

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
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Case Number: Tracie K. Lindeman
Clerk of Supreme Court

District Court Case Number
A627691-B

**APPENDIX TO PETITION FOR
WRIT OF PROHIBITION OR
MANDAMUS RE ORDERS
DENYING MOTION TO
DISQUALIFY JUDGE
ELIZABETH GONZALEZ
WITHOUT A HEARING**

**VOLUME I of XIII
(PA1-245)**

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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 ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING – VOLUME I OF XIII (PA1-245)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY (CD)

Chief Judge David Barker
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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Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 22nd day of February, 2016.

By: /s/ Fiona Ingalls

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR
MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY
JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING
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IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

No. 58294

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

FILED

AUG 26 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss for lack of personal jurisdiction.

Petitioner asserts that the district court improperly based its exercise of personal jurisdiction on petitioner's status as a subsidiary of a Nevada corporation with common officers and directors. Real party in interest contends that the district court properly determined that he had established a prima facie basis for personal jurisdiction based on the acts taken in Nevada to manage petitioner's operations in Macau.

The district court's order, however, does not state that it has reviewed the matter on a limited basis to determine whether prima facie grounds for personal jurisdiction exist; it simply denies petitioner's motion to dismiss, with no mention of a later determination after consideration of evidence, whether at a hearing before trial or at trial. While the order refers to the district court's comments at oral argument on the motion, the

transcript reflects only that the district court concluded there were “pervasive contacts” between petitioner and Nevada, without specifying any of those contacts. We have therefore found it impossible to determine the basis for the district court’s order or whether the district court intended its order to be its final decision regarding jurisdiction or if it intended to consider the matter further after the admission of evidence at trial (or an evidentiary hearing before trial).

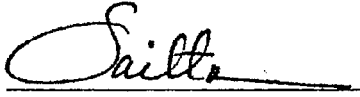
In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation’s status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries’ conduct; the Court suggested that including the parent’s contacts with the forum would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation’s contacts in this state in exercising jurisdiction over the foreign subsidiary.

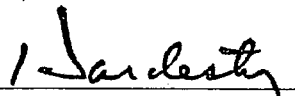
Accordingly, having reviewed the petition, answer, reply, and other documents before this court,¹ we conclude that, based on the summary nature of the district court’s order and the holdings of the cases

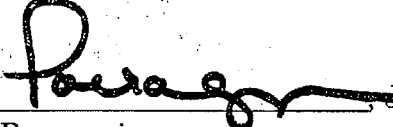
¹Petitioner’s motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific leave of this court; thus, no such motion was necessary.

cited above, the petition should be granted, in part. We therefore direct the district court to revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction. If the district court determines that general jurisdiction is lacking, it shall consider whether the doctrine of transient jurisdiction, as set forth in Cariaga v. District Court, 104 Nev. 544, 762 P.2d 886 (1988), permits the exercise of personal jurisdiction over a corporate defendant when a corporate officer is served within the state. We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision.²

 J.
Saitta

 J.
Hardesty

 J.
Parraguirre

²Petitioner's motion for a stay is denied as moot in light of this order.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC
Campbell & Williams
Eighth District Court Clerk

Alvin D. Levine

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING TO SET TIME FOR EVIDENTIARY HEARING

THURSDAY, JUNE 28, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRADLEY BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

CLERK OF THE COURT

JUL 02 2012

RECEIVED

33

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 28, 2012, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Okay. If I could go to Jacobs versus
4 Sands.

5 Mr. Pisanelli, if you'd switch sides of the room.
6 What did you guys do with Mr. Peek? There he is.

7 MR. PEEK: I'm here, Your Honor. The elevator --

8 THE COURT: Well, while you're coming up, Mr. Peek,
9 I've got a question.

10 MR. PEEK: Yes, Your Honor.

11 THE COURT: I've been dealing with what I
12 characterize as a discovery dispute in a jurisdictional
13 portion of this litigation because of the writ I told you to
14 file in the Nevada Supreme Court related to this discovery
15 issue was determined by the Nevada Supreme Court to be
16 inappropriate. So why didn't somebody tell me 11 months ago
17 or so that the Macau Data Privacy Protection Act wasn't going
18 to be an issue because somehow the documents had already
19 gotten to the U.S. and, geez, it was by mistake, but we're not
20 going to pursue that anymore?

21 MR. BRIAN: I'm volunteering to take him up --

22 MR. PEEK: I mean, I could, but I --

23 THE COURT: I don't think you guys understood how
24 frustrated I was when I read the statute.

25 MR. PEEK: No, I'm sure you were very frustrated,

1 Your Honor. And we are prepared to answer that question with
2 -- to you this morning. And I can do it, or I'm going to
3 defer to Mr. Brian, because --

4 THE COURT: I don't care who does it. I'd just
5 really like an answer, because we've spent 11 or 12 months on
6 this issue.

7 MR. PEEK: Yeah. And I think, Your Honor, just
8 understand that although you say it was all here, it's not --
9 what they're suggesting to you, that it is all here, is not
10 exactly correct.

11 THE COURT: Okay.

12 MR. PEEK: So I'll let Mr. Brian --

13 MR. BRIAN: Your Honor, Brad Brian for Sands China
14 Limited. Let me try, Your Honor, because I appreciate Your
15 Honor's frustration.

16 When we got into the case we got in in stages. Mr.
17 Weissman got in a few months before I did. I got in around
18 February or March. And when this issue first came up --

19 THE COURT: You can sit down. You don't have to
20 stand.

21 MR. BRIAN: -- and we learned that there had been
22 some transfers of documents from Macau there was -- those
23 documents were in error. They should not have happened.
24 There was a real concern about what we should do about it.
25 And since that -- since that concern began there have been a

1 number of meetings with the Macau authorities who are
2 responsible for dealing with this issue. Mr. Weissman and
3 another lawyer from the United States travelled to Macau and
4 met with the authorities. There've been I think -- I'm told
5 five meetings, some involving folks from the U.S., others
6 involving lawyers over there, to try to figure out how to deal
7 with this. And the intention at the time -- and frankly there
8 was a concern about whether we could do anything with it,
9 whether or not we were allowed to do anything with those
10 documents. It was not until a meeting on May 29th of this
11 year, after the last status conference that there was
12 sufficient comfort that we could produce in this litigation
13 Macau documents that were already in the United States.
14 Before that it had been our plan, which I --

15 THE COURT: Nobody told me for the 11 months that
16 I've been dealing with it there was a potential issue that you
17 were exploring with the Macau authorities, and all the times I
18 asked questions about whether we could talk to the Macau
19 authorities about making this process work better. Nobody
20 thought to say, gosh, Judge, we're already talking to them
21 because we screwed up and took this information we weren't
22 supposed to and we're trying to see what we're supposed to do
23 now.

24 MR. BRIAN: Your Honor, in hindsight if you could
25 roll the clock back there's no doubt that it would have been

1 better to advise the Court of that. I recognize that. There
2 was real worry about what the implications of all this were,
3 and so the plan had been, which I understand Your Honor did
4 not like and expressed a discomfort about it at the last
5 status conference, which unfortunately I was sick and couldn't
6 attend -- maybe fortunately, I don't know -- was it had been
7 to go through Jacobs's -- Mr. Jacobs's ESI, go through those
8 documents, then compare it to the documents that were already
9 here, and if there were additional documents already here, to
10 go to the Macau authorities and try to persuade them that it
11 was okay to produce them.

12 Your Honor expressed the view that, no, no, we don't
13 sequence that discovery, and I'm not asking Your Honor to
14 revisit that. And then on a meeting on May 29th we got
15 sufficient comfort -- by the way, it's not a waiver issue.
16 The question is what the Macau authorities will do about it in
17 the event we were to make a production in this lawsuit of
18 those documents. We got the comfort and then developed --
19 immediately developed a protocol, went to the plaintiff's
20 lawyers and laid out the protocol, requested a meet and
21 confer, which they were not available to do last week, that's
22 why it appeared this week. So now we're in a process -- we're
23 in a situation where we're going to end up reviewing
24 essentially two sets of what are largely overlapping
25 documents. That's going to be more expensive, more

1 burdensome, more time consuming, I get that. We think it
2 could have been avoided if Mr. Jacobs had produced his ESI
3 earlier. He didn't for reasons that he can explain. But we
4 are where we are. And if we had rolled the clock back, maybe
5 this thing would have been done differently, maybe it should
6 have been done differently. There was no -- there was no ill
7 intent on the part of anybody to do this and in any way
8 conceal it, and all those documents were either going to be
9 produced to the extent they were nonprivileged or recorded on
10 a privilege log. So that's -- that's where we are. And they
11 took -- it took a long time to get guidance from the Macau
12 authorities. This is not a -- the law is complicated and
13 evolving, I think is the best way to say it. And as to what
14 the Macau authorities would do about it is evolving. That led
15 to the multiple -- multiple meetings.

16 THE COURT: Well, I'm very disappointed in the
17 conduct of counsel.

18 MR. BRIAN: I understand, Your Honor. And I can
19 only tell you that it's an issue that -- it's just been a
20 concern, and counsel, the client, everybody have been
21 struggling with certainly since the time we got in this case.
22 I can't speak for what happened before we got in this case,
23 but it's an issue that people have been dealing with, dealing
24 with diligently.

25 I will tell you my perspective -- I mean, I

1 understand that's a concern, but when I went over the papers
2 last night to prepare for this hearing my perspective on it
3 was -- I read two different pleadings. We think that despite
4 Your Honor's --

5 THE COURT: I'm not really worried about what's in
6 the status reports now. I'm worried about the work that we've
7 done related to the production of the documents and the
8 application of the Macau Data Privacy Act and the work we've
9 done on this side and the work that you guys have done on that
10 side when you have the documents here in the U.S. all along.
11 Now, whether they were in the U.S. wrongfully, appropriately,
12 or in violation of Macau law is a different issue. But nobody
13 told any of us, and that's a problem, Counsel.

14 MR. BRIAN: Your Honor, I can only repeat what I
15 said. I understand the Court's frustration, I do. And to the
16 extent that it should have been done earlier, I apologize. I
17 mean, if it had become more -- if it had been raised earlier,
18 maybe in hindsight that would have been better. I'm just
19 telling you that at the time there was a real concern about
20 what we are to do about it, and nobody really had an answer
21 until we went through those series of meetings with Macau
22 authorities. That's -- that may not be satisfactory to the
23 Court, I'm just telling you that's the process that both the
24 clients and counsel went through for the last -- oh, God, last
25 number of four, five months.

1 THE COURT: All right.

2 MR. PEEK: And, Your Honor, since -- since I was the
3 one that --

4 THE COURT: You've been here the whole time.

5 MR. PEEK: I've been here the whole time, and so I'm
6 not going to let Mr. Brian take any hits for me. So I have to
7 take and accept that responsibility, as well. And if we're
8 wrong in your view, Your Honor, I apologize. But it is, as
9 Mr. Brian has described it, a struggle with the Macau PDPA.
10 It's been a struggle for over 14, 15 months or longer since it
11 came to our attention. They're trying to work through that
12 issue with the Office of Personal Privacy Data and the
13 implications that come from that potential violation that put
14 us where we are here today. And for that, Your Honor, I
15 apologize to this Court. I do.

16 MR. BRIAN: And I do.

17 MR. PEEK: And I take that responsibility, Your
18 Honor, because my credibility with this Court is important to
19 me, because I appear in front of this Court an awful lot, and
20 I have been here an awful lot.

21 THE COURT: I sent you on a writ up to the Supreme
22 Court because --

23 MR. PEEK: You did, Your Honor.

24 THE COURT: -- of what you told me about this.

25 MR. PEEK: You did.

1 THE COURT: You didn't have to tell them anything,
2 because they sent you right back.

3 MR. PEEK: They did. But it was a different issue,
4 Your Honor.

5 THE COURT: Overlapping, Mr. Peek.

6 MR. PEEK: I agree, Your Honor, it is overlapping.
7 But certainly --

8 MR. BRIAN: Your Honor, there are -- there are other
9 issues, and I just second what Mr. Peek says. If we made a
10 mistake in judgment, I apologize for that. I can tell you
11 that for many, many months that everybody has been trying to
12 resolve that issue and to solve it. Now, we obviously didn't
13 solve it to the Court's satisfaction, and for that I
14 apologize. But people were trying to solve it and, you know,
15 either there were mistakes made with the transfers and maybe
16 there were mistakes made with how it was handled, but there
17 are other issues raised in the papers, and I would like to
18 address them briefly --

19 THE COURT: Sure.

20 MR. BRIAN: -- because when I read the papers, I
21 mean, I do think that we have acted diligently to -- we've
22 searched over 300,000 documents, we've produced at a cost of
23 more than \$300,000, we have met and conferred, and now we read
24 for the first time yesterday a litany of allegations that we
25 have not been told about, there've been --

1 THE COURT: You're referring to the declaration Mr.
2 Jacobs attached to the status report?

3 MR. BRIAN: I'm referring to the declaration of Mr.
4 Jacobs, which I think, Your Honor, is an example of what is
5 wrong with litigation nowadays, where people put out
6 essentially press releases in the guise of a declaration.
7 And that's what that largely is. There is nothing in that --

8 THE COURT: Because there's absolute immunity for
9 that.

10 MR. BRIAN: I stand.

11 THE COURT: That's why Mr. Adelson got out of the
12 case [inaudible].

13 MR. BRIAN: Well, Your Honor, that -- what's done is
14 done, but that declaration, there are things in there that
15 they're not -- we have never heard about those things before.
16 If Mr. Jacobs --

17 THE COURT: Aren't you glad you know about them now?

18 MR. BRIAN: If Mr. Jacobs truly believed that Mr.
19 Adelson had approved prostitution, he would have resigned. He
20 was fired. And that is in that declaration for one reason.
21 You know that and they know that and Mr. Jacobs knows that.
22 And those sort of false, scurrilous allegations do not belong
23 in the case.

24 With respect to the discovery disputes, we have met
25 and conferred with -- Mr. Weissman and other colleagues at my

1 firm, Mr. Peek, have met and conferred with them on a number
2 of occasions. It was not until yesterday that they said they
3 raised two issues of documents they say we did not produce
4 that should have been produced. They're wrong on one, and Mr.
5 Weissman can explain this if you need more details, and the
6 other one we don't think was ever requested. So we went --

7 THE COURT: And the Mr. Tracy ones have now been
8 produced.

9 MR. BRIAN: We went through -- we went through last
10 night -- because we hadn't seen this declaration and these
11 allegations until we got it, we went through last night and we
12 prepared this report, which if I may pass it up to the Court,
13 goes through some of the allegations of documents that they
14 say were not produced which in fact have been produced.

15 THE COURT: Okay. We've marked it as Court's 1 for
16 you.

17 MR. BRIAN: Thank you, Your Honor. Those documents
18 have been produced. So we're in a situation where we would
19 like to move forward to solve the discovery disputes, not to
20 conjure up disputes and try to make hay out of them, which I
21 think is what's happening on the other side.

22 Now, unfortunately, we have the issue with the Macau
23 documents that Your Honor doesn't feel so kindly toward us
24 about. I understand that. But on the other issues, we have
25 been dealing with this diligently, as competently as we know

1 how to try to move this case forward. We met with the client
2 last night. We are going to double and redouble our efforts
3 to move this thing along and review the Jacobs documents that
4 are in the United States and get those documents that are
5 responsive to jurisdiction produced as quickly as we can. We
6 are the ones who've wanted to move forward with a hearing on
7 jurisdiction. We were the ones who came in and wanted to keep
8 today's date. It was the plaintiff who wanted to delay it.
9 Now they pretend to want to move forward quickly.

10 So we think, Your Honor, we can address the specific
11 issues, but I don't think it's appropriate to put in the
12 declaration that was put in without raising that, I don't
13 think it's appropriate to put in all of these so-called
14 discovery disputes without raising them in a meet and confer
15 and, if they can't be resolved, filing a motion, which is the
16 appropriate -- I think that if there are issues --

17 THE COURT: It is the appropriate way, you're
18 absolutely right.

19 MR. BRIAN: If there are -- if there are documents
20 that they say are responsive that Mr. Jacobs knows were not
21 produced, tell us and we'll go back and look at them, which is
22 what we're going to do now in response to this declaration.
23 Thank you.

24 THE COURT: Okay. I marked your Table of Production
25 as Court's Exhibit 1 so that we have it for the record, but I

1 anticipate always that issues related to compelling documents
2 will be handled by a motion. The status report is merely to
3 tell me if we're going to throw me off schedule further. Part
4 of what we were hoping today was to talk about scheduling.

5 MR. BRIAN: Here's our -- here's our --

6 THE COURT: I'm not sure we're at a point to even
7 talk about scheduling in this case.

8 MR. BRIAN: Well, here's our --

9 MR. BICE: I'd like to be heard before we talk about
10 scheduling, Your Honor.

11 THE COURT: Wait. Not yet, Mr. Bice. Not yet, Mr.
12 Bice.

13 MR. BRIAN: On that -- if you want my thoughts, I'll
14 sit down after that, but --

15 THE COURT: Sure.

16 MR. BRIAN: -- as I say, last night we sat down with
17 the client and talked about how we would essentially increase
18 staffing, increase the expense, and get it done. And we think
19 that we can get all of the documents, other than documents in
20 Macau -- and we have to decide what the Court is going to do
21 with that, because documents in Macau are a whole different
22 situation and involve legal issues that may or may not have to
23 be resolved on the jurisdictional issue. But we think we can
24 get through all of the Jacobs documents and all of the other
25 documents in the United States by Labor Day and get those

1 produced so that if, Your Honor -- if there's no discovery
2 disputes and discovery motions, we think we'd be in a position
3 to have a hearing in October. That's our best bet.

4 THE COURT: All right. Thank you.

5 Mr. Bice.

6 MR. BICE: Yes, Your Honor. I learned about this
7 information -- I think the day before yesterday was the first
8 I --

9 THE COURT: And "this information," you mean the
10 stuff that got taken out of Macau?

11 MR. BICE: Yes. That's right. Now, Mr. Brian
12 didn't -- wasn't on any of the calls that we've had over the
13 course of the last three days about this, so I want the Court
14 to understand what I was told, because you can imagine my
15 reaction when I heard this information. I won't use the same
16 tone that I used over the phone, but I'll try and recall
17 exactly what I said.

