of the ESI vendor, Plaintiff's counsel will provide to the ESI vendor all documents received by them from Steve Jacobs, or in his possession, custody or control, and which (a) he obtained while employed by SCL, (b) he obtained while acting as a consultant to LVSC through Vagus Group, or (c) are nonpublic documents created by or transmitted to any person affiliated with LVSC, SCL, VML, or their affiliates. By way of non-limiting example, Plaintiff's counsel will provide to the ESI vendor the 11 gb of data referenced in Mr. Williams' July 8, 2011 email.

3. The ESI vendor shall Bates number the documents and process the documents as TIFF files, along with the following items of searchable metadata/information (where available), as required to make these documents reasonably usable:

A. For Emails:

1. Author
2. Recipient
3. CC
4. BCC
5. Sent Date
6. Subject
7. Text

B. For Other Electronic Files:

1. File name
2. File Type or Extension
3. Author
4. Created Date
5. Modified Date

6. Text

C. For All Documents:

1. Custodian
2. Bates Number Beginning
3. Bates Number Ending
4. Family Range Beginning
5. Family Range Ending

4. TIFF Images should be produced in monochrome single-page format at 300 dpi resolution with Group IV compression and named by the Bates number each image represents. Images should be labeled with unique filenames, zero-padded and with no spaces, which are unique and match the Bates number stamped on the image. In addition to any other reasonable formatting, images should contain "speaker's notes" for MS PowerPoint files, hidden pages/columns/rows/text with any substantive content for MS Excel files and "tracked changes" for any MS Word documents.

5. Searchable metadata described above should be produced in a fully loaded Concordance Version 8 or Version 10 database or as a Concordance Version 8 or Version 10 compatible load file (i.e. DAT) with an Opticon image cross reference file (.OPT), which provides for the image range of each record. Text may be delivered separate from the database or load file, provided that it is delivered as separate text files which are named with the same Bates number name as the image files and delivered in the same folder as its related image files.

6. At the same time as the delivery of documents described in paragraph 2, Plaintiff's counsel will supply the ESI vendor a list of names of the attorneys and their staff who have represented Mr. Jacobs in connection with this matter. The ESI vendor will search the documents and generate a schedule of all documents sent to or from any of the individuals on the plaintiff's list. Plaintiff's counsel may obtain a copy of such documents from the ESI vendor. Within 5 days of the ESI vendor's production of the schedule, Plaintiff's counsel shall notify Defendant's counsel of those documents claimed to be privileged. Defendants reserve the right to challenge any such privilege claim.

7. With respect to all other documents, within 5 days of the notification by Plaintiff's counsel of any privilege claim, the ESI vendor shall either make the documents available on its platform for review by Defendants' counsel or provide a copy of the load files to Defendant's counsel. Notwithstanding the foregoing, Defendants may request specific and individual records to be delivered in a different form, including, but not limited to, native form.

8. Within 45 days of the delivery of the copy by the ESI vendor, Defendants shall serve on Plaintiff's counsel a schedule identifying those documents that Defendants



contend should not be reviewed or used by Plaintiff or his counsel, along with a brief identification of the grounds for such contentions listed separately for each document (Defendant's Schedule). Defendants reserve the right to assert any grounds, including by non-limiting example attorney-client and work product privileges, trade secrets, protected status under the Macau Personal Data Protection Act, and wrongful obtaining and/or possession of the document. Plaintiff reserves the right to contest such assertions through the process described below.

9. Within 5 days of service of Defendant's Schedule, the parties shall meet and confer in good faith to narrow any disagreements they may have with respect to the documents on the schedule.

10. Within 10 days of service of Defendant's Schedule, Plaintiff's counsel shall identify those documents on the schedule that they wish to review prior to the evidentiary hearing on SCL's motion to dismiss for lack of personal jurisdiction (Plaintiff's Schedule).

11. Within 7 days of service of Plaintiff's Schedule, Defendants shall file a motion for protective order and/or other relief with respect to those documents on Plaintiff's Schedule as it elects. Plaintiff may file an opposition to Defendant's motion within 14 days, and Defendants may file a reply within 7 days following the opposition.

12. Subsequent to the lifting of the stay by the Nevada Supreme Court, the parties shall discuss a process for briefing and Court decision with respect to documents on Defendant's Schedule that were not addressed by the Court in connection with the jurisdictional discovery hearing.

