

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Case Number Mar: 23/2015 08:25 a.m.
Tracie K. Lindeman
District Court Clerk of Supreme Court
Case Number
A627691-B

**APPENDIX TO
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS
RE MARCH 6, 2015
SANCTIONS ORDER**

**Volume V of XXXIII
(PA753 – 987)**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER VOLUME V OF XXXIII (PA753 – 987)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY (CD)

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

Respondent

VIA ELECTRONIC SERVICE

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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ORIGINAL

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP 11 2012

BY *Billie Jo Craig*
BILLIE JO CRAIG, DEPUTY

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

COURT'S SANCTION HEARING - DAY 1

MONDAY, SEPTEMBER 10, 2012

A-10-627691-8
TRAN
Transcript of Proceedings
1906075



APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRAD D. BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

FOR HOLLAND & HART

CHARLES MCCREA, ESQ.
SAMUEL LIONEL, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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PA753

1 LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 10, 2012, 1:18 P.M.

2 (Court was called to order)

3 THE COURT: All right. And if all counsel who are
4 participating in my proceeding today, not as a witness, but as
5 a regular participant, please identify themselves and who you
6 are here on behalf of, since there appears to be some
7 confusion, starting over on the end with Ms. Spinelli.

8 MS. SPINELLI: Good afternoon, Your Honor. Debra
9 Spinelli on behalf of Mr. Jacobs.

10 MR. JACOBS: Steve Jacobs, plaintiff.

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

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

15 MR. LIONEL: Samuel Lionel on behalf of the
16 defendants, Your Honor.

17 THE COURT: Now, which defendants, Mr. Lionel?

18 MR. LIONEL: Well, actually this hearing, Your
19 Honor.

20 THE COURT: Okay.

21 MR. MCCREA: Charles McCrea on behalf of both
22 defendants. We're making a limited -- both Mr. Lionel and I
23 are making a limited appearance.

24 MR. BRIAN: Brad Brian of Munger, Tolles & Olson for
25 defendant Sands China Limited.

1 MR. PEEK: Your Honor, I'm here as a witness.

2 THE COURT: Today you're a witness, Mr. Peek.

3 MR. PEEK: Today I'm a witness, but I do represent
4 Las Vegas Sands Corp. and Sands China Limited. But today I'm
5 here as a witness.

6 MR. WEISSMAN: Good afternoon, Your Honor. Henry
7 Weissman for Sands China.

8 MR. OWENS: And John Owens for Sands China, Your
9 Honor.

10 THE COURT: All right. Are there any other counsel
11 who believe you will be participating in my hearing that need
12 to identify themselves for purposes of the record, as opposed
13 to people who may be testifying as witnesses?

14 MR. BRIAN: I don't think so, Your Honor. I would
15 introduce Phil Nichols of our staff, who may help us with
16 document presentation and the like.

17 THE COURT: Not a problem. The more people to make
18 it go smoother the better. You can be seated.

19 As you all know, there's a stay in place from the
20 Nevada Supreme Court pending my completion of an evidentiary
21 hearing related to jurisdictional issues raised in the motion
22 to dismiss by Sands China. As a result of a discovery issue
23 in this case, which in part relates to the jurisdictional
24 discovery I have permitted, I have become familiar with the
25 position of Las Vegas Sands and Sands China related to the

1 Macau Personal Data Privacy Act, which I will try and refer to
2 as MDPA, Jill, for purposes of your record.

3 The MDPA and its impact upon production of documents
4 related to the jurisdictional discovery has been an issue of
5 serious contention between the parties in motion practice
6 before this Court since the spring of 2011. At no time prior
7 to June 28th, 2012, was the Court informed that a significant
8 amount of electronic stored information in the form of a ghost
9 image relevant to this litigation had actually been taken out
10 of Macau in July or August of 2010 by way of portable
11 electronic devices.

12 When it became clear that representatives of the
13 defendants had not been forthright with this Court a sanction
14 hearing was scheduled pursuant to the authority of EDCR 7.60.
15 As I've previously identified, since I had sua sponte
16 scheduled this hearing, I will conduct the initial examination
17 of the witnesses, followed by counsel for Jacobs, counsel for
18 Sands, and counsel for Sands China.

19 I understand, Mr. McCrea and Mr. Lionel -- and when
20 I thought about this earlier I thought you were just
21 additional counsel, as opposed to maybe the entire counsel, so
22 we'll see how this works today. But if you have any issues
23 that you need to raise, I'd appreciate you raising them, and I
24 look forward to hearing from you, since are new participants
25 to my case.

1 MR. MCCREA: Thank you.

2 THE COURT: If there are any issues to which an
3 objection needs to be posed by the defendants, I hope that you
4 will please make them. Please -- I've had people object to my
5 questions when I've asked them in bench trials before. It
6 doesn't bother me. It is an important part of the process.
7 So please don't be offended if you need to object to a
8 question I've phrased. I make mistakes, too.

9 There will be no opening remarks. However, just so
10 we're clear, there will be an opportunity for argument at the
11 close of the presentation of the evidence.

12 This hearing is not intended to infect any rights
13 that Mr. Jacobs may have related to Rule 37 sanctions relating
14 to the same issues.

15 I have previously informed all counsel that I
16 anticipate a separate motion will be filed by Mr. Jacobs's
17 counsel. For that reason, if Mr. Jacobs's counsel appears to
18 exceed the scope of the hearing that has been scheduled, I may
19 limit that examination, as it may be more appropriate for the
20 anticipated hearing on the Rule 37 motion which will be
21 scheduled in conjunction with your Rule 37 motion.

22 I understand from my law clerk that Mr. Kostrinsky
23 and Mr. Krum have called, and both are unavailable today. The
24 witnesses I would like to hear from include Ms. Glaser, Mr.
25 Peek, Mr. Justin Jones, Mr. Singh, and Mr. Kostrinsky.

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

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

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

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

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

24 Does anybody have any questions about the process?

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

1 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

8 MR. BRIAN: Thank you, Your Honor.

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

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

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

21 Anybody have any questions?

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

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

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

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

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

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

9 DIRECT EXAMINATION

10 BY THE COURT:

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

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

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

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

23 MR. MCCREA: Thank you.

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

1 MR. McCREA: I don't think the microphone is picking
2 you up when you're facing Ms. Glaser.

3 THE COURT: Is my mike off?

4 THE COURT RECORDER: No.

5 THE COURT: Okay. Please tell me if you can't hear
6 me, and I'll speak up, okay.

7 MR. McCREA: Thank you.

8 THE WITNESS: I heard everything, Your Honor.

9 BY THE COURT:

10 Q When were you retained to represent Sands China in
11 this case related to Mr. Jacobs?

12 A Shortly after the lawsuit was filed. I don't
13 remember the precise date.

14 Q So sometime in the spring of 2011?

15 A No. No, that's not -- I think it was in 2010,
16 because I think the lawsuit was filed in 2010. But I'm not
17 sure when the lawsuit was filed. But it was -- it was in
18 2010, not 2011.

19 Q Right. When did you first become aware of the MDPA?

20 A In April-May of 2011.

21 Q And how did you become aware of it?

22 MR. McCREA: Objection, Your Honor. May call for an
23 attorney-client communication.

24 THE COURT: Okay. So are you going to direct the
25 witness not to answer?

1 MR. MCCREA: I'm lodging the objection, Your Honor.
2 I don't think it's my prerogative to direct her not to answer.

3 THE COURT: But it's your client's privilege. Your
4 client can waive the privilege if you want.

5 MR. MCCREA: The client has not --

6 THE COURT: She has to -- she has to not tell me if
7 you don't waive the privilege.

8 MR. MCCREA: We are not waiving the privilege, Your
9 Honor.

10 THE COURT: Okay.

11 THE WITNESS: Your Honor, if you direct me to
12 answer, is it still a waiver of the privilege?

13 THE COURT: It is, I think. But I'm not -- I'm not
14 an expert in this matter, so we're just going to avoid that.
15 I've already told the lawyers that if privileges are asserted
16 I may make inferences and those inferences may be adverse --

17 THE WITNESS: Well, my concern is --

18 THE COURT: -- which is I think how Mr. McCrea and
19 Mr. Lionel got hired.

20 THE WITNESS: I have -- I want to be completely
21 candid with the Court, and it's hard for me to be completely
22 candid if I am interrupted, appropriately, with attorney-
23 client privilege objections.

24 THE COURT: Well, I know. And that's part of the
25 challenge that we're going to have here during this

1 proceeding.

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

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

6 BY THE COURT:

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

10 A I don't think so.

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

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

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

22 A Okay.

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

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

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

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

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

16 Q Sure.

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

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

21 THE COURT: Right?

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

24 BY THE COURT:

25 Q It was a nice guess, though.

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

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

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

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

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

19 Q Okay.

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

22 MR. MCCREA: Objection.

23 THE WITNESS: I'm sorry.

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

1 BY THE COURT:

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

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

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

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

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

13 BY THE COURT:

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

18 A I understand.

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

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

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

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

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

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

16 THE COURT: Mr. McCrea.

17 MR. MCCREA: How she --

18 THE COURT: He's asking when.

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

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

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

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

3 THE COURT: Objection is overruled.

4 BY THE COURT:

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

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

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

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

17 Q Any of them.

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

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

23 A Through the client.

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

1 A No.

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

4 A (No audible response)

5 Q Is that yes?

6 A I'm sorry. Yes.

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

10 A You say --

11 MR. McCREA: Objection, Your Honor.

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

13 MR. McCREA: Yes, Your Honor.

14 BY THE COURT:

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

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

1 Q Okay.

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

6 Q Okay.

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

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

14 A I am assuming, because I don't remember for sure,
15 I'm assuming that by virtue of -- I've read the transcript,
16 Your Honor. So Mr. Peek said there were documents in Las
17 Vegas from Macau. He said that in the June hearing, I
18 believe. And I believed that there were documents here from
19 Macau in June when he said that to you in open court.

20 Q Actually I think what he told me was there were
21 communications on servers and email communications in Las
22 Vegas.

23 A That's what I understood.

24 Q Okay.

25 A In June.

1 Q All right. And is that a different understanding
2 than this hard drive that was a mirror image of Mr. Jacobs's
3 computer that had been made and then sent to Mr. Kostrinsky?

4 A I have been wracking my brain, honestly, and I
5 cannot tell you for sure if I knew. I may have known then
6 about the Kostrinsky -- a hard drive, not what's contained in
7 the disclosure that's in -- that was given to the Court in
8 June and July of this year.

9 Q Okay. Again, at that same hearing in July of 2011
10 you told me that only Sands China lawyers would be allowed to
11 start the process of reviewing documents for the MDPA
12 analysis.

13 A That's my understanding it was -- and it's my
14 understanding today.

15 Q Okay. And given what you've read in the filing that
16 was made in the last two weeks, it appears to you that a
17 significant difference in information exists?

18 A Much more -- appears to me that more than a hard
19 drive being forwarded to Mr. Kostrinsky had been -- was -- had
20 left Macau for Las Vegas.

21 Q And at the time that you and I were having the
22 discussions about the MDPA and the document review that had to
23 occur in Macau, which would be the summer of 2011, was it your
24 understanding that Mr. Kostrinsky was not a Sands China
25 employee?

1 A It was not.

2 Q Okay. What was your understanding of what he was?

3 A My understanding is he was a Las Vegas company --
4 Las Vegas Sands employee.

5 Q And were you aware that other outside counsel had
6 reviewed information on Mr. Kostrinsky's computer?

7 MR. MCCREA: Objection, Your Honor. Calls for
8 attorney-client privileged communication.

9 THE WITNESS: Everything I know is from counsel,
10 Your Honor.

11 THE COURT: Thank you.

12 MR. PISANELLI: Your Honor, because -- if I may.

13 THE COURT: It's okay. We're going to let them take
14 the attorney-client, because they have to assert it. If
15 they're going to assert it, that's fine.

16 MR. PISANELLI: But I don't want our silence to be
17 taken that this is a legitimate assertion of the privilege.
18 Simply because, as Your Honor knows, a fact is filtered
19 through a lawyer doesn't turn that fact into a privileged
20 fact. This counsel has come before you and made
21 representations to you about facts. And we are entitled to
22 know what she knew and when she knew it. We don't need to
23 talk about the sources.

24 THE COURT: I'm going to let you ask questions.
25 Remember, I said I had a short and to-the-point examination

1 and then I was going to let you ask questions that were in the
2 bounds of the hearing I've scheduled. You can be the bulldog.
3 I'm trying to get some information that I need to get to make
4 the evaluation I need to, which is whether a knowing violation
5 was made. That's really all I need to do. And I'm going to
6 try and do it in the most effective way that I can given my
7 position as a judge, because I'm the fact finder here. I'm
8 not here to argue one side or the other. I'm not here to be
9 the advocate. I'm here to get information so I can evaluate
10 whether a violation of my rule has occurred. That's all I'm
11 trying to do.

12 MR. PISANELLI: But the only point that I would
13 make, Your Honor, is -- I don't want to interrupt you, but I
14 also don't want our silence to be interpreted in this record
15 as an agreement that this is a proper assertion of the
16 privilege, nor do I --

17 THE COURT: You mean for the Nevada Supreme Court up
18 there? Make an objection every question, then, Mr. Pisanelli.

19 MR. PISANELLI: All right.

20 THE COURT: That's what you've got to do.

21 BY THE COURT:

22 Q All right. At some point in time you were
23 negotiating an ESI protocol with Campbell & Williams before
24 they left.

25 A Yes.

1 Q All right. And eventually we approved an ESI
2 protocol about a year later. As part of --

3 A We were gone by the time it was approved, I think.

4 Q Oh. Were you?

5 A I think so.

6 Q Okay. Well --

7 A I wasn't involved in it, and they approved it.

8 Q Eventually an ESI protocol was approved by the
9 Court, and you believe based on your recollection that at that
10 time you were already out of the case?

11 A I'm looking to counsel. I don't remember the dates.

12 Q Nobody remembers.

13 A I could have been in the case still.

14 Q Okay.

15 A Mr. Ma negotiated -- from our office negotiated the
16 detail of it much more than I did.

17 Q Let me see if I can --

18 A But I do remember having -- I want to be -- just
19 finish the -- I did have conversations about an ESI with Mr.
20 Campbell and Mr. Williams.

21 Q Okay. Thank you. Before you left your
22 representation of Sands China is there a reason you did not
23 disclose to the Court that the mirror of Mr. Jacobs's hard
24 drive was already in the U.S.?

25 A I didn't --

1 MR. MCCREA: Objection, Your Honor. Privileged.

2 THE COURT: Okay. Thank you.

3 BY THE COURT:

4 Q Next one, why did you fail to disclose to the Court
5 that the Outlook emails related to Mr. Jacobs were already in
6 the U.S.?

7 MR. MCCREA: Same objection, Your Honor.

8 THE COURT: Mr. Pisanelli, did you want to ask any
9 questions?

10 MR. PISANELLI: Yes, ma'am. If I could have just a
11 moment or two to set up the Elmo.

12 THE COURT: And remember to be nice.

13 MR. PISANELLI: I'm always nice. It's all relative.

14 (Pause in the proceedings)

15 MR. PISANELLI: Your Honor, for ease of reference we
16 have created basically a witness notebook to reference the
17 transcripts so that Ms. Glaser will know exactly what quotes
18 that I'm referencing when I read it to her, she won't have to
19 take my word for it.

20 THE WITNESS: I'm prepared to take Mr. Pisanelli's
21 -- if it speeds it up, to --

22 MR. PISANELLI: And I -- and I have a book for Your
23 Honor.

24 THE COURT: I don't need a book. I went through all
25 the transcripts and marked on them myself over the weekend

1 after I made my children and my externs have them.

2 THE WITNESS: And I'm prepared to accept Mr.
3 Pisanelli's representations if it speeds it up.

4 MR. LIONEL: If Your Honor please, we will object to
5 plaintiff's counsel asking of this witness. We rely on Club
6 Vista Financial Services. We think that there are other means
7 to find out this, and that's demonstrated by the fact that
8 Your Honor was able to ask pointed questions. We think, Your
9 Honor, that Club Vista bars -- precludes the plaintiff's
10 counsel from questioning this witness. And we make that
11 objection for the record.

12 THE COURT: Mr. Pisanelli, is there anything you
13 want to say about your interpretation of Club Vista?

14 MR. PISANELLI: Yes, Your Honor. We are not here to
15 find out anything about the defendants' position about sources
16 of evidence going to the merits of this case. We're here at
17 Your Honor's direction in order to find out just how broadly
18 this campaign of misrepresentation to you is. We go back from
19 virtually the day my law firm entered into this action and
20 find statements throughout the transcripts that just do not
21 seem to comport with what we have learned over the past month
22 or so. So this is an issue more akin to contempt proceedings
23 than one to the merits, and there is nothing about Club Vista
24 that handcuffs Your Honor, so to speak, in getting to the
25 bottom of misrepresentations that are made to you.

1 THE COURT: Okay. The objection is overruled.
2 Mr. Pisanelli, please be narrow in your questions.
3 Only one person per side gets to object. You've
4 already had your --

5 MR. BRIAN: I wasn't to go object. I have a
6 request, Your Honor. I heard either Mr. Pisanelli or Mr. Bice
7 indicate they had a binder of documents. I just wonder if
8 they do if we could have a copy.

9 MR. BICE: I apologize. Yes.

10 THE COURT: Ms. Glaser, you may, if you like, review
11 the binder that's in front of you, but you do not have to.
12 I'm not going to open it or look at it, and I'm not making it
13 part of my record since everything in it is supposed to be a
14 transcript.

15 Correct, Mr. Pisanelli? Everything's a transcript
16 that's in the binder?

17 MR. PISANELLI: Yes.

18 THE COURT: Okay. So if you will just cite to the
19 date of the transcript, then --

20 THE WITNESS: That's not accurate.

21 MR. BICE: That's not true.

22 THE COURT: All right.

23 MR. BICE: There are some briefs that are also in
24 the --

25 THE WITNESS: Well, there's also emails or letters,

1 I should say.

2 THE COURT: Why don't you take the book back, then,
3 Mr. Pisanelli.

4 MR. BICE: Okay. I can take those out, Your Honor.
5 They just -- they're exhibits from other briefs that are
6 already in the record.

7 MR. PISANELLI: Everything in the book is in the
8 record.

9 MR. BICE: Yes.

10 MR. PISANELLI: Nothing --

11 THE COURT: Fine. I'm just mainly worried about
12 transcripts. So if you want to cite to transcripts by date,
13 I'd be happy for her to, if she doesn't take your word for it,
14 look at. But I have my copy, because I have my copies, as I
15 said.

16 MR. BICE: All right. We'll take them out, Your
17 Honor, and I'll hand it back.

18 THE COURT: I probably have more transcripts than
19 you guys do.

20 CROSS-EXAMINATION

21 BY MR. PISANELLI:

22 Q While Mr. Bice is doing that, first just a couple of
23 points of clarification, Ms. Glaser. You told Her Honor that
24 in I believe it was May of 2011 you went to Macau to get an
25 understanding of the MDPA. Did I understand you correctly?

1 A Yes.

2 Q Was that your first trip to Macau concerning the
3 Jacobs case?

4 A No.

5 Q When did you first go to Macau in connection with
6 the Jacobs case?

7 A I believe it was in November of the year before, and
8 there was no discussion whatsoever about the Privacy Act at
9 that time.

10 Q Who accompanied you on that trip?

11 A Justin Jones, I believe; Gayle Hyman; and Michael
12 Kostrinsky. When I say -- when you use the word
13 "accompanied," I'm not sure everybody travelled together, but
14 everybody was there.

15 Q That's fine. Thank you for that clarification.

16 While you were there, Ms. Glaser, you had an
17 opportunity to review documents concerning the Jacobs dispute,
18 did you not?

