

CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

STEVEN C. JACOBS,

Plaintiff,

vs.

LAS VEGAS SANDS CORP., SANDS  
CHINA LTD., SHELDON G.  
ADELSON,

Defendants.

CASE NO. A-10-627691

DEPT. NO. XI

**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE  
**DEFENDANT SANDS CHINA LTD'S MOTION TO STAY COURT'S MARCH 6,  
2015 DECISION AND ORDER AND TO CONTINUE THE EVIDENTIARY  
HEARING ON JURISDICTION SCHEDULED FOR APRIL 20, 2015;  
DEFENDANTS' PETITION FOR WRIT OF PROHIBITION OR MANDAMUS  
FRIDAY, MARCH 13, 2015**

APPEARANCES:

For the Plaintiff: JAMES J. PISANELLI, ESQ.  
TODD L. BICE, ESQ.  
JORDAN T. SMITH, ESQ.

For the Defendants: J. STEPHEN PEEK, ESQ.  
J. RANDALL JONES, ESQ.  
STEVE L. MORRIS, ESQ.  
IAN P. MCGINN, ESQ.

RECORDED BY: JILL HAWKINS, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 FRIDAY, MARCH 13, 2015 AT 8:30 A.M.

2

3 THE COURT: Good morning.

4 MR. BICE: Good morning.

5 MR. JONES: Good morning.

6 MR. PEEK: Good morning, Your Honor.

7 THE COURT: Mr. Jones, it's your Motion.

8 MR. JONES: Thank you, Your Honor.

9 Your Honor, I would normally not file this kind of  
10 a motion until the writ was filed and because of the timing  
11 issues, we haven't been able to get the writ done because I  
12 know the Court likes to at least have an opportunity to  
13 look at the writ when it considers motions like this. So,  
14 we apologize for not being able to have that --

15 THE COURT: I'm not worried about it in this  
16 particular case, given the long history of the number of  
17 writs that have gone up. This one is not one that concerns  
18 me as much as most of them.

19 MR. JONES: With that said, Your Honor, I know the  
20 Court is familiar with the factors under *Hansen* about  
21 granting a stay and circumstances. Again, we're somewhat  
22 handicapped having not had the opportunity to show you the  
23 writ, but in terms of the factors, we looked at this, Your  
24 Honor, as a situation where obviously from a timing  
25 standpoint we had to file this now because the order is

1 going to take effect or require action by -- on the 16<sup>th</sup>.

2           With respect to the issues of the writ,  
3 essentially, Your Honor, it's our position that the *Viega*  
4 case does not contemplate a circumstance where the -- a  
5 party does not have the opportunity to present evidence in  
6 a jurisdictional hearing. So there's no precedent for this  
7 type of situation in the state of Nevada at this point in  
8 time and, therefore, we think this is an important issue  
9 that needs to be decided by the Supreme Court.

10           THE COURT: So can I ask you a question?

11           MR. JONES: Sure.

12           THE COURT: What do you believe the standard of  
13 proof is in the jurisdictional hearing that I've been  
14 directed to conduct by the Nevada Supreme Court in the writ  
15 that was issued on August 26<sup>th</sup>, 2011 or so?

16           MR. JONES: I'm sorry the standard of?

17           THE COURT: Proof.

18           MR. JONES: The standard of proof for?

19           THE COURT: For plaintiffs to show.

20           MR. JONES: For the plaintiffs to show? Well, you  
21 know, Your Honor, I have to tell you that I've done this so  
22 many times that I should know this off the top of my head,  
23 but I don't want to misspeak as to what the standard is.

24           THE COURT: Here's what I think it is.

25           MR. JONES: All right.

1           THE COURT: Just -- and the only reason I know is  
2 because I went through and read a lot of briefs yesterday  
3 while I was listening to some boring depositions.

4           I think it's a prima facie showing by the  
5 plaintiffs even after discovery occurred and I'm conducting  
6 a jurisdictional hearing with additional findings that are  
7 then made at the time of trial related to jurisdiction.

8           MR. JONES: The only difference of opinion that I  
9 would have about this, and I have been involved in lots of  
10 these cases, is I think prima facie case, that may be  
11 correct with respect to specific jurisdiction. I don't  
12 believe that is the standard -- it's my understanding  
13 that's not the standard with respect to general  
14 jurisdiction and so that is, obviously, an issue that we  
15 would want to have the Supreme Court to weigh in on and  
16 under those circumstances, this -- we do think that there  
17 is an issue here that would result -- without the stay,  
18 would result in a --

19           THE COURT: Well, here's why I think that's the  
20 standard. In paragraph 2 of the writ or the order granting  
21 the writ, it says:

22           Petitioner asserts District Court improperly based  
23 its exercise of personal jurisdiction on petitioner's  
24 status [indiscernible] officers and directors. The  
25 real party in interest contends the District Court

1 properly determined that he had established a prima  
2 facie basis for personal jurisdiction based on the acts  
3 taken in Nevada to manage petitioner's operations in  
4 Macau.

5 They never depart from that, which has been the  
6 longstanding standard on the initial jurisdictional  
7 determination that has to be made by the Court. What is  
8 stated in this order is that I have to make specific  
9 findings after conducting a further hearing and you guys  
10 decided you wanted an evidentiary hearing and you wanted to  
11 do discovery and so that was four years ago.