13. Plaintiff and his counsel agree not to review, use, or disseminate any of the documents described in paragraph 2, except (a) as determined by the Court, provided, however, that such review, use, or dissemination shall not commence for 10 days following the Court's ruling(s) in order to preserve Defendant's right to seek appellate review (except if and to the extent Defendants notify Plaintiff that they do not intend to seek such appellate review); (b) documents on Plaintiff's privilege log, (c) documents not on Defendants' Schedule.

14. Defendants reserve all rights to assert additional claims, and to seek additional remedies or relief, with respect to the documents described in paragraph 2. Plaintiff reserves all rights to oppose any such claims, remedies, or relief.

## **EXHIBIT N**

## Stephen Ma

---

**From:** Stephen Ma  
**Sent:** Monday, October 10, 2011 1:43 PM  
**To:** 'James Pisanelli'; Debra Spinelli  
**Cc:** 'Steve Peek'; Patricia Glaser  
**Subject:** FW: ESI Protocols for Jacobs Documents  
**Attachments:** IDOCS\_15355003\_4.doc

Jim and Debra -- As a follow up to my voicemail to Jim today, I wanted to see if you were free to speak with Steve Peek and me at approximately 2:30pm today to discuss further the proposed ESI protocol.

Steve

## Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

### Stephen Y. Ma | Attorney at Law

10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.556.7888 | Direct Fax: 310.843.2688  
E-Mail: [sma@glaserweil.com](mailto:sma@glaserweil.com) | [www.glaserweil.com](http://www.glaserweil.com)

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**From:** Steve Peek [<mailto:S.Peek@hollandhart.com>]  
**Sent:** Friday, October 07, 2011 11:53 AM  
**To:** 'James Pisanelli'; 'dls@pisanellibice.com'  
**Cc:** Stephen Ma; Patricia Glaser  
**Subject:** ESI Protocols for Jacobs Documents

Jim and Debra:

In accordance with the court's direction, I am attaching a draft of Protocols for the processing and handling of Jacobs' documents, and most particularly, the 11 gb of electronic data that Campbell and Williams disclosed in July and August. Since we are facing a hearing on October 13, 2011 in which the court will most likely be discussing protocols for the processing and handling of the Jacobs documents, Steve Ma and I would like to discuss the Protocols with you this afternoon, if you are available, or sometime early Monday. Please let me know your availability.

Steve

\*Please note address change below effective July 11, 2011\*

**J. Stephen Peek, Esq.**  
**Partner**  
**Holland & Hart LLP**  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134



(702) 669-4600 (office)  
(702) 222-2544 (direct)  
(775) 247-1554 (cell)

Email: [speek@hollandhart.com](mailto:speek@hollandhart.com)

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## **EXHIBIT O**

## Stephen Ma

---

**From:** Debra Spinelli [dls@pisanellibice.com]  
**Sent:** Monday, October 10, 2011 1:52 PM  
**To:** Stephen Ma; James Pisanelli; Steve Peek  
**Cc:** Patricia Glaser; Todd Bice  
**Subject:** RE: ESI Protocols for Jacobs Documents

Steve –

I just left you a bit of a rambling voicemail. Jim is in depo prep with several witnesses today in a different matter. His meetings go into the evening. And, he is in depositions tomorrow and Wednesday. Can we set up a time to discuss the protocol on Thursday? We have substantial revisions to the document you sent on Friday, and are still going through it.

Also, I am not sure if you had been in touch with the court regarding the hearing on the motion in limine. If you haven't, I will. But, I wanted to touch base with you first.

Thanks,  
Debbie

Debra L. Spinelli  
Pisanelli Bice PLLC  
3883 Howard Hughes Pkwy, Suite 800  
Las Vegas, NV 89169  
tel 702.214.2100  
fax 702.214.2101



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---

**From:** Stephen Ma [mailto:sma@glaserweil.com]  
**Sent:** Friday, October 07, 2011 2:45 PM  
**To:** James Pisanelli; Steve Peek; Debra Spinelli  
**Cc:** Patricia Glaser  
**Subject:** RE: ESI Protocols for Jacobs Documents

Jim: Are you available at 3:30pm today? My understanding is that Steve Peek will not be available until then.

Steve

## **EXHIBIT P**

## Stephen Ma

---

**From:** Steve Peek [SPeek@hollandhart.com]  
**Sent:** Tuesday, October 11, 2011 4:01 PM  
**To:** Stephen Ma; 'Debra Spinelli'  
**Cc:** 'James Pisanelli'; Patricia Glaser; 'Todd Bice'  
**Subject:** RE: ESI Protocols for Jacobs Documents

Debbie, were you able to get a time from Jim for a meet and confer on the proposed ESI protocols that we submitted to you and Jim last Friday?