19 A I don't think we reviewed documents. I think we
20 spent -- I don't know if this is attorney-client privilege,
21 but we spent the entire time, my recollection is, interviewing
22 witnesses.

23 Q You don't recall viewing any documents?

24 A I don't.

25 Q Do you recall Mr. --

1 A Excuse me. I -- well, I don't know what to do now.
2 I reviewed -- I remember reviewing a explanation of an
3 attorney bill when I was in Macau for the first time in
4 November of 2010, written by some lawyers in Macau.

5 Q Mr. Jones --

6 THE COURT: Ms. Glaser, let's just assume that Mr.
7 McCrea or Mr. Lionel are going to make an objection if they
8 see something that is problematic where they want to protect
9 the privilege. Otherwise, just pause a little bit before you
10 answer so that they have that chance.

11 THE WITNESS: Thank you.

12 BY MR. PISANELLI:

13 Q Justin Jones was with you on that trip?

14 A He was.

15 Q And who did you understand Mr. Jones to be
16 representing on that trip?

17 A Las Vegas Sands.

18 Q And Michael Kostrinsky was with you on that trip, as
19 was Gayle Hyman?

20 A Yes.

21 Q And who did they represent?

22 A Las Vegas Sands.

23 Q And did you become aware that all three of those
24 lawyers on behalf of Las Vegas Sands were also reviewing
25 documents while on that trip?

1 MR. McCREA: Objection, Your Honor. Calls for
2 attorney-client privilege.

3 THE COURT: Go on to the next one.

4 MR. PISANELLI: Okay. I'm just seeking your
5 guidance if you want to debate on the ruling.

6 THE COURT: If there's one I need a debate, I'll ask
7 you for comment. Otherwise let's just assume that we're going
8 to protect the privilege and I will make any inference that I
9 deem appropriate, which may be adverse.

10 MR. PISANELLI: Your Honor, just for clarification
11 of the record, what we're worried about is any inferences
12 coming in connection with a privilege and we're not sure, you
13 know, what the privilege is or whether it's properly asserted.
14 Is Your Honor assuming for purposes of today's hearing that if
15 a privilege is made, then you are going to assume that it is
16 appropriately being asserted, or is Your Honor just simply not
17 giving a ruling on that point and making an inference and
18 moving on to the next topic?

19 THE COURT: There are certain ones that I assume we
20 will address because they are a stretch of the attorney-client
21 privilege --

22 MR. PISANELLI: Right.

23 THE COURT: -- and there are others that are
24 obviously within the attorney-client privilege, and so for
25 those that are obvious, if there's an objection I'm probably

1 not going to ask you for much comment.

2 MR. PISANELLI: Okay.

3 THE COURT: For those where it seems to be a little
4 more tenuous I might ask you for comment.

5 BY MR. PISANELLI:

6 Q Did you return with the Las Vegas Sands lawyers,
7 return to the United States?

8 A Are you talking about the first trip?

9 Q Yes.

10 A I'm pretty confident I did.

11 Q And were you aware that on that return trip Michael
12 Kostrinsky was given electronic data to bring back to the
13 United States with him from Sands China?

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

16 MR. PISANELLI: I will take your silence as you've
17 instructed to move on to the next point.

18 BY MR. PISANELLI:

19 Q Ms. Glaser, did you bring back any electronically
20 stored information with you?

21 A I did not.

22 Q All right. And do you know whether Justin Jones
23 did?

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

1 MR. BICE: Your Honor, I think --

2 THE COURT: We're not doing a team approach.

3 MR. BICE: Understood. Understood. So --

4 THE COURT: So pass him a note.

5 MR. BICE: I will. Since Mr. Kostrinsky and others
6 testified to these facts already, I'm not sure how it's
7 privileged.

8 THE COURT: Let's not argue. I didn't read the
9 depositions, because I don't have complete copies of the
10 depositions.

11 BY MR. PISANELLI:

12 Q Now, Ms. Glaser, you told us that you were aware
13 that a hard drive, I think was your terminology, a hard drive
14 was taken from Macau into the possession of Sands China and
15 delivered to Las Vegas Sands in Las Vegas; is that right?

16 A That is not exactly what I said. I said I believed
17 that at some time I learned that there was a hard -- a hard
18 drive sent from Macau to Mr. Kostrinsky.

19 Q Now --

20 A And Mr. Kostrinsky was, I'd understood, in Las
21 Vegas.

22 Q You had an opportunity to review the defendants'
23 filing with this Court on July 6th of 2012 entitled
24 "Defendant's Statement Regarding Data Transfers"?

25 A I read it, yes.

1 Q And you noticed that there are references to several
2 hard drives that were sent from Macau to the United States in
3 that document?

4 A I saw that.

5 Q And you understood that this was a statement of the
6 defendants to the Court?

7 A I did.

8 Q Okay. Were you able to determine from a review of
9 that filing which hard drive you were aware of had been sent
10 to the United States?

11 THE COURT: Which one that was identified? In the
12 statement?

13 BY MR. PISANELLI:

14 Q Yes. Which of the many hard drives identified in
15 this statement. Were you able to determine which is the one
16 that you knew of?

17 A I don't think there were many, but I was not able to
18 identify the one that I was aware of.

19 Q Okay. You understood --

20 A And I wouldn't be able to identify it, just to
21 finish my answer, because I never knew what was on the hard
22 drive.

23 Q How did you become aware that a hard drive had been
24 sent from Macau?

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

1 privilege.

2 BY MR. PISANELLI:

3 Q By the way, on this issue of source of knowledge,
4 did I understand you correctly to say that you had no other
5 source of information about the MDPA other than attorney-
6 client communications?

7 A I think the Court asked me if I knew about it from
8 any source other than the client. And my answer is I don't
9 think I knew it from any source other than the client.
10 Clients.

11 Q So you never analyzed the law yourself?

12 A I spoke -- when I was in Macau the second time, in
13 May, I spoke to outside counsel -- I read their opinion and
14 spoke to outside counsel about that opinion. If you're asking
15 me did I do that, that I did.

16 Q Did your firm, Glaser Weil firm, conduct any
17 analysis of that law?

18 A Other than trying to understand what Macau counsel
19 was saying? I don't think so.

20 Q What do you mean by that?

21 A Well, it was hard to understand.

22 Q So you did your own research?

23 A No. It was hard to understand, which was one of the
24 reasons we went to Macau, because we couldn't understand part
25 of what was in -- a good deal of what was in the written

1 opinion of Macau counsel.

2 Q Okay. What I'm getting at, Ms. Glaser, and I'm
3 probably guilty of using over the broad terms in particular
4 the pronoun "you." To be clear, I want to know if the Glaser
5 Weil firm ever independently analyzed the MDPA.

6 MR. MCCREA: Your Honor, I think this calls for
7 attorney-client privileged communications.

8 THE COURT: As to whether her firm ever did the
9 analysis for MDPA -- of MDPA?

10 MR. MCCREA: Yes.

11 THE COURT: Okay. Was the only analysis you did in
12 conjunction with evaluating the MDPA for Sands China, or did
13 you do it as a source of gaining additional knowledge, like
14 for other clients?

15 THE WITNESS: I evaluated the information that had
16 been provided to Sands China by people in Macau.

17 THE COURT: Or the scope of your representation of
18 Sands China, as opposed to teaching a class or seminar or
19 something like that?

20 THE WITNESS: For sure I did not teach a seminar or
21 class.

22 BY MR. PISANELLI:

23 Q And I'm sorry. I know Her Honor just asked you
24 this, but I'm not altogether clear. Are you still saying that
25 the Glaser Weil firm did no independent analysis of this law?

1 A As best I can recall, I'm not recalling any
2 independent analysis other than -- I don't -- it's partly
3 analysis when you sit there and you read somebody else's
4 analysis and you examined them to understand it, I consider
5 that analysis, I guess. I personally did that.

6 Q You personally did that. And that, if I understood
7 you correctly, was May of 2011.

8 A Yes.

9 Q Now, at any time did anyone from the Glaser Weil
10 firm -- well, strike that. Let's back up one step here.

11 You knew that a hard drive came over to the United
12 States from Macau; right?

13 A At some point I did.

14 Q Okay. Did you understand that that hard drive came
15 from a computer used by Steve Jacobs?

16 MR. MCCREA: Objection, Your Honor. Calls for
17 attorney-client privilege.

18 THE COURT: Overruled.

19 THE WITNESS: Everything I know I know from counsel,
20 and I believe that it contained some Jacobs emails. I don't
21 know -- I'm not sure I knew it was a, quote, "Jacobs" hard
22 drive, but I knew it contained Jacobs's emails.

23 BY MR. PISANELLI:

24 Q Did you learn that there were in essence two initial
25 deliveries to the United States, one a delivery of the emails

1 and secondly a delivery of a hard drive? Did you understand
2 that?

3 MR. MCCREA: Objection, Your Honor. Objection.
4 Calls for attorney-client --

5 THE WITNESS: I understand what you just said.

6 THE COURT: Hold on a second.

7 Mr. McCrea, this is information that's totally in
8 the defendants' statement, which is why I overruled the
9 objection before, because it seems to be something that has
10 already been waived by your client in the public filing that
11 was made. With respect to particular knowledge that she has
12 from communications by Sands people I'm probably going to give
13 you a little more leeway. But this is directly out of your
14 brief -- not your brief, their brief.

15 MR. BRIAN: Your Honor, may I consult? I know you
16 don't want two people talking --

17 THE COURT: That's correct. You may consult.

18 THE WITNESS: And if the question's allowed, may I
19 just have it repeated?

20 THE COURT: Yes. We don't have a court reporter, so
21 the lawyer has to remember. It's a harder job for them.

22 MR. MCCREA: Your Honor, there's a clear distinction
23 between a fact that we disclosed in a pleading to this Court
24 and a fact that is disclosed to an attorney by a client or
25 client's representative. And that's where my objection goes.

1 THE COURT: So you're objecting to this new
2 question, which is did somebody tell you there were two sets
3 of information that were on this one hard drive that you found
4 out Mr. Kostrinsky had here in Las Vegas?

5 MR. MCCREA: I'm not sure that was the question.
6 Maybe that was the gist of it. And the facts that were
7 communicated to her by a client or client representative are
8 protected by the attorney-client privilege. Facts that are
9 disclosed in pleadings before this Court are not. But I want
10 to protect --

11 THE WITNESS: What about a lack of facts?

12 MR. MCCREA: But I want to protect the
13 communications.

14 THE COURT: Okay. Mr. Pisanelli, can you ask your
15 question again so that we're all clear on what you're asking.
16 Because I thought you were trying to get to the point in the
17 brief that I got that tells me about all of the different hard
18 drives and data transfers that have occurred.

19 MR. PISANELLI: And I am, Your Honor. And I take
20 Ms. Glaser at her word that there are many transfers
21 identified in that document, that filing from the defendants
22 that she's unaware of. So I'm trying to narrow down what it
23 was she did know about prior to making the statements to this
24 Court.

25 //

1 BY MR. PISANELLI:

2 Q So let me ask you again, Ms. Glaser. Were you made
3 aware that an electronic storage device containing Mr.
4 Jacobs's emails were sent from Macau to the Las Vegas Sands
5 here on Las Vegas Boulevard?

6 A At some point in 2011 I was aware of a hard drive
7 that had been sent from Macau to Las Vegas.

8 Q You understood it to be a singular hard drive?

9 A I did.

10 Q Did you understand that there was also an electronic
11 storage device that was sent that contained emails from Mr.
12 Jacobs?

13 A I don't mean to sound stupid, but is that in
14 addition to a hard drive?

15 Q Yes, ma'am.

16 A No.

17 Q Okay. Did you learn what was on the hard drive
18 generally speaking?

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

21 BY MR. PISANELLI:

22 Q In other words, you understood this was Jacobs's
23 ESI?

24 MR. McCREA: Same objection.

25 THE COURT: Sustained.

1 BY MR. PISANELLI:

2 Q Okay. What did you know to be on that hard drive?

3 MR. McCREA: Same objection.

4 THE WITNESS: Everything I know I learned from --

5 MR. McCREA: Your Honor --

6 THE COURT: She's telling me that everything she
7 would answer falls within the attorney-client privilege, so
8 therefore she's not going to answer anymore.

9 Right?

10 THE WITNESS: Yes.

11 MR. McCREA: Okay. Thank you.

12 BY MR. PISANELLI:

13 Q Did I understand your testimony earlier, Ms. Glaser,
14 to be that you never reviewed any of the emails on that hard
15 drive that you've identified for us?

16 A That's correct.

17 Q Again, I'm using a singular and personal pronoun
18 here. Did anyone from the Glaser Weil firm review any emails
19 that were transferred from Macau to Las Vegas Boulevard?

20 A Not to my knowledge.

21 Q Have you ever learned of that fact?

22 MR. McCREA: Objection, Your Honor. Calls for
23 attorney-client privilege.

24 THE COURT: From any source other than your former
25 client.

1 MR. McCREA: Or a client representative.

2 THE WITNESS: Then it's sort of a pregnant -- soon
3 as I learned it -- I'm just --

4 THE COURT: You don't know that?

5 THE WITNESS: I don't know that.

6 THE COURT: Okay.

7 BY MR. PISANELLI:

8 Q You don't know that. Did you ever learn that any
9 lawyers for Las Vegas Sands had reviewed those emails?

10 MR. McCREA: Objection, Your Honor. Attorney-client
11 privilege.

12 THE COURT: Other than in the public filings that
13 have been made that say that they were?

14 BY MR. PISANELLI:

15 Q You must know that someone from Las Vegas Sands
16 reviewed those emails by now. Las Vegas Sands has put it in
17 the public record in this case.

18 A I don't know what's in the public record. I
19 apologize for that. I do have knowledge that I've learned
20 surrounding this proceeding that I did not have before.

21 Q You know that Steve Peek was reviewing those emails
22 in 2011?

23 A I believe -- I know that he had reviewed documents
24 in 2011 that came from Macau.

25 Q When did you know that?

1 A I don't know when --

2 Q For the first time?

3 A -- I knew it but I did know it.

4 Q Did you know it 2011?

5 A I don't know if I did or not.

6 Q Did you know that Michael Kostrinsky was reviewing
7 emails here in Las Vegas that came from Macau?

8 A No.

9 Q Did you know that Michael Kostrinsky was printing
10 off emails that had been sent from Macau and delivering them
11 to certain executives in Las Vegas Sands?

12 A Is that true?

13 Q It is. That's what he testified to. I certainly
14 can't attest to it, but that's what he said.

15 A I don't know that.

16 Q You're hearing that for the first time now?

17 A Am I hearing it for the first time? No. I heard it
18 in connection with this proceeding.

19 Q Okay. Did anyone from the Glaser Weil firm obtain
20 an electronic link that allowed them to review the emails from
21 their own desk?

22 A I don't know what an electronic link is. I
23 certainly didn't. I don't believe so.

24 Q Do you know what a shared drive is?

25 A No.

1 Q Okay. Have you set up --

2 A Well, excuse me. I know -- somebody explained it to
3 me this morning. So I do know what I've been told a share
4 drive is, which I guess is my ability from a distant place to
5 hook into a server located someplace else that other people
6 can get on to, as well.

7 Q Using your definition, did anyone at Glaser Weil
8 have the ability to electronically gain access to the emails
9 of Mr. Jacobs that had been sent over from Macau?

10 A I don't know if they had an ability to use a shared
11 drive, and I certainly don't know whether or not -- what was
12 on that shared drive. So I know that there was an attempt to
13 set up a shared drive at one point. I don't know what was on
14 the shared drive, and I don't -- I certainly had no access to
15 it, and I don't know if anybody else in my firm did.

16 Q When did you learn that there was an attempt to set
17 up a shared drive with these emails that had come over from
18 Macau?

19 A Again, you're rubbing two issues together. I knew
20 there was a shared drive; I didn't know what was on the shared
21 drive.

22 Q I didn't ask you what was on it. I asked you when
23 did you learn?

24 A You said emails. You actually said, when did you
25 know there was shared drive with emails on it.

1 THE COURT: Mr. Pisanelli she --

2 BY MR. PISANELLI:

3 Q I'll take a step back. That's a fair point. When
4 did you learn that a shared drive had been set up?

5 A Sometime in 2011.

6 Q And is it your testimony to this Court that you had
7 no idea what was put on this shared drive?

8 A I knew it was documents in connection with the
9 Jacobs litigation. I didn't know if it was emails or anything
10 else.

11 Q You didn't know where the documents came from?

12 A Correct. Well, I knew they came from -- they were
13 in the possession of Las Vegas Sands.

14 Q And you knew they were Jacobs's emails?

15 A I don't know what was on the shared drive. To this
16 day I don't know what was on the shared drive.

17 Q You knew there were Jacobs-related documents on the
18 shared drive in 2011?

19 A I knew they were Jacobs related in the sense of
20 Jacobs litigation related, yes.

21 Q Did you have responsibility with managing Sands
22 China's discovery requests in this case as it related to
23 jurisdiction?

24 A I don't know what that means. I was certainly aware
25 of efforts to manage the process. I didn't personally manage

1 the process.

2 Q Were you lead counsel for Sands China in this case?

3 A I was.

4 Q Did you assume that it was your responsibility to
5 make sure that your team was complying with all the discovery
6 rules in connection with the jurisdiction-related discovery?

7 A I'd certainly take responsibility if they didn't.

8 Q Okay. So if it was ultimately your responsibility,
9 how did you intend to comply with your discovery obligations
10 if neither you nor anyone from Glaser Weil looked at,
11 reviewed, or even inquired about the information that was in
12 the possession of Las Vegas Sands?

13 MR. MCCREA: Your Honor, objection. This calls for
14 the mental impressions of the attorney.

15 THE COURT: Mr. Pisanelli, I believe his objection
16 is well founded.

17 MR. PISANELLI: Fair enough.

18 BY MR. PISANELLI:

19 Q What did you do to insure that Sands/China was
20 complying with the discovery obligations as it related to
21 personal jurisdiction?

22 MR. MCCREA: Your Honor, Mr. Pisanelli, is also
23 going well beyond the scope of this hearing. He's going into
24 the jurisdictional discovery and other issues that aren't
25 before the Court today.

1 MR. PISANELLI: Your Honor, I think what --

2 THE COURT: The jurisdictional discovery is why
3 we're here.

4 MR. PISANELLI: Thank you.

5 THE COURT: So, Mr. Pisanelli, if you could limit it
6 to try and elicit questions that won't invade the attorney-
7 client privilege or the attorney work product mental
8 impressions issue.

9 BY MR. PISANELLI:

10 Q Did Sands China take any steps to insure that it was
11 complying with this discovery obligations --

12 MR. MCCREA: Objection.

13 BY MR. PISANELLI:

14 Q -- as it related to personal jurisdiction?

15 THE WITNESS: Can I answer?

16 MR. PISANELLI: It's up to him.

17 MR. MCCREA: Objection, Your Honor. Calls for
18 attorney-client privilege.

19 THE WITNESS: I can tell you what we --

20 THE COURT: Wait. Hold on a second.

21 Mr. McCrea, are you objecting?

22 MR. MCCREA: I am, Your Honor. Attorney-client
23 privilege.

24 THE COURT: Okay. That appears to be
25 attorney-client privilege.

1 THE WITNESS: Well, I think I have information
2 that's not subject to the attorney-client privilege. Does
3 that matter?