12 MR. JONES: Right. And I -- and my only comment  
13 to that would be the comment in the order that you just  
14 read about the acts taken in the state of Nevada and,  
15 again, that -- I think, and this is just my interpretation,  
16 Your Honor, the Supreme Court may say I'm completely wrong  
17 about this, but I have had, I think, every case -- well,  
18 even including this one now that's been decided since  
19 *Daimler* has happened and I think the standard is that on  
20 general jurisdiction is where the company is at home or the  
21 foreign entity is at --

22 THE COURT: I understand, --

23 MR. JONES: -- home.

24 THE COURT: -- but the reason I'm asking the  
25 questions is the standard of proof and if the standard of

1 proof is only a prima facie standard, that's a pretty low  
2 standard, and it's merely a showing that the plaintiffs  
3 have to make.

4 MR. JONES: And, again, my only quibble with that,  
5 Your Honor, is that I think there's a differentiation  
6 between specific jurisdiction and general. Even with the  
7 language that you just quoted in this case, first of all, I  
8 would say that that was pre *Daimler* and, secondly, --

9 THE COURT: True.

10 MR. JONES: -- I think that the language talks  
11 about since it refers to acts in Nevada, I think that would  
12 -- my interpretation of that would be an issue related to  
13 specific jurisdiction, not general, but unfortunately,  
14 because that really was not -- as I understood it, was not  
15 really an issue that was specifically detailed by the  
16 Supreme Court in that order, we don't have a lot of  
17 guidance in that respect. So, that's my -- the difference  
18 I have with the Court in terms of that issue.

19 THE COURT: Well I'm just asking the question  
20 because --

21 MR. JONES: Sure.

22 THE COURT: -- my understanding what the hearing  
23 has always been is that the plaintiffs have to make a prima  
24 facie showing after presenting whatever evidence they're  
25 going to make. It's not a very high standard. It's a

1 pretty low standard. I've been waiting for a long time to  
2 do this hearing and I structured the decision I wrote as a  
3 lesser sanction, and I do not see it as a terminating  
4 sanction, because you're still able to test their prima  
5 facie showing through cross-examining the evidence they  
6 would present to make that showing without necessarily  
7 presenting any affirmative evidence of your own.

8 I understand your issue, but because it's only a  
9 prima facie showing that is required, I am not certain that  
10 I see the level of prejudice that you're trying to express  
11 to me. So I need you to -- if you think the standard of  
12 proof is different than the prima facie, it affects my  
13 decision making. So that's why I'm asking you these  
14 questions.

15 MR. JONES: And I understand that and I saw --  
16 certainly saw the Opposition filed by plaintiff which, I  
17 think, makes them -- or brings up some of the points you  
18 just referenced about prejudice and the standard. And so,  
19 I would say to you if I wasn't -- if my comment wasn't  
20 clear before, I do believe there is a definite distinction,  
21 especially in light of the *Daimler* and *Viega* cases between  
22 specific jurisdiction and general jurisdiction.

23 And so, the prima facie case I would certainly --  
24 you know, my understanding of the law with respect to  
25 specific jurisdiction. It is not my understanding of the

1 law with respect to general jurisdiction, especially in  
2 light of *Daimler* and *Viega*. And so, in that regard, Your  
3 Honor, I think that the standard of proof is significantly  
4 different and higher for the plaintiff in this case to  
5 demonstrate. And so, consequently, I think that that  
6 factor actually weighs in our favor with respect to general  
7 jurisdiction.

8 THE COURT: What do you think the standard of  
9 proof is?

10 MR. JONES: Well, Your Honor, that's an  
11 interesting question because I don't know that the Supreme  
12 Court -- either the U. S. Supreme Court or the Nevada  
13 Supreme Court has given us any particular direction on that  
14 and I -- and as I sit here today, that may not be the case.  
15 Again, I haven't --

16 THE COURT: I think that's a prima facie showing  
17 on that, too, with the --

18 MR. JONES: It may be, Your Honor. I don't --

19 THE COURT: -- caveat that you still have got to  
20 make the findings at trial.

21 MR. JONES: I don't know about that. I honestly  
22 would have to -- I would want to look at that issue --

23 THE COURT: Okay.

24 MR. JONES: -- particularly because that, from my  
25 perspective, you know, I -- maybe I should have anticipated



1 that, but I didn't, and so --

2 THE COURT: It's okay.

3 MR. JONES: In speaking directly to that, I just  
4 think it's a higher standard and that's based upon my  
5 reading of *Daimler* and *Viega*, but I can't -- off the top of  
6 my head, I cannot point the Court to a specific higher  
7 standard to reference.

8 THE COURT: Okay.

9 MR. JONES: So, with that said, Your Honor, I  
10 think that there is a difference. I think that difference  
11 is material and I think it's important and I think it's  
12 something that we believe we need to get some direction  
13 from the Supreme Court on, that their -- and I understand  
14 that the Opposition's argument that, as you just said, you  
15 didn't say the sanction is I'm going to strike any defense  
16 of lack of personal jurisdiction, but we believe that the  
17 order, as it's been issued, hamstringing my client to such an  
18 extent that there is certainly the possibility that it's  
19 inevitable of a finding of jurisdiction against my client.