---

**From:** Stephen Ma [mailto:sma@glaserweil.com]  
**Sent:** Tuesday, October 11, 2011 12:55 PM  
**To:** 'Debra Spinelli'; Steve Peek  
**Cc:** James Pisanelli; Patricia Glaser; Todd Bice  
**Subject:** RE: ESI Protocols for Jacobs Documents

Debbie – I'm following up on your email. We would like to schedule a time to discuss your comments on the proposed protocol this afternoon.

Please let us know when you and/or Jim are available.

Thanks, Steve

## Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

**Stephen Y. Ma | Attorney at Law**  
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**From:** Debra Spinelli [mailto:dls@pisanellibice.com]  
**Sent:** Monday, October 10, 2011 6:50 PM  
**To:** Steve Peek; Stephen Ma  
**Cc:** James Pisanelli; Patricia Glaser; Todd Bice  
**Subject:** RE: ESI Protocols for Jacobs Documents

Dear Steves (I just made myself giggle) –  
Tonight doesn't work. Let's shoot for tomorrow. Likely late afternoon because of Jim's depo. I'll keep you posted.  
Thanks,  
Debbie

---

**From:** Steve Peek [mailto:SPeek@hollandhart.com]  
**Sent:** Monday, October 10, 2011 2:39 PM  
**To:** Debra Spinelli



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

October 13, 2011

---

A-10-627691-B      Steven Jacobs, Plaintiff(s)  
vs.  
Las Vegas Sands Corp, Defendant(s)

---

October 13, 2011      9:00 AM      All Pending Motions

HEARD BY:    Gonzalez, Elizabeth      COURTROOM:    RJC Courtroom 14C

COURT CLERK:    Billie Jo Craig

RECORDER:    Jill Hawkins

REPORTER:

**PARTIES**

**PRESENT:**      Glaser, Patricia      Attorney  
                 Peek, J. Stephen      Attorney  
                 Pisanelli, James J      Attorney  
                 Spinelli-Hays, Debra      Attorney  
                 L.

**JOURNAL ENTRIES**

- SANDS CHINA LTD.'S MOTION IN LIMINE TO EXCLUDE DOCUMENTS STOLEN BY JACOBS IN CONNECTION WITH THE NOVEMBER 21, 2011, EVIDENTIARY HEARING REGARDING PERSONAL JURISDICTION ON ORDER SHORTENING TIME...SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISDICTIONAL DISCOVERY ORDER ON ORDER SHORTENING TIME

Todd Bice also present.

AS TO MOTION IN LIMINE: Arguments by counsel. Court stated its findings, and ORDERED, Motion is DENIED WITHOUT PREJUDICE. Motion may be renewed upon good faith efforts to confer. Court recommends the use of a Court Reporter at the meetings.

AS TO MOTION FOR CLARIFICATION: Court apologized for vacating the Evidentiary Hearing without Ms. Glaser being present and stated reasons it vacated the Hearing. Arguments by counsel regarding the Motion. Court stated its findings, and ORDERED, Motion is GRANTED IN PART and

PRINT DATE:    10/13/2011

Page 1 of 2

Minutes Date:      October 13, 2011

clarified its ruling on the record herein. Court answered all questions of counsel.

ITEM 3. ESI PROTOCOL: Court noted it reviewed the multiple drafts. Arguments by counsel regarding the protocol. The E-mail dated 7/8/11 was marked as Court's Exhibit 1, and lodged with the Vault. (See Worksheet.) Dates were given for actions and were later vacated. No start date is available at this time. Court explained the process.

ITEM 4. VENDORS: Colloquy regarding possible vendors to do the review of the 11 gigabytes of information in question. Mr. Peek requested time to research vendors until the end of the day on Monday, 10/17/11. COURT ORDERED, the 48 hours is TOLLED until counsel agree on a vendor or a particular person to do the review of information. If not agreed upon, the Court will modify the ESI Order. Court noted the ESI Order contained shifting of costs provisions.

ITEM 5. DEPOSITIONS OF IT PEOPLE, PLAINTIFF JACOBS, AND PRODUCTION OF DOCUMENTS: Arguments by counsel. Court noted the Stay and limitations imposed by the Nevada Supreme Court. Court noted Plaintiff Jacobs should be deposed relating to all issues and stated it should be one deposition only to cover all issues. Further arguments by counsel. Court answered all questions posed by all counsel.

At request of counsel, COURT ORDERED, two Motions scheduled on 10/18/11 be VACATED. Las Vegas Sands Corp.'s Motion for Protective Order and for Return of Stolen Documents and Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act are VACATED.