4 BY MR. PISANELLI:

5 Q What information do you have?

6 THE COURT: Well, wait. Is it work product? If
7 it's work product, he's also raised an objection on it.

8 THE WITNESS: I think we reported to the Court what
9 we were doing. We sent lawyers to Macau. And I --

10 THE COURT: Yeah, you did that. You were part of
11 that.

12 THE WITNESS: And I --

13 THE COURT: And there was 2 to 13 terabytes of
14 information that had to be reviewed.

15 THE WITNESS: And it was done in Macau. And we sent
16 a team of lawyers to do it. That's a fact. So if you're
17 asking what did we do, we spent a lot of money, the client
18 money, and we sent lawyers over to Macau to review documents
19 in Macau because we were told those documents couldn't be
20 reviewed anywhere else. /

21 BY MR. PISANELLI:

22 Q Told by who?

23 MR. MCCREA: Objection, Your Honor. Attorney-client
24 privilege.

25 MR. PISANELLI: Well, Your Honor, we can't have the

1 clients say that they were told something --

2 THE COURT: Yes, we can, Mr. Pisanelli. If the
3 client is going to be the one who takes responsibility for
4 this action and wants to direct counsel not to answer the
5 question, then that is an inference I will likely make someday
6 at the end of this hearing.

7 MR. PISANELLI: Fair enough.

8 MR. MCCREA: Your Honor, I would also like to move
9 to strike her answer to that question.

10 THE WITNESS: Sorry.

11 THE COURT: That information was information that
12 was told to me during status conferences, which was why I had
13 the 2 to 13 terabytes of information that we discussed at the
14 July 19th, 2011, hearing as part of my questions to her. It's
15 part of being late to the game, Mr. McCrea. Sorry.

16 MR. MCCREA: I don't think that was the question she
17 was answering. It was the one after that she answered before
18 the objection got out.

19 THE COURT: Okay. The request to strike is denied.
20 because I think it was part of what we discussed in the status
21 conferences.

22 Mr. Pisanelli.

23 BY MR. PISANELLI:

24 Q I want to ask you a few questions about some remarks
25 you made during the hearing before this Court June 9th, 2011.

1 Specifically I'm going to be turning to page 52, if you would
2 like to.

3 A Can I just look here?

4 Q You can, but in fairness to you --

5 MR. McCREA: Which exhibit is that?

6 THE COURT: It's not an exhibit, it's a transcript.
7 It's June 9th.

8 MR. PISANELLI: It's not an exhibit, it's
9 demonstrative.

10 MR. McCREA: Is it in your witness book?

11 MR. PISANELLI: It is.

12 MR. McCREA: What number?

13 MR. PEEK: Transcript page 52.

14 THE COURT: Here go you, Ms. Glaser. You are
15 welcome to us my copy since I don't know where it is in that
16 book you have.

17 THE WITNESS: Thank you, Your Honor.

18 Do you want me to read the whole --

19 MR. BICE: It's Number 1, Charlie.

20 THE WITNESS: I have it in front of me.

21 BY MR. PISANELLI:

22 Q Do you? Okay. Now, you see what I have up on the
23 screen is a paraphrasing of page 52. If you look at page 52,
24 line 7, you stated to the Court, "This is what happens.
25 Documents get -- must be reviewed in Macau." Do you see that?

1 A I do.

2 Q Okay. Now, when you told the Court that documents
3 must be reviewed in Macau you knew at that time that Steve
4 Peek was reviewing the documents on Las Vegas Boulevard, did
5 you not?

6 A What documents?

7 Q Steve Jacobs's emails.

8 A I knew at some point -- no. Actually I know that
9 Peek was reviewing documents, because Las Vegas Sands was
10 actually producing documents well before Sands China. What I
11 was referring to here and what I very strongly believed then
12 and now is that the documents that were in Macau were not
13 going to be able to leave Macau, period.

14 Q Okay. Let's focus on what I asked you, okay.

15 A I thought I did.

16 Q When you made this statement to Her Honor, you knew
17 that Steve Jacobs was reviewing -- Steve Peek was reviewing
18 Steve Jacobs's emails that had been sent over from Macau to
19 Las Vegas Boulevard, did you not, at the time you made this
20 statement?

21 A Okay. I'm going to try again. I knew --

22 Q It's a yes or no. It's not that difficult. Yes or
23 no?

24 A I knew at some -- can I answer my question?

25 Q No. My question to you is at the time that you made

1 this statement on June 9th, 2011, you knew that Steve Peek was
2 reviewing the Jacobs emails on Las Vegas Boulevard?

3 A I knew at some point Peek was reviewing documents in
4 Las Vegas --

5 Q At the time that you made the statement --

6 A -- because they were producing documents.

7 Q -- did you know it?

8 MR. MCCREA: Your Honor -- Your Honor, can she
9 finish her answer, please?

10 THE COURT: You've got to let her finish her answer.

11 MR. PISANELLI: The answer's yes or no.

12 THE COURT: Guys, can we have a little bit of
13 courtesy.

14 Ms. Glaser, can you finish your answer.

15 THE WITNESS: I knew that Steve Peek was reviewing
16 documents, he and Justin Jones and others from his firm, in
17 connection with producing documents by Las Vegas Sands, not
18 Sands China. I did not understand that Sands China was
19 producing documents at this point in time, because they were
20 in Macau. That's what I understood.

21 Q You believed that Justin Jones and Steve Peek were
22 reviewing Las Vegas Sands records?

23 MR. MCCREA: Objection, Your Honor. Calls for a
24 mental impression.

25 THE WITNESS: whatever was here in Las Vegas.

1 THE COURT: Overruled.

2 THE WITNESS: I believe that they were reviewing Las
3 Vegas documents in the possession of Las Vegas Sands in Las
4 Vegas. I did believe that.

5 BY MR. PISANELLI:

6 Q Okay. Let me be very clear. You understood that
7 what Mr. Peek was reviewing had come from Macau?

8 A It is -- I certainly knew -- I want to be clear. I
9 knew that there were documents certainly in the ordinary
10 course of business that had come from Macau, because I had
11 seen some of those that preceded -- having been sent preceding
12 the litigation. I can give you examples, if you're
13 interested. Having said that --

14 Q Please do.

15 A Can I finish?

16 Q Yes. I'm sorry. Go ahead.

17 A And I knew that they were looking at documents for
18 purposes of producing documents in this litigation for
19 jurisdictional reasons. I knew that. If you told me that
20 they were reviewing Jacobs documents that had come from this
21 hard drive, I don't -- I know it now based on what I've been
22 told. I don't think I knew it -- what they were reviewing at
23 the time.

24 Q This is I think the second time you've used this
25 phrase "ordinary course of business." What do you mean by

1 that?

2 A Well, Sands China is 70 percent owned by Las Vegas
3 Sands or whatever the parent's called. And I knew there were
4 documents back and forth regarding financial issues. I knew
5 that over the course of -- ever since it was formed --

6 Q In other words --

7 A -- I just knew there were documents going -- I
8 assumed going back and forth.

9 Q Right. In other words, you knew at the time that
10 you made this statement that there was a free flow of
11 information between Sands China and Las Vegas Sands, didn't
12 you?

13 A I wouldn't use that expression. I know that when
14 necessary documents came from Macau had nothing to do with
15 Jacobs litigation, and I think documents went from Las Vegas
16 Sands to Macau having nothing to do with the Jacobs
17 litigation. I did know that.

18 Q Okay. And so now coming back to my statement or my
19 question, I'm sorry. So in June 9th, 2011, you knew that
20 there was a regular exchange of information between the
21 companies; right?

22 A I don't know if it was a regular exchange. I knew
23 that ordinary course of business unrelated to Jacobs, means
24 what you just said. I guess I knew that.

25 MR. MCCREA: Your Honor, I'm going to object again

1 to the scope of his questioning. He's going well beyond
2 your --

3 THE COURT: Overruled.

4 BY MR. PISANELLI:

5 Q And more specifically you knew that what Mr. Peek
6 was reviewing on Las Vegas Boulevard had come from Macau?

7 A I did not know at the time what he was reviewing. I
8 knew he was reviewing what was on a server in Las Vegas for
9 Las Vegas Sands.

10 Q Let me put it a different way. You knew that Steve
11 Peek was reviewing Steve Jacobs's emails while he was sitting
12 here on Las Vegas Boulevard; right?

13 A I thought I just answered that.

14 Q I'm sorry. I apologize, then. Please answer it
15 again.

16 A I don't believe I knew exactly or with any precision
17 what he what was reviewing. He was reviewing not documents
18 from -- that had come from Macau in connection with this
19 litigation. I believe he was reviewing documents in the
20 possession of Las Vegas Sands. What those documents were Mr.
21 Peek could tell you.

22 Q So is then your testimony that you didn't know that
23 Steve Peek was reviewing Steve Jacobs's emails?

24 A When?

25 Q At the time you made the statement to the Court on

1 June 9th, 2011.

2 A I don't know if I knew that at the time. I knew
3 there were documents from Macau in Las Vegas and we had told
4 -- both your prior counsel and Mr. Peek had told the Court the
5 documents that were extant in Las Vegas that had come from
6 Macau. I know that for a fact.

7 Q You do. And you can direct Her Honor and us to
8 where that statement was made?

9 A In one of the transcripts, I --

10 Q Somewhere in here?

11 A Well, yeah.

12 Q Okay.

13 A Absolutely. And I think you know that, Mr.
14 Pisanelli.

15 Q Well, I'm going to ask you lots of quotes, so you'll
16 be able to tell me if this was it.

17 THE COURT: It's on page 55.

18 BY MR. PISANELLI:

19 Q Okay. Now you also said --

20 THE COURT: Will you not hit the microphones.

21 THE WITNESS: That's me. I apologize.

22 THE COURT: Okay.

23 BY MR. PISANELLI:

24 Q Now, on the very next line --

25 A Well, wait a minute. It's right here on page 55.

1 Q Trust me, Ms. Glaser, we're going to get to it. I
2 want to stay on page 52.

3 A Okay.

4 Q Now, when you told Her Honor, "We're starting that
5 process now," that process you were talking about was the
6 assemblage of documents in Macau; correct?

7 A Correct.

8 Q You knew when you said that that there were
9 documents here on Las Vegas Boulevard, didn't you?

10 A I knew that there had been documents here in Las
11 Vegas from Macau. I did know that.

12 Q And when you told us a moment ago that you knew
13 sometime in 2011 that a hard drive had come over from Macau,
14 you knew when the hard drive came, as well, didn't you?

15 A No.

16 Q When did you learn that fact?

17 A I'm not sure I know today. I know it came in 2011,
18 so I probably know that today. But I'm not sure I knew ever
19 when it came over.

20 Q It came in 2010, didn't it?

21 A I have no knowledge it came in 2010. I learned
22 about it in 2011.

23 Q Are you aware that Mr. Kostrinsky has testified that
24 everything he obtained from Macau he shared with outside
25 counsel?

1 A I'm not aware of that.

2 Q You didn't read his deposition transcript?

3 A I did not.

4 Q Okay. Do you know that he said that everything he
5 obtained from Macau he shared specifically with your law firm?

6 A I'm not aware of that. That would not be true.

7 Q So it's your testimony, then, that Mr. Kostrinsky
8 brought evidence about the Jacobs case over from Macau and
9 kept it secret from his outside counsel?

10 A His outside counsel? I did not know, speaking about
11 me.

12 Q Thank you. That's fair and thank you for the
13 clarification. It is your point or your testimony that Mr.
14 Kostrinsky brought the evidence from Macau to Las Vegas and
15 kept it secret from Sands China, the company that gave it to
16 him in the first place?

17 MR. McCREA: Objection, Your Honor. That
18 mischaracterizes.--

19 Q That's your testimony?

20 THE COURT: Wait, wait.

21 I need you to finish your objection.

22 MR. McCREA: Mischaracterizes the testimony.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Sometime in 2011 I learned that Mr.
25 Kostrinsky had caused a hard drive, I thought physically that

1 looks like a hard drive to be sent from Macau to Las Vegas. I
2 was aware of that in 2011. I've told you before and I -- you
3 haven't triggered my recollection at all with your questions,
4 I don't remember precisely when I knew that, but I certainly
5 knew it in 2011.

6 BY MR. PISANELLI:

7 Q So help me understand this. On line 12 you say to
8 Her Honor, "They're," referencing documents; correct?

9 A Yes.

10 Q "The documents are in Macau. They are not allowed
11 to leave Macau." You said that to Her Honor; right?

12 A This is an accurate reflection as best as I can
13 recall of what I told the Court.

14 Q And you said, "We have to review them there"; right?

15 A Correct.

16 Q How -- well, strike that. Why would you make a
17 statement like that, Ms. Glaser, when, as you just admitted,
18 that you knew in the ordinary course of business information
19 was being exchanged between these two companies on a daily
20 basis?

21 A Well, I can answer that question.

22 Q Please.

23 A The -- what I was representing here is anything in
24 Macau, I mean anything in Macau as of June 9th, 2011, anything
25 couldn't leave and it had to be reviewed in Macau. That's

1 what I was intending to convey. If I said something that was
2 misleading, then I apologize to the court to the nth degree.
3 But I meant exactly what I said here. It was my understanding
4 that we were not permitted to even review documents outside of
5 Macau that were in Macau at that point. And from the moment
6 we learned -- to my knowledge, the moment we learned about the
7 Macau privacy act, I'm not aware that anything left Macau and
8 was brought to Las Vegas. That's my knowledge.

9 Q So the moment you learned of the Privacy Act the
10 exchange of the information between the companies that
11 occurred in the ordinary course of business, as you described
12 it, stopped? Is that what you are telling Her Honor?

13 A I don't have knowledge that any additional documents
14 came. I don't know if it stopped or not, sir.

15 Q All right. What I'm getting at here, and I'm
16 confused, is how you can tell Your Honor in one breath that
17 you knew prior to making this statement in June of 2011 that
18 there was a ordinary course free flow of exchange between the
19 companies and then turn around and say that they must be
20 reviewed in Macau, they're not allowed to leave Macau.

21 A This is what I knew. I knew that any email -- I'd
22 like to be able to elaborate. Any email that was -- a human
23 being was sent to or from or cc-ed, we had to get their
24 permission for that email to leave Las Vegas -- excuse me, to
25 leave Macau. It could not leave Macau without everybody

1 signing off on it, and then I was told you had to go to the
2 Office of Privacy and they would look at the document again.
3 That's what we were told.

4 Q Who told you that?

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

7 BY MR. PISANELLI:

8 Q Whoever that person was, did he also told you that's
9 also the process that Steve Peek used when he was reading
10 thousands of emails on Las Vegas Boulevard?

11 MR. McCREA: Objection, Your Honor. Lack of
12 foundation. Assumes facts not in evidence.

13 THE COURT: Overruled.

14 THE WITNESS: It wasn't a he.

15 BY MR. PISANELLI:

16 Q I apologize for that. Whoever that person was, did
17 that person tell you that Steve Peek and Michael Kostrinsky
18 had followed that procedure when they brought Mr. Jacobs's
19 emails over from Macau?

20 A I don't think Mr. Peek brought anything over.

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

23 THE COURT: Okay. Can you go to the next one.

24 MR. PISANELLI: Yes, ma'am.

25 //

1 BY MR. PISANELLI:

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

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

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

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

17 Q You tell me.

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

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

1 A Yes, sir.

2 Q How would you know that?

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

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

8 A You bet they did.

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

11 THE COURT: Okay.

12 BY MR. PISANELLI:

13 Q And did they do this --

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

18 MR. McCREA: Yes.

19 THE COURT: Strike it.

20 BY MR. PISANELLI:

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

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

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

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

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

7 Q Turn to page 58, will you.

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

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

12 A I do.

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

20 A 56, what line?

21 Q Lines 9 through 17.

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

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

1 A Okay, just give me a second.

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

5 A Okay.

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

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

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

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

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

19 A I have no idea.

20 Q You never learned that fact?

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

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

24 A I don't know.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 A Concern about what?

3 Q Her Honor's directive.

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

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

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

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

11 BY MR. PISANELLI:

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

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

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

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

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

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

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

12 Q Who's they?

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

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

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

1 2011.

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

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

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

14 A Yes.

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

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

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

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

25 Q Prior to you making this statement?

1 A Yes.

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

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

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

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

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

11 MR. PISANELLI: Yes, ma'am.

12 BY MR. PISANELLI:

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

16 A I have page 5 in front of me.

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

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

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

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

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

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

6 BY MR. PISANELLI:

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

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

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

15 A Yes, I do.

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

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

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

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

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

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

7 BY MR. PISANELLI:

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

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

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

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

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

25 A Correct. And with respect to the documents that

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

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

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

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

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

10 BY MR. PISANELLI:

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

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

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

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

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

1 Q Now, on the next page, page 7, you tell Her Honor --

2 A This is highlighted.

3 THE COURT: That's me, sorry. Just so you guys
4 didn't know that I prep sometimes it has tabs on it.

5 BY MR. PISANELLI:

6 Q -- that there are terabytes of documents that are
7 going to require you to go to Macau. Do you see that?

8 A Yep.

9 Q And that you're now allowed to look at the documents
10 at a station here. You see that?

11 A I do.

12 Q Now, if I understand your testimony a moment ago,
13 you knew that Steve Peek was at a station here reviewing
14 documents from Macau; right?

15 A I knew he was reviewing documents in Las Vegas --

16 Q That came from Macau?

17 A I assumed some of those documents came, because he
18 told us in court that they did.

19 Q Right. And so you're telling Her Honor that all of
20 these records -- you have to go on behalf of Sands China to
21 Macau to read them, but that Las Vegas Sands can stay here in
22 Las Vegas and read documents that came from Macau. That is
23 the position you were offering this Court?

24 A That is a complete misrepresentation, and you know
25 it.

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

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

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

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

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

16 A True.

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

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

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

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

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

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

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

8 THE WITNESS: Thank you.

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

11 BY MR. PISANELLI:

12 Q Okay. Go ahead.

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

21 Q Okay.

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

23 MR. PISANELLI: Yes, of course.

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

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

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

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

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

10 THE WITNESS: I'm sorry?

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

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

15 THE COURT: I don't know.

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

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

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

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

8 THE COURT: Okay. Thank You.

9 BY MR. PISANELLI:

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

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

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

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

24 BY MR. PISANELLI:

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

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

3 A Which page are we on?

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

7 A That's what we were told.

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

12 A I do.

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

15 A You've asked me the same question.

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

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

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

23 A I did.

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

1 A I knew that Mr. Peek and his colleagues were
2 reviewing documents on a server or from a server in Las Vegas.

3 Q That came from Macau?

4 A Well, things in the ordinary course of business I
5 knew -- I assumed he was reviewing.

6 Q You assumed he was reviewing the hard drive that you
7 just told us was outside of the ordinary course of business.

8 A I believed it was outside the ordinary course of
9 business.

10 Q Right. So when you said, only people that can go
11 are people that represent Sands China, that was a knowingly
12 false statement?

13 A Not at all.

14 Q You knew that Mr. Peek was reviewing Sands China
15 records; right?

16 A I knew -- Mr. Peek?

17 Q Yes.

18 A No. Mr. Peek was reviewing whatever was in Las
19 Vegas.

20 Q From Macau?

21 A I assumed he was reviewing whatever was in Las
22 Vegas. I'm assuming the documents from Las Vegas included
23 documents from Macau.

24 Q And you knew that Mike Kostrinsky, lawyer for Las
25 Vegas Sands, was doing that?

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

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

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

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

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

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

23 A Yes sir.

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

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

3 A From line 7 through 24, yes.

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

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

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

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

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

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

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

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

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

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

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

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

10 THE WITNESS: This transcript speaks for itself.
11 What I said -- I don't think this is a misrepresentation of
12 what I said.

13 BY MR. PISANELLI:

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

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

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

1 China in harm's way?

2 A I don't understand your question.

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

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

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

14 A Actually page 11 is sort of interesting.

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

22 A I do.

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

1 A I think you misspoke.

2 Q Misspoke?

3 THE COURT: You meant Sands/China?

4 MR. PISANELLI: I'm sorry?

5 THE COURT: You meant Sands/China has to be
6 independent?

7 MR. PISANELLI: I'm sorry. My mind's racing faster
8 than my mouth can keep up, which is unusual. Usually it's the
9 other way around.