20 It so hampered their due process rights, and I  
21 understand that the -- that, again, the plaintiff disagrees  
22 with that. We think that that is an infringement of our  
23 due process rights in presenting our case for a company  
24 that primary place of business is in Macau. It's a Cayman  
25 Islands company. It's on the Hong Kong Stock Exchange.

1 It's -- all of its employees are in Macau and it's being  
2 told, essentially, you're going to come here and defend  
3 yourself and if you -- in defending yourself at this  
4 jurisdictional hearing, you won't be able to present any  
5 affirmative evidence, we think that impacts our due process  
6 rights and we think that that's an issue that needs to be  
7 decided by the Supreme Court as to whether or not *Viega*  
8 goes that far because certainly on its face, the *Viega* case  
9 does not suggest that these kind of sanctions and inability  
10 to present affirmative evidence as a part of the *Viega*  
11 rule.

12           With respect to the prejudice, you know that's an  
13 interesting issue. We believe that's an extremely  
14 prejudicial to us and there's a case called -- it's *Sparks*  
15 -- I'm trying to find my case now. I think it's the -- oh  
16 yeah, I'm sorry. The *City of Sparks versus Sparks*  
17 *Municipal Court*. I found this last night because, of  
18 course, we didn't have an opportunity to Reply because of  
19 the order shortening time, but that is a case that says --  
20 this is a Nevada case.

21           THE COURT: I'm familiar with that case.

22           MR. JONES: Okay. With that said, then you  
23 understand that the Court said:

24           A constitutional violation may be difficult or  
25 impossible to remedy through money damages. Such a

1 violation made by itself be sufficient to constitute  
2 irreparable harm.

3 So that is an issue, we think, that needs to be  
4 presented to the Supreme Court with respect to the  
5 prejudice of the plaintiff.

6 I -- again, I read their Opposition. They've  
7 talked about delay. We don't think that any delay  
8 associated with the MPDPA redactions has occurred. As we  
9 presented at the sanctions hearing, but I would add this,  
10 Judge. There has been a substantial time period that has  
11 elapsed and I understand that and I understand the  
12 plaintiffs saying that has impacted our ability to get to  
13 this hearing -- jurisdictional hearing and ultimately the  
14 hearing on the merits.

15 What has happened in the interim though, Judge, is  
16 a bunch of writs and -- as you've already mentioned and I  
17 don't see how it can be an inappropriate or prejudicial  
18 delay to a party when the writs are filed and the Supreme  
19 Court accepts them.

20 THE COURT: Well the problem is Rule 41 because  
21 the orders that have been issued by the Nevada Supreme  
22 Court in this case are unclear as to the effect of the  
23 stays on the binding of the rule at the time under Rule 41  
24 and when I previously asked for briefing on this issue from  
25 the parties, the parties disagreed as to whether there was

1 tolling related to those stays. As a result of that, I've  
2 got a serious problem and I have to start a trial prior to  
3 October 19<sup>th</sup>, 2015.

4 MR. JONES: Well, let me address that issue, Your  
5 Honor, anticipating that that issue may come up.

6 THE COURT: Well I put it in the decision I issued  
7 last Friday for a reason.

8 MR. JONES: And I want to address that issue.  
9 It's -- it is -- I would say this. I would acknowledge  
10 that the case law in the state of Nevada has essentially  
11 determined that the -- a stay tolls the statute.

12 THE COURT: But it's only a stay. If --

13 MR. JONES: Excuse me, tolls the five-year rule.

14 THE COURT: Only if it's a stay of the entire  
15 case. We've not had a stay of the entire case in this  
16 situation.

17 MR. JONES: Well, Your Honor, I don't know that I  
18 read the case law that way and to the extent that that's an  
19 issue, I think that we would acknowledge that the stay does  
20 --

21 THE COURT: That's not what was acknowledged when  
22 I got the briefing previously.

23 MR. JONES: Well I'm --

24 THE COURT: A different position --

25 MR. JONES: -- here acknowledging that point to

1 the Court in direct response to the Court's question.

2 THE COURT: And what is Las Vegas Sands' position?

3 MR. PEEK: Your Honor, it's the same position as  
4 Sands China Limited.

5 THE COURT: So when do you think the -- or how  
6 many days do you think have been tolled under Rule 41 as a  
7 result of the --

8 MR. PEEK: Your Honor, given --

9 THE COURT: -- stays? I'm sorry.

10 MR. PEEK: My apologies.

11 Given the fact that the stay was issued in August  
12 of 2011 and there were a number of intermediate stays after  
13 that of the entire proceedings, including the  
14 jurisdictional hearing, if we were to just use those stays  
15 that stayed the entire case, as per the Court's comment and  
16 inquiry, we would certainly go back to at least the -- I'm  
17 trying to think the two writs that stayed the entire case.  
18 That would be the one related to Justin Jones, the one  
19 related to the attorney-client privilege of the documents  
20 that Mr. Jacobs took when he left, and then the stay  
21 related to the sanctions that the Court's order of March  
22 27<sup>th</sup> of 2013. I don't know the exact time frame of those,  
23 but if I took those three stays which stayed the entire  
24 case, including jurisdictional discovery and jurisdictional  
25 hearing, Your Honor, the Justin Jones decision, I think,

1 was in September 2012 and I don't remember when the Supreme  
2 Court decision was, but I can go back and calculate those  
3 times. But they're probably at least a year.