*Allen D. Quinn*

CLERK OF THE COURT

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 SANDS CHINA'S MOTION IN LIMINE  
AND MOTION FOR CLARIFICATION OF ORDER

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD BICE, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

CLERK OF THE COURT

OCT 19 2011

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*JS*

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 13, 2011, 9:00 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Jacobs versus Sands.  
4 And I assume that everybody in the courtroom is here as a  
5 interested observer, because otherwise I have things on the  
6 calendar I don't know about it.

7 MS. GLASER: Good morning, Your Honor. Patricia  
8 Glaser for Sands China.

9 MR. PEEK: And Stephen Peek for Las Vegas Sands  
10 Corp., Your Honor.

11 MR. PISANELLI: Good morning, Your Honor. James  
12 Pisanelli on behalf of plaintiff, Mr. Jacobs.

13 MR. BICE: Todd Bice on behalf of plaintiff, Your  
14 Honor.

15 MS. SPINELLI: Debra Spinelli on behalf of Mr.  
16 Jacobs.

17 THE COURT: Okay. Let's start with the motion in  
18 limine.

19 MS. GLASER: May I?

20 THE COURT: Please.

21 MS. GLASER: Thank you. Good morning, Your Honor,  
22 again.

23 THE COURT: Good morning.

24 MS. GLASER: Your Honor, it's actually a little bit  
25 of a dilemma that we're here on today. We think that there

1 are three different bases for the position that we take and  
2 that Mr. Jacobs is not entitled to any of the documents he's  
3 possessed that he obtained as an employee of ours. We think  
4 it's the '04 policy. He says that wasn't applicable to him.  
5 We say there's a March 14, '09, side agreement he signed that  
6 said he was going to keep these documents confidential, and,  
7 of course, there is the consulting agreement in May of '09  
8 that he has to return documents that he got in connection with  
9 his employment.

10           Having said that, we've asked for them back. We  
11 event went to the trouble -- because I think Your Honor had an  
12 extremely good suggestion and one that was frankly beneficial  
13 to both sides when you suggested at one of our hearings, I'd  
14 like you to come up with a protocol, originally suggested by  
15 counsel for the plaintiff, which I concede, prior counsel for  
16 the plaintiff. We came up with that protocol because we  
17 thought it was an excellent idea to sort of get past sort of  
18 certain obstacles that had been put forth. And I need to  
19 emphasize one thing. Now, all of the papers that were filed,  
20 and you've seen, unfortunately, too many of them, I know, in  
21 all the papers that were filed nowhere does Mr. Jacobs  
22 dispute, because he cannot, that more than 11 gigabytes of  
23 documents were downloaded by Mr. Jacobs the day he was  
24 terminated by Sands China, the day he was terminated. And  
25 those are the documents primarily we are most interested in



1 not having him to disclose to his attorneys. Many of them are  
2 attorney-client, many, by their own admission, trade secrets,  
3 and certainly many of them were subject to the Macau Privacy  
4 Act.

5 Now, I want to get back to the protocol in just --  
6 in one moment. There is -- appears to be some dispute about,  
7 well, who was he really employed by. Under Macau law only  
8 Macau residents are entitled to work and provide services in  
9 Macau. And a Macau entity must apply for a work permit for  
10 that employee. That was done, and he signed a consulting  
11 agreement or document in order for us to get the work permit  
12 so he could work in Macau, which nobody contests he both did  
13 work in Macau and he both signed this document. That document  
14 that he signed has a confidentiality provision.

15 Now, to work in Macau without the work permit and  
16 therefore to work without the written agreement is a violation  
17 -- it's a crime in Macau. And everybody complied with the  
18 law, including Mr. Jacobs, by signing a document that allowed  
19 us to get a work permit.

20 Now, what do we do about this? I don't think that  
21 the Court necessarily has to adopt our position or plaintiff's  
22 position. I think what the Court frankly, in our view --

23 THE COURT: At the moment, Counsel, we are  
24 discussing a motion in limine, and that's all we're talking  
25 about. I certainly understand there is an overlap, and I will

1 be happy to get to that at a later point. Right now all I'm  
2 discussing is a motion in limine and, arguably, whether  
3 there's been compliance with the Eighth Judicial District  
4 Court rules, which I mentioned in our conference call the  
5 other day.