18 "How long have you known about this and why weren't
19 we and the Court told about it"; and this is the response I
20 was given, we were under no duty to disclose this to you or
21 the Court. That was the answer I got. I was never told, oh,
22 we've been working with the Macau Government, you know, we
23 didn't know what to do, we've been trying to solve this. The
24 answer was that simple. Ms. Spinelli was also on the phone,
25 and I believe Mr. Pisanelli was in the room. "We had no duty

1 to disclose this to you or the Court." That's why we weren't
2 told about it. It wasn't because of Macau Data Privacy
3 problems.

4 And I love this argument from Mr. Brian, well, we
5 wanted to move the hearing quickly, we wanted to move forward
6 with the hearing. You're darn right he did. That's exactly
7 what they were trying to do. They were trying to cram that
8 hearing down our throat without the facts ever coming to
9 light. And only when you said, we're not going to do that,
10 guess what happens. Now their hands are tied, they have to
11 'fess up that for two years they have been sitting on these
12 documents and even to this day haven't searched them for
13 purposes of this case. They've apparently been searching them
14 for other purposes, I'm sure to deal with the United States
15 Government, but they haven't searched them for purposes of
16 this case. You ordered jurisdictional discovery last year,
17 and they still haven't searched these documents.

18 Your Honor, Mr. Jacobs has a saying, and I can now
19 see how it is in play here. Mr. Adelson told Mr. Jacobs in
20 response to several complaints by Mr. Jacobs about the
21 inappropriate activities that were going on at Sands, it's not
22 what they know, it's what they can prove. And we've now seen
23 that is exactly what's going on in this case. It's not what
24 Mr. Jacobs knows, it's what Mr. Jacobs can prove, so we want
25 to make sure we see Mr. Jacobs's documents before he sees

1 ours. And that was the whole excuse for the sequencing that
2 was going on, and that became crystal clear. And when you
3 called them out and said, you're not permitted to do that,
4 what did they do in the last 30 days relative to producing Mr.
5 Jacobs's emails and the like to us? Nothing. They haven't
6 even searched them by their own acknowledgements. Because,
7 guess what, Your Honor, guess when they get Mr. Jacobs's ESI
8 under our agreement. They get it next week. That's what this
9 is about. This is about stalling as long as they can. They
10 didn't have a duty, to use their exact words, a duty to
11 disclose this to us or to the Court, and now they'll start
12 looking at Mr. Jacobs's emails. And I love this. You know,
13 they've got their resources. They're going to man up now or
14 they're going to get lots of personnel and they're going to
15 start searching through Mr. Jacobs's ESI. Guess when they're
16 going to do that. Just as soon as they get Mr. Jacobs's from
17 Advance Discovery so that they know what he can prove, not
18 what he knows. And that's what -- that's why I took the
19 position, and I ask the Court to do it now, they be directed
20 to immediately deposit all ESI with Advance Discovery. Not
21 that they can search it after they get Mr. Jacobs's documents
22 to determine what he can prove, not what he knows, so that
23 then documents don't get sanitized. And that's what the
24 purpose of his affidavit is.

25 And I'll be happy to address why is affidavit is --

1 was submitted with the status report. Because what has gone
2 on and what we found out about two days ago is they've been
3 holding onto a bunch of documents and they're sanitizing them.
4 They produce a few things. I love this argument, they've
5 produced everything about Ed Tracy. We've responded to that.
6 They've produced duplicates of I think his resume and an email
7 forwarding it. That is it.

8 THE COURT: And those were produced yesterday?

9 MR. BICE: No. Those were produced before then, two
10 days ago.

11 THE COURT: Two days ago.

12 MR. BICE: Right. And that's all they've produced.
13 And then they come to you and say, well, see, we're
14 responding. No. What they're doing is they're trying to just
15 leak out a little information so that they can say to you, oh,
16 we're responding; because they are cherry picking what they
17 don't want to be known. And then they come to us and say,
18 well, you should tell us, tell us what Mr. Jacobs knows, and
19 then we'll go look for additional documents. Again, this one-
20 sided attempt, we want to know what Jacobs can prove before we
21 respond to discovery. Just like they -- how in the world can
22 they stand here and tell you they were not under a duty to
23 disclose to us and to you that for two years they have had
24 Jacobs's emails in the United States? I mean, I can't
25 remember the number of times we were in this courtroom, people

1 from -- they were represented by separate counsel because they
2 couldn't even look at the documents. That was the story. Mr.
3 Peek's firm couldn't even look at the documents. Now it turns
4 out his client is the one that has possessed them all along.

5 Now, I asked point blank questions about this. And
6 you're right, I was -- I was agitated on the phone. I don't
7 deny it. I asked them point blank, how did they get here and
8 when did they get here; the first answer was, well, we'll need
9 to confer with our client about whether or not we're going to
10 answer that question.

11 So then the response came back in a subsequent phone
12 call, they were brought here by a lawyer. They won't tell us
13 who. They claim it was none of them, but they won't tell us
14 who brought them here, and they don't say exactly when they
15 were brought here, just sometime in 2010.

16 Then we started asking followup questions, of
17 course, and then we were accused of conducting an inquisition
18 against them over this stuff, such as, what's been done with
19 them; well, nothing has been done with them. And that's why,
20 Your Honor, we ask you to now take control of those documents
21 and place them with Advance Discovery just like Mr. Jacobs had
22 to do. These people have lost the right -- when I say these
23 people, Sands and Sands China have lost the right to tell us
24 and to tell this Court, trust us, we're going to be forthright
25 with you in discovery, trust us. For two years they kept a

1 secret, a whopper from you and from us, and there is no excuse
2 for it anywhere. They can't be trusted, they've demonstrated
3 they can't be trusted, and the documents need to be placed
4 with Advance Discovery now so that we don't run into more
5 selective sanitizing of the documentation with the assurances
6 of trust us. Tell us, Mr. Jacobs, what else would you like to
7 know, you let us know what you're looking for and then we'll
8 see if we can find it for you. That's not the way it's
9 supposed to be working.

10 And what Mr. Jacobs knows, Your Honor, which is why
11 we submitted this declaration is if they were legitimately
12 running the search terms that they have told us that they ran
13 to pull out these documents about Ed Tracy, Mr. Jacobs knows
14 for a fact other documents would have surfaced. And they
15 didn't. Why is that? Who's making the selection process
16 internally or amongst this group to not find the documents and
17 not produce them? Somebody is. You know, this is the -- this
18 is the problem for them, is that Mr. Jacobs knows the
19 documentation that exists. Again, they want to know what
20 could he prove exists. He knows what exists. And it's not
21 showing up if they were legitimately running these search
22 terms like they claim that they were. And that's why they've
23 lost the right to claim, trust us.

24 After two years of silence while we sat here -- you
25 know, Mr. Brian's firm wasn't involved at that point in time,

1 but we had argument after argument after argument in this
2 courtroom, we had motions for sanctions leveled against us
3 over all this. And while that was ongoing the people in this
4 courtroom sat here with knowledge that they had large volumes
5 of those documents in Sands's possession here in Las Vegas.
6 Can anyone sit here with a straight face and say, we didn't
7 feel that it was appropriate or we were under any duty to
8 inform the Court of that fact? They knew it. And they
9 deceived us. And it wasn't an oversight. You were here, I
10 was here, Mr. Pisanelli was here. It was no oversight.

11 What happened is they wanted to cram that hearing
12 down our throat without ever revealing this fact to us. And
13 when you called them out on the attempt to sequence discovery,
14 that forced their hand. And now the excuse has come out,
15 well, now they've tried to negotiate -- I can't -- really, I
16 can't keep the stories straight. Are you now claiming that
17 you've been negotiating with the Macau Government for the last
18 two years, or are you claiming that you only started that
19 process within the last 30 days? I'm confused.

20 As we've cited to you, Your Honor, in --

21 THE COURT: Let's talk about your discovery.

22 MR. BICE: I'm happy to do that. There's a couple
23 of more points about theirs I'd like to know.

24 They make a reference that there were -- because,
25 again, I learned something new with the status report. Now it

1 turns out that it wasn't just Mr. Jacobs's documents that were
2 transferred to the United States, apparently two other unnamed
3 people. Well, who are they? Why isn't that disclosed to us?
4 Was one of them Eric Chu [phonetic]? I'd like them to explain
5 on the record who those people are, because that may explain
6 to us where there are some additional documents. Is it Eric
7 Chu and Yvonne Mau whose data they transported into the United
8 States and have possessed for the last two years without
9 telling us?

10 That's why we asked, Your Honor -- that's why we
11 submitted an affidavit with the status report. We recognize
12 that affidavits with status reports aren't the norm. And I
13 told them yesterday that we were going to submit it in light
14 of this revelation and what is going on in this case; because
15 there's two things, they've demonstrated that they can't be
16 trusted to produce the information because they've been
17 sitting on it for two years, and they've demonstrated that
18 they can't be trusted to respond to our discovery requests
19 because documentation that Mr. Jacobs knows exists that would
20 be -- would surface in these search terms is also not being
21 produced. Something is afoot here, and it's not oversight.

22 Now, to respond to Her Honor's question, our
23 discovery. Our discovery has been placed with Advance
24 Discovery. Mr. Jacobs was given 10 days in order to review
25 it. That's what we find fascinating. He's got hundreds of

1 thousands of pages, and we agreed to have 10 business days to
2 review it. But they have had this documentation for two
3 years, and, of course, they're just not going to get to it
4 until, guess when, until they get to see Mr. Jacobs's
5 documents, because this case is about what Steve Jacobs can
6 prove, not what he knows. That's why I ask you to force them
7 to now, before they get Mr. Jacobs's data, deposit their
8 documentation with Advance Discovery so that we won't have a
9 dispute down the road when more documents go missing or there
10 are new revelations that the Court didn't need to know and
11 that we didn't need to know about for the last two years.

12 And as we cite to the caselaw for you, Your Honor,
13 we think that there's a little selective interpretation going
14 on of the Macau Data Privacy Act. Whoever these unnamed
15 lawyers are that made the decision that the data could be
16 shipped -- and, of course, it only demonstrates Mr. Jacobs's
17 point all along about who really controls Sands China. It's
18 being controlled from Las Vegas by the Las Vegas executives.
19 Who went and got the documents and pulled them out of Macau?
20 Las Vegas Sands did. Why? Because they're in control. Who
21 are the lawyers that made that decision? When did the Macau
22 Data Privacy Act suddenly become the defense? It seems like
23 it only became the excuse after this Court started saying,
24 we're going to do jurisdictional discovery. It apparently
25 wasn't any obstacle before then.

1 So what we've got going on is when Sands wants to
2 pull information out of Macau for its own purposes it's not an
3 obstacle to it or even its legal team. But when they have to
4 have the burden of responding to discovery in litigation in
5 the United States, whoa, Macau Data Privacy Act, we can't --
6 we can't comply and we can't even tell you, Your Honor, that
7 we've interpreted it and applied it differently for the last
8 two years before our sudden revelation that it applied and
9 precluded us from responding to discovery.

10 That's why we cite the caselaw to you, Your Honor,
11 in our status brief. And I understand again it's a status
12 brief, but we're still trying to move this forward and that
13 the Federal Courts have taken the position that these blocking
14 statutes, especially how it's being invoked in this matter by
15 Sands, do not obstruct discovery and they are still required
16 to respond. That's why we are asking that they be forced to
17 place both the documentation that they have here in Nevada
18 with Advance Discovery so that nothing else happens to it, and
19 that all documentation in Macau that they claim to have
20 preserved also be deposited with Advance Discovery
21 immediately. That way we can work out a protocol that it can
22 legitimately be searched, just like they insisted Mr. Jacobs
23 had to do, legitimately be searched to determine what is in
24 there, not sanitized by people who have an agenda here of not
25 having the bad facts come out, just spoon feeding us what

1 they'd like us to see.

2 And if the Court doesn't have any further questions
3 for me, I will sit down.

4 THE COURT: So your discovery is back on track and
5 the -- Mr. Jacobs is currently reviewing the information that
6 was gathered by the search terms when Advance Discovery ran
7 them --

8 MR. BICE: That is correct.

9 THE COURT: -- and that should be returned to
10 Advance Discovery for them to make any determinations as to
11 personal or private information that Mr. Jacobs has designated
12 and then be produced to the defendants next week?

13 MR. BICE: What Mr. Jacobs has done is he has gone
14 through the documents, he is comparing the search terms that
15 are going to be then run against the database, that those
16 search terms will then pull out those documents, they will get
17 to see the search terms. When that is done they can either
18 agree or disagree. We've agreed that if in the event that
19 there's disagreement that will hold up the process the search
20 terms will be run, the documents will be pulled out and
21 segregated, they will then be given access on a secured server
22 to what remains of the documentation. It's already been de-
23 duced. All that process has already occurred. That's what's
24 obviously --

25 THE COURT: The removal of the documents especially

1 related to Mr. Jacobs's children, which was of a --
2 MR. BICE: Yes.
3 THE COURT: -- significant concern to me when this
4 issue first came up about a year ago --
5 MR. BICE: Yes.
6 THE COURT: -- are going to be pulled out --
7 MR. BICE: That is correct, Your Honor.
8 THE COURT: -- through the search term use.
9 MR. BICE: That is correct, Your Honor.
10 THE COURT: Okay.
11 MR. BICE: And that process has been underway now
12 for a period of time, and it will be done. We agreed that he
13 would have 10 business days to complete that, and he will be
14 done with it.
15 Obviously, Your Honor, in that regard just
16 demonstrating our frustration with this recent revelation is
17 even though they've had this data for two years they haven't
18 even run it to compare it against their own database in Macau
19 to determine what's missing or what isn't missing or what's
20 even left in Macau. They haven't even done that process.
21 Why? Because they want to see what Steve Jacobs has before
22 they produce anything from Steve Jacobs. And that sequencing
23 is what you told them was forbidden, and all they have -- they
24 have granted it to themselves by now just simply using time as
25 the means in which to accomplish it once you told them they

1 weren't allowed to do that.

2 THE COURT: Okay. Before you leave the podium let's
3 talk about scheduling.

4 MR. BICE: Yes, Your Honor.

5 THE COURT: The volume of documents that is going to
6 be provided on the secured server for the defendants to review
7 beginning next week is probably going to take them three to
8 four weeks to get through?

9 MR. BICE: Yes.

10 THE COURT: Okay. Assuming some day you get some
11 more documents from the defendants, how much longer do you
12 think you're going to need before you're ready for the
13 hearing?

14 MR. BICE: We will not need much time. Once we get
15 the documents we will take the depositions within 30 days of
16 our possession of those documents, and we will proceed.

17 THE COURT: Okay. So you're talking about another
18 60 to 90 days basically.

19 MR. BICE: We would think 60. I mean, if Mr. Jacobs
20 -- you know, you had said three to four weeks for them to
21 review it. I wouldn't think it would really take that long.
22 I mean, Mr. Jacobs is reviewing them in 10 business days.
23 They have a far larger army than Mr. Jacobs has. He's doing
24 this -- has to do it, by agreement, all by himself. They
25 could certainly get through those documents a whole heck of a

1 lot faster if the -- and by the way, I'm quite sure they will,
2 Your Honor. I'm quite sure they're going to get through those
3 documents real fast, because they want to see what's in them
4 before the Court tells them what they have to give to me. And
5 that's what's inappropriate.

6 THE COURT: Okay.

7 MR. BICE: Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Brian.

10 MR. BRIAN: I think I can be really brief, Your
11 Honor, unless you have more questions.

12 Let me address very briefly Mr. Bice's request that
13 we be required to deposit these documents with Advance
14 Discovery. I understand there's a big difference, that the
15 Court ordered that of Mr. Jacobs because, contrary to what is
16 normally done, Mr. Jacobs did not take an image of his hard
17 drive, and continued to use it. There was concern, and we had
18 concerns and the Court had concerns, that caused that
19 procedure to be raised.

20 Now, Mr. Bice tries to equate that by saying there's
21 evidence of sanitizing of documents, but that's the issue that
22 just got conjured up yesterday in connection with the status
23 conference report, has never been the subject of meet and
24 confers, and the issue that I think many things they say are
25 wrong. If they have evidence that they think documents exist

1 that were not produced, we're happy to sit down and go back
2 and look at them and try to produce more documents. So I
3 don't -- I don't think the situations are at all -- at all
4 equal.

5 THE COURT: And the documents you're going to look
6 at are the electronically stored information that was taken
7 out of Macau?

8 MR. BRIAN: We're going to -- we are -- on those
9 documents we heard Your Honor loud and clear. We are going to
10 double and redouble and go through those documents. I'm
11 talking about the other documents that are now in his
12 declaration that he says have -- that are just essentially Las
13 Vegas Sands type documents that he says have not been
14 produced. On those documents we should sit down across the
15 room and figure out are there documents that exist that Mr.
16 Jacobs thinks exist that have not been produced, and we'll go
17 back and look at them.

18 THE COURT: Okay. So let's switch gears for a
19 minute.

20 MR. BRIAN: There's no intention to sanitize the
21 documents, certainly by nobody in this room, Your Honor.

22 As to the hearing date, I --

23 THE COURT: Are you finished?

24 MR. BRIAN: Pardon?

25 THE COURT: I have a point, if I could make it,

1 please.

2 MR. BRIAN: Go ahead. Please.

3 THE COURT: I'm inclined to schedule an evidentiary
4 hearing to make a determination as to the failure of the
5 defendants to disclose the existence of the information that
6 was removed from Macau, and at that hearing I want the
7 attorney who was involved in the transporting of the
8 electronically stored information, I want the actual
9 electronic storage devices on which the information was
10 disclosed. When will you be able to provide that information
11 for me so I can conduct a hearing and make a determination as
12 to whether any sanctions are appropriate?

13 MR. BRIAN: I don't know. I may have to ask Mr.
14 Weissman that, Your Honor. I think the individual --

15 THE COURT: I'm going to let you take a chance and
16 make a -- take a short break while I finish up the rest of the
17 cases, and then I'll get to you.

18 MR. BRIAN: We'll do that, Your Honor. Thank you.

19 (Court recessed at 10:28 a.m., until 10:41 a.m.)

20 THE COURT: Gentlemen, we were talking about dates.

21 MR. PEEK: Your Honor, if I understand correctly,
22 what the Court has asked us to do is to have available the
23 individual who took the data from Macau in 2010. I will tell
24 the Court that was former in-house counsel Michael Kastrinski
25 who did that. He no longer is an employee. However, I

1 believe he lives in Las Vegas, so he certainly is available
2 whenever we can get a date, because I'm sure he's within the
3 subpoena power of the Court, and I'm sure he will more than
4 likely cooperate with us. We'll certainly request that he
5 cooperate.