10 BY MR. PISANELLI:

11 Q So let me restate it. Was it your intent to tell
12 Her Honor that Sands China was obligated to and did act
13 independently of Las Vegas Sands?

14 A I was saying that, yes.

15 Q And you're aware that Las Vegas Sands in this very
16 case has stated the exact opposite?

17 MR. MCCREA: Your Honor, I object to the scope of
18 this examination again.

19 THE COURT: Sustained.

20 BY MR. PISANELLI:

21 Q You knew at the time that you made that statement,
22 Ms. Glaser, that Las Vegas Sands controls Sands China, didn't
23 you?

24 MR. MCCREA: Same objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. PISANELLI:

2 Q Let's look at page 12.

3 A May I start reading on page 11?

4 Q Yes, of course.

5 THE COURT: And, Ms. Glaser, I'll tell you, since
6 you are a witness today, at any time if you need a break, you
7 let us know. Because you are the witness. And you've got the
8 M&M's and the water there.

9 THE WITNESS: Thank you, Your Honor.

10 Understood. I read down to line 15.

11 BY MR. PISANELLI:

12 Q I wanted to focus starting at line 2.

13 A On page 12?

14 Q Yes. Here you tell Her Honor that, "The government
15 investigations that are occurring...." do you see that?

16 A I do.

17 Q What government investigations are you referring to
18 there?

19 MR. MCCREA: Your Honor, scope again.

20 THE COURT: Overruled.

21 THE WITNESS: I am assuming, but -- I don't remember
22 100 percent, but I'm assuming I was talking about the
23 investigations by governmental authorities here.

24 BY MR. PISANELLI:

25 Q The SEC?

1 A I think it was two different ones, but --

2 Q Department of Justice?

3 A Yeah.

4 Q You were aware of both of those at the time you made
5 this remark?

6 A Yes.

7 Q And you told Her Honor that those government
8 agencies were hitting the same stone wall that was being set
9 up for Mr. Jacobs in this case?

10 A I did.

11 Q And you said that, "They are not even permitting the
12 government to come and look at the documents." Who's the
13 "they?" Is that Las Vegas Sands or Sands China?

14 A I understood it was the Office of Privacy.

15 Q Okay. So it was the Macau --

16 A That's how I read that.

17 Q I'm sorry. Thank you for the clarification. Macau
18 government is not allowing the United States Government to
19 look at the Sands/China records; that's what you're saying?

20 A That's my understanding.

21 Q And at this point you didn't think Her Honor needed
22 to know that while the United States Government couldn't
23 review these documents, Steve Peek could?

24 A It's a different group of documents, sir.

25 Q All right. Let's focus on the documents that we're

1 talking about --

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

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

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

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

18 A Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A You mean with the exception of the documents already

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

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

5 A No, it's not sir.

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

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

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

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

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

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

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

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

23 BY MR. PISANELLI:

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

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

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

8 MR. McCREA: There's an objection.

9 THE WITNESS: I'm sorry?

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

11 BY MR. PISANELLI:

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

13 A 2012?

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

16 A I'm sorry?

17 Q Page 41.

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

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

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

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

25 A I see it.

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

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

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

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

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

19 MR. PISANELLI: Your Honor, one moment.

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

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

24 THE COURT: Thank you.

25 MR. McCREA: Can we have a moment?

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

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

5 THE COURT: Yes it would.

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

7 THE COURT: Ten minutes.

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

1 THE COURT: So who is my examiner?

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

3 THE COURT: All right. Thank you.

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

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

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

9 THE COURT: You are.

10 THE WITNESS: Thank you.

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

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

14 THE COURT: Oh.

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

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

1 MR. PISANELLI: Thank you, Your Honor.

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

4 Have a nice day, Ms. Glaser.

5 MS. GLASER: Thank you, Your Honor.

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

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

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

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

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

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

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

1 me. It's typically not the procedure I would permit, but --

2 MR. BRIAN: I know it isn't, Your Honor. I know it
3 isn't.

4 THE COURT: -- given the lack of historical
5 knowledge that Mr. McCrea and Mr. Lionel have, I think it's
6 okay.

7 MR. BRIAN: Thank you, Your Honor.

8 MR. PISANELLI: Understood, Your Honor. One moment
9 before Mr. Peek takes the stand.

10 THE COURT: I'm listening.

11 MR. PEEK: And I told Mr. Brian of that rule, Your
12 Honor, so that he would --

13 MR. BICE: As I understand -- and I apologize, Your
14 Honor. If I understand, you're going to release Mr. Ma from
15 today. We would want to put him on the stand, Your Honor.

16 MR. PEEK: Then maybe I should step down.

17 THE COURT: Then why don't you step down and let's
18 let Mr. Ma get in and out of here.

19 MR. MCCREA: Your Honor, could we get some kind of a
20 proffer? I mean, this was supposed to be your proceeding, not
21 their proceeding.

22 THE COURT: Well --

23 MR. MCCREA: And you have indicated --

24 THE COURT: -- Mr. Ma made representations at one
25 hearing. It's very narrow, very brief. So in the interest of

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

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

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

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

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

11 THE COURT: Okay.

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

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

21 MR. BICE: Understood.

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

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

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

1 housekeeping matter?

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

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

8 THE COURT: Uh-huh.

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

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

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

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

22 MR. BICE: Yes, Your Honor.

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

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

1 combination to the safe.

2 MR. BICE: Is there an inventory?

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

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

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

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

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

14 (Pause in the proceedings)

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

19 MR. BICE: There is not.

20 MR. BRIAN: No reason, Your Honor.

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

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

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

3 THE COURT: That's fine.

4 MR. BRIAN: Thank you, Your Honor.

5 STEPHEN MA, PLAINTIFF'S WITNESS, SWORN

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

8 THE WITNESS: Stephen Ma; M-A.

9 DIRECT EXAMINATION

10 BY MR. BICE:

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

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

14 Q And what is your position at Glaser Weil?

15 A I am a partner at that firm.

16 Q And how long have you been a partner?

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

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

22 A I believe so, yes.

23 Q And what was your role in the litigation?

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

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

3 A Yes, I believe so.

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

6 A No.

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

10 A In connection with his action?

11 Q Yes, sir.

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

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

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

21 Q Was the only law firm?

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

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

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

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

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

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

3 MR. BICE: Understood.

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

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

9 BY MR. BICE:

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

12 MR. McCREA: Same objection.

13 MR. BICE: It's merely --

14 THE COURT: This is a when.

15 MR. BICE: -- a when.

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

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

19 BY MR. BICE:

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

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

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

1 answer.

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

5 THE WITNESS: Yes.

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

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

14 THE COURT: Okay.

15 BY MR. BICE:

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

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

22 THE COURT: Overruled.

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

25 //

1 BY MR. BICE:

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

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

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

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

13 Q Could it have been before July of 2011?

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

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

17 A I did not.

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

20 A Yes.

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

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

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

1 A I did not have any access to VPN.

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

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

6 Q Yes.

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

9 Q Okay. You've learned --.

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

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

15 THE WITNESS: Correct.

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

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

22 THE COURT: Okay. The objection is overruled.

23 BY MR. BICE:

24 Q And what did you learn?

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

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

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

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

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

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

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

20 MR. McCREA: Objection, Your Honor.

21 BY MR. BICE:

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

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

25 THE COURT: To the extent you already testified

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

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

9 BY MR. BICE:

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

11 A That's correct.

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

14 A Yes, I think that's accurate.

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

16 A No, I did not.

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

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

22 MR. McCREA: Objection.

23 THE COURT: Then don't tell us.

24 All right. Next?

25 //

1 BY MR. BICE:

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

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

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

9 A Yes.

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

13 A Correct.

14 Q And you comply with discovery responses; correct?

15 A Correct.

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

18 A Correct.

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

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

1 privilege.

2 THE COURT: Sustained.

3 MR. MCCREA: And also scope.

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

6 BY MR. BICE:

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

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

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

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

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

18 BY MR. BICE:

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

23 A I'm here.

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

1 A Line 25?

2 Q Yes.

3 A Yes.

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

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

7 Q Yes, onto page 42. Correct.

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

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

12 A I believe so.

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

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

18 THE COURT: Overruled.

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

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

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

4 BY MR. BICE:

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

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

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

19 A I do remember that discussion.

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

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

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

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

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

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

14 A That's correct.

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

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

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

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

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

10 Q Data privacy --

11 A -- privacy laws.

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

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

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

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

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

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

5 THE COURT: Thank you.

6 BY MR. BICE:

7 Q Turn to November 22nd.

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

9 THE WITNESS: Thank you, Your Honor.

10 MR. McCREA: Do we have a page?

11 BY MR. BICE:

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

14 A I'm on page 11.

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

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

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

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

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

1 out of the case?

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

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

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

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

24 A Correct.

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

1 respond to that?

2 A Correct.

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

5 A Correct.

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

9 A I never did.

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

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

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

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

19 THE COURT: Okay.

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

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

3 BY MR. BICE:

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

7 A No, that's not my testimony.

8 Q Okay.

9 A My -- my --

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

13 A In this case, correct.

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

17 MR. McCREA: Your Honor, scope.

18 THE COURT: Overruled.

19 You can answer.

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

1 outside counsel from Macau because they had serious concerns
2 about --

3 BY MR. BICE:

4 Q Well, if you're going to -- if you're going to waive
5 privilege and tell me about concerns, that's fine. I don't
6 have any problem with that.

7 A I don't want to waive --

8 MR. McCREA: We're not waiving.

9 BY MR. BICE:

10 Q But I'm not going to allow this partial waiver.

11 A I'm not going to waive privilege.

12 THE COURT: Mr. McCrea is objecting.

13 Right, Mr. McCrea?

14 MR. McCREA: Yes, ma'am.

15 THE COURT: I just wanted to make sure that the nod
16 of the head was what I thought it was.

17 MR. McCREA: Right.

18 THE WITNESS: And I don't intend to waive privilege
19 and I won't do so.

20 BY MR. BICE:

21 Q What was your understanding that as of July of 2011,
22 up until the January 3rd hearing, and if it changed, you tell
23 me, what was your understanding of who had possession,
24 custody, and control of that drive?

25 A Well, to the extent that we are talking about the

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

6 Q Okay. Well --

7 A Well, if I can finish?

8 Q Sure, go ahead.

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

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

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

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

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

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

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

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

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

5 Q Okay.

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

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

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

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

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

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

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

24 BY MR. BICE:

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

1 Her Honor that?

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

3 Q Okay.

4 A Not that question.

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

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

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

11 A No, that was not my intent.

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

14 A Can you give me the page again?

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

17 A Thank you. I've read that.

18 Q Have you read it, Mr. Ma?

19 A I have. Thank you.

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

24 A That's my recollection that --

25 Q Okay.

1 A -- because these are documents taken from the
2 company.

3 Q Right.

4 A Correct.

5 Q And so your position was is that those documents
6 were subject to the Macau Data Privacy Act; right?

7 A My recollection --

8 Q Yes or no?

9 A I think it's no.

10 Q So it's your recollection, it's your position that
11 the documents that Mr. Jacobs had in his possession as of this
12 November 22, 2011, were not subject to the Macau Data Privacy
13 Act; correct?

14 A No, that's not what I said. I think you're
15 misstating what my answer was.

16 Q Okay. Let's just make sure that we're crystal clear
17 on it. Is it your position that the documents that Mr. Jacobs
18 had that you were claiming he needed to return were subject to
19 the Macau Data Privacy Act during this hearing on November 22,
20 2011?

21 A The answer is yes in part.

22 Q Okay. And Her Honor made the statement to you about
23 sharing those documents with Mr. Peek, because she, at the
24 bottom of the transcript, says, "And if he has to release them
25 to Mr. Peek" -- this is Mr. Jacobs she is referencing -- "to

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

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

5 THE COURT: It's the same page.

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

7 BY MR. BICE:

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

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

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

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

16 Q Okay.

17 A And it says --

18 Q Well, let's continue reading it.

19 A Okay.

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

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

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

3 Q Correct.

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

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

13 A I'd have to go --

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

15 A If I can answer?

16 Q It's a yes or no question.

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

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

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

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

24 A By January of 2012 I did.

25 THE COURT: This was November.

1 BY MR. BICE:

2 Q Well, even November you knew.

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

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

7 A I did.

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

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

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

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

17 THE COURT: Overruled.

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

19 BY MR. BICE:

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

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

24 Q Okay.

25 A I certainly had privileged communications with

1 regard to that data.

2 Q Okay.

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

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

7 A Which communication?

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

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

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

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

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

21 BY MR. BICE:

22 Q Do you recall that?

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

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

25 A The Jacobs drive?

1 Q Yeah.

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

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

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

9 Q Yes.

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

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

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

15 THE COURT: Overruled.

16 You can answer.

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

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

22 BY MR. BICE:

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

25 A Yes.

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

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

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

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

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

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

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

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

18 Q Who are the other lawyers?

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

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

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

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

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

1 lawyer of several lawyers.

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

4 A I don't.

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

7 A No, it was a different law firm.

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

9 A I believe it was in Macau.

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

12 THE COURT: Thank you.

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

14 THE COURT: Thank you.

15 And defendants have nothing for Mr. Ma?

16 MR. BRIAN: Nothing, Your Honor.

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

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

20 THE WITNESS: Thank you, Your Honor.

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

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

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

3 THE COURT: Thank you.

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

5 STEPHEN PEEK, COURT'S WITNESS, SWORN

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

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

10 DIRECT EXAMINATION

11 BY THE COURT:

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

15 A November 2010.

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

19 A I do, Your Honor.

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

23 A That is correct, Your Honor.

24 Q Can you tell me why?

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

1 implications of the Macau Data Privacy Act.

2 Q Okay.

3 A I was not familiar with the Macau Data Privacy Act
4 at that time, Your Honor.

5 Q During that conference --

6 A In -- I'm sorry. In detail. I mean, I think may
7 have generally known that there was such a statute out there,
8 but I'm not even sure if I did, Your Honor --

9 Q Okay.

10 A -- on April 22, 2011.

11 Q During that conference I did, as I frequently do,
12 made sure that the client knew about document preservation and
13 the preservation of ESI and the importance of that. At that
14 time were you aware that a mirror of Mr. Jacobs' laptop
15 computer and copies of some of his Outlook emails had already
16 been made and sent to the U.S.?

17 A Yes, Your Honor.

18 MR. MCCREA: Objection, Your Honor. Attorney-client
19 privilege.

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

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

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

23 THE COURT: Or he has to be slower.

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

25 MR. MCCREA: I move to strike.

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

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

5 BY THE COURT:

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

12 A What page, Your Honor?

13 Q 55 of the June 9th transcript.

14 A I'm there, Your Honor.

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

19 A Yes, Your Honor.

20 Q What were you referring to?

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

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

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

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

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

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

24 THE COURT: Okay.

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

1 BY THE COURT:

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

5 A In May of 2011.

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

8 A Yes, they were.

9 Q So you printed some of them?

10 A I did, Your Honor.

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

14 MR. BICE: I do, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BICE:

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

19 A There are two times I learned about it.

20 MR. MCCREA: Objection, Your Honor.

21 THE WITNESS: I learned about it --

22 MR. MCCREA: Attorney-client privilege.

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

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

1 but it was December 2010 to January 2011.

2 BY MR. BICE:

3 Q Okay.

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

5 Q All right. And what you understood that Her Honor
6 has made reference to a mirror -- you heard Her Honor say
7 that; correct?

8 A I did.

9 Q Okay. But in reality what you understand is that
10 it's only a ghost image; correct?

11 A I don't make a distinction between mirror image and
12 ghost images, Mr. Bice. I know that Mr. Kostrinsky asked for
13 copies to made and those copies to be sent to the United
14 States for preservation purposes.

15 Q You -- you were aware -- or I should presuppose, but
16 you were present for Mr. Singh's deposition; correct?

17 A I was, sir.

18 Q And Mr. Singh said that there is a difference
19 between a mirror and a ghost image?

20 A Yes. Well, I understand the distinction between a
21 forensic image and a ghost image.

22 Q Okay.

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

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

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

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

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

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

14 THE COURT: Okay.

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

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

17 MR. BICE: Okay.

18 BY MR. BICE:

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

21 A No, you're correct.

22 Q Okay.

23 A December to January --

24 Q December to January time frame.

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

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

3 A That is correct, sir.

4 Q And how did you review them?

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

7 Q Okay.

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

10 Q Okay.

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

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

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

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

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

21 Q Did you print more than two or three?

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

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

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

1 A No, he was not.

2 Q Okay. And why --

3 A He was in -- he was in another location because --
4 because there wasn't room in the office.

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

7 A The Macau Data Privacy Act.

8 Q Okay. And that's the reason that you didn't take
9 them, but you didn't believe that it stopped you from
10 reviewing them; correct?

11 A I did not think at that time that it stopped me from
12 reviewing them.

13 Q And you didn't think that it stopped you from
14 printing them off and giving a hard copy to Mr. Kostrinsky?

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

16 Q I -- I apologize.

17 A But I --

18 Q I stand corrected.

19 A -- I left them --

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

21 THE WITNESS: I left them there.

22 BY MR. BICE:

23 Q And you didn't believe that it stopped you from --
24 or precluded you from doing that, either?

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

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

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

11 Q Okay.

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

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

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

1 THE COURT: Sustained.

2 BY MR. BICE:

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

4 A Yes.

5 Q Did you --

6 A Together with the attachments to those emails.

7 Q Okay.

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

9 Bice, to which I looked.

10 Q The database to which you were given access, did it
11 only contain emails with their attachments, or did it contain
12 other things, as well?

13 A I understood at that time that the collection that I
14 was reviewing was actually on Mr. Kostrinsky's laptop.

15 Q Understood.

16 A Had been put only on that laptop.

17 Q Okay.

18 A And that it was whatever had been sent over, which I
19 understood only to be Mr. Jacobs' email and nothing else.

20 Q And so you had no knowledge of any other data
21 transfers in the -- that -- when we're talking about in the
22 December and January time frame your only knowledge of data
23 transfers was that Mr. Jacobs' emails that you had been given
24 access to in May?

25 A That's not entirely true.

1 Q Okay.

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

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

9 THE WITNESS: I can, Your Honor.

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

11 MR. McCREA: Thank you.

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

23 BY MR. BICE:

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

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

2 A Yes, sir.

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

9 A I do, sir.

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

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

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

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

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

25 A I did.

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

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

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

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

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

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

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

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

22 Q Well --

23 A I'm just --

24 Q -- I just --

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

1 MR. BICE: Sure, Your Honor.

2 THE COURT: Thanks.

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

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

16 BY MR. BICE:

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

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

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

1 initial disclosures in this case?

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

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

11 A That was my understanding, sir.

12 Q And where did you get that understanding?

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

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

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

19 THE COURT: All right.

20 THE WITNESS: I mean --

21 THE COURT: That's okay.

22 BY MR. BICE:

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

25 A That sounds about right because there are eight days

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

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

6 A Yes, sir.

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

9 A He was, sir.

10 Q Okay.

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

12 Q All right.

13 A -- 2011.

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

16 A That's my answer, yes.

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

19 A Yes, sir, I had.

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

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

24 Q All right.

25 A -- that we --

1 Q That's what --

2 A -- we --

3 Q -- I've been told --

4 THE COURT: Only one of you --

5 MR. BICE: -- by my staff.

6 THE COURT: -- at a time, please.

7 MR. BICE: I apologize. I cut him off.

8 THE WITNESS: We -- once we received the ESI
9 protocols, we began the production of documents in accordance
10 with the direction from Campbell and Williams which changed
11 after we received the letter because they wanted to take Mr.
12 Adelson's deposition first, followed by Mr. Leven. And we
13 switched, because Mr. Campbell was insistent that that
14 deposition go forward, I believe, late August or early
15 September, so we started with Mr. Adelson's collection, and
16 then switched to Mr. Leven's. And we were -- that's just the
17 way we did it.