6 MS. GLASER: You did. And we supplied a  
7 declaration, Your Honor, by Mr. Steve Ma in response to the  
8 Court's inquiry about whether there had been a meet and  
9 confer. I want to say to Your Honor I'm an officer of the  
10 court, and on repeated occasions, both in writing and by  
11 telephone call, we requested a meet and confer not just with  
12 respect to the protocol which Your Honor had suggested was a  
13 good way to get past this, not just --

14 THE COURT: Protocol has nothing to do with your  
15 motion in limine, Ms. Glaser.

16 MS. GLASER: Agreed. What we did was we -- the day  
17 -- that day that we were in court we asked to meet and confer  
18 with Mr. Pisanelli in the hallway. He didn't have time, which  
19 is perfectly okay, and he would get back to us both with  
20 respect to returning the documents, what documents could be  
21 used and what could not, and the discovery that was -- the  
22 Court was talking about. And if you recall, Your Honor said,  
23 if you want discovery you have to make a motion. So we've  
24 attempted on repeated occasions -- it's in Mr. Ma's  
25 declaration -- to meet and confer with respect to --

1 THE COURT: Actually, I didn't say if you want  
2 discovery you have to make a motion. What I said was if you  
3 cannot reach an agreement as to the discovery you will have to  
4 make a motion.

5 MS. GLASER: Hundred percent correct. I apologize.  
6 That's exactly what you said. We could -- there was an effort  
7 to meet with prior counsel with respect to both discovery and  
8 with respect to return of the documents, both of which are  
9 addressed by the motion in limine. We -- Mr. Pisanelli  
10 actually admitted that he filed the motion without meeting and  
11 conferring on discovery. He admitted it. He said he just  
12 didn't have time to deal with us. That's okay. We then -- we  
13 attempted to -- continued to attempt to meet and confer, both  
14 with respect to this motion in limine precluding the use of  
15 documents at our hearing, whenever it may be, and we continued  
16 to attempt to discuss what documents could be used at the  
17 evidentiary hearing. And we were not met with anything other  
18 than -- and I say this as candidly as I can -- a stone wall.

19 Now, I can't confer -- meet and confer with myself.  
20 And, yes, we did not have a meeting and confer session because  
21 Mr. Pisanelli did not either have the time or desire to meet  
22 with us, but we made every reasonable effort to meet and  
23 confer, Your Honor. And I need to represent that again as an  
24 officer of the court.

25 I would like to address the merits of the motion in

1     limine or continue to --

2             THE COURT:   Sure.   But I don't want you to address  
3     the discovery issue, which is a separate issue.

4             MS. GLASER:   Well, it's actually interesting.   It's  
5     not entirely, because our -- and I -- and I want to make sure  
6     -- the Court may ultimately disagree with me, but I at least  
7     want to make sure that I'm clear.   The protocol takes into  
8     account a continuing dispute with respect to how Mr. Jacobs  
9     got these documents and whether he's entitled to them for  
10    purposes of the evidentiary hearing.

11            THE COURT:   Let me stop you.   Where is the protocol  
12    attached to your motion in limine?

13            MS. GLASER:   It's attached to our reply brief, Your  
14    Honor.

15            THE COURT:   That's not what I'm asking, Counsel.  
16    Where's the protocol attached to your motion in limine?

17            MS. GLASER:   It's not attached to the motion in  
18    limine because it --

19            THE COURT:   Thank you.

20            MS. GLASER:   -- by the time we filed our -- when we  
21    filed our motion in limine -- there've been so many hearings I  
22    can't be a hundred percent correct, but there's no question --

23            THE COURT:   Including one day before yesterday;  
24    right?

25            MS. GLASER:   Correct.

1 THE COURT: A telephonic hearing when somebody said  
2 Mr. Pisanelli wanted to move a hearing and turned out not to  
3 be true.

4 MS. GLASER: No. That is not correct.

5 THE COURT: That's not what people told my law  
6 clerk?

7 MS. GLASER: I want to be -- and I want to be very  
8 clear. This is what the -- what we understand. What was told  
9 was Mr. Pisanelli's office by email -- and Your Honor has the  
10 email -- offered -- specifically said, we can't meet until  
11 Thursday, today, to discuss the protocol. So we --

12 MR. PISANELLI: And I have to object, since she's  
13 now making representations of what I said. It's in the record  
14 what I said, which doesn't even resemble what she just said.

15 THE COURT: I am --

16 MR. PISANELLI: So I just offer that objection.

17 THE COURT: -- at the point where I have little  
18 patience with representations from counsel that are not based  
19 on written documents or heard in court. And if I don't have  
20 an affidavit from people at this point, it is causing me  
21 graver concern. I don't need counsel and putting my staff in  
22 the middle of a situation between the rest of you guys.