6 THE COURT: He's always cooperated whenever we've
7 asked him to do anything before in other cases.

8 MR. PEEK: So that's the issue with respect to that
9 removal of data by Mr. Kastrinski in 2010. And I don't know
10 when you want to do something -- when you want to have that
11 hearing.

12 THE COURT: Where are the electronic storage
13 devices?

14 MR. PEEK: They are at the Sands, Your Honor.

15 THE COURT: Okay.

16 MR. PEEK: At the Las Vegas Sands Hotel & Casino.

17 THE COURT: They're still preserved?

18 MR. PEEK: They are still preserved, Your Honor.

19 They have been preserved. They have not --

20 THE COURT: That's a good thing, Mr. Peek.

21 MR. PEEK: Yes, Your Honor. They are preserved,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PEEK: They're in the same --

25 THE COURT: Does somebody want to call Mr.

1 Kastrinski? Is he --

2 MR. PEEK: I don't know if he's found new
3 employment. I don't know what he's doing. I've not been in
4 touch with Mr. Kastrinski, Your Honor, for some time. But I
5 can certainly -- I'll reach out to him.

6 THE COURT: I have the week of July 9th fairly open
7 because the CityCenter people moved back a week and Mr. Bice
8 settled his other case and you guys didn't go, so the July
9 stack is more open than it was. So I was looking at the week
10 of July 9th. I figure this as almost a full day, knowing the
11 people involved in this case, and by that I mean the lawyers.

12 MR. PEEK: I have very intense hearings on the 10th.
13 I have I think four or five motions on the 10th.

14 THE COURT: Is that in the Wayne Newton case?

15 MR. PEEK: It is, Your Honor. I also have the
16 deposition of Mr. Kennedy scheduled for the 9th, and also the
17 Harbers scheduled for followup after our motion practice. So
18 certainly towards the end of that week I would --

19 THE COURT: So you're looking at Friday, the 13th?

20 MR. BRIAN: Not a good day to pick, but -- Your
21 Honor, unfortunately, I'm in Washington on some intense
22 confidential negotiation through the 13th, for the next two
23 weeks, starting on Monday.

24 THE COURT: Well, then I guess we can move up to the
25 week before.

1 MR. BRIAN: Can we do it that following week?

2 THE COURT: No, I can't. We can move up the week
3 before, which is the week of the Fourth of July.

4 MR. BRIAN: I can't. See, I start this week, and
5 it's going to run for two weeks.

6 THE COURT: I'm not moving it past my CityCenter,
7 Wayne Newton, and kids fighting over the business with parents
8 cases.

9 MR. PEEK: What was the last one, kids fighting over
10 what?

11 THE COURT: Kids fighting over the business with the
12 parents. It's called CD Construction versus ERC Investments.
13 Max just tells me it's the son fighting with the parents case.

14 MR. PEEK: Doesn't sound like a pleasant one, Your
15 Honor.

16 MR. BRIAN: May we have a moment, Your Honor?

17 MR. PEEK: I'd be available, Your Honor.

18 THE COURT: Now, if you can get the CityCenter folks
19 to resolve their issue on the Harmon, then I could go back to
20 doing regular stuff, and they could get ready for trial.

21 MR. PEEK: So, Your Honor, we're just talking about,
22 what, a half a day, one with Mr. --

23 THE COURT: I'm thinking it's a little more than a
24 half a day knowing the people --

25 MR. PEEK: Okay. So --

1 THE COURT: -- knowing the lawyers involved in this
2 case. And I'm not criticizing you --
3 MR. PEEK: I know you're not, Your Honor.
4 THE COURT: -- and I'm not criticizing Mr. Bice.
5 But you're both very, very thorough. And I am criticizing Mr.
6 Pisanelli. Forty-five minutes on the can I take a deposition
7 motion.
8 MR. PEEK: I was here, Your Honor, listening to --
9 MR. BRIAN: Perhaps, Your Honor, if -- what date
10 works the week of July 9th? I don't know if I can do it, but
11 Mr. Weissman will be here if I can't do it. Is the 13th the
12 best day?
13 THE COURT: Well, your friend here has Wayne
14 Newton's stuff most of that week, he said.
15 MR. BRIAN: Let's set it for the 13th, and somebody
16 from our office will be here. I don't know -- I don't know
17 that it can be me.
18 THE COURT: Okay. Friday, the 13th, at 9:30.
19 MR. BRIAN: That's fine, Your Honor.
20 MR. BICE: Fine with us.
21 MR. PEEK: That's fine, Your Honor.
22 THE COURT: Okay.
23 MR. PEEK: We'll have Mr. Kastrinski here. I
24 assume, Your Honor, you're not asking for outside counsel with
25 respect to what its conversations were with the client to

1 testify --

2 THE COURT: No, I'm not.

3 MR. PEEK: -- Ms. Glaser or myself.

4 THE COURT: I'm not asking for any attorney-client
5 privilege. I am asking for the how did the stuff get out of
6 Macau. You guys have told me why you didn't tell me. I take
7 you at your word. I may disagree with the judgment call that
8 you made, but I have very serious concerns about what happened
9 and the data and what the data actually is and how that
10 impacts the jurisdictional discovery that I've been trying to
11 oversee for almost a year.

12 MR. BRIAN: We understand, Your Honor.

13 MR. PEEK: We understand, Your Honor.

14 THE COURT: Mr. Bice, is there something you want to
15 say, since you're standing up? Or are you just tired of
16 sitting?

17 MR. BICE: Well, I'm tired of sitting, but -- I
18 think I'd like more information about --

19 THE COURT: About what?

20 MR. BICE: About -- you know, I'm not going to just
21 accept the premise that Mr. Kastrinski did this on his own.
22 Maybe he --

23 THE COURT: Well, I'm sure somebody's going to ask
24 him, who told you to do this, or, why'd you do it.

25 MR. BICE: So would it be productive to see if we

1 cannot depose Mr. Kastrinski before the -- we're going to have
2 an evidentiary hearing. I --

3 THE COURT: Sure, you can depose Mr. Kastrinski if
4 you want to.

5 MR. BICE: And that way we can perhaps find out who
6 all has known about this, how long they've known, which is all
7 relevant, it seems to me, to your question.

8 THE COURT: And if there's going to be privilege
9 issues, that somebody's going to set up so we have them and
10 can deal with them.

11 MR. BICE: Yes. And I know he is residing in Las
12 Vegas, so we can work with him to try and set up --

13 THE COURT: For some reason I thought he was still
14 at Harrah's.

15 MR. BICE: He is not --

16 MR. PEEK: No, no. He was at Harrah's, and then he
17 came to us after Harrah's, Your Honor.

18 THE COURT: Okay.

19 MR. BICE: He is not, Your Honor.

20 MR. PEEK: I don't know where he is now. Maybe Mr.
21 Bice does.

22 MR. BICE: Well, since he and I went to law school
23 together, I do -- he is working at a firm. I don't know the
24 name of it.

25 THE COURT: But you're going to find out --

1 MR. BICE: Yeah.

2 THE COURT: -- and you're going to set him for depo
3 and perhaps notify him that I picked the day of July 13th at
4 9:30 to talk with him.

5 MR. BICE: I'm sure he will be very happy, Your
6 Honor.

7 MR. PISANELLI: And, Your Honor, from what we learn
8 from that deposition will we be permitted to subpoena other
9 people from Sands if we find out that they're at the heart of
10 this action?

11 THE COURT: How about we have a conference call if
12 you discover that.

13 MR. BICE: Brief.

14 MR. PISANELLI: Very good.

15 THE COURT: If you want to do anything more than
16 talk to more than talk to Mr. Kastrinski, we have a conference
17 call.

18 MR. BICE: Thank you, Your Honor.

19 MR. BRIAN: We'll ben touch with Mr. Kastrinski and
20 see what his schedule's like for the deposition, Your Honor.

21 THE COURT: Mr. Bice, don't talk to him about
22 anything about this case other than scheduling.

23 MR. BICE: I will not, Your Honor.

24 THE COURT: Thank you. Because I don't want any of
25 us to get into the situation of having a potential

1 disqualification issue raise its ugly head yet again.

2 MR. BICE: Absolutely, Your Honor.

3 MR. PEEK: Your Honor, so --

4 THE COURT: Mr. Williams, thank you very much, by
5 the way for your ESI protocol that was drafted over a year
6 ago, which actually ended up being used.

7 MR. WILLIAMS: I can see it's done a lot of good,
8 Your Honor.

9 THE COURT: I've moved so far forward.

10 MR. PEEK: Your Honor, so that I can be prepared
11 from a briefing standpoint and an argument standpoint --

12 THE COURT: Hold on. Let me get my rule book out so
13 I can tell you what the rules that I'm concerned about.

14 MR. PEEK: -- and what the --

15 THE COURT: There's this rule called Rule 37, but
16 the rule that I think is more important for purposes of this
17 hearing is an infrequently used rule. The last time I believe
18 it was cited in a published decision was the Nevada Power-
19 Fluor case, which should give you an idea.

20 MR. PEEK: I remember Mr. McPike's case well.

21 THE COURT: It was EDCR 7.60.

22 MR. BRIAN: What is it, Your Honor?

23 THE COURT: EDCR 7.60.

24 MR. PEEK: I don't think that's what it was at the
25 time of the -- but I'm sure the rule was there at time of the

1 Nevada Power.

2 THE COURT: No, it was the exact same rule.

3 MR. PEEK: It was the same rule. I was trying to
4 remember --

5 THE COURT: It's never been cited any other time
6 except then.

7 MR. PEEK: Are you looking for those same similar
8 sanctions? Because that's really what I'm -- that's really
9 where I'm going, Your Honor. I understand the violation, but
10 I'm trying to understand where the Court is going with its --

11 THE COURT: I'm not going to put anybody in jail, so
12 I'm not doing this as a contempt proceeding. I'm doing it as
13 a potential sanctions hearing. There are issues related to --
14 monetary sanctions related to attorneys' fees necessitated by
15 this situation.

16 MR. PEEK: I understand that, Your Honor.

17 THE COURT: There's potential sanctions that might
18 go to a charitable organization, and it is unlikely that there
19 will be evidentiary sanctions unless it appears to me there
20 has been data lost as a result of the removal and
21 transportation. And I won't know that until we do more stuff
22 and probably won't occur at this hearing.

23 MR. PEEK: Okay.

24 THE COURT: You understand what I'm saying?

25 MR. PEEK: I do, Your Honor.

1 THE COURT: Okay.

2 MR. PEEK: I just wanted to be clear on it so that I
3 could be prepared to make the arguments.

4 THE COURT: Okay.

5 MR. BICE: Your Honor, may I -- there are a couple
6 points. One, we haven't really addressed my request that they
7 be forced to deposit this data with Advance Discovery prior to
8 their receipt of Mr. Jacobs's data, which we are very
9 concerned is going --

10 THE COURT: You're right. I didn't grant that
11 request.

12 MR. BICE: Okay. I didn't -- well, I didn't hear
13 you deny it, either. That's why I'm asking for the --

14 THE COURT: No. I set this hearing instead and I
15 asked where the originals were, and I was told, and I'm taking
16 Mr. Peek at his word, since he knows I'm rather irritated at
17 the moment.

18 MR. BICE: I understand that. But do they get Mr.
19 Jacobs's data next week?

20 THE COURT: Absolutely.

21 MR. BICE: All right.

22 THE COURT: Anything else?

23 MR. BICE: And I don't want my silence to your
24 comments to be deemed that we will not be seeking other
25 sanctions other than what the Court has detailed.

1 THE COURT: Since this was set sua sponte by me, as
2 opposed to a motion by you --
3 MR. BICE: Yes.
4 THE COURT: -- I always try and give people the
5 opportunity to have a hearing before I sanction them, unless
6 it's for something that's obvious, like rolling their eyes,
7 yelling at me, calling me names, or something like that.
8 MR. BICE: Understood, Your Honor. I just didn't
9 want my silence to somehow be --
10 THE COURT: Ten days sometimes is enough for those
11 kind of hearings, but this one will be shorter.
12 MR. BICE: Understood, Your Honor.
13 MR. PEEK: Ten days in jail, Your Honor, for --
14 THE COURT: Ten days for a hearing, Mr. Peek.
15 MR. PEEK: I was concerned about --
16 THE COURT: You never went to jail during that
17 hearing.
18 MR. PEEK: No, I know.
19 THE COURT: And your client ended up never going to
20 jail here in the U.S., for that matter.
21 MR. PEEK: And you know he passed away, Your Honor.
22 THE COURT: Yeah, he did.
23 Anything else?
24 MR. BRIAN: No. Thank you, Your Honor.
25 THE PROCEEDINGS CONCLUDED AT 10:52 A.M.

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

6/29/12

DATE

A-10-627691-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

August 23, 2012

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

August 23, 2012 9:00 AM Motion for Protective Order

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Billie Jo Craig

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Bice, Todd L Attorney
Owens, John B. Attorney
Peek, J. Stephen Attorney
Spinelli-Hays, Debra L. Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court stated because of the Reese deposition and the subject matter related to the leaks of O'Melveny & Myers information to the media is not something within the scope of the permissible discovery given the stay, that does not mean that at some later time Mr. Bice can inquire of that. At this point, the Court is very limited on what to do at the Hearing. While the Sanctions Hearing is indirectly related to that because it relates to the representations related to compliance with jurisdictional discovery requests as a result of the Macau Data Privacy Act and what the Sands told the Court were the issues related to that, the Court will conduct the Sanctions Hearing regardless of the Stay Order. Because of the Sanctions Hearing next week, the Court asked counsel to make a list of potential outcomes as the Court wishes to resolve this matter at the Hearing.

PRINT DATE: 08/24/2012

Page 1 of 1

Minutes Date: August 23, 2012

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ORIGINAL

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

SEP 13 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 3

WEDNESDAY, SEPTEMBER 12, 2012

A-10-627691-8

TRANS
Transcript of Proceedings
1988063



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.

FOR MR. KOSTRINSKY:

JEFFREY A. GAROFALO, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 12, 2012, 9:26 A.M.

2 (Court was called to order)

3 MR. PEEK: Your Honor, my apologies for a --

4 THE COURT: Not your problem. I mean, there was a
5 flood yesterday, and I went down and looked at the wall this
6 morning and it was still wet. So it affected the equipment,
7 and I know it affected the people down there. So don't worry
8 about it.

9 MR. PEEK: Thank you.

10 MR. BRIAN: Your Honor, both sides got a message
11 from Mr. Kostrinsky's counsel that he wanted to come back this
12 morning and offer some supplemental or clarifying or
13 correcting testimony. He thought it would be short. I think
14 both of agree that that can -- which should proceed first if
15 that's convenient to the court.

16 THE COURT: Sure. Mr. Kostrinsky, why don't you
17 come on back up.

18 MR. BRIAN: There may be, as you probably
19 anticipate, a privilege issue, but we'll deal with that. But
20 procedurally we all agree.

21 THE COURT: Mr. Garofalo, so nice of you to join us
22 today.

23 MR. GAROFALO: Good morning, Your Honor, Jeff
24 Garofalo for the witness.

25 THE COURT: I had Mr. Lee in the box where you

1 usually sit for CityCenter next to the mike.

2 MR. GAROFALO: I heard.

3 MICHAEL KOSTRINSKY, COURT'S WITNESS, SWORN

4 THE CLERK: Please be seated and state your name and
5 spell it for the record, please.

6 THE WITNESS: Good morning. Michael Kostrinsky
7 K-O-S-T-R-I-N-S-K-Y.

8 REDIRECT EXAMINATION

9 BY THE COURT:

10 Q Was there something you wanted to tell us, Mr.
11 Kostrinsky?

12 A Yes. Yesterday, Mr. Pisanelli had asked me some
13 questions about the SEC drives. And one of the questions he
14 had asked was whether -- it was in the tune of whether I had
15 information or I had -- I had information of whether it was
16 possible that information may have been loaded onto one of the
17 two SEC drives and perhaps taken off at some point. And I
18 believe my answer to that was, no. And after being able to
19 think about it, my answer to --

20 MR. MCCREA: Your Honor, I'm going to object.
21 Attorney-client privilege.

22 BY THE COURT:

23 Q Is your information that you have based upon a
24 communication with your former employer and client, Las Vegas
25 Sands, or based upon something else?

1 A It would be based upon communications from counsel
2 from my former client.

3 THE COURT: Okay. The objection's sustained.

4 And whoever has the cell phone still going off,
5 please turn it off..

6 Anything else you wanted to tell us? Mr.
7 Kostrinsky, anything else you wanted to add?

8 THE WITNESS: No. It's just I wanted to be able to
9 clarify the answer that I gave.

10 THE COURT: I appreciate that.

11 Now, Mr. Pisanelli, did you want to ask some
12 questions of Mr. Kostrinsky?

13 MR. PISANELLI: Thank you, Your Honor.

14 REXCROSS-EXAMINATION

15 BY MR. PISANELLI:

16 Q Mr. Kostrinsky, there was a time when you had access
17 to the shared drives containing the SEC subpoena documents;
18 correct?

19 A I know I had access to the U.S. drive, yes.

20 Q All right. And you took the opportunity to review
21 those documents on the drive itself; is that right?

22 A I've loaded documents onto the drive.

23 Q Okay. After -- when was that approximately?

24 A This would have been between February -- I think we
25 estimated between 10 and 15 -- 12th and the 15th of February I

1 think it started. And I think it stopped around the middle of
2 March.

3 Q Okay. So did there come a time after, we'll call
4 the middle of March after the documents were loaded onto that
5 drive, that you had the ability -- well, strike that. Did
6 there come a time after the documents were loaded where you
7 reviewed the shared drive again?

8 A I was on the U.S. shared drive quite a bit --

9 Q Okay.

10 A -- loading documents, organizing things and so
11 forth.

12 Q Now, from the time that the documents were loaded
13 and moving forward in time, did there come a time where you
14 personally noticed that some of the documents were missing
15 from that shared drive? In other words, they had been taken
16 off the shared drive?

17 A I don't recall personally noticing documents not
18 being there. Although, I didn't go on and check them everyday
19 for that purpose. So I want to put it in that context.

20 Q I understand. So Her Honor understands your point,
21 is it your testimony then that any information you have
22 concerning the removal of documents from that shared drive
23 came from a communication with another human being and not
24 from your personal experience?

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

1 privilege.