18 BY MR. BICE:

19 Q But you had already reviewed Mr. Jacobs's; correct?

20 A I had --

21 Q Or prior to July 28, 2011.

22 A I had looked at some. I had not, in terms of a
23 review for document production, done a document production
24 review of Mr. Jacobs' ESI because I didn't look at every email
25 on -- that was contained within the collection on Mr.

1 Kostrinsky's computer.

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

4 A About 100 of them, yes, sir.

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

6 A I did, sir.

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

10 A No, I did not.

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

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

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

19 A No, sir, I did not.

20 Q Did anyone else from your office?

21 A Yes, sir.

22 Q Who did?

23 A Mr. Jones.

24 Q When did he do that?

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

1 day or two or three after I reviewed them.

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

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

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

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

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

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

23 THE COURT: It's on page 55.

24 BY MR. BICE:

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

1 there's --

2 A Let me -- let me just finish.

3 Q Sure.

4 A "That same data privacy act, Your Honor, also
5 implicates communication that may be on servers and email
6 communication, hard document, hard copy documents in Las
7 Vegas." The Court says, "Here in the States." Mr. Peek,
8 "Sands, as well." And then the Court says, "Well, you can
9 take that position." And then I go on and tell her that we're
10 told that it does -- it is implicated.

11 Q Okay. When was the Macau Data Privacy Office,
12 whatever it's called, actually told about the emails being
13 brought over here?

14 MR. MCCREA: Objection, Your Honor. Attorney-client
15 privilege.

16 MR. BICE: How -- when a government agency is told
17 something, Your Honor --

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

19 MR. BICE: I apologize.

20 THE COURT: Mr. Peek, to the extent that you had
21 direct conversations with the governmental agency, as opposed
22 to learning of the communications with the governmental agency
23 from your client, I would love to hear about it.

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

1 THE COURT: Okay.

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

4 BY MR. BICE:

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

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

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

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

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

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

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

15 THE WITNESS: Oh. I'm sorry.

16 THE COURT: -- of the objection.

17 THE WITNESS: My apologies.

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

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

22 THE COURT: I know what it says.

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

25 THE COURT: Right.

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

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

6 MR. BICE: Yes.

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

9 MR. BICE: Okay.

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

14 MR. BICE: Understood, Your Honor.

15 THE COURT: Okay.

16 BY MR. BICE:

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

19 A I do, sir.

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

22 A I know that we did some rolling productions.

23 Q Okay.

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

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

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

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

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

22 A Yes, sir, I'm here.

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

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

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

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

6 A Yes, sir, I did.

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

10 A Yes, sir.

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

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

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

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

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

1 privacy; correct?

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

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

7 A No, sir, I did not.

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

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

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

15 A I do, sir.

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

18 A I do, sir.

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

23 A I did, sir.

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

1 the Court had ordered?

2 A Did I personally, or did --

3 Q Did anyone -- did anyone representing Las Vegas
4 Sands Corp do so?

5 A Yes.

6 Q Who did?

7 A Reviewers at Munger Tolles & Olson --

8 Q And when did they do it?

9 A -- had commenced that review. I don't know when. I
10 know it's -- I know it's -- I know it's late in time.

11 Q Well, what do you mean late in time? They didn't
12 start that review until after the Court learned that the
13 documents were here, isn't that fair, Mr. Peek?

14 A That is a fair --

15 MR. McCREA: Your Honor, it seems we're going well
16 beyond the scope of what this hearing is about.

17 THE COURT: This is appropriate because they all
18 know I got mad at them and yelled at them on June 28th.

19 THE WITNESS: What I know is jurisdictional
20 discovery was ordered in the September/October time frame.
21 You did not serve a respect with respect to which had been
22 granted until December 27th of 2011, about three months after
23 you were permitted discovery. You delayed your request.

24 BY MR. BICE:

25 Q And I'm sure --

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

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

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

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

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

15 Q Okay.

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

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

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

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

23 MR. MCCREA: This is argumentative.

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

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

1 THE WITNESS: If you want to get up here, get under
2 oath.

3 THE COURT: Mr. Peek.

4 MR. BICE: I actually will. I have no --

5 THE COURT: Gentlemen.

6 MR. BICE: -- hesitancy to do so.

7 THE COURT: Gentlemen. You know what, it's 4:37. I
8 had to break at 4:45 anyway, so we're going to break eight
9 minutes early. We're going to let everybody come back
10 tomorrow fresh.

11 MR. BICE: Thank you, Your Honor.

12 THE COURT: I'm hopeful to see you at 10:30 in the
13 morning. Unfortunately, I have a very challenging motion
14 calendar. And we will resume with Mr. Peek's examination.

15 THE WITNESS: Thank you, Your Honor.

16 MR. BICE: Thank you, Your Honor.

17 (Court recessed at 4:39 p.m., until the following day,
18 Tuesday, September 11, 2012, at 10:30 a.m.)

19 * * * * *

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THE COURT'S WITNESSES

| | | | | |
|--------------------|-----|-----|--|--|
| Patricia L. Glaser | 9 | 27 | | |
| Stephen Peek | 132 | 136 | | |

* * *

PLAINTIFFS' WITNESSES

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| Stephen Ma | 100 | | | |
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CERTIFICATION

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

AFFIRMATION

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

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP 12 2012

BY *Billie Jo Craig*
BILLIE JO CRAIG, DEPUTY

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

COURT'S SANCTION HEARING - DAY 2
VOLUME I

TUESDAY, SEPTEMBER 11, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRAD D. BRIAN, ESQ.
HENRY WEISSMAN, ESQ.
JOHN OWENS, ESQ.

FOR HOLLAND & HART

CHARLES McCREA, ESQ.
SAMUEL LIONEL, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

A-10-627691-8

TRANS
Transcript of Proceedings
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1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 11, 2012, 10:48 A.M.

2 (Court was called to order)

3 THE COURT: Sorry I'm late.

4 (Pause in the proceedings)

5 THE COURT: All right. Anything of a housekeeping
6 nature before we resume with Mr. Peek's examination?

7 MR. BRIAN: Yes, Your Honor. Last night we went
8 back and we reviewed our notes of the testimony of Mr. Ma. I
9 looked at some other materials we had. We didn't get the
10 transcript, so we don't know exactly what was said, but we
11 think there's one or two things that should be clarified. And
12 we talked to Mr. Ma about that.

13 THE COURT: Mr. Ma, luckily for everybody, is still
14 in the back row.

15 MR. BRIAN: He agreed to stay over tonight. But I
16 would ask the Court if it's acceptable to get him on and off
17 first. I suspect counsel may have some followup questions.

18 THE COURT: So you wanted to ask him some questions
19 when you didn't yesterday?

20 MR. BRIAN: Either that, or he would clarify
21 himself. However, either Mr. Owens can ask him some direct
22 questions, or he can just clarify, and then they can ask their
23 followup questions, whichever you and counsel would prefer.

24 THE COURT: Anybody have an objection with that?

25 MR. BICE: I'm not going to ask Mr. Ma to stay. So

1 let's get it over with now.

2 MR. BRIAN: Thank you, Counsel.

3 THE COURT: Okay. Mr. Ma, come on back up.

4 MR. BRIAN: Thank you, Your Honor.

5 THE COURT: Not a problem.

6 STEVEN MA, PLAINTIFF'S WITNESS, SWORN

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

9 THE WITNESS: Steven Ma, M-A. The last name is M-A.

10 MR. OWENS: Good morning, Your Honor. John Owens
11 for the record.

12 CROSS-EXAMINATION

13 BY MR. OWENS:

14 Q Mr. Ma, there are a couple areas you would like to
15 clarify today after your testimony yesterday?

16 A I do.

17 Q Please.

18 A Two items. I have not seen a transcript of my
19 testimony yesterday, but having thought about it, my general
20 recollection is that I was asked the question by Mr. Bice
21 yesterday as to whether I knew the contents of the hard drive
22 that was located here in Las Vegas. And although I am have
23 not seen the contents of that hard drive, based on -- without
24 revealing my communications with the client and with outside
25 counsel, based on those conversations I did have an

1 understanding that the data on that hard drive related to data
2 relating to Mr. Jacobs.

3 Q Was there another point you wanted to clarify?

4 A The second point was I can't remember the specifics
5 of the question and answer that was given to me yesterday, but
6 I recall I was a question to the extent if I'd ever reviewed
7 data from Mr. Jacobs. I think my testimony yesterday was I
8 don't recall seeing any such data.

9 Having given it some thought last night, my
10 recollection is that in advance of this hearing I reviewed
11 some materials that were transferred from my firm, Glaser
12 Weil, to the firm that substituted in this case for Sands
13 China, Munger Tolles, and I recall in the course of reviewing
14 those materials there included I believe two or three emails
15 that seemed to relate to communications by Mr. Jacobs.

16 MR. OWENS: One moment, Your Honor.

17 Nothing further, Your Honor. Thank you.

18 THE COURT: Mr. Bice.

19 REDIRECT EXAMINATION

20 BY MR. BICE:

21 Q So you -- so that we're clear, you did know the
22 contents of the hard drive; correct?

23 A I did know that it related to Jacobs. I have not
24 actually seen the documents themselves, but I was told by --
25 again, without revealing the actual communications, I can say

1 that I was told by the client and/or co-counsel that it --

2 MR. MCCREA: Objection, Your Honor. Attorney-client
3 privilege.

4 THE COURT: Mr. Ma, remember, we're trying not to
5 disclose attorney-client privileges --

6 THE WITNESS: I understand.

7 THE COURT: -- which is why Mr. McCrea is there
8 objecting so politely in this --

9 THE WITNESS: I appreciate the guidance. Thank you.
10 BY MR. BICE:

11 Q All right. Did you -- after thinking about it last
12 night did you come to a better time frame about when it is you
13 knew about the contents of the hard drive? Was it prior to
14 July of 2011?

15 A My recollection that it was still during that
16 approximate July 2011 time period.

17 Q Okay. Do you believe that it was prior to July 9 of
18 2011?

19 A I can't be that specific. I'm sorry.

20 Q All right. You said that in reviewing the documents
21 to transfer them to MTO that you came across some emails from
22 Mr. Jacobs?

23 A I don't know if it was from Mr. Jacobs or to Mr.
24 Jacobs. I do recall that he was listed on the email.

25 Q Okay. Had you produced those documents in discovery

1 in this case?

2 A I don't know the answer to that. I apologize.

3 Q Okay. Did they have a Bates stamp on them?

4 A They -- I don't remember if they had a Bates. I can
5 give a general description of the document that I remember.

6 Q Okay. What was the document you remember?

7 A I recall that there were -- I believe there were two
8 sets of binders that were provided to us. My general
9 recollection, without revealing any privileged communications,
10 is that it was given to us by the client. I had not seen the
11 binders --

12 MR. McCREA: Your Honor, we'd also object on work
13 product grounds.

14 THE COURT: I think you probably should follow the
15 admonishment.

16 THE WITNESS: I will.

17 BY MR. BICE:

18 Q There were two sets of binders?

19 A That's my recollection.

20 Q What were in the binders?

21 MR. McCREA: Same objection, Your Honor.

22 THE COURT: The objection's sustained.

23 BY MR. BICE:

24 Q Well, do you recall Ms. Glaser testifying yesterday
25 that she never saw any emails from Mr. Jacobs?

1 A I don't have a specific recollection, but that seems
2 to be consistent with my recollection.

3 Q Were these binders something that Ms. Glaser had
4 access to?

5 MR. MCCREA: Objection, Your Honor. Work product.

6 THE COURT: Overruled. That's a yes or no.

7 THE WITNESS: I don't know if she ever reviewed
8 those binders.

9 BY MR. BICE:

10 Q Okay. But she had access to them; correct?

11 A I don't know.

12 Q Well, she was the head lawyer in your firm in charge
13 of the case; correct?

14 A She certainly was the head lawyer on the case.

15 Q Were these binders -- whose office were these
16 binders in, if anyone's?

17 A I don't believe they were in an office per se. I
18 believe they were part of the -- there's a file system kept
19 for the case.

20 Q Okay.

21 A So I think it was probably kept by a paralegal.

22 Q All right. Whose -- a paralegal in your firm?

23 A I believe so. You know --

24 Q Who was the paralegal in your firm that would have
25 had possession of those?

1 A In connection with the -- you know, I don't want to
2 guess. I don't remember who it was. But I did work with a
3 paralegal in terms of a transfer of files from my firm to the
4 Munger Tolles firm. I can't remember which specific paralegal
5 was involved.

6 Q All right. And so the in the process of
7 transferring them you transferred -- how many binders were
8 there that these emails were in?

9 MR. McCREA: Objection, Your Honor. Work product,
10 beyond the scope.

11 THE COURT: Overruled. We're only looking for a
12 number.

13 THE WITNESS: My recollection is that there were two
14 binders.

15 BY MR. BICE:

16 Q There are two binders.

17 A As I recall, without revealing any communications,
18 the binders had approximately 40 or 50 tabs on the binders.

19 Q And were they all emails in those binders?

20 A No.

21 Q Okay. They were other documents, as well? Correct.

22 MR. McCREA: Objection, Your Honor. Work product.

23 THE COURT: Sustained.

24 BY MR. BICE:

25 Q Do you know when you came -- or when your firm came

1 into possession of the documents that were in those binders?

2 A I do not.

3 Q Do you know how you came into possession of them?

4 A I don't know the specifics. My understanding is
5 they came from the firm, but I don't know from whom and at
6 what time.

7 Q They came from whom?

8 A I don't know from what specific person.

9 Q Did they come from Mr. Peek's office?

10 A I don't know that.

11 Q All right. Or do you know whether they came from
12 the client?

13 A I believe they came from the client.

14 Q Do you know who at the client?

15 A I do not.

16 Q Who was your client contact at the time in which you
17 were representing Sands China?

18 A The general counsel of Sands China, David Fleming.

19 Q Were you ever provided documents by any
20 representatives of Las Vegas Sands Corp.?

21 A I can't recall specifics. I'm assuming that we did.

22 Q The emails that you reviewed in transferring the
23 documents to MTO, you said -- how many emails were there? I
24 apologize if you already --

25 A Approximately two or three.

1 Q Two or three. That you looked at; correct?

2 A I believe that's correct.

3 Q Okay. Did you go through both of those binders and
4 see how many emails were in them?

5 A I did not review those documents for that purpose.

6 Q And the emails were -- Mr. Jacobs was either a
7 sender or a recipient on them?

8 A That's my recollection.

9 Q Okay. Do you remember the subject matter of them?

10 A I do not.

11 Q Do you remember who were any of the other recipients
12 or senders?

13 A I don't recall.

14 Q Was it your understanding that those were emails
15 from Macau when Mr. Jacobs was in Macau?

16 A I don't have a recollection as to whether it was
17 from Macau or any other place.

18 MR. BICE: I don't have anything further, Your
19 Honor.

20 THE COURT: Anything further?

21 MR. OWENS: Nothing further, Your Honor. Thank you.

22 THE COURT: Thank you, Mr. Ma. We appreciate you
23 staying over. Have a nice day.

24 MR. BRIAN: Thank you for the courtesy, Your Honor.

25 THE COURT: Now are we ready to resume with Mr.

1 Peek?

2 Mr. Peek, if you'd come on up, be sworn again.

3 STEPHEN PEEK, COURT'S WITNESS, SWORN

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

6 THE WITNESS: Stephen Peek. That's S-T-E-P-H-E-N,
7 and Peek is P-E-E-K.

8 And, Mr. Bice and Your Honor, there were a couple
9 things that I wanted to bring up from yesterday, if I may.

10 MR. BICE: I don't have any problem with when your
11 counsel redirects that we can do so -- or that you can do so.

12 THE COURT: Did you make notes so you were going to
13 remember them? I'm asking --

14 THE WITNESS: I did not, Your Honor. But I think I
15 can remember them.

16 THE COURT: Okay. All right. Then let's wait till
17 we get to your counsel if you can remember them. And if you
18 need a piece of paper, I would be happy to hand you one so you
19 can write it down.

20 THE WITNESS: That might be a good idea just in
21 case, Your Honor.

22 (Pause in the proceedings)

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Uh-huh. Now, Mr. Bice.

25 MR. BICE: Thank you, Your Honor.

CROSS-EXAMINATION (Continued)

BY MR. BICE:

Q Let's just deal with this issue first. With respect to what Mr. Ma just told the Court, Mr. Peek, did you provide any emails from the data set that you had reviewed to the attorneys at Glaser Weil?

A Did not.

Q Do you know whether anyone else did?

A I do not know whether anybody else did.

Q I just want to make sure I got the timeline down yesterday. And if I didn't, I'm sure you will correct me.

You looked at the emails in December of '11 and -- or you learned about them, I apologize, you didn't look at them, learned about them in December of '11 and January of '12; correct?

A No, that's not correct.

Q That is incorrect? What is incorrect about my statement? I apologize.

A December 2010 and January 2011.

Q You are correct. I got the dates wrong.

I also understood -- and, again, if I'm wrong, you will correct me, that you learned about other data transfers in July of 2011.

A No, that's not correct.

Q Okay. So let's make sure that we do get it correct

1 for purposes of my examination.

2 In December of '10, January of '11, you learned
3 about emails that Mr. Kostrinsky had; correct?

4 A That's correct. I apologize. I learned it in July
5 of 2011 about the fact that Mr. Jacobs had downloaded
6 information off of his laptop desktop that included not only
7 his email, but potentially email and hard-copy documents of
8 others in Macau. So --

9 Q Okay.

10 A -- that's what I referred to yesterday about other
11 data, not by Las Vegas Sands, but by Mr. Jacobs.

12 Q All right. When did you learn that not only did Mr.
13 Kostrinsky had emails, that he had a copy of the desktop, a
14 ghost image of Mr. Jacobs's desktop?

15 A I'm sorry. I thought I answered -- when Mr.
16 Kostrinsky had it?

17 Q Yes. When did you learn that Mr. Kostrinsky not
18 only had the emails, but he also had a ghost image of the
19 desktop? Was it at the same time?

20 A I don't -- I don't know that he had a ghost image of
21 the desktop, so --

22 Q Okay.

23 A I mean, I apologize. What I said yesterday was that
24 what I understood is that Mr. Kostrinsky had asked folks in
25 Macau -- and this comes from his deposition --

1 Q Uh-huh.

2 A -- to make images -- or make copies of his
3 computer's hard drive, the desktop, I think a PC to which he
4 had access -- it may have been two desktops and one or two PCs
5 that Mr. Jacobs used while he was in Macau, one in a hotel
6 room, I think, and one perhaps in his office. That's what I
7 understood him to ask the IT department in Macau to undertake.

8 Q All right. And when did you learn that those --
9 that data set had been brought to the United States?

10 A Again, in December of 2010, January -- approximately
11 December 2010, January 2011.

12 Q All right. Did you learn thereafter, after January
13 of 2011 that additional data had been brought over from Macau?

14 A Yes, I did learn that.

15 Q When did you learn that?

16 A Spring 2012.

17 Q When you say spring, can you give us a time frame?

18 A I can't give you -- May, June. My recollection it
19 could have been earlier.

20 Q Okay.

21 A I don't think it was later, because I know we filed
22 a pleading with the Court in June, as well as in July.

23 Q Okay. And you learned that in conjunction -- let me
24 rephrase it. The additional information or the additional
25 documents that you learned about or data that you learned

1 about is on the drives that were brought to the Court
2 yesterday?