23 MS. GLASER: Okay. I want to -- we sent an email to  
24 Mr. Pisanelli yesterday, because he asked for an explanation  
25 of what happened with Your Honor. And I'm going to give it to



1 you in one sentence, and then I'm going to not say another  
2 word about it. The effort was -- no good deed goes  
3 unpunished. What we tried to do was we simply wanted to see  
4 if the Court was available. We did not represent that Mr.  
5 Pisanelli had agreed. I would never do that. If the Court  
6 were available in the afternoon, then we simply were going to  
7 ask the Court -- ask Mr. Pisanelli, okay, should we meet and  
8 confer this morning on the protocol. If that was misconstrued  
9 or we misspoke, I want to be very clear. The direction from  
10 my office was, just find out if the Court's even available on  
11 Thursday afternoon. That was the issue. Then when -- then  
12 Your Honor generated a phone call. But at no time --

13 THE COURT: No. I asked counsel to generate a phone  
14 call because it appeared that there was an issue after my  
15 staff had been contacted requesting a hearing be moved. And  
16 the person who was saying it was requesting be removed wasn't  
17 the person calling, which always gives us cause for concern.

18 MS. GLASER: I want to be clear. If your clerk  
19 understood us to be asking for the hearing to be moved without  
20 Mr. Pisanelli on the phone, that was a huge, inappropriate  
21 mistake, and we did not intend that at all. All we intended,  
22 and I want to be very clear, was to see if the Court were  
23 available, and then we were going to call Mr. Pisanelli.  
24 Without his agreement we wouldn't -- it wouldn't occur to us  
25 and it wouldn't occur to me to change a hearing in front of

1 Your Honor. And if we put your court staff remotely in the  
2 middle, I want to apologize right now. That was not the  
3 intention. The intention was simply to determine if Your  
4 Honor were even available this afternoon. If the Court were  
5 available, we then intended to call Mr. Pisanelli and ask him  
6 to participate in a call to continue this so we could have a  
7 meeting and confer regarding the protocol. I want to be as  
8 clear as I can be about that. And if there was a -- if we  
9 miscommunicated, I apologize to Your Honor. It was not  
10 intended to misrepresent anything, because we had not spoken  
11 to Mr. Pisanelli at that point, and I want to be very clear.

12 THE COURT: The point I was making -- and I just  
13 want you to be real honest with me, and if somebody else needs  
14 to answer the question because you're not sure of the answer,  
15 please have that person answer the question. There was no  
16 protocol that was discussed with anyone related to what is now  
17 a motion in limine before me on September 28th, other than  
18 what Mr. Williams had proposed last summer and I've repeatedly  
19 suggested people should talk about.

20 MS. GLASER: Correct.

21 THE COURT: Okay. So --

22 MR. PEEK: Your Honor, I will say, though, that on  
23 the 20th, after we came to the hearing before the Court --

24 THE COURT: Hold on. Let me look at my calendar so  
25 I can figure out what day that was. Okay.

1 MR. PEEK: September 20th. Remember -- you recall  
2 that I was here on --

3 THE COURT: And I want to apologize to you, Mr.  
4 Peek. You have been scolded by the Nevada Supreme Court  
5 inappropriately. I am the one who told you to file that writ  
6 because I believe their stay order is ambiguous and unclear.  
7 And so I'm sorry that you got criticized. And if there was a  
8 way for me to take the blame, I would. But, you know, I  
9 apologize. So --

10 MR. PEEK: My shoulders are broad. As I get older,  
11 Your Honor, they get broader. But, Your Honor --

12 THE COURT: Okay. So Justin Jones was here on the  
13 16th --

14 MR. PEEK: Correct.

15 THE COURT: -- for a TRO application, and then you  
16 guys were here on --

17 MR. PEEK: No, not on the TRO application. He was  
18 here on the motion for protective order, and that's the case  
19 in which -- in that main case -- in this main case on the 16th  
20 he was here, and you said, guys, I've been stayed --

21 THE COURT: Yeah.

22 MR. PEEK: -- go ask the Supreme Court for relief.

23 THE COURT: Please.

24 MR. PEEK: So -- and I don't want to get --

25 THE COURT: And then you filed a new case.

1 MR. PEEK: Filed a new case. I don't want to get  
2 into that. I just -- what I'm talking about is on the 20th we  
3 did come before you, and at the conclusion of the hearing on  
4 the 20th I did step outside, did speak with Mr. Pisanelli and  
5 Ms. Glaser. As you know, I was in trial, so --

6 THE COURT: Yeah, in Federal Court, because Judge  
7 McKibben asked me to move my hearing back so you wouldn't have  
8 to miss your jury closing arguments.