2 THE COURT: Overruled.

3 THE WITNESS: The information that I would have -- I
4 would have received information from somebody about
5 information that may or may not have been removed and not from
6 -- and not from other sources. It would have been from an
7 internal communication from --

8 Can I say where it's from or I can't?

9 THE COURT: No. Don't tell me, because Mr. McCrea's
10 going to object again and I already sustained it once.

11 BY MR. PISANELLI:

12 Q But the communication, so we're clear on whether a
13 privilege is appropriate, came from someone at Las Vegas Sands
14 Corp?

15 A No.

16 Q Okay. Was it a lawyer that you were speaking to?

17 A I wasn't speaking to them, but yes.

18 Q Okay. So this was a written communication?

19 A Yes.

20 Q All right. Who was the written communication from?

21 A Anne Salt, an attorney from --

22 Q Anne Salt was an attorney for Sands China?

23 A Yes.

24 Q Okay. And Ms. Salt sent you a written communication
25 about documents on the United States shared drive, is that

1 what you're telling Her honor?

2 A I don't know if it was on the United States shared
3 drive.

4 Q Okay.

5 A But she sent me information -- she sent me
6 information.

7 MR. MCCREA: Objection, Your Honor.

8 THE WITNESS: Yes, I --

9 THE COURT: Don't tell me what the information was.
10 We've established the fact of the communication, it would
11 appear to be privileged because of Ms. Salt's position.

12 BY MR. PISANELLI:

13 Q And I think you just answered this, I'm sorry, she
14 sent this to you via email?

15 A Yes.

16 Q Okay. And it concerned records on one or the other
17 of the shared drives?

18 MR. MCCREA: Objection, Your Honor. Attorney-client
19 privilege.

20 THE COURT: Overruled. As to the subject matter
21 only, it's a yes or no.

22 THE WITNESS: Yes.

23 BY MR. PISANELLI:

24 Q And it is that communication that you were relying
25 upon when you asked the court to come back in to clarify your

1 testimony about the removal of documents from a shared drive?

2 A Yes.

3 Q Okay. And you have no other source of information
4 concerning the removal of documents from a shared drive other
5 than that email from Anne Salt; is that right?

6 A To the best of my recollection, that's right.

7 MR. PISANELLI: Thank you, Your Honor.

8 THE COURT: Anything else?

9 Anything else, Mr. Kostrinsky, that you wanted to
10 tell us?

11 THE WITNESS: No.

12 THE COURT: Have a very nice day. Thank you, Mr.
13 Garofalo, for visiting with us.

14 MR. GAROFALO: Thank you, Your Honor.

15 THE COURT: All right. Now, we were going to go to
16 either Mr. Singh or Mr. Justin Jones depending upon court
17 availability. Since I see Mr. Justin Jones in the courtroom,
18 I'm assuming you want to go to Mr. Justin Jones next. Just an
19 assumption on my part.

20 MR. PEEK: That is correct, Your Honor. I'd
21 arranged with him.

22 THE COURT: Okay.

23 JUSTIN JONES, COURT'S WITNESS, SWORN

24 THE CLERK: Please be seated. State your name and
25 spell it for the record, please.

1 THE WITNESS: Justin Jones, J-O-N-E-S.

2 DIRECT EXAMINATION

3 BY THE COURT:

4 Q Good morning, Mr. Jones. How are you today?

5 A Great.

6 Q That's delightful to hear. I only have a few
7 questions to you. Some of them may elicit an attorney-client
8 objection. If they do, I'll rule on the objection and then
9 I'll decide whether I'm going to stop asking questions and let
10 Mr. Pisanelli or Mr. Bice start. On July 19th, 2011, in a
11 court hearing you told me you could not be involved in the
12 review of Jacobs's information and were prohibited from going
13 to Macau. Do you recall that?

14 A Yes.

15 Q Okay. Why did you tell me that?

16 MR. McCREA: Objection, Your Honor. Foundation --

17 THE WITNESS: I'm happy to answer, but --

18 MR. McCREA: -- and attorney-client privilege.

19 THE COURT: Okay.

20 BY THE COURT:

21 Q Did you review ESI from an image of the hard drive
22 of Mr. Jacobs's computer in the United States?

23 A I reviewed email correspondence.

24 Q And was that at Mr. Kostrinsky's computer at the Las
25 Vegas Sands?

1 A Yes, that is correct.

2 Q And when did you do that review?

3 A Approximately May 19th, 2011.

4 Q What were you told about the source of that ESI?

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

7 THE COURT: Objection's sustained.

8 BY THE COURT:

9 Q Were any portions of ESI converted to hard copy
10 while you were in Mr. Kostrinsky's office? In other words,
11 did you print any of them?

12 A Yes.

13 Q What did you do with the ones that you printed?

14 A I placed them on Mr. Kostrinsky's desk with a Post-
15 it note.

16 Q Okay. Well, I'm not going to ask what the Post-it
17 note says, because I know what that will elicit. Can you tell
18 me why you failed to disclose to the court the mirror -- or
19 the information that you were reviewing at Mr. Kostrinsky's
20 office?

21 MR. MCCREA: Objection, Your Honor. Attorney-client
22 privilege.

23 BY THE COURT:

24 Q Were you, in fact, precluded from going back to
25 Macau by the authorities?

1 A I could have gone there and gambled if I wanted.

2 But it was my understanding that I could not participate in
3 the review of documents because I was not counsel for Sands
4 China or VML.

5 Q So it wasn't that you couldn't go to Macau?

6 A Correct. And if -- I apologize to the court if that
7 was --

8 Q I thought you'd done something and they wouldn't let
9 you back in the country.

10 A I'm not aware that I did anything that would prevent
11 me from going back there. It was in the context of Ms.
12 Glaser's comments with regards to communications from OPDP
13 with regards to review of documents by anyone other than Sands
14 China counsel.

15 MR. MCCREA: Your Honor, objection. I don't want
16 him to get into any communications he had with any attorneys
17 for Las Vegas Sands or Sands China.

18 THE COURT: Okay. I'm not going to ask any more
19 questions of Mr. Jones, because everything else I want to know
20 from Mr. Jones would probably elicit an attorney-client
21 objection and is probably cleaner if one of the attorneys for
22 Mr. Jacobs now asks the question so I can just rule on
23 objections.

24 Thank you, Mr. Jones.

25 THE WITNESS: May I ask a question?

1 THE COURT: Sure.

2 THE WITNESS: Since I haven't been involved in this
3 case for a year now and am only -- have only limited knowledge
4 as to what the purpose of this proceeding is, I've heard Your
5 Honor make some comments with regards to adverse inferences of
6 the invocation of the privilege. Since I am an attorney
7 sitting here that you're questioning, is that adverse
8 inference going to be directed at me since you have questions
9 about me, because I --

10 THE COURT: That is probably unlikely given the
11 limited --

12 THE WITNESS: Okay. Because --

13 THE COURT: -- involvement that you had.

14 THE WITNESS: -- that's of concern to me.

15 THE COURT: So let me -- let me tell you, it's
16 probably unlikely given the limited involvement that you had
17 in the proceedings. However, I anticipate there will some day
18 be another Rule 37 motion that is filed by the plaintiffs and
19 that they're going to ask for a hearing. And I can't tell you
20 what will happen at that hearing.

21 THE WITNESS: Understood.

22 THE COURT: There is primarily issues related to
23 sanctioning every party that is involved in my proceeding as
24 opposed --

25 THE WITNESS: Okay.

1 THE COURT: -- sanctioning of an attorney.
2 THE WITNESS: Thank you for the clarification.
3 THE COURT: But I do not, you know, we'll see what
4 happens if something else happens in the future.
5 THE WITNESS: All right.
6 THE COURT: I'm ready.
7 MR. PISANELLI: Thank you, Your Honor.
8 THE COURT: I'm ruling on objections. Now I'm
9 taking notes.
10 MR. PISANELLI: Thank you, Your Honor.
11 CROSS-EXAMINATION
12 BY MR. PISANELLI:
13 Q Mr. Jones, there was a time during dependency of
14 this litigation that you were involved in the representation
15 of one or more of the defendants; is that right?
16 A One of the defendants.
17 Q Which defense?
18 A Las Vegas Sands.
19 Q And when did your involvement in this litigation
20 begin?
21 A Either the very end of October or beginning of
22 November, 2010.
23 Q Now, did there come a time when you ever were
24 involved in joint representation of both defendants?
25 A No.

1 Q Okay. When did you stop working on this case?
2 A End of September, 2011.
3 Q Why did you stop working on it?
4 MR. McCREA: Objection, Your Honor. Attorney-client
5 privilege.
6 THE COURT: Sustained.
7 BY MR. PISANELLI:
8 Q Did you ask or demand to be removed from this case?
9 A No.
10 Q Was your removal from this case based upon any of
11 your concerns of ethical violations that were occurring?
12 MR. McCREA: Objection, Your Honor. Attorney-client
13 privilege, work product.
14 THE COURT: Sustained.
15 BY MR. PISANELLI:
16 Q When did you first learn that the Macau Data Privacy
17 Act was going to be used as a -- I'm going to use the word
18 reason, as neutral a word as I can find, for one or both of
19 the defendants to not produce documents that originated out of
20 Macau?
21 MR. McCREA: Objection, Your Honor. Attorney-client
22 privilege.
23 MR. PISANELLI: The date, Your Honor.
24 THE COURT: The date only.
25 THE WITNESS: To the best of my recollection, that

1 would have been in connection with my trip to Macau the fourth
2 week in May 2011.

3 BY MR. PISANELLI:

4 Q And how did you learn that that law of Macau would
5 be used as a reason for not producing documents in this case?

6 MR. McCREA: Objection. Attorney-client privilege.

7 MR. PISANELLI: Didn't ask what the communication
8 was, Your Honor, just the nature of the communication.

9 THE COURT: How he learned, whether it was a
10 communication in writing of an in-person conversation,
11 something like that. To the extent it was only a how the
12 communication was given to you.

13 THE WITNESS: There were verbal communications with
14 other attorneys for Sands China.

15 BY MR. PISANELLI:

16 Q Were these in-house attorneys or outside counsel?

17 A Both.

18 Q Was Anne Salt the in-house attorney?

19 A She was an attorney.

20 Q Was Mr. Melo one of the attorneys?

21 A No.

22 Q I'm sorry, not Mr. Melo. Who was the in-house
23 attorney?

24 A David Fleming.

25 Q Who were the outside counsel?

1 A I don't recall. We met with two law firms when we
2 were in Macau. I heard reference to one of the firm names
3 yesterday -- or for Ms. Glaser the other day, but I don't
4 recall.

5 Q Do you recall either of the counsel, the law firms?
6 Do you remember any of their individual names?

7 A I don't.

8 Q Other than those conversations that occurred while
9 you were in Macau, did you ever independently analyze the
10 Macau Data Privacy Act?

11 A No.

12 Q Did anyone at Holland & Hart?

13 MR. McCREA: Objection, Your Honor. Work product,
14 attorney-client privilege.

15 THE COURT: Sustained.

16 BY MR. PISANELLI:

17 Q Let's talk about the transfers of the data from
18 Macau to Las Vegas. I'd like to get a feel for the depth of
19 your understanding of what occurred. You understand that the
20 first delivery of data from Macau to the United States
21 occurred on or around August of 2010?

22 A I have heard that.

23 Q Where have you heard it?

24 A In connection with these proceedings.

25 Q Okay. When did you first learn that data had been

1 transferred from Macau to the United States?

2 A Early part of 2011.

3 Q And did you understand that that data that was sent
4 here was Mr. Jacobs's email?

5 MR. McCREA: Objection, Your Honor. Attorney-client
6 privilege, work product.

7 BY MR. PISANELLI:

8 Q I'll ask it broadly. What do you understand the
9 transfer of data to be -- what data was transferred --

10 MR. McCREA: Same objection.

11 THE COURT: Overruled.

12 THE WITNESS: I had an understanding that there were
13 email files of Mr. Jacobs that had been transferred.

14 BY MR. PISANELLI:

15 Q Did you also understand that a hard drive had been
16 transferred to the United States?

17 A I have a recollection to that extent. I don't know
18 that I ever was aware of any other documents that were
19 contained on the hard drive.

20 Q Okay. Did you understand the body of emails to be
21 separate and apart from the hard drive?

22 MR. McCREA: Objection. Attorney-client work
23 product.

24 THE COURT: Sustained.

25 //

1 BY MR. PISANELLI:

2 Q You said that you first learned about this transfer
3 of data in September of 2011; is that right?

4 A No.

5 THE COURT: He said, early 2011.

6 BY MR. PISANELLI:

7 Q I'm sorry, the spring. Can't even read my own
8 writing. Spring?

9 A I believe what I said, Mr. Pisanelli, was the early
10 part of 2011.

11 Q Can you be a little more clear on that point.

12 A I know that it was prior to April. I can't pinpoint
13 it any further than that.

14 Q Why do you know it was prior to April?

15 MR. McCREA: Objection. Attorney-client, work
16 product.

17 THE COURT: Sustained.

18 BY MR. PISANELLI:

19 Q All right. So from your answers to Your Honor we
20 are to understand that you did have an opportunity to review
21 those emails?

22 A Yes.

23 Q And at the time that you did, you were acting as
24 counsel for Las Vegas Sands Corp; is that right?

25 A Yes.

1 Q What was the purpose of your review?

2 MR. McCREA: Objection, Your Honor. Work product.

3 MR. PISANELLI: We've already heard Mr. Peek give a
4 long explanation of what his purpose was.

5 THE COURT: I understand. The objection's
6 overruled.

7 THE WITNESS: To understand the allegations in Mr.
8 Jacobs's complaint.

9 BY MR. PISANELLI:

10 Q Did you hear Mr. Peek's testimony about why he was
11 reviewing them?

12 A I did.

13 Q Do you share that explanation as to why you were
14 reviewing them?

15 A Yes.

16 Q Okay. Did you review all of them?

17 A No.

18 Q How did you determine which to review and which not
19 to review?

20 MR. McCREA: Objection. Attorney-client, work
21 product.

22 THE COURT: Sustained.

23 BY MR. PISANELLI:

24 Q As between the work that you did and that Mr. Peek
25 did, do you have a belief that both of you had completed a

1 review of all of the email that had been transferred
2 concerning Mr. Jacobs from Macau?

3 A No.

4 Q Okay. Without telling me the thought process, was
5 there some type of measure you were using as to which email to
6 review and which not to review?

7 MR. McCREA: Objection, work product.

8 THE COURT: It's only a yes or no, was there a
9 thought process?

10 THE WITNESS: Yes, there was a thought process.

11 BY MR. PISANELLI:

12 Q In other words, it wasn't just simply a random
13 review, there were certain things that you had an objective of
14 reviewing and certain things you just let go. Something to
15 that effect?

16 A Yes.

17 Q Okay. Fair enough. Did you review emails between
18 Mr. Jacobs and his wife?

19 MR. McCREA: Objection. Work product, attorney-
20 client.

21 THE COURT: Sustained.

22 BY MR. PISANELLI:

23 Q Did you review emails between Mr. Jacobs and his
24 personal counsel?

25 MR. McCREA: Same objection.

1 THE COURT: Sustained.

2 BY MR. PISANELLI:

3 Q Where were you when you made this review?

4 A Mr. Kostrinsky's office.

5 Q You were actually sitting at his desk?

6 A I was.

7 Q All right. And you were using the same computer
8 that Mr. Kostrinsky had testified to that contained these
9 emails?

10 A I didn't listen to Mr. Kostrinsky's testimony. It
11 was my understanding that it was his laptop.

12 Q Okay. That's -- the laptop that he just used on a
13 day-to-day basis in other words?

14 A Yes.

15 Q All right. How many of the emails did you print?

16 A I don't recall.

17 Q Can you give us your best estimate.

18 A Twenty-five to 30.

19 Q What was the purpose of printing those emails?

20 MR. McCREA: Objection. Work product.

21 THE COURT: Sustained.

22 BY MR. PISANELLI:

23 Q Did you print them for the purpose of circulating
24 them?

25 MR. McCREA: Same objection.

1 THE COURT: Sustained.
2 BY MR. PISANELLI:
3 Q Did you circulate them?
4 A No.
5 MR. McCREA: Objection.
6 THE COURT: You've got to be faster, Mr. McCrea.
7 MR. McCREA: Doing my best.
8 BY MR. PISANELLI:
9 Q You left them on Mr. Kostrinsky's desk with a
10 Post-it note?
11 A Yes.
12 Q Post-it note directed to Mr. Kostrinsky?
13 MR. McCREA: Objection, Your Honor. Work product.
14 THE COURT: Overruled.
15 THE WITNESS: The Post-it note was directed to
16 someone?
17 A Yes.
18 Q Who was it directed to?
19 A My staff.
20 Q How did you expect your staff to read that Post-it
21 note if it was left on Mr. Kostrinsky's desk?
22 A The staff was going to go over and index the
23 documents.
24 Q Okay. So without telling me what was on there, you
25 were leaving some type of instruction for your staff of what

1 to do with those documents?

2 A No.

3 Q What was the purpose of the Post-it note?

4 MR. McCREA: Objection. Work product.

5 THE COURT: Sustained.

6 BY MR. PISANELLI:

7 Q I think you already answered this, Mr. Jones, and if
8 you did I apologize, but did you review the emails that Mr.
9 Peek printed?

10 A Not to my recollection.

11 Q Were you aware that he had printed out email?

12 A Yes.

13 Q All right. Did you have any idea one way or another
14 whether you were printing out duplicates of what he had
15 already printed out?

16 MR. McCREA: Objection. Work product.

17 THE COURT: Sustained.

18 BY MR. PISANELLI:

19 Q I got the impression from Mr. Peek's testimony that
20 you were both combining your efforts to complete a particular
21 task. I think the words that he used is that he didn't
22 complete the review or the assignment and that you came in
23 after him to review it. Did you view your work in that same
24 manner?

25 A He performed some searches, I performed some

1 searches. I was only in Mr. Kostrinsky's office because of
2 the circumstances of the timing for approximately two hours.
3 I did not feel that I completed any task.

4 Q Did you have an intention of going back to review
5 those records?

6 A I don't recall --

7 MR. McCREA: Objection. Work product.

8 THE COURT: Sustained.

9 BY MR. PISANELLI:

10 Q Well, when you left, did you just say a moment ago
11 that you only reviewed emails for a couple of hours?

12 A Correct.

13 Q At the completion of those couple of hours, did you
14 believe that your review was complete?

15 MR. McCREA: Objection. Work product.

16 MR. PISANELLI: I think he just said this a second
17 ago, Your Honor.

18 THE COURT: I think he did, too. The objection's
19 overruled.

20 THE WITNESS: I don't believe so.

21 BY MR. PISANELLI:

22 Q Okay. And when you went to go perform these
23 searches that you just described, were there any restrictions
24 imposed upon you about which emails you could review and which
25 you could not?