3 A No.

4 Q Okay. What additional data did you learn about,
5 then, in the spring of 2012?

6 A Well, let me take this back. I don't know what was
7 brought to Court yesterday --

8 Q Okay.

9 A -- so I couldn't tell you for sure. But I don't
10 believe that everything that -- I don't know, Mr. Bice,
11 because I didn't sit here yesterday with Tony and others or
12 stand there with Tony and others as he passed those --

13 Q Okay.

14 A -- so I don't know what he brought with him. I do
15 know what we disclosed to the Court of the other data
16 transfers and when they -- when they had occurred.

17 Q All right. So --

18 A So I apologize. I just don't know. I mean, if you
19 gave me the -- perhaps the documentation that Tony gave to the
20 court clerk, I might be able to tell you.

21 Q All right. And it's your understanding, though --
22 did you learn about the additional data transfers above and
23 beyond what I understood was the Jacobs ESI? You learned
24 about that in conjunction with making the disclosure to the
25 Court?

1 A That is correct.

2 Q Okay. To your knowledge, Mr. Peek, did anyone at --

3 THE COURT: And that disclosure was the one about a
4 month and a half ago?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right.

7 THE WITNESS: Yes, Your Honor, it was.

8 BY MR. BICE:

9 Q So prior to your making that disclosure to the Court
10 or in that time frame the client Las Vegas Sands Corp. had
11 never revealed to you that it possessed those additional data
12 sources?

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

15 THE COURT: Objection is sustained.

16 BY MR. BICE:

17 Q Okay. Mr. Peek, to your knowledge when did the
18 attorneys at Glaser Weil know about the Jacobs emails?

19 MR. MCCREA: Objection, Your Honor. Privilege --
20 attorney-client privilege and work product.

21 THE COURT: Sustained.

22 BY MR. BICE:

23 Q Did they know about the transfers prior to July 9 of
24 2011?

25 MR. MCCREA: Same objection.

1 THE COURT: Sustained.

2 BY MR. BICE:

3 Q With respect to the emails -- let's deal with the
4 Jacobs emails that you had reviewed. You had told me that you
5 reviewed them, and I believe, and I apologize if I didn't hear
6 you right, two days, correct, in May?

7 A Well, I believe it was over the course of two days,
8 Mr. Bice.

9 Q All right. And were they consecutive days?

10 A That I'm not -- I don't know for sure.

11 Q Okay.

12 A I believe that they were consecutive days.

13 Q Understood. Were there any other times when you
14 reviewed them other than those two days that you've already
15 told us about?

16 A No, there was not.

17 Q Okay.

18 A That was one I was going to clarify with you, is
19 that there was a paralegal who actually did look at those
20 documents after Mr. Jones and I reviewed them.

21 Q Okay. Well, I'm going to -- fair enough. And I
22 will get to that other people who may have reviewed them or
23 not.

24 But you personally, I'm talking about Stephen Peek
25 personally right now, did not review them at any other point

1 in time?

2 A I did not, that's correct.

3 Q And you have never seen -- is it fair to say you
4 have never seen a physical copy of them other than the two
5 times in which you reviewed them on a computer and printed off
6 some of them?

7 A That is also correct.

8 Q And so no one else from your office has ever
9 provided you with a physical copy of any of them. Is that
10 fair?

11 A That is fair, because they were left at -- in Mr.
12 Kostrinsky's office in May of 2011.

13 Q Understood.

14 Now, let's deal, then, with whether you ever
15 examined them in a remote electronic format.

16 A I did not.

17 Q Okay.

18 A I did not. I don't believe that they were
19 accessible in a remote electronic format.

20 Q All right. Now, Mr. Singh had testified -- and
21 let's clear this up. Mr. Singh had testified that you had or
22 he thought you had something called a VPN access. Do you
23 recall that?

24 A I recall his testimony.

25 Q Okay. Did you have VPN access to any data at Las

1 Vegas Sands Corp.?

2 A Having now learned from Mr. Singh what VPN means --

3 Q Yes.

4 A -- yes. I understood it was called a shared drive
5 access --

6 Q Okay.

7 A -- to which I was given rights.

8 Q Okay.

9 A I never did access that, and I don't believe that
10 the Jacobs collection was on that shared drive.

11 Q Do you know what the shared drive was that you had
12 access to? Do you know the name of it?

13 A I do not. I remember Mr. Singh testifying to it in
14 his deposition, because I was there.

15 Q Right.

16 A But I don't recall either from his testimony -- and
17 I don't -- I don't even know if -- when I was given access to
18 it in the fall of 2010, winter 2011, whether it even had a
19 name. I don't remember.

20 Q All right. And did you ever -- and maybe you
21 answered this, and if you did, I apologize. Did you ever
22 actually access -- regardless of what the drive had on it, did
23 you actually ever physically do it?

24 A I did not.

25 Q Okay.

1 A I'm sorry. I'm computer literate I like to think,
2 but I'm very challenged with this access.

3 Q All right. What about -- was there any other form
4 of -- and I think I know the answer to this, but I'll give you
5 a chance to explain it. Is there any other form of access to
6 any of the Jacobs ESI that Mr. -- that your client had? Did
7 you have any other form of access to it other than the two
8 days in which you looked at it on Mr. Kostrinsky's computer?

9 A I did not have any other form of access to it. But
10 without knowing what was -- what Mr. Kostrinsky put on the --
11 on that shared drive --

12 Q Right.

13 A -- I'm -- I can't say for certainty that I didn't
14 have access to what -- I mean, I certainly had the ability to
15 get into that shared drive. I just didn't.

16 Q Understood.

17 A And I don't know what was on that shared drive that
18 Mr. Kostrinsky put there.

19 Q All right. Now, is it fair to say -- because I
20 think and I want to try to understand your testimony -- is you
21 never had a physical copy of any of Mr. Jacobs's ESI
22 documents, so you could have never shared them with anyone; is
23 that right?

24 A That's not right.

25 Q Okay. Tell me what's wrong about that.

1 A I think that from time to time Mr. Kostrinsky may
2 have made copies of things that he saw on his desktop that may
3 have come from Mr. Jacobs.

4 Q Right.

5 A And from time to time I believed that he may have
6 circulated some of those documents, maybe one, two, or three.
7 I don't -- I don't know exactly how many.

8 Q Okay. And they were --

9 A I know this is probably work product, but I'm not
10 hearing an objection, so --

11 Q All right. And you --

12 THE COURT: Are you coaching Mr. McCrea?

13 THE WITNESS: I'm not, Your Honor. But I don't want
14 to get in trouble.

15 THE COURT: Next time I have an issue in Newton I'm
16 going to play this where you were trying to help Mr. McCrea.

17 MR. MCCREA: He testified to that yesterday, so I
18 thought it was out of the bag.

19 THE COURT: Oh. All right. Thank you, Mr. McCrea.

20 THE WITNESS: Just wanted to make sure I wasn't
21 stepping out of bounds.

22 BY MR. BICE:

23 Q And those were circulated. Do you know to whom?
24 Obviously you.

25 A Yes.

1 Q Okay.

2 A And I believe there was the legal team, so it would
3 have been --

4 Q Ms. Glaser --

5 A -- myself and other lawyers at Holland & Hart. I
6 believe Mr. Jones, and I'm not sure if Mr. Cassity was on that
7 legal team at that time. I know he is today. The Glaser Weil
8 team, which would have been included Ms. Glaser, at that time
9 Mr. Krum, Mr. Sedlock, and I don't think others. And then I
10 -- then I don't think Steve Ma was -- Steve Ma was on the team
11 at that time.

12 Q All right. The documents that you received from Mr.
13 Kostrinsky, were they received by you or your firm in
14 electronic format?

15 A They were attached -- I guess the answer is yes,
16 because they were attachments to an email, so they were a
17 .pdf. I think that's Adobe.

18 Q Okay. Were those documents printed? The
19 attachments, were they printed?

20 A I wouldn't have printed them. I just would have
21 looked at them on my screen. I don't believe that I printed
22 any of those.

23 Q Do you know whether or not anyone in your department
24 or your team printed them?

25 A I do not.

1 Q Were they produced in this case in discovery?

2 A We haven't gotten to that point yet.

3 Q Did they pertain to Mr. Jacobs?

4 A Well, yes, they pertained to Mr. Jacobs. They would
5 have been part of the merits discovery ultimately as we worked
6 through the PDPA issue.

7 Q Okay.

8 A But that was stayed by the Supreme Court.

9 Q When did you receive the emails from Mr. Kostrinsky?

10 A I don't recall, Mr. Bice. Just during fall-winter
11 of 2010, 2011, as we were investigating the facts underlying
12 Mr. -- and the defenses to Mr. Jacobs's claim that there was a
13 breach of contract.

14 Q And you -- and you received those documents well --
15 from Mr. Kostrinsky well in advance of the stay, did you not?

16 A Oh, yes.

17 Q Okay.

18 A Oh, yes.

19 Q And you understood that those documents had come
20 from Macau; correct?

21 A Yes. Because Mr. Jacobs -- during that period of
22 time those were -- that was the period of time during which
23 Mr. Jacobs was the CEO and president of Sands China Limited.
24 I don't know whether any of the emails that I had were emails
25 when Mr. Jacobs was a consultant to Las Vegas Sands Corp.,

1 which is a different period of time, or a consultant to VML,
2 which is another different period of time. There were like
3 three different periods of time.

4 Q Do you disseminate those emails outside of your
5 team?

6 A No.

7 Q Do you know whether or not they were disseminated to
8 any of the executives in Las Vegas Sands Corp.?

9 A I don't believe that they were. But I don't know
10 what Mr. Kostrinsky may have done with them. And I'm trying
11 to think --

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

14 THE COURT: Sustained.

15 BY MR. BICE:

16 Q Who was giving you -- from the client's standpoint,
17 Mr. Peek, who were you taking direction from?

18 A Well, there were two different periods of time.

19 Q Understood.

20 A In the beginning and throughout the period of time
21 until November of 2011 it was always Ms. Hyman. Gayle Hyman
22 was the general counsel.

23 Q Okay.

24 A Mr. Kostrinsky was directing the litigation from the
25 time -- he's the one that actually contacted me and hired me

1 or set up the interviews --

2 Q Okay.

3 A -- in late October, first of November, and he was
4 succeeded by Rob Rubenstein I believe sometime in April of
5 2011. So from 2011 Mr. Kostrinsky was still kind of there,
6 but it was really more Ms. Hyman and Mr. Rubenstein.

7 Q Did that ever change other -- other than the change
8 you've described for Mr. Kostrinsky to Mr. Rubenstein, did --

9 A Yes, it did.

10 Q And when was that change?

11 A I believe Mr. Rafaelson came on board on
12 November 1st, 2011, as the new general counsel, because Ms.
13 Hyman was interim general counsel.

14 Q All right.

15 A Or -- I don't know if she was interim or was general
16 counsel, but she's still in the company, I know that.

17 Q All right. And then you then were being directed by
18 Mr. Rafaelson after that --

19 A Mr. Rafaelson and Mr. Rubenstein still.

20 Q All right. And that was after -- and I apologize,
21 Mr. Peek -- April of 2011?

22 A No, no, no, no. Well, Mr. Rubenstein came on in
23 April of '11?

24 Q Yes, sir.

25 A And then Mr. Rafaelson was hired as general counsel

1 for Las Vegas Sands Corp. on November -- took office on
2 November 1st, 2011.

3 Q All right. I apologize for mixing up those dates.
4 You had indicated -- and let's deal -- we'll deal
5 with Mr. Jones here separately in a moment.

6 Other than you and the paralegal that you have
7 described is there anyone else who may have reviewed any of
8 those emails at Holland & Hart?

9 A The paralegal I think had some clerical staff with
10 her when she went over to index those documents. So I could
11 only reasonably conclude that those individuals who worked
12 under Theresa's election would have seen things. I don't know
13 whether -- other than they just would have seen things.

14 Q All right. Well, as part of your review into what
15 happened have you inquired as to whether or not anyone else in
16 your office used this VPN access to review the emails at any
17 point in time?

18 A Yes, I'm familiar --

19 MR. McCREA: Objection, Your Honor, on work product.

20 THE COURT: Sustained.

21 BY MR. BICE:

22 Q Is it true that someone in your office did access
23 those emails through the VPN network?

24 MR. McCREA: Same objection.

25 THE COURT: Sustained.

1 BY MR. BICE:

2 Q Did anyone in your office --

3 A Can I correct something in your question?

4 Q You may.

5 A You're assuming that the email -- the emails were
6 accessible in VPN access. And as I said to you, Mr. Bice,
7 they were not -- it's my understanding they were not on that
8 VPN access.

9 Q Okay. Well, I --

10 A They were not on that shared drive.

11 Q I apologize. Because I thought you said you didn't
12 know whether they were or they weren't.

13 A I do not believe that they were.

14 Q Okay. And why do you not believe that?

15 A In conversations with Mr. Kostrinsky as to what was
16 on the --

17 MR. McCREA: Object. Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. BICE:

20 Q All right. So let's set aside the VPN issue for a
21 moment. Do you have any knowledge that -- and I'll set aside
22 Mr. Jones for a moment -- that anyone else on your staff saw
23 any of those emails that were from Mr. Jacobs that were on Mr.
24 Kostrinsky's computer?

25 A I don't believe --

1 MR. McCREA: Objection. Work product.

2 THE COURT: Overruled.

3 THE WITNESS: I don't believe that anybody else did.

4 I looked at them and didn't complete my task, so I asked Mr.

5 Jones to complete the task.

6 BY MR. BICE:

7 Q Okay.

8 A And I think he did it by himself. He may have asked

9 Mr. Cassity to assist him, but I think he did it by himself.

10 You'll have to ask him, because he's here.

11 Q Understood. And he -- to your knowledge, he, like

12 you, went to Mr. Kostrinsky's office and reviewed them?

13 A Yes, he did.

14 Q And is it your understanding how many days that he

15 reviewed them? Do you know?

16 A I believe it was only one, but it may have been two

17 days. I'm not certain. And certainly he's here and he can

18 tell you.

19 Q And his job was to complete the task, because you

20 had only gotten partway through?

21 A That is correct.

22 Q All right. And did Mr. Jones complete the task?

23 A I believe he did, or he would have continued. But I

24 -- it was a very limited, discrete task.

25 Q Okay. And that -- how long after you had looked at

1 them for a couple of days was it that Mr. Jones was sent? Was
2 he sent the next day, or was it in close in time?

3 A I think it was close in time, but I don't know if he
4 went the next day. I'm a single dad, so I go to -- I go to
5 Reno every other week to --

6 Q Understood.

7 A -- be with my two children.

8 Q Understood.

9 A And so I think that was the reason why I asked him
10 to --

11 Q Okay. And so then that would have been sometime --
12 it would be your belief, at least, that sometime in May of
13 2011 Mr. Jones had performed -- or had completed the task;
14 correct?

15 A Yes, sir.

16 Q Okay. So it's fair to say that by May of 2011 your
17 firm had completed the task of reviewing the emails that were
18 on Mr. Kostrinsky's computer?

19 A For the limited discrete task that we were
20 undertaking that would be a fair statement. But the task was
21 not -- well, I'll leave it at that.

22 Q Well, the --

23 A I think that gets into --

24 Q The task was to review those emails for defenses and
25 addressing the merits of the case; correct?

1 A It was trying to understand whether there was an
2 merit to Mr. Jacobs's claims.

3 Q Okay.

4 A So, yes, it was to evaluate whether there were any
5 merits to Mr. Jacobs's claim.

6 Q And did Mr. Jones, to your knowledge, also print off
7 emails?

8 A To my knowledge, I don't know. I would imagine --

9 THE COURT: We don't want you to guess or speculate,
10 Mr. Peek.

11 BY MR. BICE:

12 Q He's here, so we can ask him.

13 But is it fair to -- I'm positive I know the answer
14 to this. But Mr. Jones, if he did print them off, he left
15 them with Mr. Kostrinsky, he did not bring them back to the
16 office?

17 A That would be an accurate assumption on your part.

18 Q All right. Mr. Peek, do you have any knowledge --
19 outside of the Holland & Hart firm do you have any knowledge
20 of other people, obviously other than Mr. Kostrinsky, also
21 reviewing those emails?

22 MR. McCREA: Objection, Your Honor. Work product.

23 THE COURT: Sustained.

24 BY MR. BICE:

25 Q Do you have any knowledge, Mr. Peek, of attorneys at

1 O'Melveny & Myers reviewing those emails?

2 MR. McCREA: Same objection.

3 BY MR. BICE:

4 Q How about attorneys from Munger, Tolles & Olson? Do
5 you have any knowledge of them reviewing those emails?

6 MR. McCREA: Same objection.

7 THE COURT: Sustained.

8 BY MR. BICE:

9 Q Do you have any knowledge of Sands executives,
10 setting aside lawyers, Sands executives reviewing those
11 emails?

12 MR. McCREA: Attorney-client privilege.

13 THE COURT: Sustained.

14 MR. BICE: Well, Your Honor, I don't understand the
15 predicate for the claim of attorney-client privilege. It's a
16 fact. It's not an attorney-client communication.

17 THE COURT: All right.

18 MR. BICE: Does he have any knowledge of it?

19 THE COURT: If you're going to ask the executives if
20 they reviewed the information, that's one thing, Mr. Bice.
21 But asking Mr. Peek if he knows if the executives reviewed the
22 information in my mind --

23 MR. BICE: Well --

24 THE COURT: -- impinges upon the attorney-client
25 privilege. But since I told you we weren't calling executives

1 as part of this hearing, we'll wait and hear that in your
2 Rule 37 evidentiary hearing if you ever file your motion.

3 MR. BICE: Understood, Your Honor. Understood.

4 BY MR. BICE:

5 Q Mr. Peek, do you know whether or not anyone at the
6 Glaser Weil firm ever reviewed those emails?

7 MR. McCREA: Objection. Work product.

8 THE COURT: Sustained except to the extent we've
9 heard testimony in court if you want to expound on any of the
10 testimony either Mr. Ma or Ms. Glaser gave I'd be happy to
11 hear it.

12 THE WITNESS: Well, the question is do I know. The
13 answer is I know -- whether they did or not, I guess? Is that
14 the question?

15 BY MR. BICE:

16 Q Yes.

17 A Yes, I know whether they did or not.

18 Q Okay. And they did; right?

19 A No, they did not look at that collection that I
20 printed out and left in Mr. Kostrinsky's office to my
21 knowledge. I do not believe that they did look at that
22 collection.

23 Q All right. Do you know whether or not they had
24 access to the database that contained the emails?

25 MR. McCREA: Objection. Work product.

1 THE WITNESS: I don't believe that anybody had
2 access to that, other than those who went --

3 MR. McCREA: Objection. Objection.

4 THE COURT: Objection's sustained.

5 Mr. Peek, you've got to let --

6 THE WITNESS: Sorry.

7 THE COURT: When I say "sustained," you have to
8 stop.

9 BY MR. BICE:

10 Q All right. So let's back up a little bit. Or maybe
11 not. I guess we're moving forward, not backing up.

12 When is it that you first heard about the Personal
13 Data Protection Act [sic]?

14 A I believe it was --

15 THE COURT: I asked this yesterday, so it's asked
16 and answered.

17 MR. McCREA: Your Honor --

18 MR. BICE: And I apologize, Your Honor. I don't
19 recall the date if you did, Your Honor.

20 THE WITNESS: I told -- I told the Court yesterday
21 it was I believe late April, early May.

22 THE COURT: After our Rule 16 conference.

23 BY MR. BICE:

24 Q Of --

25 A 2011.

1 Q Thank you. I apologize for having to re-ask it.

2 In your capacity as representing Las Vegas Sands
3 Corp. you are aware, are you not, in no small part, I guess,
4 based on Mr. Singh's testimony in his deposition and Mr.
5 Kostrinsky's, that in the -- prior to -- let's deal with the
6 time frame prior to late April or May of 2011. You're aware
7 that it was in the ordinary course of business there was a
8 link between Las Vegas Sands Corp. and the Macau properties
9 for the transfer of data; correct?