9 MR. PEEK: So I spoke briefly with Mr. Pisanelli  
10 about the protocol that had been proposed by Mr. Williams in  
11 his July 8th email, and I know that at the conclusion of that  
12 I said to both Ms. Glaser and to Mr. Pisanelli -- and I know  
13 that it was followed up, because I spoke to Ms. Glaser -- that  
14 she was going to give Mr. Pisanelli a call and work on my  
15 behalf to try to work through what kind of discovery -- what  
16 the extent of the discovery would be on the jurisdictional  
17 issue. I wasn't involved in that, but I -- I just -- I know  
18 that at least there was that moment. And I get what Mr.  
19 Pisanelli is saying, and I know that Ms. Glaser did call Mr.  
20 Pisanelli after that to try to set up that meet and confer.  
21 Beyond that, that's all I know. But I just wanted to just  
22 clarify that, that there was an effort at least on that  
23 jurisdictional issue and what the scope and -- the nature,  
24 scope, and extent of that discovery would be.

25 THE COURT: Okay. So two of my specific instances

1 that are discussed in Mr. Ma's affidavit relate to the court  
2 appearances that we had here and discussions in the hallway  
3 after those.

4 MS. GLASER: And we did make an attempt by email and  
5 by phone to discuss both issues, the scope of the discovery  
6 and -- before the motion was filed -- and also the return of  
7 the documents that is the subject of our motion in limine. We  
8 believe -- I know there've been a flurry of documents, but on  
9 the motion in limine we think that there are two documents  
10 signed by Mr. Jacobs. One document he says wasn't applicable  
11 to him, that he didn't deem in force against another  
12 individual at the company that was indeed applicable to the  
13 company as a whole. He says it wasn't applicable to him. We  
14 have the law, we have documents he himself signed which he  
15 does not back away from, and we have an 11-gigabyte download  
16 the day he was fired that is not explained and not addressed  
17 in any of his papers.

18 We ask the Court in our motion in limine to not  
19 allow those documents to be used, and then Your Honor --  
20 before the motion in limine was filed Your Honor had  
21 suggested, because you thought it was a discovery issue --  
22 we're not entirely in agreement with that, to be honest, but,  
23 nonetheless, that's when last Friday we sent them a protocol.  
24 It was not attached to our original motion in limine, because  
25 that protocol suggestion which was originally made by opposing



1 -- prior opposing counsel and Your Honor, when it was -- when  
2 Mr. Jones was here, you -- at that hearing you had suggested  
3 that the parties -- I think it was Mr. Jones or Mr. Peek, I'm  
4 frankly not remembering entirely, but Your Honor had suggested  
5 at that point let's think about a protocol because it was  
6 actually pointed out to you that Mr. Campbell's partner, Mr.  
7 Williams, had actually suggested a protocol, an ESI provider,  
8 et cetera.

9           So what we're saying is as follows. You're right  
10 that the ESI protocol wasn't part of the motion in limine  
11 'cause it wasn't -- wasn't the thrust of our motion. The  
12 thrust of our motion was quite simply, look, kiddo, in so many  
13 words, idiomatically, you took a lot of documents from us,  
14 there are privileged documents in there, Mr. Williams  
15 acknowledged there were privileged documents, that's when he  
16 stopped looking at the documents. There are trade secret  
17 information in there, there are Macau Privacy Act -- documents  
18 implicating the Privacy Act in there, no question about it.  
19 There has to be, there's so many of them. And we simply said,  
20 give those -- you cannot use those at the evidentiary hearing  
21 because in order for you to get ready for an evidentiary  
22 hearing you've got to review those documents. We don't want  
23 those documents reviewed, we don't think counsel has any right  
24 to look at those documents. Your Honor I think even made a  
25 suggestion -- I don't want to say more than it was. Obviously

1 everybody's bound by the code of professional conduct in terms  
2 of reviewing documents, and anybody looking at documents that  
3 are privileged is obviously subject to a motion to disqualify.  
4 We don't want to get to that.

5 THE COURT: And we actually now know what the rules  
6 are in Nevada for that --

7 MS. GLASER: We do, sort of.

8 THE COURT: -- because of a decision last week.

9 MS. GLASER: Yes. Although it's sort of an  
10 interesting decision, because there it was an anonymous source  
11 for the documents. There's no anonymity here. We know  
12 exactly --

13 THE COURT: No. I understand exactly what you're  
14 saying. But at least we now have a framework for the  
15 analysis.