1 MR. McCREA: Objection. Attorney-client, work
2 product.

3 THE COURT: Sustained.

4 BY MR. PISANELLI:

5 Q Was there any restrictions imposed upon you at some
6 later date that prohibited you from going back and completing
7 the project you were working on?

8 MR. McCREA: Same objection.

9 THE COURT: Sustained.

10 BY MR. PISANELLI:

11 Q After leaving those email -- printed emails in Mr.
12 Kostrinsky's office did you ever see them again?

13 A No.

14 Q Did your staff go in and complete the assignment you
15 had given them?

16 A The staff had gone back to index documents, yes. I
17 don't recall whether it was I or Mr. Peek that gave specific
18 direction.

19 Q It was staff and not lawyers that went back?

20 A Correct.

21 Q All right. Did any lawyers from Holland & Hart go
22 in to review the emails?

23 A Other than myself and Mr. Peek?

24 Q Yes, sir.

25 A No.

1 Q Okay. Mr. Anderson go for any reason?
2 A No.
3 Q And it's your understanding that Bob Cassity didn't
4 review any of these email either?
5 A Not to my knowledge.
6 Q Okay. Without telling me what was on the documents,
7 did you or your staff create any summaries about the emails
8 you had reviewed?
9 MR. McCREA: Objection. Work product.
10 THE COURT: Sustained.
11 MR. PISANELLI: Your Honor, as you notice from the
12 question, all I'm asking is the existence --
13 THE COURT: I understand, Mr. Pisanelli.
14 MR. PISANELLI: -- of a document that would be
15 something that would be on the privilege log.
16 THE COURT: A summary may not be in a privilege log.
17 MR. PISANELLI: Well, depending upon who it was
18 circulated to it would.
19 THE COURT: A summary that was created by counsel is
20 unlikely to appear on a privilege log.
21 MR. PISANELLI: Depending if it was circulated to
22 someone other than their law firm then -- that's my point is
23 only to know if certain documents exist.
24 THE COURT: The objection is sustained.
25 MR. PISANELLI: Okay.

1 THE COURT: Thank you.

2 BY MR. PISANELLI:

3 Q Did you have any -- well, strike that. The visit
4 that you took to Mr. Kostrinsky's office, that was the only
5 time you went there to review those emails; is that right?

6 A Correct.

7 Q Did you have the opportunity to review the emails in
8 some other form?

9 A No.

10 Q Do you have any knowledge as to whether Holland &
11 Hart was provided electronic access to those email?

12 MR. McCREA: Objection. Work product, attorney-
13 client.

14 THE COURT: Overruled.

15 THE WITNESS: Not to my knowledge.

16 BY MR. PISANELLI:

17 Q Did you receive any hard-copy emails from Mr.
18 Kostrinsky?

19 A I received many emails from Mr. Kostrinsky. Are you
20 referring specifically to emails printed out from Mr. Jacobs's
21 computer?

22 Q Yes, sir. Right.

23 A I heard Mr. Peek reference that there may have been.
24 I don't specifically have a recollection, there may have been.

25 Q Okay. You recall -- actually you may not recall, I

1 haven't turned around much during these proceedings, but were
2 you here for Mr. Ma's testimony?

3 A I believe I was here for all of Mr. Ma's testimony.

4 Q Were you here for his followup testimony when he
5 came back to correct some earlier answers?

6 A Yesterday?

7 Q Yes.

8 A I think I was.

9 Q Okay. Were you -- happened to be paying attention
10 when he talked about these notebooks that he had received from
11 a client that contains some emails and other documents?

12 A I did hear that.

13 Q All right. Did you -- strike that. Did Holland &
14 Hart receive similar notebooks of documents and emails from
15 your client?

16 MR. MCCREA: Objection. Work-product.

17 THE COURT: Overruled.

18 THE WITNESS: I don't have a recollection of that.
19 I don't recall what time frame Mr. Ma was referencing. I was
20 out of the case by September. So if he was referencing
21 something that postdated my involvement I don't know, but not
22 to my recollection.

23 Q Okay. All right. I know you said that Mr.
24 Kostrinsky would send emails to you about the case all the
25 time. I don't want to know about those specifically unless

1 they contained attachments of the Jacobs's emails. And again,
2 I think you just answered this, but were there any such
3 emails?

4 A Like I said, I heard Mr. Peek reference that there
5 may have been. I don't have a specific recollection, but I
6 don't want to say no.

7 Q Do you have a belief, one way or another, of whether
8 Glaser Weil was aware of the existence of the emails at or
9 around the same time you were aware of them?

10 MR. McCREA: Objection. Work product, attorney-
11 client.

12 THE COURT: Sustained.

13 BY MR. PISANELLI:

14 Q Did you provide any of the emails to Glaser weil?

15 MR. McCREA: Objection. Attorney-client, work
16 product.

17 THE COURT: Sustained.

18 BY MR. PISANELLI:

19 Q Did you discuss the existence of the emails with
20 Glaser Weil?

21 MR. McCREA: Same objection.

22 THE COURT: Sustained.

23 BY MR. PISANELLI:

24 Q Now, following -- you were pretty precise on the
25 date that you reviewed those emails, were you not?

1 A Yes.
2 Q May 19th, was that right?
3 A That's my recollection.
4 Q Did you review your billing records prior to coming
5 to court?
6 A I reviewed a few billing records.
7 Q For what purpose?
8 MR. McCREA: Objection. Work product.
9 THE COURT: Overruled.
10 THE WITNESS: To refresh my recollection as to
11 certain dates.
12 BY MR. PISANELLI:
13 Q Okay. And did the billing records actually refresh
14 your recollection?
15 A Yes, they did.
16 Q Do you know which billing records you actually
17 reviewed that did in fact refresh your recollection about
18 events in this case?
19 A I reviewed my billing records for the third week in
20 May to determine what day it was.
21 Q Those the only ones you reviewed?
22 A No.
23 Q What else did you review?
24 A What other billing records did I review?
25 Q Yes.

1 A I reviewed some billing records from I know the end
2 of August or early part of September.

3 Q Of what year?

4 A 2011.

5 Q For the purpose of refreshing your recollection
6 again?

7 A Yes.

8 Q Did they in fact refresh your recollection about the
9 timing of events in this case?

10 A Yes.

11 Q Okay. Did you review anything else?

12 A Did I review any other documents in preparation for
13 appearing here today?

14 Q That's a better way to put the question, yes.

15 A Yes.

16 MR. MCCREA: Objection, Your Honor. Work product.

17 THE COURT: Overruled.

18 BY MR. PISANELLI:

19 Q What else did you review?

20 A I reviewed some emails.

21 Q Which ones?

22 MR. MCCREA: Your Honor, same objection.

23 THE COURT: Overruled.

24 THE WITNESS: I reviewed emails that refreshed my
25 recollection as to the timing of events in this case. I also

1 reviewed the transcript from the July -- the transcript that
2 Her Honor referenced.

3 THE COURT: July 19th, 2011.

4 THE WITNESS: July 19th.

5 BY MR. PISANELLI:

6 Q Okay. And did all of those documents refresh your
7 recollection about the events in this case?

8 A Yes.

9 Q Let's start with the emails. Who were the parties
10 to the emails?

11 A There were several parties.

12 Q Okay. First of all, how many emails were there?

13 A How many emails did I review in preparation for
14 appearing today?

15 A Yes, sir.

16 A I don't recall.

17 Q Approximately?

18 A Ten to 15.

19 THE COURT: Let me recharacterize that question.

20 How many emails did you review to refresh your memory in
21 preparation for appearing today?

22 THE WITNESS: Ten to 15.

23 THE COURT: Okay.

24 MR. PISANELLI: Thank you, Your Honor.

25 //

1 BY MR. PISANELLI:

2 Q What did you do with those 10 to 15 emails --

3 MR. BRIAN: Your Honor, may we be heard briefly on
4 this?

5 THE COURT: Absolutely, you can be heard. I think I
6 dealt with this issue yesterday, Mr. Brian.

7 MR. BRIAN: No. I think it's a little different --
8 I think it's different, Your Honor. And I think this is an
9 example of one of the problems I think of when we have a
10 situation of a proceeding where counsel is now examining a
11 lawyer at the firm currently representing the client. Because
12 it's not the same, I would argue to Your Honor, about a lawyer
13 who refreshes -- a witness who normally would refresh
14 recollection, I understand the rules on that.

15 Here you have a situation where quite -- in a quite
16 extraordinary proceeding, Your Honor, it's permitting counsel
17 to do an extensive examination of lawyers at firms that are
18 currently representing. Those documents would otherwise be
19 privileged. And I think in that circumstance, given the
20 nature of this proceeding that the -- whether you call it the
21 witness advocate rule or whether you call it the legal system
22 we now have, I think it puts the parties and counsel in a very
23 difficult situation. And I don't think it's appropriate to
24 then cause privileged documents to be produced when a witness
25 used them to try to figure out dates and the like. I think

1 it's not the normal situation, Your Honor.

2 THE COURT: I understand what you're saying, Mr.
3 Brian. Right now the question is who were the recipients on
4 the emails and who were the addressees. That's not the same
5 issue that you're addressing.

6 MR. BRIAN: That's fine, Your Honor.

7 THE COURT: I'm not there yet.

8 MR. BRIAN: Okay. That I appreciate, Your Honor.

9 THE COURT: Mr. Pisanelli, you may continue.

10 MR. PISANELLI: Thank you.

11 BY MR. PISANELLI:

12 Q Before we got to the identities, I just want to
13 know, what did you do with those 10 to 15 emails that you used
14 to refresh your recollection about testimony today?

15 A I looked at them. I provided copies of some of them
16 to counsel.

17 Q To whom?

18 A John Owens.

19 Q You didn't provide all of them to Mr. Owens?

20 A No.

21 Q If called upon, Mr. Jones, to reassemble those 10 to
22 15 emails, do you believe you'd have the ability to do that?

23 A Yes.

24 Q Did you maintain hard copies of them somewhere in
25 your office or wherever?

1 A Some of them.

2 Q Okay. Would you have to go off of memory to

3 assemble the 10 or 15? In other words, that's what I'm

4 getting at, do you have them already segregated, or would you

5 have to go back and recollect them?

6 A I could assemble the ones I sent to Mr. Owens.

7 Q Okay. What about the --

8 A I don't recall about the other ones.

9 Q I'm sorry?

10 A I couldn't tell you about the other ones.

11 Q You would have to just go off your best

12 recollection?

13 A Yes.

14 Q All right. How many did you send to Mr. Owens?

15 A I don't remember, six or seven.

16 Q So let's start with the others. We'll call it five

17 to 10. Actually, strike that. Let's just test your memory

18 the best we can and go through and identify for me each of the

19 emails as best you can whether it be by author, recipient,

20 date, subject matter, whatever it is. Do what you can to

21 identify them for us.

22 THE COURT: Mr. Pisanelli, we've got to be very

23 careful about subject matter. I don't have a problem with the

24 identification by date and recipient, because that information

25 is something that should be on the privilege log, or at least

1 arguably should be on the privilege log. If it is subject
2 matter, I get into issues of concern.

3 MR. PISANELLI: Understood, Your Honor. The only
4 point I would make, and not to debate you, is this isn't as
5 Mr. Brian characterized, a general litigation issue, this is a
6 specific Nevada statute as Your Honor knows. And there is no
7 exception for the circumstances of this proceeding. There's
8 no exception at all, it is a mandatory disclosure in Nevada
9 when a party does what Mr. Jones did. And so I think that
10 they are openly discoverable at this point.

11 THE COURT: Not a party, a witness.

12 MR. PISANELLI: I'm sorry. A witness. And so they
13 are openly discoverable in non-privileged records as we stand.

14 THE COURT: I understand what we're going to do.
15 You're going to identify them for me and then we're going to
16 have a motion --

17 MR. PISANELLI: Okay.

18 THE COURT: -- and you're going to ask for them to
19 be produced. And Mr. Brian's going to file a brief and he and
20 Mr. Peek are going to -- and Mr. Lionel and Mr. McCrea are
21 going to say why they shouldn't be produced.

22 MR. PISANELLI: Okay.

23 THE COURT: And then I'm going to have an argument
24 and then I'm going to rule.

25 MR. PISANELLI: I hear you loud and clear.

1 THE COURT: Okay.
2 MR. PISANELLI: All right.
3 THE COURT: So if you want to identify them so it
4 makes our life easier to be able to identify the particular
5 items that are going to be in dispute as part of the refreshed
6 recollection issue, then we can do it.
7 MR. BRIAN: I would just say, just to preview the
8 argument, Your Honor, I think this is the --
9 THE COURT: I don't need you to preview the
10 argument. I know what you're going to say.
11 MR. BRIAN: I'm just going to say two words, Club
12 Vista.
13 THE COURT: This isn't Club Vista.
14 MR. BRIAN: I think it's a --
15 THE COURT: This is a very serious violation of
16 duties of candor to the court by counsel who are representing
17 a party.
18 MR. BRIAN: I understand.
19 THE COURT: That's why I'm here, Mr. Brian.
20 MR. BRIAN: I know that. I understand --
21 THE COURT: All right. This isn't Club Vista.
22 MR. BRIAN: I understand your concern, Your Honor.
23 But I'm just saying the policy --
24 THE COURT: Mr. Brian, you don't understand my
25 concern. You've not understood my concern since the issue

1 arose in May.

2 MR. BRIAN: I have, Your Honor. Trust me, I have.

3 THE COURT: So -- Mr. Pisanelli, if you would like
4 to identify the documents, I would appreciate it.

5 MR. PISANELLI: Thank you, Your Honor.

6 BY MR. PISANELLI:

7 Q Mr. Jones, I want to do this the best way for you.
8 So if it's easiest to say let me start with the John Owens or
9 let me start with the non John Owens or start chronologically,
10 whatever it is easiest for you to recall the 10 to 15, feel
11 free to do so. Let's start, if it makes sense, with the dates
12 of the emails. Do you recall the dates of the emails that you
13 used to refresh your recollection?

14 A Somewhere in May of 2011. Others were in August,
15 September of 2011.

16 Q I take it you don't remember the specific dates of
17 any of them?

18 A I do not.

19 Q All right. So let's take a different approach.
20 Let's talk about the authors or recipients, would that be an
21 easier way for you to identify for the court the emails that
22 you used to refresh your recollection?

23 A Sure.

24 Q Okay. Who were the authors of the emails that you
25 reviewed to refresh your recollection?

1 A In May the author was Steve Peek. I don't recall on
2 other emails from May. The authors and recipients of the
3 emails in August and September of 2011 were myself and in-
4 house and outside counsel.

5 Q Were you in -- focusing on the May emails, were you
6 the recipient of the emails from Mr. Peek?

7 A Yes.

8 Q Okay. Anyone else copied on those emails?

9 A Not to my recollection.

10 Q So the body of email that you used to refresh your
11 recollection about your testimony today from May were email
12 communications solely between you and Mr. Peek. Do I have
13 that right?

14 A That's my recollection.

15 Q How many in May?

16 A One.

17 Q Now, let's move over to August. This was -- I'm
18 sorry, between you and outside counsel?

19 A Both in-house counsel and outside counsel.

20 Q All right. Who -- were you the author?

21 A Some of them I was the author, some of them I was
22 the recipient.

23 Q All right. On the ones where you were the author,
24 who were you writing to?

25 A Varied by email, but generally Mr. Peek, counsel

1 from Glaser Weil, and in-house counsel.

2 Q Who at Glaser weil?

3 A Mr. Ma and perhaps Ms. Glaser on one or two of them.

4 Q And on the emails where you were the recipient, who
5 was or who were the authors?

6 A Mr. Ma, Mr. Rubenstein.

7 Q Were there any other recipients besides yourself?

8 A Were there recipients? Yes. A Ms. Salt was an
9 author of an email that I recall.

10 Q And who else were the recipients of those? Let's
11 start with the emails from Mr. Ma, who was he writing to?

12 A I don't recall specifically. To the best of my
13 recollection, there would have been at least one of the in-
14 house counsel.

15 Q And Mr. Rubenstein, who was he writing to?

16 A I don't recall if -- who the other recipients were.
17 There may have been other recipients. There probably were
18 other recipients.

19 Q And Ms. Salt, who was she writing to?

20 A The best of my recollection, that was directed back
21 to the legal team that included in-house and outside counsel.

22 Q And who were those individuals?

23 A Myself, Mr. Peek, Ms. Glaser, Mr. Ma, Mr. Sedlock,
24 Mr. Fleming, Mr. Rubenstein, Mr. Kostrinsky, Ms. Hyman.

25 Q Anyone else?

1 A Not that I can recall.

2 Q Now, we've been going through the body of emails I
3 think that you labeled as the August email. But earlier you
4 said there was a body from May and a body from August,
5 September. Just so we're clear, everything we just went
6 through under the August label, that includes what you had
7 earlier described as August/September, fair enough?

8 A Correct.

9 Q All right. Good. Were there any other emails that
10 you reviewed to refresh your recollection other than those
11 that you've just described?

12 A Not that I recall.

13 MR. PISANELLI: Your Honor, did I understand you
14 correctly that you did not want the witness to disclose if
15 there were re lines or subject lines in these emails?

16 THE COURT: I'd rather not go through that --

17 MR. PISANELLI: Okay.

18 THE COURT: -- process, because I think it's too
19 likely to have an inadvertent waiver of reform. Mr. McCrea
20 can get up and object.

21 MR. PISANELLI: Fair enough.

22 BY MR. PISANELLI:

23 Q Are there any other identifiers in these emails that
24 you can disclose to Her honor that would not disclose what
25 otherwise may be an attorney-client privileged communication

1 or work product information?