10 MR. MCCREA: Your Honor, can I have some
11 clarification on this?

12 THE COURT: Sure.

13 MR. MCCREA: Is he talking about just what he knows
14 from the two depositions he referred to? I'll let him answer
15 that.

16 THE COURT: That's what I understood -- that's what
17 I understood the question to be.

18 THE WITNESS: And that's what I understood the
19 question to be, as well.

20 MR. BICE: Okay.

21 THE COURT: Are we all on the same page?

22 MR. BICE: Yes.

23 THE COURT: Okay.

24 THE WITNESS: I don't think you're representing it
25 correctly, but I'll let Mr. Singh answer for himself. But I

1 know that there certainly were transfers of data from time to
2 time between the two companies, but I don't -- your
3 characterization is your characterization. I'd rather have
4 Mr. Singh characterize it himself in what he knows.

5 BY MR. BICE:

6 Q Well, let me make sure I understand what your
7 position is.

8 A My position is what was testified to. That's all I
9 know.

10 Q What's your --

11 A So if you have a -- if you have something from the
12 transcript you want to read to me and say, did you remember
13 this, I'm happy to do that. But all my knowledge is only the
14 knowledge that I gained in listening to Mr. Kostrinsky testify
15 and listening to Mr. Singh testify, and that's all I know.

16 Q Well, you heard also Ms. Glaser yesterday testify,
17 as well; correct?

18 A Yes. And I also testified that from time to time in
19 the ordinary course that Mr. Jacobs, as reporting to the
20 chairman of Sands China Limited and its special advisor, Mr.
21 Leven, would have written emails or under the shared services
22 agreement there are responsibilities of each of the two
23 companies to each other under a shared services agreement. So
24 I know that in the ordinary course that Mr. Jacobs, as the
25 president and CEO, would have corresponded from time to time

1 with executives and also that there would have been executives
2 in both Sands China and in Las Vegas Sands who performed
3 duties under the shared services agreement who would have
4 communicated in the ordinary course of business to -- what's
5 the right word -- is to follow up on those obligations under
6 the shared services agreement. And, you know, you went over
7 the shared services agreement with Mr. Adelson last week,
8 so --

9 Q All right. And Mr. Adelson in fact testified that
10 he received prior to --

11 MR. MCCREA: Your Honor, this is beyond the scope.

12 THE COURT: Sustained.

13 MR. BICE: Your Honor, I don't believe it is beyond
14 the scope, because what I want to lay the foundation for or my
15 followup questions about the fact that the data transfer that
16 was occurring prior to April of 2011 occurred routinely and
17 there was no problem -- despite that fact that they now want
18 to was an error in law, they had no problem searching it, Mr.
19 Adelson's documents, Mr. Kaye's documents, Mr. Goldstein's
20 documents. They had no problem searching all of those
21 documents despite the supposed error in law about data
22 transfers from Macau.

23 THE COURT: You mean error in interpretation of law.

24 MR. BICE: Well, I don't think it was an error at
25 all. I think it was a new theory. And we'll get into that

1 with Mr. Singh a little bit.

2 THE WITNESS: It may be the same error that Mr. Wynn
3 had.

4 MR. MCCREA: Your Honor --

5 THE COURT: Gentlemen, I'm not on that case today.

6 MR. MCCREA: Your Honor, this all started on what he
7 learned from the depositions of Mr. Kostrinsky and Mr. Singh.
8 And now we're going into what he knows from all different
9 kinds of sources, including clients and clients'
10 representatives.

11 THE COURT: Mr. Bice --

12 MR. BICE: Yes, Your Honor.

13 THE COURT: -- while I certainly understand that
14 your theory is that the use of the MDPA is merely a
15 convenience that the Las Vegas Sands and Sands China came up
16 with during purposes -- during this litigation, that's not
17 what my hearing's about.

18 MR. BICE: Well --

19 THE COURT: My hearing's about whether I was -- if
20 misrepresentations were made to me and whether counsel had not
21 been forthright with me. And I understand that you finished
22 the -- or at least you took the deposition of Mr. Adelson, but
23 he is not one of the witnesses that I was concerned with.

24 MR. BICE: Well, I --

25 THE COURT: I know from the statement that was filed

1 by the Sands that they admit now to additional transfers that
2 were made prior to the Jacobs, and so I understand that we had
3 that as an issue.

4 MR. BICE: Correct.

5 THE COURT: But I don't think we need to go into.

6 MR. BICE: Well, here's my point on that, Your
7 Honor.

8 THE COURT: All right.

9 MR. BICE: I'll make my record, and you will rule.
10 What we've got going on here is a claim by the defendants and
11 their counsel that they did not need -- and we're going to get
12 into more of that now with Mr. Peek -- they did not need to
13 search this data for jurisdictional discovery. All those
14 devices that you've now put into the safe that contain I have
15 no idea how much -- magnitude in terms of documentation, were
16 never searched prior to the stay, they were never searched
17 after the stay or after you ordered jurisdictional discovery.
18 And the story that has been trumped up is, well, we didn't do
19 that because of the Macau Data Privacy Act. But do you know
20 what, it's funny, because all the other documents and all the
21 other data that has been transferred by these defendants in
22 the ordinary course of business that they now claim, well,
23 well that was in error and we changed our policy after the
24 Securities and Exchange Commission issued us a subpoena,
25 nonetheless, but we changed our policy, but that don't serve

1 as any restriction on them in searching that data.

2 Now, these documents that we're talking about here
3 from Mr. Jacobs were brought over here in August of 2010,
4 okay, long before this supposed change in policy occurred and
5 long before the concern about the Macau Data Privacy Act had
6 raised its head. And yet they were never searched. Well, we
7 know that they were searched. We know they were gone over by
8 their lawyers. Every one of them was gone over. And that's
9 our point, Your Honor. You can't come into court and say, we
10 have this good-faith belief the Macau Data Privacy Act
11 precluded us from producing the Jacobs ESI when it didn't
12 preclude us from searching everything else and producing it
13 from the exact same custodians that they were searching for
14 here. That's the problem. You can't have it both ways. And
15 I am entitled to show that this is being contrived as an
16 excuse for the misrepresentations to the Court.

17 THE COURT: Okay. Thank you.

18 MR. BRIAN: Do I need to respond to that, Your
19 Honor?

20 THE COURT: No. I'd already sustained the
21 objection.

22 MR. BRIAN: Thank you.

23 BY MR. BICE:

24 Q Mr. Peek, in response to the Court's and our -- the
25 Court's order regarding jurisdictional discovery and our

1 discovery requests did you withhold any documents from any of
2 the custodians that you searched on the grounds of the Macau
3 Data Privacy Act?

4 MR. McCREA: Objection, Your Honor. Work product
5 and beyond the scope.

6 THE COURT: Sustained.

7 MR. BICE: Your Honor, I don't know how it can be
8 work product, since it'd have to be on a privilege log if that
9 were the case.

10 THE COURT: We haven't seen any privilege logs, have
11 we, Mr. Bice?

12 MR. BICE: We sure haven't, Your Honor.

13 THE COURT: I know that. But that's a different
14 issue.

15 MR. PISANELLI: We have.

16 THE COURT: Oh. You have?

17 THE WITNESS: We have given -- we did provide --

18 MR. BICE: Oh. I apologize. I apologize. But not
19 on the --

20 THE WITNESS: That's not work product. We've given
21 responses to this --

22 MR. BICE: He's right.

23 THE COURT: Let's not argue. So we have a privilege
24 log?

25 MR. BICE: We have a privilege log, but it is --

1 THE COURT: I've never seen it.

2 MR. BICE: To my knowledge, there are no claims of
3 the Macau Data Privacy Act as a grounds for withholding any
4 documents.

5 THE COURT: Oh. Okay. Thanks.

6 MR. BICE: Okay.

7 THE COURT: So the objection's still sustained. I
8 certainly understand you disagree, but let's keep going.

9 BY MR. BICE:

10 Q In the review of the emails that you performed --
11 that you and Mr. Jones performed was there any personal data
12 in those emails?

13 MR. McCREA: Objection, Your Honor. Work product.

14 THE COURT: Sustained.

15 BY MR. BICE:

16 Q Of the hundred or so that you printed off was there
17 any personal data on them?

18 MR. McCREA: Same objection.

19 THE COURT: Sustained.

20 BY MR. BICE:

21 Q In the emails that you reviewed was there any of
22 them that contained no personal data?

23 MR. McCREA: Same objection.

24 THE COURT: Sustained.

25 THE WITNESS: Your Honor, can I ask for

1 clarification?

2 THE COURT: Absolutely.

3 THE WITNESS: When he says -- and this is really
4 more -- I'm going to direct it to you, rather than Mr. Bice,
5 because I -- when he says "personal data" I assume he means
6 personal data as defined by the Macau Data Privacy Act --

7 THE COURT: Macau Data Privacy Act.

8 THE WITNESS: -- as opposed to --

9 THE COURT: That's what I'm guessing. Don't you?
10 Because that's what we're here about.

11 THE WITNESS: Okay. That's what I understood it to
12 be.

13 THE COURT: As opposed to personal identifying
14 information, which the Nevada Supreme Court identifies. I'm
15 assuming they're identifying court records --

16 THE WITNESS: Correct.

17 THE COURT: -- which is a different issue.

18 MR. BICE: And you're sustaining that objection is
19 what I understand.

20 THE COURT: I am. But did I guess right on what you
21 meant?

22 MR. BICE: You did.

23 THE COURT: Good.

24 BY MR. BICE:

25 Q I take it, Mr. Peek -- and if I'm misstating your

1 position, you will let me know, I'm sure. I take it it is
2 your contention in this proceeding, this sanctions proceeding
3 that you did disclose the presence of this data to the Court
4 and to us. Correct?

5 A That is correct.

6 Q Okay. And you believe that you've satisfied your
7 duty of candor to the Court and fairness to us by your July 9,
8 2011, statement; is that right?

9 THE COURT: June 9th. June 9th.

10 MR. BICE: Of June 9. I apologize.

11 THE COURT: Page 55.

12 THE WITNESS: To the amount that I was allowed to
13 go, yes.

14 BY MR. BICE:

15 Q Okay. And so you thought -- you have always thought
16 since at least that point in time that both the Court and we
17 or Mr. Jacobs's counsel, I'll leave it broadly, that both the
18 Court and Mr. Jacobs's counsel knew that this data existed in
19 the United States?

20 A I can't put myself in the Court's mind, so I can't
21 speak for the Court. What I can speak for are the discussions
22 with Mr. Jacobs's counsel before you and Mr. Pisanelli came
23 in, as well as the correspondence where they sought as a
24 priority custodian Mr. Jacobs, and the correspondence from --
25 the email correspondence with Mr. Williams about the Macau

1 Data Privacy Act and his understanding that we had data. So
2 just specifics of we have X gigabytes of this data taken here,
3 I don't think we ever got into that level of detail.

4 Q Did you ever tell them that you had Mr. Jacobs's --

5 A Just like -- just like when Mr. Williams told me --

6 Q -- emails?

7 THE COURT: Let him finish.

8 THE WITNESS: -- he had 11 gigabytes of data it
9 turned out to be well over 40 gigabytes, I don't think that
10 Mr. Williams was lying to me, I don't think Mr. Williams was
11 misrepresenting to me, I just don't think that Mr. Williams
12 knew when he said had 11 gigabytes that you later learned it
13 was 40 gigabytes.

14 BY MR. BICE:

15 Q But you did know that you had all those emails;
16 right? Because you had reviewed them.

17 A Yes, sir, I did.

18 Q And you never told Mr. Williams that you had done
19 so; right?

20 A No. I didn't think it was my obligation to tell him
21 what my work product was and what I was doing.

22 Q You didn't tell him --

23 A My -- I mean, maybe I --

24 Q You didn't tell him they were even here.

25 A -- after 40 years of practice I didn't think that I

1 was obligated to say, this is what I'm doing as a lawyer. I
2 mean, tell you what all my work product is. I -- just like I
3 didn't expect Mr. Campbell or Mr. Williams to tell me. I
4 mean, it's --

5 Q Mr. Peek, do you recall we had a phone call when you
6 told us about the data being in the United States?

7 A Mr. Bice, I've had many -- way too many phone calls
8 with you on this case trying to work out issues with you and
9 your firm --

10 Q Do you recall what --

11 A -- over all of these things. I don't remember one
12 specific phone call over another.

13 Q Do you recall telling --

14 A I know for a time --

15 Q -- me, Mr. Peek, on --

16 A I know for a time --

17 THE COURT: Mr. Bice, you've got to let him finish.

18 MR. BICE: I'd like an answer to my question, not
19 these speeches, Your Honor.

20 THE COURT: Mr. Bice.

21 MR. BICE: That's my problem.

22 THE COURT: You will let him finish his answers.

23 MR. BICE: Understood.

24 THE COURT: I know that he goes on, but let's give
25 him the opportunity to do so.

1 MR. BICE: Understood, Your Honor.

2 THE WITNESS: I know that we had recorded for a time
3 when Glaser Weil was in, because we had disputes over what
4 people had said. So maybe it's in a transcript. I don't know
5 what you're referring to.

6 BY MR. BICE:

7 Q When you -- when you told us that the data was in
8 the United States do you recall telling me that you had no
9 duty to tell me or to tell the Court?

10 A I remember telling you that I wasn't sure that I had
11 a duty to disclose to you. Yes, I do recall telling you that
12 under the circumstances, yes, of the stay and everything else
13 that's exactly what I told you, yes.

14 Q Also you invoked the stay during that call, do you
15 believe?

16 A Mr. Bice, I don't believe --

17 Q It's just a simple question.

18 A May I give you --

19 THE COURT: The reason only one of you can talk at a
20 time, Mr. Bice, and you know this well --

21 MR. BICE: I do.

22 THE COURT: -- is because we are a recording
23 department, and it is very difficult for Jill and the
24 transcribers that she uses to make an accurate transcript --

25 MR. BICE: You're right.

1 THE COURT: -- if more than one person is talking at
2 a time. So let's please have the courtesy for Jill,
3 regardless of how you feel about anybody else, to only have
4 one person speak at a time.

5 MR. BICE: Understood.

6 THE COURT: Mr. Peek, please let Mr. Bice finish his
7 questions before you start.

8 And, Mr. Bice, please let Mr. Peek finish his very
9 long answers before you go to the next question.

10 MR. BICE: Okay.

11 THE COURT: And, Mr. McCrea, if you have to object,
12 please stand up faster.

13 MR. MCCREA: I'll do my best.

14 THE COURT: Okay.

15 BY MR. BICE:

16 Q Did you tell me that you had no duty to disclose
17 this data -- the existence of this data to me and to the
18 Court?

19 A No, I did not tell you those words in that way.

20 Q Did you tell me that you had no duty to disclose the
21 data to the Court?

22 A No, I did not tell you in those words in that way,
23 Mr. Bice.

24 Q During that call, Mr. Peek, did you claim that you
25 had already disclosed the data to us?

1 A I don't believe that I did make that claim, that I
2 had already disclosed that data to you.

3 Q When did you do that?

4 A I hadn't to you. I had to your prior counsel.

5 Q I see. So do you recall coming to the court the
6 next day or the day -- within two days for a status conference
7 with the Court after you made the statement about no duty to
8 me to tell us about it?

9 A Well, first of all your predicate is that I told you
10 what you say I told you, which is not true. And then I don't
11 know the day on which this meet and confer occurred, but I do
12 know that I was in court many times with you on this case.

13 Q Okay.

14 THE COURT: And on June 28th we had a discussion
15 that wasn't very pleasant.

16 BY MR. BICE:

17 Q Right. And during that unpleasant discussion, Mr.
18 Peek, did you tell the Court -- during that unpleasant
19 discussion did you ever say to Your Honor, wait a minute, Your
20 Honor, I disclosed this to you and to Mr. Jacobs all along?

21 MR. MCCREA: Your Honor, if there's a transcript, then he
22 must refer to --

23 THE COURT: There is a transcript from the June 28th
24 hearing.

25 MR. MCCREA: Let's use it.

1 THE COURT: I don't know that it's in the book.

2 MR. BICE: It's in my book, Your Honor.

3 THE COURT: Okay. Because I think you order a
4 transcript from every hearing.

5 MR. BICE: I do Your Honor.

6 THE WITNESS: So I guess --

7 BY MR. BICE:

8 Q I'm just asking you whether or not you told the
9 Court, hey, wait a minute, I did disclose this, what are you
10 guys talking -- Judge, why are you yelling at me, I told you
11 about this. Did you ever tell her that?

12 MR. McCREA: Your Honor, this is argumentative.
13 Let's get the transcript.

14 THE COURT: Overruled. Actually, I was yelling at
15 Mr. Weissman.

16 THE WITNESS: I'm looking at the transcript, so I'm
17 trying to -- the Court starts out I think on page 2, "Why
18 didn't somebody tell me 11 months ago or so that the Macau
19 Data Privacy Protection Act wasn't going to be an issue
20 because somehow some of the documents have already gotten to
21 the U.S. and, geez. it was by mistake, but we're not going to
22 pursue that anymore?"

23 BY MR. BICE:

24 Q I mean, if you felt that you had disclosed it to all
25 of us, Mr. Peek --

1 A I'm trying to -- well --

2 Q -- I'm sure you would have stood up and told Your
3 Honor, Your Honor, we did tell you about, this don't you
4 remember my one sentence in June of 2011.

5 MR. McCREA: Argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: Mr. Bice, I'm trying to read from the
8 transcript, so I'm trying to understand what I said that day.
9 So without knowing what I said that day, it's hard for me to
10 answer whether --

11 Q Do you think -- I apologize. Go ahead. Sorry.

12 A It's hard for me to answer your question without at
13 least looking to the words that I said that day. And just
14 judging from the what the Court said, perhaps I didn't. So
15 I'm just trying to look here. I know Mr. Brian spoke that
16 day, the Court, Mr. Brian.

17 I know that I spoke on page 8, because I didn't want
18 -- I said, "I've been here the whole time, and so I'm not
19 going to let Mr. Brian take any hits for me. So I will have
20 to take and accept the responsibility, as well. And if we're
21 wrong in your view, Your Honor, I apologize. But it is, as
22 Mr. Brian has described it, a struggle with the Macau PDPA.
23 It's been a struggle for over 14, 15 months or longer since it
24 came to our attention. We're trying to work through that
25 issue with the Office of Personal Privacy Data and the

1 implications that come from that potential violation that put
2 us where we are here today. And for that, Your Honor, I
3 apologize to this Court. I do. And I take that
4 responsibility, Your Honor, because my credibility with this
5 Court is important to me, because I appear in front of this
6 Court an awful lot and I've been here an awful lot."

7 Q Mr. Peek, was there any point in time during that
8 hearing that you said to the Court, I did disclose this, I
9 disclosed this to all of you a long time ago, over a year ago?

10 A I don't know what I said. But if I -- you know, the
11 transcript is what it is. But I -- if you're telling me I
12 didn't say that, Mr. Bice, and you're asking why didn't I do
13 that --

14 Q No. I'm just asking you whether you did or didn't.

15 A Well, I'm trying to look through the transcript, so
16 if you'd let me -- do you want me to look through it or not to
17 -- or do you have a place where you want to point me to?

18 Q I'm asking you do you believe that you told the
19 Court, Mr. Peek?

20 A I don't know, Mr. Bice. That's why I want to look
21 at the transcript, if you don't mind.

22 Q Okay.

23 A Do you want me look at it?

24 Q Take however much time you would like --

25 A Okay.

1 Q -- to confirm whether you think you told the Court
2 that you had already disclosed this data so you didn't
3 understand what she was unhappy about.