4 If you were certainly to go back all the way to  
5 September -- to August of 2011, we know -- I can do that  
6 calculation for you because that would be three years and  
7 approximately six months. So multiply three times -- three  
8 and a half times 365 which comes out to 1,000 days.

9 THE COURT: You think there's been three days of  
10 stay?

11 MR. PEEK: Yeah. So --

12 THE COURT: I mean, three years of stay?

13 MR. PEEK: There's been at least three years of  
14 stay using that one, Your Honor, but using just those that  
15 stayed the entire case because they would be on top of the  
16 jurisdictional --

17 THE COURT: I don't care what you say the number  
18 is, I just care that you say on the record how many days  
19 you think --

20 MR. PEEK: I don't know the exact number of days,  
21 Your Honor. Using the two forms of calculus, the one  
22 calculus where the Court says the stay of the entire case.  
23 I don't know that calculus. I can do that and present it  
24 to the Court.

25 I do -- I certainly do know the calculus as it

1 relates to September -- excuse me, August of 2011.

2 THE COURT: Okay. So let me ask you a question a  
3 little bit differently and the reason I'm asking you, and  
4 I'm going to include Mr. Morris in this discussion, is part  
5 of my concerns, as I indicated on page 2 of my decision  
6 that was issued last Friday, is the Rule 41 issues that I  
7 previously had briefed by the parties which did not appear  
8 to take the same position that you are taking at this  
9 point.

10 If you are agreeing and stipulating on the record  
11 that there has been an extension of the five-year rule for  
12 a certain period of time, that will weigh in my  
13 consideration of this Motion, --

14 MR. PEEK: Okay.

15 THE COURT: -- but I need you to, as a group, all  
16 three of you, to give me that -- what period of time that  
17 is because that is a significant issue for me as a trial  
18 judge because in unpublished decisions that the Nevada  
19 Supreme Court have issued, they have been very critical of  
20 judges who do not ensure their cases are tried within the  
21 five-year rules.

22 MR. PEEK: And Your Honor I'm respectful of that  
23 concern of the Court and respectful of the Supreme Court's  
24 criticism, but I can't give you an exact answer here today  
25 but --

1 THE COURT: Okay.

2 MR. PEEK: -- I would like --

3 THE COURT: That's fair.

4 MR. PEEK: I'm going to say, Your Honor, that for  
5 at least for a period of one year or more there has been a  
6 stay of the entire proceedings and if I may, Your Honor, --  
7 if you give me a little bit of a break so I can talk to my  
8 colleagues to get an answer on that? I want to talk to Mr.  
9 Adelson's counsel and I want to talk to Mr. Jones as well.

10 MR. JONES: I think we can calculate the period of  
11 time related to the stays of the entire case within a few  
12 minutes -- well, certainly come within a real close within  
13 a real close number within a few minutes if we can get --  
14 and we can give that to the Court, but I would certainly  
15 agree with Mr. Peek that at a minimum, we're probably  
16 talking about over a year but I don't have the exact number  
17 of days off the top of my head.

18 THE COURT: Okay.

19 MR. PEEK: Can we have a moment, Your Honor, to  
20 counsel with each other to --

21 THE COURT: Mr. Bice, do you want them to take  
22 their break before or after you argue now?

23 MR. BICE: Well, I obviously want --

24 THE COURT: Because I'm going to give them the  
25 break before I decide.



1 MR. BICE: All right. Then have them do it now.

2 THE COURT: Okay.

3 MR. BICE: Because I'm -- I want to be heard --

4 THE COURT: Absolutely. I'm just trying to get  
5 them --

6 MR. BICE: -- on this.

7 THE COURT: -- to give me a number.

8 MR. BICE: Thank you, Your Honor.

9 THE COURT: So you can take a short break.  
10 However long you need.

11 MR. PEEK: Thank you, Your Honor.

12 THE COURT: Have a nice visit. I'm going to try  
13 and find the prior briefing that occurred. Does anybody  
14 remember when that was? Two years ago?

15 MR. BICE: Your Honor, I'm not sure that briefing  
16 ultimately was ever submitted. I recall us having the  
17 discussion and I recall us having a dispute about it, but I  
18 don't know that the briefing ever actually occurred.

19 THE COURT: Was it two years ago?

20 MR. PEEK: I don't -- I remember the inquiry of  
21 the Court and I'm like Mr. Bice, I do not remember that  
22 there actually was a brief submitted to the Court on this  
23 issue. I do remember the Court inviting briefing on this  
24 issue, but I don't believe that any of us did.

25 THE COURT: Imagine that. Me inviting briefing.

1 Okay. Bye. Go consult.

2 MR. PEEK: Thank you, Your Honor.

3 [Recess taken at 8:49 a.m.]

4 [Hearing resumed at 9:05 a.m.]

5 THE COURT: While you were gone, we found where we  
6 discussed it. We discussed it in case number A671020,  
7 which is the deposition case out of Florida on January 22<sup>nd</sup>,  
8 2014. We were supposed to get briefs in this case sometime  
9 in February 2014 and the only brief I got related to the  
10 cyber-attack that Mr. peek filed. I didn't get a brief on  
11 the five-year rule from anybody. I think there was a  
12 discussion among counsel and you all decided that it wasn't  
13 fruitful to file the brief because somebody called and  
14 asked us to take the status check I had set off.