2 MR. McCREA: Objection, Your Honor. Attorney-client
3 privilege.

4 THE COURT: That's a yes or a no, Mr. Jones.

5 THE WITNESS: I'm sorry. I don't know what other
6 identifiers you would be referring to.

7 BY MR. PISANELLI:

8 Q Well, I doubt that it happened --

9 A Sorry.

10 Q -- but for instance, a Bates number could have been
11 put on these things?

12 A On the emails themselves?

13 Q Yes.

14 A No.

15 Q Okay. You're a litigator; right?

16 A Yes.

17 Q And so you can brainstorm this issue as much as I
18 can. I'm just trying to --

19 A I can't think of anything Mr. Pisanelli.

20 Q That's all I'm asking. Okay. Good. Thank you.

21 MR. PISANELLI: Now, Your Honor, it is not for me to
22 direct Mr. Jones to assemble these records, but I would ask
23 Your Honor to direct him to do so only so we won't have to
24 challenge or test or rely upon Mr. Jones's memory as the
25 briefing goes on. In all likelihood, this may last more than

1 a month or so, and it certainly is in everyone's best interest
2 if they are assembled and preserved waiting for Your Honor's
3 resolution on what to do about them.

4 THE COURT: I understand what you're saying, Mr.
5 Pisanelli. Thank you.

6 MR. PISANELLI: I will take your silence as a
7 rejection of my request and I will move on.

8 THE COURT: Very perceptive.

9 MR. PISANELLI: Yes.

10 BY MR. PISANELLI:

11 Q To the yes or no questions, Mr. Jones, do these
12 emails reflect in any manner a reason why you no longer
13 participated in the defense of this case?

14 MR. MCCREA: Objection. Attorney-client, work
15 product.

16 THE COURT: Sustained.

17 BY MR. PISANELLI:

18 Q Let's talk about the billing records. Have you
19 segregated those billing records that you used to refresh your
20 recollection?

21 A To be clear, I didn't look at a physical billing
22 record. We have a system called DTE Axiom at my office. I
23 clicked back through to the months that I wanted to look at,
24 pulled open the entry for Las Vegas Sands and reviewed the
25 date for that particular entry.

1 Q Did you review your own entries on the bill, is that
2 what you mean?

3 A Well, it wasn't a physical bill. I enter my time on
4 my computer, it comes up on my computer screen in DTE Axiom.
5 And so I went back to that particular date and clicked on that
6 particular entry. So kind of bill per say.

7 Q Is this program that you're using, does it show only
8 your entries?

9 A Yes.

10 Q Okay. Once again, if you were called upon to go
11 back and print hard copies of the particular entries that you
12 reviewed to refresh your recollection, do you believe you'd
13 have the ability to do that?

14 A Yes.

15 Q Have you made any notation or any type of
16 memorialization of the dates of your billing entries that you
17 reviewed to refresh your recollection?

18 A No.

19 MR. McCREA: Objection. Work product.

20 THE COURT: Overruled.

21 BY MR. PISANELLI:

22 Q So as you sit here today, the only source of
23 information concerning the billing entries that you reviewed
24 to refresh your recollection would be your own memory?

25 A Yes.

1 Q All right. Besides your -- the email that you
2 described and the billing entries that you've described, were
3 there any other documents or information that you reviewed to
4 refresh your recollection about today's testimony?

5 A I don't believe so.

6 THE COURT: Mr. Jones, I'll tell you the same thing
7 I tell all witnesses. If you need to take a break at some
8 point in time, you let us know.

9 THE WITNESS: Oh, I don't want to take a break.

10 THE COURT: Just telling you. Treating you like any
11 other witness, you've got M&M's --

12 THE WITNESS: Appreciate that.

13 THE COURT: -- you've got water, you're entitled to
14 a break if you need it.

15 BY MR. PISANELLI:

16 Q So I believe we started on this path because you
17 were certain of the date that you reviewed the emails. Do I
18 have that right?

19 A I believe my testimony, Mr. Pisanelli, was that it
20 was approximately May 19th.

21 Q And again, I apologize, Mr. Jones, if you've told us
22 this before, but prior -- well, strike that. You knew about
23 the existence of the emails in the United States prior to the
24 day that you went over to review them; right?

25 MR. MCCREA: Objection. Work product.

1 THE COURT: Overruled.

2 BY MR. PISANELLI:

3 Q Were you able to refresh your recollection to
4 determine when you learned that the emails were here in the
5 United States?

6 A No more than I already testified.

7 Q Okay. Your best estimate, how long prior to you
8 going over on or around May 19th, did you learn that the
9 emails were here in the United States?

10 A I know that I knew in April. I don't recall of any
11 before then.

12 Q All right. Now, you were responsible for preparing
13 the 16.1 disclosures in this case; is that right?

14 A I believe so, yes.

15 Q You actually signed them?

16 A If you -- I'll accept your representation that I
17 signed them, yes.

18 Q Now, the first one that you made in this case was
19 May 5th of 2011; is that right?

20 A Again, if you want to show me a document, otherwise
21 I'll accept your representation.

22 Q You knew at the time of the preparation and
23 execution of Las Vegas Sands Corp's first 16.1 disclosure of
24 the existence of these emails in the United States, did you
25 not?

1 A I did.

2 Q All right. Yet, none of the emails are on that 16.1
3 disclosure, are there?

4 A If you could show me the 16.1 disclosure I'd
5 appreciate it.

6 Q Do you recall putting anything about those emails on
7 that 16.1 disclosure?

8 MR. McCREA: Objection. Work product.

9 THE COURT: Overruled.

10 THE WITNESS: Again, if you want to show me the
11 document, I'd be happy to review it. I don't recall putting
12 them on there, no.

13 Q All right. Do you recall producing to the
14 plaintiffs in this case a privilege log concerning the emails
15 that you knew to exist in the United States at the time of
16 that disclosure?

17 A I don't recall.

18 Q If I were to tell you that the plaintiffs have never
19 seen one, would that be inconsistent with your knowledge of
20 what happened in this case?

21 A I can only testify with regard to my involvement in
22 the case. If there wasn't a privilege log before I left the
23 case, then I accept your representation.

24 Q Okay. Thank you. So there was a second delivery of
25 data from Macau to the United States that occurred around, on

1 or around November of 2010, are you aware of that?

2 MR. McCREA: Objection, Your Honor, attorney-client.

3 THE COURT: Overruled.

4 Mr. Jones, if you're aware of it from some source
5 other than an attorney-client communication because it's been
6 put in public documents filed by the Sands, you're welcome to
7 tell him about it. But if it comes solely from an attorney-
8 client communication, just tell me you don't have any non-
9 privileged information,

10 THE WITNESS: I'm not sure I can answer that
11 question.

12 BY MR. PISANELLI:

13 Q Okay. I don't want you, as Your Honor instructed,
14 to tell me what you and Mr. Kostrinsky talked about while you
15 were both in Macau. I want you to tell us, if you can, what
16 you saw. Okay? Did you witness Mr. Kostrinsky bring some
17 form of storage device back to the United States during that
18 trip?

19 A I did not witness him bring it back to the United
20 States.

21 Q Did you see any storage devices that Mr. Kostrinsky
22 had with him while on your trip to Macau?

23 A While we were in Macau I witnessed a foil envelope
24 handed to Mr. Kostrinsky. What became of that after that I'm
25 not entirely certain.

1 Q Can you describe the envelope for Her Honor.
2 A It was foil and had bubble wrap around it, the kind
3 you would expect a hard drive to come in.
4 Q How big was it?
5 A 4 by 6.
6 Q Did you witness what Mr. Kostrinsky did with that
7 envelope?
8 A No.
9 Q Did you ever see it again?
10 A No.
11 Q Did you ever have the opportunity to review the
12 data, if any, that was on it?
13 A Not to my knowledge.
14 Q Let's talk about that trip for a few minutes. What
15 was the purpose of that trip?
16 MR. MCCREA: Objection. Attorney-client privilege.
17 THE COURT: Sustained.
18 BY MR. PISANELLI:
19 Q Who went on that trip to Macau?
20 A Michael Kostrinsky, Gayle Hyman, Patty Glaser.
21 Q While on that trip, did you have an opportunity to
22 review any documents?
23 A I don't specifically recall reviewing documents
24 while we were there, that was not the purpose of the trip.
25 Q Did you witness any of the other people that went on

1 the trip with you reviewing documents?
2 A Not to my recollection.
3 Q Did you witness anyone reviewing electronic
4 information?
5 A No.
6 Q Did you review any electronic information?
7 A No.
8 Q All right. Did you have an opportunity to inspect
9 Mr. Jacobs's office while you were there?
10 A No.
11 Q Did you witness anyone else inspecting that office?
12 A I'm not sure that I knew where Mr. Jacobs's office
13 was, so not to my recollection.
14 Q Did you have any communications with any government
15 officials while you were there?
16 A No.
17 Q Did you ever have any communications with any Macau
18 government officials concerning this case --
19 A No.
20 Q -- or Mr. Jacobs?
21 A No.
22 Q Did you bring back anything back?
23 A My luggage.
24 Q It was a very unclear and poorly worded question.
25 THE COURT: You brought back balls that broke.

1 MR. PISANELLI: I remember that from a hearing.
2 BY MR. PISANELLI:
3 Q Did you bring back any --
4 A Actually, that was on a subsequent trip, Your Honor.
5 THE COURT: Okay.
6 BY MR. PISANELLI:
7 Q Did you bring back any evidence concerning this
8 case?
9 A Absolutely not.
10 Q Did you witness, other than that envelope, any other
11 person bring evidence back from Macau?
12 A No. And I think that I testified that I did not see
13 Mr. Kostrinsky bring that envelope back. So --
14 Q Okay. You said you just saw it handed to him?
15 A Correct.
16 Q Okay. Fair enough. Did you see any other forms of
17 evidence handed to anyone else that you were on that trip
18 with?
19 A No.
20 Q All right. Yes or no question, do you have any
21 reason to believe that any form of evidence concerning this
22 case was brought back as part of that trip?
23 MR. McCREA: Objection. Attorney-client privilege.
24 THE COURT: Sustained.
25 //

1 BY MR. PISANELLI:

2 Q Now, there was a third delivery of electronically
3 stored information from Macau to the United States in February
4 or March of 2011. Are you aware of that?

5 A I have heard that in connection with these
6 proceedings.

7 Q Is that the first time you'd heard of it?

8 A To my recollection, yes.

9 Q Okay. I'll represent to you that your client has
10 represented to Her Honor that on or around that time two hard
11 drives were delivered to the United States, the first one
12 containing images of a hard drive from two employees. Had you
13 known of that fact prior to these proceedings?

14 A Las Vegas Sands is not my client.

15 Q Had you known about the delivery of two hard drives
16 in February or March of 2011, to the United States from Macau?

17 A Did I know then? Absolutely not.

18 Q Was a hearing in these proceedings the first time
19 you learned of it?

20 A Best of my recollection.

21 Q You said Las Vegas Sands is not your client?

22 A I am not doing any work for Las Vegas Sands. I
23 haven't done any since September of 2011. They may be my
24 firms client, but not mine.

25 Q Thank you for that clarification. (You threw me for

1 a loop for a half a second there. So then fair for us to
2 understand that while you were working on this case -- well,
3 back up a minute. You were working on this case on behalf of
4 Las Vegas Sands in February, March of 2011; correct?

5 A Correct.

6 Q All right. And despite that you're working on this
7 case, you didn't learn about the delivery of these two hard
8 drives to the United States until you were sitting in this
9 courtroom listening to it?

10 A I learned before sitting in this courtroom. I think
11 I said in connection with these proceedings.

12 Q So you read it in some papers that were filed?

13 A Yes. Or was told be another --

14 MR. McCREA: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. PISANELLI:

17 Q Here's what I'm getting at. Mr. Jones, you filed and
18 -- you didn't file, strike that. You served three supplements
19 to the 16.1 disclosures throughout 2011. Do you recall that?

20 A I don't.

21 Q Does it sound like the right date that you served a
22 supplement on July 28th, 2011?

23 A I'll accept your representation.

24 Q And on the -- the second supplement was served
25 August 1st, 2011?

1 A I'll accept your representation.

2 Q And the third supplement was served August 5th,
3 2011?

4 A And I'll accept your representation.

5 Q Okay. All right. Is it your testimony today that
6 despite that all three of these deliveries of electronically
7 stored information from Macau had occurred prior to all of
8 those supplements? You were never made aware that that
9 information was in United States?

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

12 THE COURT: Sustained.

13 MR. PISANELLI: Well, Your Honor, if I may --

14 THE COURT: Uh-huh.

15 MR. PISANELLI: The reason why I think that last
16 question is important is one of the exercises we're going
17 through today is trying to determine what counsel knew when
18 they made representations to you. And if Mr. Jones's position
19 is that he didn't know that any of this information was in the
20 United States, that certainly will be relevant to any analysis
21 of his representations to you.

22 THE COURT: But the client is, if they decide,
23 permitted to make the attorney-client privilege objection.
24 And if I brought an adverse inference related to that, that's
25 one of the things that happens. But they're allowed to direct

1 their counsel not to answer that question.

2 MR. PISANELLI: Okay.

3 THE WITNESS: And again, the adverse inference is --

4 THE COURT: I'm dealing with party issues --

5 THE WITNESS: All right.

6 THE COURT: -- at this point.

7 MR. MCCREA: Your Honor, I'm deeply concerned about
8 your repeated comments that --

9 THE COURT: I've said it about 25 times in the last
10 three weeks, Mr. McCrea.

11 MR. MCCREA: I know. And I respectfully direct the
12 Court's attention to NRS 49.405, which says that no inference
13 is to be drawn from the assertion of the privilege. And, in
14 fact, if we were in front of a jury we would be entitled to
15 instruction to the jury admonishing the jury that no inference
16 could be taken from the assertion of the privilege.

17 THE COURT: You know, there's this case that's a
18 couple years old where there's a Fifth Amendment privilege
19 assertion in a civil case and it talks about the inferences
20 that can be made. Because of the nature of the issues in this
21 case, the attorney-client privilege is being used in this
22 particular case more in the nature of a Fifth Amendment
23 privilege objection by Sands, and I think that may be an issue
24 that is briefed at some point in time, but, unfortunately, a
25 corporation can act only through its officers, employees, and

1 agents, and so I don't have a person here who is the Las Vegas
2 Sands who can make that sort of provision. So I have not made
3 a decision as to the type of inference that will be drawn.
4 That is certainly something I will entertain argument on. But
5 given the Nevada Supreme Court's analysis of the way in which
6 a trial court is supposed to draw conclusions related to the
7 assertion of certain privileges, I didn't want anyone to be
8 surprised if I ultimately made a decision that an adverse
9 inference was appropriate to be made. That's all I'm trying
10 to say, Mr. McCrea. I'm trying to make sure nobody gets
11 blindsided by what may happen. And I certainly haven't
12 decided what that appropriate standard is at this time.

13 MR. MCCREA: Thank you for the clarification.

14 MR. BICE: Your Honor, I just would like to be heard
15 just briefly on the legal point so that the record is clear on
16 this.

17 THE COURT: Do we really need to do it now?

18 MR. BICE: Well, I can tell from your tone that I do
19 not.

20 THE COURT: Thanks.

21 All right. Since we're on interruption, let me go
22 back to one of the questions. And this is -- it may elicit an
23 objection, and, if so, don't answer it. So if you see Mr.
24 McCrea start to move or start to object, please be cautious.

25 On the hearing where you and I were having the

1 discussion and you told me you couldn't go back to Macau Ms.
2 Glaser had told me that, we're, and she was including the
3 attorneys, not even allowed to look at documents on a work
4 station here in the U.S. Is there a reason that you didn't
5 tell me you'd already looked at the documents on the work
6 station that day?

7 MR. MCCREA: Objection, Your Honor. Attorney-client
8 privilege.

9 THE COURT: Okay. Thanks.

10 BY MR. PISANELLI:

11 Q I want to start a little earlier than the hearing
12 Your Honor referenced. I want to start a hearing on April
13 22nd, 2011. It was the mandatory Rule 16 conference. Do you
14 remember that?

15 A I believe I was present.

16 Q Do you remember participating in that hearing?

17 A I remember I was present. I don't know how much I
18 participated or not.

19 Q Let's do this. Do you see that?

20 A Yes.

21 Q Court was involved in a discussion with Ms. Salt
22 where she asked, "Do you know how the electronically stored
23 information is kept? Is it emails, is it kept in some other
24 type of server than an email server?" And Ms. Salt stated, "I
25 think the vast majority is kept in an email server." The

1 Court then asked, "And is that an email server that is
2 maintained by Sands China, or is it maintained by a separate
3 vendor?" And Ms. Salt said, "No, it's maintained by a Sands
4 China subsidiary."

5 MR. PEEK: Mr. Pisanelli, I didn't hear the page.
6 Could you tell me the page.

7 MR. PISANELLI: I'm sorry. I think it's page 19.

8 MR. PEEK: Thank you. I just didn't hear it.

9 BY MR. PISANELLI:

10 Q Do you recall that conversation, Mr. Jones?

11 A I see the transcript. I don't recall it, no.

12 Q Now, I know from your testimony that you had not yet
13 reviewed the emails that were located in the United States,
14 but you were aware of them in April of 2011; correct?

15 A Yes.

16 Q Were you aware that those emails were here in the
17 United States when Ms. Salt was representing that they are
18 maintained by a Sands China subsidiary?

19 A I don't recall.

20 Q Do you recall whether you ever took any action to
21 inform Her Honor that you were aware that Ms. Salt's statement
22 was not completely true?

23 A I didn't inform the Court of that. I'm not sure
24 that I would agree with your characterization of Ms. Salt's
25 testimony, and I don't know that I'm here to opine as to Ms.

1 Salt's veracity.

2 Q Well, at the time that she said that it is
3 maintained in Sands China subsidiary, a hundred thousand or so
4 emails were in the United States; is that right?

5 A I don't know how many emails were stored in the
6 United States.

7 Q The Jacobs emails were here in the United States at
8 the time she made that statement?

9 A It was my understanding that a copy of the emails
10 had been transported to the United States, not the original.

11 Q Fact of the matter is no one during that Rule 16
12 conference informed Her Honor of that fact; is that right?

13 A Correct.

14 Q All right. So let's take a look at now at the
15 June 9th, 2011, hearing, starting on page 52.

16 THE COURT: Which one.

17 MR. PISANELLI: Oh. Wrong one. Sorry.

18 THE COURT: Which one, Mr. Pisanelli?

19 MR. PISANELLI: June 9th, page 52, Your Honor.

20 THE COURT: Thank you. I was just trying to put
21 mine back in chronological order, so --

22 THE WITNESS: You said page 52, Mr. Pisanelli?

23 BY MR. PISANELLI:

24 Q Yes, sir. Thank you.

25 Now, by June of 2011 you had reviewed the emails;

1 correct?
2 A I had reviewed some emails, yes.
3 Q Yes. And you were at this June 9th hearing;
4 correct?
5 A Yes, I was.
6 Q All right. And you were sitting at defense table
7 when Ms. Glaser said to Her Honor that, "Documents get," this
8 is at line 7, "must be reviewed in Macau." See that?
9 A Yes.
10 Q When she made that remark you were very well aware
11 that documents were being reviewed in the United States; isn't
12 that true?
13 A Documents were not being reviewed in the United
14 States at that time.
15 Q Emails were reviewed at --
16 A Emails of Mr. Jacobs --
17 Q -- at Mr. Kostrinsky's desk, were they not?
18 THE COURT: Wait. Only one at a time, please.
19 THE WITNESS: Can I finish my answer?
20 THE COURT: Yes.
21 BY MR. PISANELLI:
22 Q I'm sorry. I was in the middle of a question. But
23 go ahead.
24 THE COURT: He hadn't finished the one before you
25 started the next one.