4 A Well, I know she was unhappy with me. That's why I
5 apologized to her. I do take my responsibility serious, and I
6 do appear in this court a lot.

7 Q Do you recall submitting a brief to the Court?

8 THE COURT: Let's let him look.

9 MR. BICE: Okay.

10 THE COURT: Remember, you told him you'd let him
11 look. So let him look.

12 MR. BICE: Understood, Your Honor.

13 THE WITNESS: Mr. Bice, it does not appear that I
14 made that statement to the Court.

15 (Pause in the proceedings)

16 BY MR. BICE:

17 Q All right. Do you recall submitting a brief to the
18 Court a day before that hearing, on June 27th of 2012?

19 A I do.

20 Q Okay. And you signed it?

21 A I did.

22 MR. BICE: Okay. Your Honor, may I approach?

23 THE COURT: You may. Do you need a copy, Mr. Peek,
24 or do you have one with you?

25 THE WITNESS: I do not have one with me. I only

1 brought transcripts with me.

2 THE COURT: That's fine.

3 THE WITNESS: Thank you. I think we made two
4 filings, one here and then one in July, because I think there
5 was some things left out.

6 MR. BICE: It is which exhibit? Exhibit 5, I
7 think, Charlie. I will double check. Well, she took it out
8 of my book.

9 MR. McCREA: 5 is a transcript --

10 MR. BICE: Actually it's in the front, Charlie. I
11 apologize. 5 or 6. clear up here. We got a lot of stuff in
12 there, I know. So let me confirm which one it is.

13 THE COURT: I show it was filed on June 27th at
14 3:13.

15 THE WITNESS: That's what this says, Your Honor.

16 THE COURT: Okay.

17 BY MR. BICE:

18 Q All right. Is that your signature on the brief, Mr.
19 Peek?

20 A It is.

21 Q And you had reviewed it, I assume prior to filing it
22 with the Court?

23 A I did.

24 Q Okay. If you'd take a look at -- on page number 5
25 of the brief. Look at Footnote Number 4 and what you told the

1 Court. It says, "LVSC did not previously disclose the
2 existence of this data to plaintiffs because their original
3 plan had been to review the ESI in plaintiff's possession";
4 correct?

5 A That is correct. That footnote relates to the
6 Jacobs, and I did not do that. I disclosed generally.

7 Q All right.

8 A I did not disclose specifically, that is correct.

9 Q Well, what you said is -- what you told the Court is
10 you hadn't -- you said, "LVSC did not previously disclose the
11 existence of this data to plaintiffs"; right?

12 A That is correct. What I said then.

13 Q Okay. You didn't say that, we had disclosed it back
14 in July or June of the year before; right?

15 A That is correct.

16 Q You didn't say that you had disclosed it to Campbell
17 & Williams; correct?

18 A That is correct.

19 Q Because you hadn't disclosed it; right?

20 A As I've said to you, based on my review of both the
21 letter from Don Campbell -- or, excuse me, from Colby
22 Williams, either -- it led me to believe, reviewing it in
23 preparation for this hearing, that either he knew or that we
24 had talked about it. I don't recall specifically. I know
25 that we talked about the PDPA, I know we talked about Jacobs

1 as a priority custodian, I know we shifted Jacobs as a
2 priority custodian below Mr. Adelson and Mr. Leven. I know
3 that we were going to review the documents, and I knew that we
4 were going to invoke the -- we were concerned about the PDPA
5 at that time.

6 Q You said that you changed focus from Mr. Jacobs to
7 Mr. Adelson and Mr. Leven; correct?

8 A Yes.

9 Q Because Mr. Campbell was going to depose the two of
10 them; right?

11 A He wanted Mr. Adelson first, and he wanted him
12 early.

13 Q Okay.

14 A That was always his insistence.

15 Q All right. And you didn't --

16 A Just as it has been your insistence.

17 Q You didn't think that Mr. -- or Mr. Campbell would
18 want Mr. Jacobs's emails in preparation for Mr. Adelson's
19 deposition?

20 A Well --

21 Q It's a yes or no question.

22 MR. MCCREA: Objection, Your Honor. Work product,
23 scope.

24 THE COURT: Overruled.

25 THE WITNESS: I don't know what Mr. Campbell

1 thought.

2 MR. McCREA: Mr. Peek.

3 THE WITNESS: She overruled you.

4 MR. McCREA: Oh. I didn't hear you, Your Honor.

5 THE COURT: I said, overruled. He's listening to me
6 now.

7 THE WITNESS: I couldn't get into Mr. Campbell's
8 mind, so I don't know what Mr. Campbell thought.

9 BY MR. BICE:

10 Q Okay. So you thought -- you thought, though, that
11 Mr. Campbell reasonably believed that you had those emails and
12 that he didn't need them prior to Mr. Adelson's deposition;
13 right?

14 A It appears to me from reviewing the correspondence,
15 both letter and email, that -- and the comments that have been
16 made along the way that Mr. Williams or Mr. Campbell
17 reasonably believed that we had data related to Jacobs in Las
18 Vegas Sands's possession.

19 Q When did you -- since you told the Court on -- the
20 date being --

21 THE COURT: June 5th, 2011.

22 THE WITNESS: June 9th, 2011.

23 BY MR. BICE:

24 Q I'm talking June 27 of 2012, when you told the Court
25 in a brief that you hadn't told us. And at the hearing you

1 never told -- you never said, wait, Court, wait, Your Honor, I
2 told you about this data before. When in purposes of
3 preparation for this hearing was it designed -- who came up
4 with the defense of we told them already? When was that --
5 when was that developed?

6 MR. McCREA: Objection. Work product.

7 THE COURT: Sustained.

8 BY MR. BICE:

9 Q Who found the reference in the June 9 transcript on
10 page 55?

11 MR. McCREA: Same objection.

12 THE COURT: Sustained.

13 BY MR. BICE:

14 Q Was that somebody other than yourself?

15 MR. McCREA: Same objection.

16 THE COURT: Sustained.

17 BY MR. BICE:

18 Q I want to show you a quote from a transcript.

19 THE COURT: What's the date?

20 MR. BICE: November 22, Your Honor.

21 THE COURT: Thank you.

22 BY MR. BICE:

23 Q On page 39 --

24 MR. BRIAN: What tab is that?

25 MR. BICE: I will find it.

1 MR. BRIAN: We got it. We got it.

2 MR. BICE: You got it?

3 MR. BRIAN: Yeah.

4 THE WITNESS: This is where Mr. Ma is speaking?

5 BY MR. BICE:

6 Q Yes.

7 A I assume I was there. Yes, I was.

8 BY MR. BICE:

9 Q Go to page 71.

10 THE COURT: Page 71?

11 MR. BICE: Yes, 71.

12 THE COURT: Thank you.

13 MR. BICE: I apologize, Your Honor.

14 THE WITNESS: Again this is where Mr. Ma is
15 speaking?

16 BY MR. BICE:

17 Q Yes, sir.

18 A Okay.

19 Q If you'd look at the first page of the transcript,
20 you'll see that you were present.

21 A I already said that.

22 Q Okay. You see on -- starting on line 7 what the
23 Court's statement is? "The only reason that we are doing this
24 exercise is because of your position related to the Macau
25 Privacy Act and Mr. Pisanelli's stated intention that he was

1 going to use some of these documents, not all of them, but
2 some of these documents as part of the evidentiary hearing."
3 You are aware that Her Honor had made that observation;
4 correct?

5 A Yes, sir.

6 Q And you understood at that point in time, in
7 November, that the only reason that we were doing this
8 exercise is because of your -- and she was referencing Mr. Ma;
9 correct?

10 A I don't know what the exercise is to which she is
11 referring without reading the whole transcript. I know that
12 you were very adamant that you had -- that your client had not
13 taken documents illegally from Macau. I know that you were
14 adamant that you didn't have to get into Advance Discovery. I
15 know that you were adamant that we only would have got the
16 QUIVX. So we were trying to work out a process with the
17 Court, because we couldn't get clarity from you. This is I
18 think our third time trying to get the documents from your
19 client, to turn them over to Advance Discovery. So I don't
20 know when she says "this exercise." I assume the exercise
21 she's talking about here is exercise of your client to turn
22 over the documents to a third-party vendor to be able to
23 process those documents so that both sides could begin
24 reviewing them, since Mr. Williams had said, I can't review
25 them, I'm concerned about reviewing them, when said there was

1 11 gigabytes and we find out later there's 40 gigabytes, and
2 you're saying, well, I can't give them to you because I've got
3 all these things in New York that are going on and my lawyer
4 in New York says I can't give them to you. I mean, that's --
5 so I don't know what "this exercise" means. There were a lot
6 of things going on, a lot of moving parts.

7 Q And one of those moving parts was that you already
8 had the emails and that you had reviewed all of them in May of
9 the preceding year -- or May of 2011; right?

10 A No, that's not one of the moving parts at this time,
11 Mr. Bice. This was to try to get back from your client the
12 documents he illegally took out of Macau.

13 Q That was the only reason we were going through this
14 exercise; right, Mr. Peek?

15 A No. I think there were two reasons that we're going
16 through the exercise. The Court had to intervene on -- and
17 set forth guidelines for the parties to reach some form of
18 agreement about how to address the documents. That was one
19 thing. The Court was concerned, I'm sure, about getting to a
20 hearing on evidentiary -- excuse me, on jurisdiction. As was
21 I. So I think there were at least two things that the Court
22 wanted to do.

23 Q Mr. Peek, when you received our jurisdictional
24 discovery in this case did you search the Jacobs ESI to
25 respond to our jurisdictional discovery?

1 MR. McCREA: Objection. Work product.

2 THE COURT: Sustained.

3 BY MR. BICE:

4 Q Did you produce any of the documents that you had
5 reviewed, all of the emails, in response to any of the
6 jurisdictional discovery?

7 A I did not. I gave you objections to the discovery,
8 waited for us to go -- the protective order to go into place.
9 So your discovery was propounded in December, late December.
10 Even though you were allowed it much earlier than that --

11 Q Okay.

12 A -- you didn't propound it until December. We
13 responded in January of 2012 --

14 Q And you didn't produce a single one of them?

15 A -- and we then talked --

16 MR. McCREA: Objection, Your Honor --

17 THE WITNESS: -- and then we waited to produce any
18 documents until after a stipulated protective order was in
19 place. You negotiated with Mr. Owens about the stipulated
20 protective order. We talked to the Court, and we addressed
21 PDPA or MDPA with the Court at a March hearing in 2012.

22 Q Okay. And you never disclosed any of those
23 documents; correct?

24 A I don't know what you mean disclosed. I filed a
25 responsive pleading to you, and that's not a disclosure. It

1 just says, we have documents that are responsive to your
2 request, there's -- I think we said, there's an illustrative
3 subset we will produce, and we also said that we wouldn't
4 produce until such time as we completed a stipulated
5 protective order.

6 Q Do you recall telling the Judge that you did not
7 review any of the Jacobs ESI for purposes of responding to the
8 jurisdictional discovery?

9 A Yes.

10 Q Okay. And that was true; right? You didn't do
11 that?

12 A At what time, Mr. Bice? Because I know what we're
13 doing now --

14 Q Oh, I know what -- right, now. I'm talking --

15 A -- versus what we had done before. Because we had
16 said to you that we were reviewing an illustrative subset of
17 the documents. That was our response. We had a series of
18 meet and confers for a long period of time, we began producing
19 documents. But you're correct, as part of that production we
20 did not produce any Jacobs documents, because we didn't think
21 that those Jacobs documents, with all due respect to your
22 position, were within the scope of the discovery that the
23 Court had allowed.

24 Q Okay. So you didn't --

25 A Now, I know you -- I know you take a contrary

1 view --

2 Q You didn't believe that any of Mr. Jacobs's ESI was
3 within the scope of the jurisdictional discovery. Is that
4 your position, Mr. Peek?

5 MR. MCCREA: Your Honor, objection. This is getting
6 way beyond the scope.

7 MR. BICE: It's a very simple --

8 THE COURT: Wait. One at a time. Mr. McCrea.

9 MR. MCCREA: This is getting beyond the scope of
10 this hearing and really is starting to get into his Rule 37
11 motion that I guess he's going to be filing.

12 THE COURT: Someday. Mr. Bice, do you want to
13 respond?

14 MR. BICE: I do want to respond Your Honor. We have
15 attorneys here telling you that we didn't ask him for this
16 documentation; right? That's one of the stories. I can't
17 keep the story straight, because it seems to vacillate. But
18 one of the stories is, well, you guys weren't smart enough to
19 ask us specific enough questions -- this is in their brief --
20 had you only asked we would have told you. That's -- that is
21 the arrogance that has preceded us with these defendants.

22 THE COURT: And that's in the in the big brief that
23 we received --

24 MR. BICE: Yeah. Right.

25 THE COURT: -- not the one we got this morning?

1 MR. BICE: Had you only -- no, no, this was in their
2 preceding one. Had you only asked we would have told you.
3 Well, guess what. We asked multiple times. And I'm going to
4 show you some representations that were made to you after we
5 had asked, and let's test the veracity of the current story
6 that is being proffered.

7 THE COURT: Okay. The objection is sustained.
8 While I agree with Mr. Bice that there are certain
9 inconsistencies in the spin that is being provided to the
10 Court, I think it is more appropriate for the Rule 37 issue.
11 I think focusing on the representations that were made to me
12 in pleadings and in Court prior to the June 28th hearing is a
13 more appropriate way for us to go.

14 MR. BICE: Okay.

15 THE COURT: But I certainly will welcome hearing
16 about this issue at the time we schedule your Rule 37
17 evidentiary hearing.

18 MR. BICE: Okay.

19 THE WITNESS: And, Your Honor, I welcome the
20 opportunity to do that. I apologize that you think there are
21 inconsistencies, Your Honor.

22 BY MR. BICE:

23 Q Let's deal with the May 24th hearing in front of Her
24 Honor. You recall being here on May 24, Mr. Peek?

25 A I do.

1 Q You and Mr. Weissman were here; correct?

2 A I believe we were.

3 Q Okay. And you were here asking the Court -- telling
4 the Court that we needed to proceed expeditiously with the
5 jurisdictional hearing; correct?

6 A Yes.

7 Q Okay.

8 A And I still would like to proceed expeditiously with
9 the hearing.

10 Q All right. Do you recall telling the Court -- if
11 you'd take a look at the transcript, we'll go to pages 8
12 through 10.

13 THE COURT: Do you have that transcript, Mr. Peek,
14 or do you need a copy?

15 THE WITNESS: I have a copy, Your Honor.

16 THE COURT: Okay.

17 THE WITNESS: I just need to get to it. What page,
18 Mr. Bice? I apologize I didn't hear you.

19 BY MR. BICE:

20 Q I apologize, Mr. Peek. We'll start on pages 8
21 through 10.

22 A Okay. Thank you.

23 Q And if you would like me to pinpoint it more, where
24 I'm going to ask you starting on page 9.

25 A Okay. Is there -- do you want me to look at

1 something or read the --

2 Q Well, previously you had asked for the right to
3 review it in advance, so I was giving you that right. If
4 you'd like me to start asking questions --

5 A Well, I always want -- I think that's just a general
6 courtesy that we all as lawyers grant our witnesses. But if
7 you'd like me to read -- is it just page 9, or is it --

8 Q No. Go ahead and start on page 8. If you'd like to
9 start at line 15 and read all the way, if you would, until the
10 end of page 11.

11 A Thank you, sir.

12 Q And then I'll ask you some questions.

13 A I remember this statement. I think we --

14 Q Okay. The statement is --

15 A Never mind. I was going to comment, but --

16 Q Statement is, starting at the bottom of page 9 -- we
17 were talking about your client's responses to discovery
18 correct; Mr. Peek?

19 A We were.

20 Q And I'll just quote you. Starting on the bottom of
21 page 9, "I've got to argue these issues, Your Honor. I think
22 -- well, I'll leave it -- I'll leave that for another day. So
23 when they say they don't have documents, they do. With
24 respect to Jacobs, Jacobs, I have to let Mr. Weissman deal
25 with Mr. Jacobs because those are issues that are of Sands

1 China, because he was a Sands China executive, not a Las Vegas
2 Sands executive. So we don't have documents on our server
3 related to Mr. Jacobs. So when he says, we haven't searched
4 Mr. Jacobs, he is correct, because we don't have things to
5 search for Mr. Jacobs." You recall that?

6 A I do.

7 Q Okay. And you made those statements to the Court;
8 correct?

9 A I did.

10 Q And you made those statements with knowledge that
11 you had reviewed all of the Jacobs emails on behalf of Las
12 Vegas Sands; correct?

13 A Yes, sir.

14 Q Then you go on to say -- and you hadn't searched
15 them for jurisdictional purposes; right?

16 A That is correct.

17 Q Okay. Then you go on to say at the bottom of page
18 10, the Court asked you a question, "At this point you believe
19 you have fully complied with your discovery obligations in
20 preparing for this jurisdictional hearing?"

21 "Mr. Peek:" Your response, "Yes, Your Honor, in the
22 sense that we have commenced production and we will continue
23 to produce." Right?

24 A Yes.

25 Q Okay. And at that point in time you had not

1 reviewed and you had no intention of reviewing any of the
2 Jacobs ESI that you had already reviewed; correct?

3 A That is correct.

4 Q Okay. Go on to page 11. "The Court:
5 Notwithstanding that there may be an issue about whether they
6 agree with your production, do you believe given the rolling
7 production schedule you will have fully complied with your
8 discovery obligations in preparation for the evidentiary
9 hearing by the first week of June?" Do you see that?

10 A That's what I was led to believe by my team.

11 Q Okay. And you had no intention, however, of
12 disclosing any of the Jacobs ESI prior to that hearing; is
13 that right?

14 A That is correct.

15 Q Okay.

16 A I did not believe that the Jacobs documents were
17 documents that went to jurisdiction. And I said that to you
18 in my objections, because we're going to produce an
19 illustrative subset.

20 Q So that's what you meant by your objections?

21 A Those are the words.

22 Q Okay.

23 A I don't know --

24 Q So you didn't believe that the Jacobs ESI was
25 relevant to the Court's determination about personal

1 jurisdiction, just so that we're clear; right?

2 A Respectfully, Mr. Bice, I had a different view of
3 the scope of the jurisdiction discovery --

4 Q That's an understatement.

5 A -- and the evidentiary --

6 THE COURT: Please, Mr. Bice.

7 THE WITNESS: -- and the evidentiary hearing that
8 was going to ensue than you did. I made my positions known to
9 you repeatedly. The Supreme Court and the jurisdictional
10 issue relates to -- the Court put it as pervasive contacts.
11 The case authority also talks about continuous and systematic
12 contacts of Sands China Limited within the United States. I
13 didn't think that Jacobs actions that couldn't be captured by
14 an illustrative subset of others of Las Vegas Sands, because
15 your focus was on everything that Mr. Adelson did because your
16 depositions were Mr. Adelson, Mr. Leven, Mr. Kaye, and Mr.
17 Goldstein. So we searched that -- those individuals as part
18 of this illustrative subset.

19 Q Okay. I just wanted to --

20 A We disagree, and I'm sorry that we disagree you, Mr.
21 Bice, but we do.

22 Q And you thought you were --

23 A You certainly could have brought that to the
24 attention of the Court and said, they have this view, this is
25 their objections, we want to compel them to produce. You

1 never did that, Mr. Bice.

2 Q You thought you were being --

3 A You wanted to use the Court's sanctions hearing as
4 your -- I'll stop.

5 THE COURT: Thank you. This would be a lovely time
6 to break for lunch. I will see you all at 1:15.

7 THE WITNESS: Thank you, Your Honor.

8 MR. BICE: Thank you, Your Honor.

9 (Court recessed at 12:06 p.m., until 1:15 p.m.)

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

9/11/12
DATE