15 MR. PEEK: Or because of the cyber-attack, Your  
16 Honor, we got a little distracted.

17 THE COURT: Mr. Peek, I -- that's probably why,  
18 but that's -- Dulce was able to recollect that we had the  
19 discussion in another case and it's -- the minutes in  
20 A671020 on January 22, 2014 reflect the discussion we had  
21 in this case about the five-year rule. So, --

22 MR. JONES: What -

23 THE COURT: -- did you come up with a number?

24 MR. JONES: With that said, Your Honor, no we did  
25 not come up with a number. We've come up with an estimate,

1 but here's where -- what I can say to the Court.

2           To -- with respect to a stipulation, I need client  
3 approval for that and I understand the concern of the Court  
4 with the timing. My client is asleep right now, but I can  
5 probably get ahold of him as early as 4 o'clock this  
6 afternoon and I will have a precise number that I can  
7 provide the Court and I can tell the Court whether I have  
8 the authority to enter into a stipulation because obviously  
9 this does go to the, you know, substantive rights of the  
10 parties. And so I need to do that and I understand the  
11 timing issues and --

12           THE COURT: I --

13           MR. JONES: -- if that's not acceptable to the  
14 Court --

15           THE COURT: Thanks. I understand what you're  
16 saying.

17           MR. JONES: I appreciate that but that is what I  
18 would offer to the Court and the -- and I would be trying  
19 to get confirmation of whether or not I have the authority  
20 to stipulate to the tolling and the exact period of time  
21 that we would agree that the case has been tolled with  
22 respect to the five-year rule and -- as early as late this  
23 afternoon. And, unfortunately, Your Honor, I need to have  
24 that authority before I can do it on the record.

25           THE COURT: I absolutely understand, Mr. Jones.

1 Thank you.

2 MR. JONES: And with that said, Your Honor, I  
3 don't know if you need to hear any additional arguments. I  
4 think that the point is we do think our substantive due  
5 process rights are impacted by the situation and we have a  
6 unique situation here, unprecedented, and we think it's  
7 imperative that we get some direction from the Supreme  
8 Court.

9 THE COURT: Thank you.

10 MR. JONES: Thank you, Your Honor.

11 MR. PEEK: Your Honor, again, so with respect to  
12 Las Vegas Sands, --

13 THE COURT: He didn't give me a number, so it  
14 doesn't really matter what anybody else says.

15 MR. PEEK: I understand but I -- all right.

16 THE COURT: If we get to a point where somebody  
17 wants to enter a stipulation, then all of you will have to  
18 sign one.

19 MR. PEEK: Right. But I -- but, Your Honor given  
20 that concern is that we certainly want until at least  
21 whatever time Mr. Jones needs to get to somebody who is  
22 asleep in Macau. I mean, it's only fair that if we're  
23 going to enter a stipulation we have the client's consent  
24 to do that.

25 THE COURT: Absolutely. It just means we can't do

1 a stipulation right now and I understand what he's --

2 MR. PEEK: No, but --

3 THE COURT: -- saying. Not that you weren't  
4 willing to, you just can't.

5 MR. PEEK: Right and I understand the Court's  
6 concern about the stay and having a stipulation, but that's  
7 important to all of us.

8 THE COURT: I understand. Thank you. Mr. Bice,  
9 your turn.

10 MR. BICE: Yes, thank you, Your Honor.

11 Your Honor, the five-year rule on this is a red  
12 herring, we would submit. Here is -- and you can tell all  
13 of the sort of wrangling going on over this issue. The  
14 reason why there were no briefs submitted on it now upon  
15 reflection of hearing this discussion is we're not -- our  
16 client is not willing to run the risk. Even if the Court  
17 ruled that it had been told and they objected to it --

18 THE COURT: I'm not ruling. The only way it's  
19 happening is if there's a stipulation.

20 MR. BICE: And that's why they're -- that's why --  
21 to hear this coming from them now, I think, sort of speaks  
22 volumes. There is no basis for a stay under *Hansen* of the  
23 Court's ruling. The Court's ruling -- if they would like  
24 to go seek a stay from the Supreme Court, if they think  
25 that they can convince the Supreme Court that a sanction

1 order -- there is no irreparable harm here. The  
2 evidentiary hearing can go forward and if they want to try  
3 to convince the Supreme Court that the Supreme Court should  
4 review this and should enter a stay while it reviews is,  
5 that is certainly something that they can attempt to do.  
6 We will oppose that at the Supreme Court and we believe  
7 that the Supreme Court will deny it. We believe that the  
8 Supreme Court won't even entertain this writ because this  
9 is not a case where privilege is implicated or any  
10 irreparable harm is implicated. They are simply wrong when  
11 they state that the law somehow that their due process  
12 rights are implicated here.

13           As the U. S. Supreme Court has said and as the  
14 Nevada Supreme Court has said, even striking an Answer in  
15 its entirety as a discovery sanction for conduct far less  
16 egregious than what has gone on in this case, does not  
17 implicate people's due process rights.

18           It's a little ironic for us, obviously, to hear  
19 the defendants, particularly Sands China, talking about due  
20 process when for four years it has sabotaged that right of  
21 Mr. Jacobs' throughout this proceeding, misrepresenting  
22 where documents were at, their access to them, their use of  
23 them, etcetera, etcetera.