16 MS. GLASER: We do. And that's what I wanted -- if  
17 you look at the Zahodnik case and the In Re Marketing case,  
18 and the Bumble case, which I guess some people call it the  
19 Merits Incentive case. I call it the Bumble case, but I think  
20 Your Honor knows to what I'm addressing myself --

21 THE COURT: I know what case you're talking about.

22 MS. GLASER: The Zahodnik case, plaintiffs sued IBM  
23 for wrongful discharge. There was a nondisclosure policy and  
24 return all the documents when you leave the employ policy. He  
25 retained the documents there, and he forwarded them to his

1 counsel. And the court said, no, you can't do that, you're  
2 enjoined from disclosure to third parties, and he ordered the  
3 return of the documents to the employer. In Re Marketing --  
4 that's a Fourth Circuit 1997 case.

5 In the In Re Marketing case a former president, he  
6 took documents and he -- I don't know if Your Honor's had a  
7 chance to look at that, but he returned the originals, but he  
8 kept copies, and he refused to agree not to use them. The  
9 court said, no, you've got to return those documents. In that  
10 case counsel was disqualified because the documents weren't  
11 returned. And that is a Texas Appeals Court decision of 1998.

12 And then you have the Bumble case. Documents were  
13 from an anonymous source, didn't know where they came from,  
14 and nobody was prepared, and certainly I'm not prepared, to  
15 attribute any bad motives to counsel who said, guess what,  
16 I've got these documents that came from an anonymous source.  
17 There were no documents there that were privileged, except for  
18 one, which the -- everybody conceded, and there the issue was  
19 was counsel to be disqualified or not, not was there a  
20 requirement the documents be returned or not returned.

21 There is clearly a heightened standard when an  
22 attorney receives documents from his own client, and that's  
23 clearly what happened here. What we're saying, Your Honor --  
24 and, by the way, Counsel says, well, you can't look at  
25 Zahodnik and you can't look at In Re Marketing, not because

1 they aren't well reasoned, but because Mr. Jacobs didn't sign  
2 anything. Well, there's at least four problems with that. He  
3 did sign two documents that required him to keep the documents  
4 confidential, and we've provided those to Your Honor. We've  
5 provided Your Honor also with a policy from 2004 of VML. He  
6 says he was above that policy. He enforced that very policy  
7 against another employee, and we have Amy Lee's declaration,  
8 Your Honor, which isn't refuted, that goes to that issue  
9 specifically.

10           So we know he signed a document -- documents,  
11 plural, requiring them to be kept confidential, we asked him  
12 to return the documents. We're not -- and the reason why Your  
13 Honor's suggestion, frankly, about the protocol, which was not  
14 attached to the motion, is you don't have to worry about what  
15 we're going to do with those documents. We'll give them to a  
16 neutral ESI provider, have everything Bates stamped, and have  
17 an orderly process for determining what's appropriate to be  
18 used, if anything, and what's not appropriate to be used. In  
19 other words, if Your Honor makes a determination at some later  
20 point, wait a minute, this guy did take these documents  
21 inappropriately and he needs to return them all, then what  
22 normal plaintiffs do is they file a request to produce  
23 documents. We're perfectly okay with that. But instead, out  
24 of an abundance of caution, we have suggested this protocol  
25 which says even more than that. If Your Honor doesn't buy --

1 which we believe strongly you should -- based on his own  
2 admissions that he shouldn't use these documents at all, then  
3 at least they have to be reviewed, not by counsel, to  
4 determine what's a trade secret, what's attorney-client  
5 privilege, what's subject to the Macau Privacy Act, and  
6 counsel for plaintiffs are not -- plaintiff is not qualified  
7 to do that. That would just be a complete, in our view,  
8 turning the law on its head.

9           So, yes, our motion in limine doesn't include the  
10 protocol. It says we want the documents back. We're willing  
11 -- and if the Court is inclined, we're willing to -- and we've  
12 got -- let me go back one step.

13           We did get some responses on the protocol last  
14 night. At 8:11 there was a surreply brief filed which lays  
15 out plaintiff's response to our detailed protocol that we'd  
16 sent the prior Friday and attempted to meet and confer about.  
17 I'm not saying he's entirely wrong. We are perfectly prepared  
18 to sit down and confer about that before Your Honor decides  
19 that he's not entitled to anything. That requires further  
20 briefing. He gave us a declaration yesterday that we don't  
21 think is totally accurate -- I'm talking about Mr. Jacobs now,  
22 not Counsel, of course -- and we are glad to respond to that.  
23 But it was filed last night -- or, excuse me, 5:47, when we  
24 were in the air flying here to Las Vegas.

25           My only point is we believe there's plenty in front