1 THE WITNESS: Let me rephrase. There may have been
2 other documents that were being reviewed in the United States
3 at that time. We were trying to get discovery going. With
4 regards to what I expect the questioning was with regards to
5 Mr. Jacobs's emails, those were not being reviewed in the
6 United States.

7 BY MR. PISANELLI:

8 Q Mr. Jacobs's emails were not being reviewed in the
9 United States; is that what you just said?

10 A Not in June.

11 Q They'd already been reviewed in the United States?

12 A There had been a very limited review in May of 2011.

13 Q Very limited by you.

14 A Correct.

15 Q But Mr. Peek had reviewed some himself; right?

16 A Again, I understood Mr. Peek's review also to be
17 fairly limited.

18 Q Did you know what Mr. Kostrinsky's review was?

19 A I did not.

20 Q Did you know what anyone else at Las Vegas Sands'
21 review was?

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

24 THE COURT: Sustained.

25 //

1 BY MR. PISANELLI:

2 Q The bottom line is that when Ms. Glaser told Her
3 Honor that the documents must be reviewed in Macau, you were
4 at this table with complete knowledge that they had already,
5 at least in part, been reviewed in Las Vegas; right?

6 A I knew that some had been reviewed, that it was our
7 understanding at that time, at this hearing, that the Office
8 of Data Privacy in Macau had been quite clear that no further
9 review could happen.

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

12 THE COURT: Sustained.

13 BY MR. PISANELLI:

14 Q My point is not about what would be done in the
15 future. My point is very simply that you never told Her Honor
16 when you heard Ms. Glaser make this remark that documents had
17 already been reviewed in the United States, did you?

18 A That is correct.

19 Q And when she says in the next line that, "They are
20 in Macau," that, too, was untrue; right?

21 A You examined Ms. Glaser. I can't get in her head
22 and know exactly what documents she was referring to.

23 Q That is a fair point, Mr. Jones. But you knew that
24 a statement that the documents are in Macau was at least
25 partially untrue, because you knew the Jacobs emails were on

1 Las Vegas Boulevard; right?

2 A I knew that Jacobs -- there was a copy of Mr.
3 Jacobs's emails at Las Vegas Sands.

4 Q And you did not take any action to inform Her Honor
5 that Ms. Glaser had made a false statement, did you?

6 A I did not.

7 Q Okay.

8 A I'm not sure that I would agree with the
9 characterization of Ms. Glaser's statement as false, but --

10 Q Well, how about the next one, where she says, "They
11 are not allowed to leave Macau"? You knew when she made that
12 remark that some of them did leave Macau; right?

13 A At the time we were in the process of trying to
14 figure out how we were going to accomplish the Court's goal of
15 getting things reviewed as quick as possible. We got
16 direction from OPDP that we couldn't --

17 MR. MCCREA: Objection, Your Honor. Attorney-
18 client.

19 THE COURT: Sustained.

20 BY MR. PISANELLI:

21 Q My simple question to you is when you heard Ms.
22 Glaser say that, "They are not allowed to leave Macau," you
23 knew that they already had; correct?

24 A I knew that some had.

25 Q Yes. And you didn't say anything to Her Honor to

1 correct that statement, did you?
2 A I did not.
3 Q She then says, "We have to review them there." You
4 knew that was false, too, because you had reviewed them here;
5 right?
6 A Again, Mr. Pisanelli, I understood at the time that
7 no one was going to be reviewing the documents from Las Vegas
8 Sands, either in Las Vegas or in Macau. So, yes, at the time
9 that statement was made I wasn't going over to the Sands to
10 review those documents, and I wasn't going over to Macau to
11 review those documents.
12 Q But you already had reviewed them here?
13 A I reviewed some of them, you are correct.
14 Q And you remained silent when Ms. Glaser said they
15 have to review them there; right?
16 A Correct.
17 Q And now it is your testimony to Her Honor that you
18 believe at this time that it was only Sands China lawyers that
19 could review the records in Macau; is that right?
20 MR. McCREA: Objection. Work product. Calls for
21 his mental impression.
22 MR. PISANELLI: He just said --
23 THE COURT: Overruled.
24 THE WITNESS: That was my understanding.
25 //

1 BY MR. PISANELLI:

2 Q All right. As of the date of this hearing you
3 didn't believe that Las Vegas Sands was entitled to review any
4 documents at all; right?

5 MR. MCCREA: Objection. Attorney-client.

6 THE COURT: Sustained.

7 BY MR. PISANELLI:

8 Q Okay. Isn't it true, Mr. Jones, that even after
9 this hearing you told Her Honor that Las Vegas Sands could
10 review the documents but they had to do it in Macau?

11 A I don't recall.

12 Q Let me read something to you, see if it refreshes
13 your recollection. I'm reading a document entitled "Las Vegas
14 Sands Corp.'s Motion to Compel Return of Stolen Documents
15 Pursuant to Macau Personal Data Protection Act." Do you
16 remember that brief?

17 A I do.

18 Q You signed it?

19 A I believe so.

20 Q Yep. And I'm going to turn to page 6 of 7, the last
21 remark you made to Her Honor.

22 MR. MCCREA: Is that in your witness book; Counsel?

23 MR. PISANELLI: I don't know the answer to that, but
24 I have copies.

25 THE COURT: Can you see it on the screen, Mr. Jones?

1 THE WITNESS: Yes.

2 MR. BICE: The answer to Mr. McCrea's question is
3 no, it is not in the book.

4 MR. PISANELLI: Your Honor, would you like a
5 courtesy copy? Got it on the screen?

6 THE COURT: I do.

7 BY MR. PISANELLI:

8 Q So this proceeding that we were talking about was
9 the position taken by Las Vegas Sands that Steve Jacobs had
10 stolen records. You remember that?

11 A Yes.

12 Q And that he was not entitled to keep them in his
13 possession during the pendency of this case; right?

14 A Correct.

15 Q As a matter of fact, it was Las Vegas Sands'
16 position that Mr. Jacobs was not entitled to keep possession
17 of them at all; right?

18 A Correct.

19 Q And the position that Las Vegas Sands took, your
20 client, was that Mr. Jacobs was not obligated to return them
21 to Sands China, but he was obligated to return the documents
22 to Las Vegas Sands. That's the position you took in the
23 papers you've signed; right?

24 A Yes.

25 Q And you even said to the Court, contrary to what you

1 just said a moment ago, that the appropriate manner to address
2 this issue is for Jacobs to return stolen company documents to
3 LVSC, and, if necessary, LVSC will then review the documents
4 in Macau. That's what you told Her Honor; right?

5 A That's what I stated in here, yes.

6 Q Right. You didn't tell her in that paper as you
7 just did that it was only Sands China lawyers that could
8 review records in Macau; right?

9 A I did not state that here.

10 Q You didn't. And you also didn't state in this
11 document that you and other Las Vegas Sands lawyers had
12 already reviewed Macau documents here in the United States;
13 right?

14 A I did not.

15 Q Now let's turn to page 55, going back to the
16 June 9th, 2011, hearing.

17 Prior to this hearing, before we talk about this,
18 Mr. Jones, did you personally inform a lawyer at Campbell &
19 Williams that Las Vegas Sands had possession of Steve Jacobs's
20 emails here in Las Vegas?

21 A I don't recall.

22 Q And Mr. Peek states at line 5 -- start at line 6,
23 where the substance of his remark starts, "That same Data
24 Privacy Act, Your Honor, also implicates communications that
25 may be on servers and email communication and hard document --

1 hard-copy documents in Las Vegas."

2 I will represent to you that Mr. Peek has taken a
3 position in this proceeding that this statement satisfied his
4 disclosure obligations to the Court. My question to you is do
5 you agree that this statement satisfied your disclosure
6 obligations to the Court concerning the transfer of data from
7 Macau to the United States?

8 MR. MCCREA: Work product, Your Honor. Objection.

9 THE COURT: Overruled.

10 THE WITNESS: I heard Mr. Peek's testimony. I know
11 that he would never make a misrepresentation to this Court.
12 And so I believe that that was -- satisfied the obligation,
13 yes.

14 BY MR. PISANELLI:

15 Q Satisfied your obligation?

16 A Yes.

17 Q And you held that belief at the time of this
18 hearing?

19 A I don't recall what I thought at the time of the
20 hearing, Mr. Pisanelli, to be quite frank.

21 Q Is your statement -- in all fairness, Mr. Jones, is
22 your statement, then, nothing more than your current state of
23 mind in support of Mr. Peek?

24 MR. MCCREA: Objection, Your Honor. Mental
25 impressions, work product.

1 THE COURT: Sustained.

2 BY MR. PISANELLI:

3 Q Is it your testimony, then, that you don't recall
4 what your state of mind was concerning your obligations of
5 candor and disclosure to the Court at the time that you were
6 listening to Ms. Glaser's remarks?

7 MR. MCCREA: Object.

8 THE COURT: Sustained.

9 BY MR. PISANELLI:

10 Q Did you believe at the time that you heard Mr. Peek
11 make the remarks that he did on page 55 that he was referring
12 Her Honor to the existence of the Jacobs emails here in Las
13 Vegas?

14 MR. MCCREA: Same objection.

15 THE COURT: Sustained.

16 BY MR. PISANELLI:

17 Q Now, on page 56 Mr. Peek tells Her Honor that your
18 law firm is not going to be able to make the date for the
19 production of documents, which was July 1st. Do you see that?

20 A Yes.

21 Q Now, you had been reviewing the documents, as you
22 told us earlier, as early as May of that same year; right?

23 A I think you're mixing documents here, Mr. Pisanelli.
24 We're reviewing a whole lot of documents --

25 Q Well --

1 A -- more than just Mr. Jacobs's emails.

2 Q Correct.

3 A I reviewed thousands and thousands and thousands of
4 documents in this case.

5 Q Did you take any action to inform Her Honor during
6 this portion of the discussion that the review of the emails
7 had already occurred at least in part?

8 A I did not.

9 Q Now, Mr. Peek said during this discussion that he
10 would be producing documents not implicated by the Macau Data
11 Privacy Act. Do you see that?

12 A Yes.

13 Q Okay. If he was making that representation in June,
14 can you explain to this Court why none of the documents that
15 were here in Las Vegas showed up on any of the 16.1
16 disclosures following this representation by Mr. Peek?

17 MR. McCREA: Objection. Attorney-client, work
18 product.

19 THE COURT: Sustained.

20 BY MR. PISANELLI:

21 Q On page 58 we're back to Ms. Glaser's remarks, where
22 she says to Her Honor that, "All documents from Sands China
23 have to get permission from the Office of Privacy." Do you
24 see that?

25 A Yes.

1 Q The documents that you had reviewed on Las Vegas
2 Boulevard prior to this hearing had not gone through or been
3 permitted by the Office of Privacy, had they?

4 MR. McCREA: Objection. Attorney-client, work
5 product.

6 THE COURT: Sustained.

7 BY MR. PISANELLI:

8 Q Did you take any action to determine whether the
9 emails that you were reviewing here in Las Vegas had gone
10 through the Office of Privacy in Macau?

11 MR. McCREA: Work product. Objection.

12 THE COURT: Sustained.

13 BY MR. PISANELLI:

14 Q Did you do anything to tell Your Honor that there
15 were records here in Las Vegas even raising the issue of
16 whether Ms. Glaser was telling the truth when she was telling
17 Her Honor about this Office of Privacy requirement?

18 A Other than Mr. Peek's statement, no.

19 Q The earlier statement on page 55?

20 A Correct.

21 Q Okay. Let's turn to some remarks that were made in
22 July -- on July 19th of 2011. Here on page 5 -- I'm sorry,
23 page 6, Ms. Glaser tells Her Honor that her client, Sands
24 China is on the cusp of violating the law. Do you see that?

25 A Yes.

1 Q Again, at the risk of belaboring this point, at the
2 time she made this remark hundred thousand-plus emails were
3 here in Las Vegas already; right?

4 A I don't know how many emails were here.

5 Q But you knew the Jacobs were here?

6 A Yes.

7 Q And you understood Ms. Glaser's remark about being
8 on the cusp of violating the law to be at best misleading in
9 light of the documents that were here in Las Vegas?

10 MR. MCCREA: Objection. Mental impression, work
11 product.

12 THE COURT: Sustained.

13 BY MR. PISANELLI:

14 Q Well, let's just talk about what you did. What did
15 you do to inform Her Honor about the existence of those
16 documents here in Las Vegas in light of Ms. Glaser telling Her
17 Honor that they were on the cusp of violating the law?

18 A I did not inform the Court at that hearing that
19 there were certain documents here in Las Vegas.

20 Q Now, the same theme continued on onto the next page.
21 On page 7, line 9, Ms. Glaser says, "We're not allowed to look
22 at documents at a station here." Earlier she said that you
23 have to go -- the law requires them to go to Macau. Do you
24 see that?

25 A Yes.

1 Q Now, when you sat here listening to her say that
2 people had to go to Macau to review the documents, you
3 couldn't review them at a station here, you had already done
4 that exact same thing; right? You did exactly what she was
5 saying could not be done; right?

6 A Two months prior and before we had learned from OPDP
7 that we should be doing so.

8 MR. MCCREA: Objection, Your Honor. Attorney-
9 client.

10 THE COURT: Sustained.

11 BY MR. PISANELLI:

12 Q What did you do to tell Her Honor -- after you heard
13 Patty Glaser say that documents could not be reviewed at a
14 station here, what did you do to inform Her Honor that
15 documents had already been reviewed at a station here?

16 A I did nothing.

17 Q I think Her Honor covered this point, but Ms. Glaser
18 said that you can't go to Macau on line 13. You see that?

19 A Yes.

20 Q Did that catch you by surprise when she said you
21 can't go?

22 A Again, I think I already clarified this with Her
23 Honor. The context of this was not that I couldn't go over
24 there and gamble or enjoy myself, it was that I couldn't go
25 over there to review documents as a Las Vegas Sands Corp.

1 lawyer.

2 Q Were you concerned that Her Honor and everyone else
3 in this courtroom was under the understanding that the
4 government wanted you out of their country?

5 MR. MCCREA: Objection, Your Honor. Lack of
6 foundation.

7 THE WITNESS: No. And I'm sorry if I --

8 THE COURT: Overruled.

9 THE WITNESS: -- that impression. It certainly
10 wasn't my intent. I thought quite and clear and after reading
11 the transcript I honestly don't believe that there should have
12 been any confusion. I apologize to Her Honor if there was the
13 impression that the government of Macau had barred me
14 personally from going over to their country.

15 BY MR. PISANELLI:

16 Q Okay. So your only point, then, when you said -- or
17 you allowed -- well, actually, you did participate in it. You
18 said, "I'm prohibited from going, actually, by the Macau
19 government." Actually your words; right?

20 A Yes. And if you continue reading down, Ms. Glaser
21 talks about the fact that the Macau government said they have
22 to review the documents in Macau.

23 Q Did she --

24 A That was the context, Mr. Pisanelli.

25 Q All right. Well, let's talk about context. Right

1 there on that same statement she started off with, "The only
2 people that can go are people that represent Sands China." Do
3 you see that?

4 A Yes.

5 Q That's exactly opposite of what you said in the
6 brief we just discussed from September; right?

7 A Mr. Pisanelli, I can't get back to my mental
8 impression in that brief. The best that I recollect with
9 regards to that line in that brief was that we needed the
10 documents back. I don't know what the point of Las Vegas
11 Sands doing the review in that brief was. However, at the
12 time we knew -- we only knew that there were 11 --

13 MR. MCCREA: Objection, Your Honor. Attorney-
14 client.

15 THE COURT: Sustained.

16 BY MR. PISANELLI:

17 Q So what I want to know from you, Mr. Jones, is we
18 have you sitting silent when Ms. Glaser tells Her Honor that
19 only Sands China people can go and review the documents in
20 Macau, and we have you later, a month or later saying that Las
21 Vegas can go to China and review the documents. As you sit
22 here today, which is your position?

23 MR. MCCREA: Objection. Mental impression, work
24 product.

25 THE COURT: Sustained.

1 BY MR. PISANELLI:

2 Q Well, we're trying to figure out, Mr. Jones, whether
3 you sat silent as a misrepresentation was made to the Court.
4 So my question to you is did you make misrepresentation in the
5 written brief we've talked about?

6 A Perhaps it should have said "Sands China do the
7 review," Mr. Pisanelli.

8 Q Even then, as you now say that it should have said
9 Sands China, that's all the while with the open concession
10 that you and many other Las Vegas Sands people reviewed the
11 documents here in Las Vegas?

12 MR. MCCREA: Objection, Your Honor.
13 Mischaracterizes the testimony.

14 THE COURT: Overruled.

15 THE WITNESS: I don't believe that there were many.
16 As we testified, myself and Mr. Peek reviewed some documents,
17 and staff went over and made an index of them.

18 BY MR. PISANELLI:

19 Q All right. You're aware that Mr. Rubenstein
20 reviewed those emails here in Las Vegas?

21 A I don't know.

22 Q You're aware that Mr. Kostrinsky did?

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

25 THE COURT: Overruled.

1 THE WITNESS: I understood that Mr. Kostrinsky had
2 reviewed some. I don't know what he reviewed.

3 BY MR. PISANELLI:

4 Q You're also aware that O'Melveny & Myers reviewed
5 those documents in the United States?

6 A I don't know.

7 Q Okay. Ms. Glaser made the same remark on page 12,
8 did she not, line 6, where she said, "It is only Sands China
9 lawyers who are being allowed to even start the process of
10 reviewing documents"? Do you see that?