24           So there is no basis under *Hansen* for a stay of  
25 this case. There is no irreparable harm. The evidentiary

1 hearing can go forward. They have plenty of time to try  
2 and convince the Nevada Supreme Court between now and April  
3 20<sup>th</sup> that the Nevada Supreme Court should grant them a stay.

4           What this Court should not do is grant a -- grant  
5 even a temporary stay so that it gives the appearance that  
6 somehow the Court thinks that a stay is warranted because  
7 that's what they will do. If the Court even gives them a  
8 stay for a few days, they will tell the Court: Look, Judge  
9 Gonzalez thinks that this is so important that it merits  
10 even a stay. They should go to the Supreme Court and try  
11 and convince them that there is a basis for a stay when  
12 there isn't one at all on this writ petition because it  
13 doesn't deprive them of any legal rights. But you know  
14 what it does do, Your Honor? It deprives my client of  
15 substantial rights.

16           Your Honor, we already know that Mr. Schwartz is  
17 dead. We already know that Mike Leven is gone from the  
18 company. I don't know how old Mr. Leven is, but he's not  
19 young. Irwin Segel, Your Honor, who was also on the Sands'  
20 Board of Directors that was intimately involved in this, he  
21 has also left the Sands' Board and I know that Mr. Segel is  
22 over 80 years old. I do not know the status of his health.  
23 I know that Mr. Adelson is over 80 years old and has had  
24 health problems in the past. We have got -- this case has  
25 been going on for over four years. No evidence is being

1 preserved. The memories of people are fading. Their  
2 testimony is not being preserved and they're all going to  
3 be allowed to claim: You know what? I don't remember.

4 And that is going to become a convenient denial  
5 for people and they'll be able to say: Well, passage of  
6 time. I just can't remember now why this happened or what  
7 we did, etcetera.

8 We need to be able to preserve evidence in this  
9 case and we are being deprived of that and we have been  
10 deprived of it for years as a result and principally -- you  
11 know, Mr. Jones is new to the case, relatively speaking,  
12 considering that it's four years old. He says that the  
13 MPDPA, you know, hasn't had that much impact. The MPDPA is  
14 the impetus of the -- of everything that has happened in  
15 this case.

16 Let's remember something. It is the impetus, it  
17 is the cornerstone that caused the stay to be in place the  
18 first time. Mr. Fleming submitted a declaration to the  
19 Nevada Supreme Court without disclosing all of the  
20 documents were -- had been already brought over to Nevada  
21 or in to the United States. Without disclosing that fact,  
22 he represented to the Court, as Ms. Glaser did as well, to  
23 the Supreme Court to obtain that stay that all of the  
24 documents were in Macau and it would take them a \$1,000,000  
25 to do that. That was their representations.



1           Now we know that those representations were  
2 incomplete to say the least. So that MPDPA excuse has been  
3 the entire predicate of the delay of this case since its  
4 very inception. And so to claim that: Oh, it hasn't  
5 really been the cause of the delay, is simply ignoring the  
6 actual facts and ignoring the actual record.

7           So, under Hansen, they have to show you  
8 irreparable harm, absent a stay. There is no irreparable  
9 harm absent a stay and, as we cite the Second Circuit in  
10 the *Linde* decision, which involved the exact same points,  
11 the exact same arguments of someone saying: Well, we were  
12 relying upon this Foreign Secrecy Act and so we're not  
13 going to comply with discovery. And the Second Circuit  
14 said: Well, that's too bad, but you can't seek writ review  
15 by a sanctions order that's saying you're not allowed to do  
16 that because your remedy is an appeal of all things after  
17 all because it's an available remedy. If you lose, you can  
18 appeal and the same is true here.

19           They do not suffer any irreparable harm because  
20 they're not being forced to forfeit any rights whatsoever.  
21 They forfeited those rights long ago when they got  
22 sanctioned for misrepresenting to the Court about the MPD -  
23 -- making the misrepresentations to the Court about the  
24 MPDPA.

25           And, again, Your Honor, when you look at who is it

1 that's going to be prejudiced by yet another delay of this  
2 case, there's only one side that is going to be prejudiced  
3 and that's Mr. Jacobs because more and more evidence is  
4 going to disappear with yet another delay of this case.

5           We have -- we set this hearing down for April 20<sup>th</sup>.  
6 That hearing has to proceed, Your Honor. My client is  
7 being prejudiced constantly by these delays and witnesses  
8 are going to be allowed to claim that they don't remember  
9 and witnesses are going to continue to disappear and/or  
10 pass away. These are not young people that are -- that  
11 were on the Board of Directors of Las Vegas Sands. George  
12 Ku has also left the Board of Directors of Las Vegas Sands  
13 Corp., Your Honor, and he was also there at the time and I  
14 know that Mr. Ku is over 80 years is my recollection.

15           THE COURT: Anything else?

16           MR. BICE: So, with that, it should be denied,  
17 Your Honor.

18           THE COURT: Thank you. Mr. Jones, anything else?

19           MR. JONES: Just briefly, Judge.

20           I would say this. I understand there's been a  
21 long passage of time and I would point out though that  
22 these are important issues and the fact that they're  
23 important issues or the proof that they're important issues  
24 and Mr. Bice talks about the time frames that have  
25 occurred, the proof that they're important issues is the

1 fact that these writs were accepted and that decisions have  
2 come out of those writs that give you guidance and give us  
3 some guidance.

4 THE COURT: But I have witnesses who testified at  
5 my sanctions hearing who don't remember stuff that only  
6 happened two years ago. Imagine how bad it's going to be  
7 when you finally start taking depositions in this case.

8 MR. JONES: Your Honor, you know, as you know, I'm  
9 on both sides of cases and I'm faced with that same  
10 prospect every day in cases that I have. That's not an  
11 unusual circumstance and I've had witnesses --

12 THE COURT: It is unusual for a case to be four  
13 years old and substantive discovery not to have started  
14 yet.

15 MR. JONES: It's not as normal as others. I've  
16 had cases where I didn't get out of the Motion to Dismiss  
17 stage until 11 years and it went all the way to the United  
18 States Supreme Court because important issues were  
19 implicated.

20 THE COURT: I understand.

21 MR. JONES: And so that's what happens when you  
22 have these kind of issues.

23 I would submit to this Court we are talking about  
24 due process rights and we may -- the Supreme Court may  
25 decide that our argument is not meritorious with respect to

1 these issues, but we believe we have a legitimate due  
2 process issue that we think needs to be presented to the  
3 Supreme Court and that case by -- I was talking about,  
4 *Humana versus Forsyth*, I had class representatives who were  
5 older people and after 11 years, I was worried that I  
6 wasn't going to have a class representative anymore, but  
7 those issues went up to the Ninth Circuit twice. Those  
8 issues had to be addressed. And so, that is unfortunately  
9 or not, and I would suggest that this is the way our system  
10 works, those are issues that have to be addressed.

11           And so, the -- and I think you said it yourself  
12 during the sanctions hearing. Delay alone is not  
13 sufficient. Assuming that you -- as Mr. Bice asserts, that  
14 you can tie all of the delay that has occurred here back to  
15 the MPDPA issues, and I submit and I believe we showed  
16 graphically that that's just not true, but even if it were  
17 true, if these kind of issues are implicated, there's a --  
18 and I think this Court has been cautious. Even though I  
19 know you're anxious to have a jurisdiction hearing, you  
20 have also been very cautious about letting these issues be  
21 played out where these important matters are the subject of  
22 the case and have granted stays I know -- where I got the  
23 impression you didn't want to grant the stay because you  
24 wanted to get on with things, but you still took the  
25 cautious approach and we think that's the best approach

1 here.

2 I would ask the Court to give me until this  
3 afternoon, at least until 5 o'clock --

4 THE COURT: Well you're not going to get a  
5 stipulation because plaintiffs aren't going to stipulate.

6 MR. JONES: Well --

7 THE COURT: So even if you were to concede when  
8 the timing was, they're not going to stipulate. So I don't  
9 have a stipulation.

10 MR. JONES: I understand.

11 THE COURT: And so I don't have a stipulation that  
12 I would need under Rule 41. So that's --

13 MR. JONES: I understand, Your Honor, but I -- if  
14 my client gave that stipulation, if Las Vegas Sands did, if  
15 Mr. Adelson was able to do that by 5 o'clock, whether Mr.  
16 Bice stipulates or not, if there is a stay ultimately  
17 granted by you or the Supreme Court and we continue on here  
18 and as a -- we are willing -- we -- say the Court were  
19 willing to do that, Mr. Bice may change his mind down the  
20 road because that may be in his interest to do so.

21 The point is that he wants to push this case but  
22 he is now telling you: I will not agree to that because I  
23 want to push this matter. And so, you've got to balance  
24 whether or not if my client were willing to stipulate to  
25 this, that there is not this deadline on the five-year rule

1 the Court is up against. So that, again, alleviates the  
2 concern for Mr. Bice's client versus is it a necessary  
3 issue to go to the Supreme Court and determine whether or  
4 not these due process issues are something that the Supreme  
5 Court thinks need to be decided first?

6 THE COURT: Okay. Anything else?

7 MR. JONES: No. No, thank you, Your Honor.

8 THE COURT: Thank you. The Motion to Stay is  
9 denied. Here the Court has to only make a prima facie  
10 determination at the jurisdictional hearing that is  
11 currently scheduled for April 20. I entered sanctions that  
12 are a lesser sanction that, in my opinion, do not infringe  
13 the due process rights of Sands China Limited.

14 Given the issues that I identified and procedural  
15 posture portion of my brief, the timing, given a lack of  
16 stipulation to the extension of the five-year rule or the  
17 period of tolling pursuant to the stays, prevents me from  
18 being able to grant a stay. So the Motion is denied.

19 Anything else?

20 MR. JONES: Your Honor, just if we could get a --

21 THE COURT: Here -- I'll say something because it  
22 was in your brief. If you file a list of witnesses and  
23 documents on behalf of Sands China, I am not going to  
24 sanction you for doing that if you're doing it in order to  
25 be cautious just in case the Nevada Supreme Court does

1 something else. So if you think you need to file that, go  
2 ahead and file it. I have made a determination you may not  
3 use those witnesses, but I'm not going to preclude you from  
4 making that filing because I know that you put in one of  
5 the briefs that you didn't want to offend me. You are not  
6 going to offend me by preserving your rights.

7 MR. PEEK: Your Honor, there's a concern of giving  
8 out \$250,000 to various legal associations, not being able  
9 to get it back in case the Supreme Court does grant that  
10 stay. Is the Court at least interested in granting a  
11 limited stay as to --

12 THE COURT: No.

13 MR. PEEK: -- the payment of those monies?

14 THE COURT: I'm not interested in granting any  
15 stay.

16 MR. PEEK: Okay.

17 THE COURT: I think the order that was fashioned  
18 was one that you were lucky to get on your side.

19 MR. JONES: Your Honor, with respect to the order,  
20 is Mr. Bice going to prepare that and if so, could we see  
21 that and --

22 MR. BICE: Of course.

23 MR. JONES: -- obviously we'd like to see it as  
24 soon as possible.

25 MR. BICE: Of course. Yes.

1 THE COURT: Okay.

2 MR. BICE: And we've agreed, Your Honor -- I think  
3 we agreed that we're pushing off the deadline for witnesses  
4 and exhibits for a week in any event because I know that  
5 that was an issue in their Motion and Mr. Jones and Mr. --  
6 the other Mr. Jones, we -- he and I have had a couple of  
7 conversations over the last couple of days.

8 THE COURT: Okay.

9 MR. JONES: Yeah. That was my understanding that  
10 Mark Jones agreed to --

11 THE COURT: But --

12 MR. BICE: Yeah.

13 MR. JONES: -- a week, assuming the Court is okay  
14 with that.

15 THE COURT: Just so we're clear, I'm not going to  
16 sanction you for filing something to preserve your rights.

17 MR. JONES: All right. Thank you.

18 THE COURT: I mean, I'm not going to. I mean, if  
19 you've got to preserve your rights, preserve your rights.  
20 It's not going to bother me.

21 MR. JONES: Very well. Thank you.

22 THE COURT: Anything else?

23 MR. PEEK: Nothing. Thank you.

24 THE COURT: Have a lovely weekend.

25 MR. MORRIS: Thank you.



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MR. PEEK: Thank you, Your Honor.

THE COURT: Bye.

MR. MORRIS: Thanks for the coffee.

THE COURT: Absolutely, Mr. Morris.

MR. PEEK: Thanks for your patience on --

THE COURT: I have no issues, Mr. Peek. Have a  
wonderful weekend. Travel safely.

PROCEEDING CONCLUDED AT 9:23 A.M.

\* \* \* \* \*

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from  
5 the audio-visual recording of the proceedings in the above-  
6 entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social  
11 security or tax identification number of any person or  
12 entity.

13

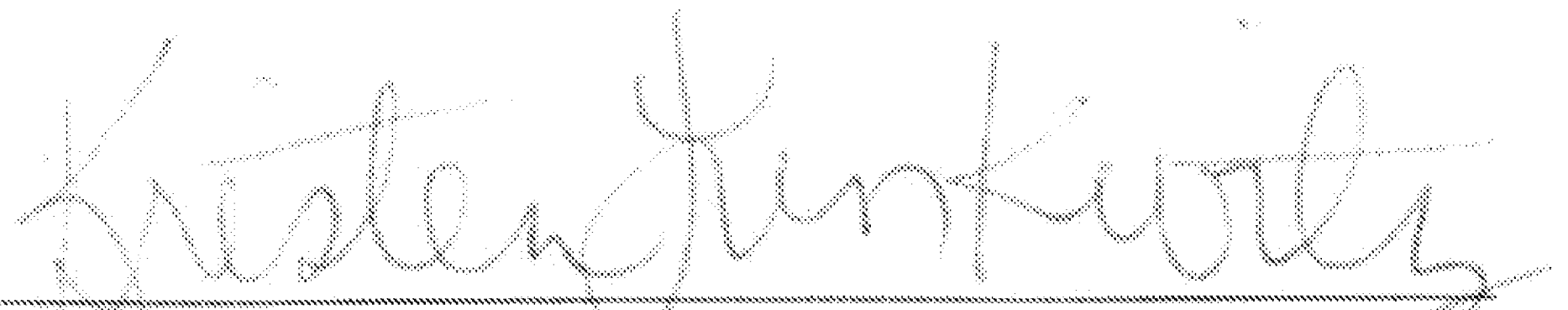
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23 INDEPENDENT TRANSCRIBER

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25

Electronically Filed  
Mar 17 2015 08:49 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**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.

**Case Number: 67576**

District Court Case Number  
A627691-B

**Supplemental Exhibit to  
Petitioners Emergency  
Motion to Stay  
Under NRAP 27(e)**

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Petitioner Sands China Ltd. hereby supplements the Emergency Motion to Stay Under NRAP 27(e) with the transcript of the district court's March 13, 2015 hearing. The transcript was not available at the time the motion was filed, and an electronic record of the district court's proceeding was submitted as Exhibit 3 in its stead. The attached transcript replaces the previously submitted Exhibit 3.

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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **SUPPLEMENTAL EXHIBIT TO PETITIONERS EMERGENCY MOTION TO STAY UNDER NRAP 27(e)** to be hand-delivered on the date and to the addressee(s) shown below:

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

### **Respondent**

A copy was delivered by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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DATED this 16th day of March, 2015.

By: /s/ PATRICIA FERRUGIA