11 A I do.

12 Q That was a patently false remark in light of what
13 occurred Mr. Kostrinsky's office, was it not?

14 A I wouldn't characterize it that way, no, Mr.
15 Pisanelli.

16 Q Did you do anything to at least clarify for Your
17 Honor what happened on Las Vegas Boulevard prior to her making
18 this remark?

19 A I did not inform the Court that we had two months
20 prior performed a limited review prior to -- I will
21 discontinue my answer.

22 THE COURT: Thank you.

23 BY MR. PISANELLI:

24 Q Let's take a look at at what happened on what may
25 have been my first appearance in this case on September 16th,

1 2011. Do you remember participating in that hearing?

2 A Not specifically, but --

3 Q My best recollection was that you and I were
4 standing up at the podium, and Ms. Glaser was on the
5 telephone. Does that ring a bell to you?

6 A I see that I'm on here, so I'll take the transcript
7 as it is.

8 Q On page 3 Ms. Glaser said to Her Honor -- in
9 opposition to my request for additional time to get up to
10 speed she said the following. "We are very much opposed to
11 continuing the evidentiary hearing." Do you see that?

12 A Yes.

13 Q She was talking about the evidentiary hearing on the
14 issue of jurisdiction over Sands China; right?

15 A I'll take your representation.

16 Q ---You don't remember that?

17 A I don't. I haven't been in this case for a year,
18 Mr. Pisanelli.

19 Q Okay. Now, on September 16th, 2011, Ms. Glaser said
20 in reference to the hearing, "It's not till November 21st.
21 I'm not trying to be unprofessional," she said, "because I
22 appreciate that counsel's just coming into this case. But --
23 and again, at the risk of sounding pedantic, this should not
24 become our problem," she said. "Sands China if appropriate
25 wants out."

1 Now, you understood that Ms. Glaser was trying to
2 convince the Court that the evidentiary hearing should go
3 forward without a continuance in November; right?

4 A Again, I don't really have a recollection of this
5 hearing. I'm reading this now. Ms. Glaser said what she
6 said.

7 Q She goes on to say on page 10, starting at line 20,
8 "Your Honor, disclosure is required today. Your prior order
9 was that we were to exchange witnesses and documents. The
10 November 21st evidentiary hearing is two months away. We
11 urge, please, please, urge the Court not to continue that
12 date."

13 When Ms. Glaser was telling Her Honor, please,
14 please don't continue the date, today's the disclosure date,
15 you knew standing at Her Honor's desk that all of the Jacobs
16 emails sitting on Las Vegas Boulevard had not been produced to
17 the plaintiffs, didn't you?

18 A Yes.

19 Q And you didn't say a word to Her Honor in response
20 to Patty Glaser's plea that the evidentiary hearing go forward
21 without the disclosure or even the identification of a hundred
22 thousand-plus emails sitting at Las Vegas Sands here in Las
23 Vegas. You didn't say a word.

24 A I didn't, Mr. Pisanelli. There were also many,
25 many, many other documents that had not yet been produce and a

1 team of reviewers going over things during the summer. And,
2 no, not everything had been produced yet, because it was a
3 very lengthy, tedious process of review.

4 Q Knowing that Ms. Glaser was pleading, please, please
5 let this hearing go forward, and understanding your remark
6 just now about all the work that needed to be done, remember
7 this is the disclosure day when she said it. Was it in the
8 works to produce those emails to the plaintiffs prior to the
9 start of the evidentiary hearing?

10 MR. MCCREA: Objection, Your Honor. Attorney-
11 client, work product.

12 THE COURT: Sustained.

13 BY MR. PISANELLI:

14 Q Was it the exact opposite --

15 MR. MCCREA: Objection. Same objection.

16 BY MR. PISANELLI:

17 Q -- for the defendants -- let me get the question
18 out. Was it the exact opposite for the defendants to do what
19 they could to move forward with that hearing without ever
20 giving one of those emails or even the idea and the knowledge
21 of the existence of those emails to the plaintiffs?

22 MR. MCCREA: Same objection.

23 THE COURT: Sustained.

24 MR. PISANELLI: Thank you, Your Honor.

25 THE COURT: Would any of the defense team like to

1 inquire of Mr. Justin Jones?
2 MR. BRIAN: No, Your Honor.
3 THE COURT: Thank you, Mr. Jones. Have a very nice
4 day.
5 That takes us to a short break before we begin with
6 I believe Mr. Singh. So 10 minutes.
7 MR. PEEK: Thank you, Your Honor.
8 (Court recessed at 10:59 a.m., until 11:07 a.m.)
9 THE COURT: Mr. Brian --
10 MR. BRIAN: Yes.
11 THE COURT: -- the case I was trying to tell Mr.
12 McCrea about, the name I couldn't remember, is Francis versus
13 Wynn.
14 MR. BRIAN: Okay. That's the case name?
15 THE COURT: 127 Nev. Adv. Opn. 60. So it's a 2011
16 case.
17 MR. BRIAN: Okay. Thank you.
18 THE COURT: Unfortunately, I have the carry on of
19 that case, and Mr. Pisanelli had the first part of that case,
20 I think. Mr. Bice had the first part.
21 MR. BRIAN: And that's the Fifth Amendment case you
22 were talking about?
23 THE COURT: Yeah.
24 MR. BRIAN: Yeah.
25 THE COURT: And I read in the paper that the jury

1 gave him 20 million punies, so --
2 MR. PISANELLI: Twenty more.
3 THE COURT: Assessed twenty more. Forty. Twenty
4 plus twenty.
5 MR. BRIAN: I know of that case. I actually
6 represented Mr. Francis in his criminal tax case in L.A.
7 THE COURT: See? So there's just lots of tentacles.
8 Mr. McCrea, I just gave Mr. Brian citation of the
9 case I mentioned for you.
10 MR. MCCREA: Oh. Thank you.
11 THE COURT: I think Mr. Pisanelli can tell you all
12 about that case, since it's his case. I didn't realize that
13 till I pulled the opinion just now.
14 MR. MCCREA: Sorry to hear that.
15 MR. PISANELLI: Your Honor, for case management
16 purposes, hearing management purposes and followup to the
17 Kostrinsky issue, rather --
18 THE COURT: Hold on a second. Hold on a second.
19 You need everybody in the room before you get too far along.
20 MR. PISANELLI: Okay.
21 THE COURT: Mr. Peek, I told Mr. Kutinac he could
22 not bring a toothbrush for you yesterday. I forgot to tell
23 you that.
24 MR. PEEK: Thank you, Your Honor. That's --
25 THE COURT: Like the Black Knight day, he was going

1 to put a toothbrush up there just to make you feel better.

2 MR. PEEK: That's comforting.

3 THE COURT: I said no, that was mean.

4 Okay. Now that everybody's in the room what do you
5 want to say?

6 MR. PISANELLI: Just for Your Honor's information
7 and management of the hearing, we last night, rather than
8 torture you and everyone else again with the entire four hours
9 of the deposition, we went through --

10 THE COURT: Referring to the Mr. Kostrinsky
11 videotape deposition?

12 MR. PISANELLI: Yes, ma'am, I am.

13 THE COURT: All right.

14 MR. PISANELLI: We went through and pulled out
15 excerpts and video, and it's about an hour 28.

16 THE COURT: And have you shared those excerpted
17 portions that you intend to play with the defense team?

18 MR. PISANELLI: We have it in both hard copy and a
19 video.

20 THE COURT: So why don't you give the hard copy to
21 the defense team so they can look at it and see if there are
22 additional portions of the videotaped deposition of Michael
23 Kostrinsky taken on July 5th, 2012, that they would like to
24 designate so that that can also be played.

25 MR. PISANELLI: Very well. We will do that.

1 THE COURT: Because that's the same thing I do every
2 time we deal with this process.

3 MR. BRIAN: May I confer briefly, Your Honor?

4 THE COURT: You may always confer briefly.

5 And I do have to break a few minutes before 12:00,
6 because I have a meeting. It's on the tenth floor, so it
7 doesn't take me very long to get there, but I've got to go,
8 and we'll probably be broke till about 1:30.

9 MR. PISANELLI: Your Honor, do you want a
10 highlighted version of the transcript for what designations
11 we're playing on video?

12 THE COURT: Nope.

13 MR. PISANELLI: We have one for you if you'd like
14 it.

15 THE COURT: No, I don't.

16 MR. PISANELLI: Okay.

17 THE COURT: However, someone on the defense team
18 should probably follow along just to make sure that there's no
19 departure from what they believe is being played and there's
20 no additional portions they want played that mistakenly got
21 left out.

22 MR. BRIAN: We're going to start reviewing this
23 right now. We just discussed --

24 THE COURT: Well, but I'm going to have Mr. Singh go
25 next; right? I've got a live witness?

1 MR. BRIAN: Yes. I understand.
2 THE COURT: Multitask.
3 MR. BRIAN: That's what we're going to do.
4 MR. PISANELLI: Your Honor, at Jill's request we're
5 going to have one available for her when it -- the tape starts
6 playing.
7 THE COURT: Jill loves to have help.
8 MR. PEEK: But she doesn't need it, Your Honor.
9 THE COURT: She is very efficient.
10 All right. Is there anything else before we resume
11 with our next live witness, Mr. Singh?
12 Hearing none, Mr. Singh, if you'd come up, please.
13 MANJIT SINGH, COURT'S WITNESS, SWORN
14 THE CLERK: Thank you. Please be seated. State
15 your name, and spell it for the record.
16 THE WITNESS: Manjit Singh, M-A-N-J-I-T S-I-N-G-H.
17 DIRECT EXAMINATION
18 BY THE COURT:
19 Q Good morning, sir. I have a --
20 MR. BICE: Apologize, Your Honor.
21 THE COURT: I get to go first.
22 MR. BICE: You do.
23 BY THE COURT:
24 Q All right. I have some questions for you.
25 Hopefully my questions will make sense to you. I don't -- I'm

1 not computer savvy, but you are. That's what you do for a
2 living.

3 A I appreciate that assumption.

4 Q If I use any terms that you think I'm not using
5 correctly or they're confusing to you, please let me know.
6 I'm not going to be offended by that. And I will try and work
7 through what it is that I'm really asking you about, okay.

8 A Okay, Your Honor.

9 Q When was the first time that electronically stored
10 information was transferred from Sands China operations in
11 Macau to the United States?

12 A In relation to this case?

13 Q No. Ever.

14 A My understanding would be that in the ordinary
15 course of business there were emails exchanged on a frequent
16 basis.

17 Q And that was beginning when?

18 A That I do not know the answer to.

19 Q Okay. Does it predate your employment?

20 A I believe it does, yes.

21 Q And when did your employment start?

22 A I started August 30th of 2010.

23 Q Okay. And so at the time you started working at the
24 Sands there was already an exchange of electronic information
25 occurring with the Macau groups?

1 A That's correct.

2 Q Okay. Do you know how frequent those transfers were
3 at the time you first started?

4 A I do not.

5 Q Okay. Did the frequency of the transfers ever
6 change?

7 A I don't have a context to be able to answer that
8 question.

9 Q Okay. You knew there were exchanges of information
10 that were occurring when you first started?

11 A Right.

12 Q Did those exchanges of information ever stop?

13 A Not to my knowledge, no.

14 Q Okay. So they still go on today?

15 A To the best of my knowledge, yes.

16 Q All right. Are you aware that a ghost or mirror
17 image -- and if I'm using the terms incorrectly, please feel
18 free to correct me -- was made of the hard drive of a computer
19 that Mr. Jacobs had used in Macau?

20 A Yes.

21 Q How did you become aware of that?

22 A As part of these proceedings I was made aware of
23 that.

24 MR. MCCREA: Your Honor, may I make a statement?

25 THE COURT: Absolutely.

1 MR. MCCREA: Mr. Singh, as the Court knows, was
2 designated as a 30(b)(6) witness, and he was deposed as such.
3 As part of his preparation for that task he met with a number
4 of attorneys to be briefed on areas that he would be -- that
5 he was designated to testify on. I'm not going to object to
6 the general subject matter of what was discussed, but I will
7 object to specific -- if there's a question that calls for a
8 specific communication from or to the attorney involved, I
9 will object. I --

10 THE COURT: Let me tell you how I've ruled on this
11 in the past.

12 MR. MCCREA: Okay.

13 THE COURT: Because this issue is not the first time
14 somebody has prepped a 30(b)(6) witness by using a lawyer to
15 do that preparation.

16 MR. MCCREA: I'm sure.

17 THE COURT: And I think the last time this was
18 problematic was a case that Mr. Peek was involved in along
19 with Mr. Hejmanowski of your law firm.

20 MR. MCCREA: I'm not surprised.

21 MR. PEEK: Why am I always the poster child, Your
22 Honor?

23 THE COURT: Because you're here a lot, just like
24 Lionel Sawyer's here a lot. So, I mean, it's -- the firms
25 that are here in Business Court are here the same ones over

1 and over again, so I see you all.

2 My position has been historically, and I'm not
3 saying you won't be able to change my mind if you brief it and
4 give me some convincing arguments, is that if an attorney
5 preps someone to be a 30(b)(6) witness, what the attorney told
6 the 30(b)(6) witness is fair game to be explored, because that
7 was the preparation method that was chosen, as opposed to the
8 more laborious process of preparation of a witness to become a
9 30(b)(6) of reviewing a pile of 6 feet of documents. That's
10 been my ruling in the past. I'm not married to it, I'm just
11 telling you Mr. Hejmanowski convinced me that was the correct
12 one last time.

13 MR. MCCREA: All right.

14 THE COURT: Sorry, Mr. Lionel. He's a very bright
15 lawyer, and he's very good. Paul Hejmanowski, not his son.

16 MR. MCCREA: Your Honor, we're going to allow him
17 to, you know, testify pretty freely because of that, but if I
18 do feel that he's going to far afield and violating the
19 attorney-client privilege, I will lodge an objection.

20 THE COURT: Well, I'm just -- I understand. And if
21 you need to object, it's not going to bother me.

22 MR. MCCREA: All right.

23 THE COURT: We'll brief it. I mean, I understand
24 the legal issues are rather complicated in this particular
25 circumstance, which is why I'm trying to make sure you guys

1 understand what I think the issues are, as opposed to what I
2 think the ruling should be, because I haven't decided what the
3 ruling should be yet. But I want you to be able to approach
4 the legal issues appropriately.

5 MR. MCCREA: Thank you.

6 BY THE COURT:

7 Q All right. Are you ready?

8 A Yes.

9 Q So let's go back. How did you become aware that the
10 ghost or mirror image was made of the hard drive the computer
11 that Mr. Jacobs had used in Macau?

12 A I was informed by one of our counsel in preparation
13 for my testimony.

14 Q And what were you told?

15 A I was told that there was a ghost image made of Mr.
16 Jacobs's hard drive and that there was also a hard drive that
17 was sent over from Macau.

18 Q Okay. And did you to any examination of those data
19 storage devices at that time?

20 A I did not.

21 Q Okay. Have you ever?

22 A I have not, no.

23 Q Okay. So I take it, since those came over prior to
24 you starting with the Sands, that you were not involved in the
25 decision to make the initial ghost or mirror image of the hard

1 drive that was on the computer of Mr. Jacobs in Macau.

2 A That would be correct.

3 Q Okay. So hold on. Let me check off several
4 questions now.

5 Do you know what happened to the data storage device
6 when it arrived here in the United States from Macau?

7 A In terms of how it was handled?

8 Q Yes.

9 A My belief is that copies of some of the data was
10 placed on some file shares, or on a file share, rather, and
11 then the storage device was placed in a vault.

12 Q Okay. And when you refer to file shares, that a
13 drive that other people can access?

14 A That would be correct.

15 Q And did it allow for remote access?

16 A That's --

17 Q When I say remote I mean somebody like one of the
18 lawyers who was in say New York could sign onto the Sands
19 system, onto the server using an appropriate identifier and
20 password, and then be provided access to that drive.

21 A It would be possible. I do not know whether or not
22 that was actually done in this case.

23 Q Okay. For any of the subsequent data transfers that
24 were made -- because you've been sitting through the
25 proceedings and heard about some other data that was brought

1 over on storage devices --

2 A I have.

3 Q -- were you involved in the decision on how those
4 storage -- how the formatting or the information was to be
5 placed onto the storage devices that were transported from
6 Macau?

7 A I was not involved in those decisions.

8 Q Once those storage devices arrived in the United
9 States were you involved at all and then doing something with
10 that data?

11 A I was not.

12 Q Okay. Do you know who had access to the information
13 that was put on the shared drive?

14 A In the course of my preparation for the testimony
15 what I was able to do was determine whether or not that -- any
16 of those files existed on the file servers today, and took a
17 look to see who had access to that information.

18 Q Okay. Can you tell me who had access to that
19 information?

20 A It was essentially the IT group which would normally
21 have access and Mr. Kostrinsky.

22 Q Was there anyone else who had access other than the
23 IT group and Mr. Kostrinsky?

24 A The best of my recollection, no. But there was
25 another IT individual who was -- who was on the one files, as

1 far as I recollect.

2 Q Okay. You've heard some testimony of some of the
3 outside lawyers, I think Mr. Ma, about this ability to sign in
4 but having a problem with a password?

5 A Yes.

6 Q Were you aware that there was an attempt to provide
7 that type of access to any of the outside lawyers?

8 A I was made aware of that, yes.

9 Q How were you made aware of that?

10 A Again, in preparation for my initial deposition
11 testimony that was shared with me by counsel.

12 Q And what were you told?

13 A I was told that VPN access were provided to
14 specifically Holland Hart and potentially Glaser Weil.

15 Q And were you able to confirm that VPN access had in
16 fact been provided to Holland & Hart and Glaser Weil to the
17 shared file drive or shared drive?

18 A I was able to confirm that Holland Hart had VPN
19 access and was able to access some information that Mr.
20 Kostrinsky made available. I was not able to determine what
21 information that necessarily was.

22 Q Okay.

23 A I was not able to determine or validate that Glaser
24 Weil was given was given access.

25 Q Now, when you say it was shared information Mr.

1 Kostrinsky had made available, what do you mean by that?

2 A There was apparently -- my understanding is that
3 there was a location that was made available to external
4 counsel through this VPN connection that contained various
5 documents. I do not know what documents those were and what
6 information was available there.

7 Q Okay. And I would take it that then you wouldn't
8 know if any changes had made to the data that was on that
9 location, either.

10 A That would be correct.

11 THE COURT: All right. That's all the questions I
12 had for you. That was quick.

13 Mr. Bice.

14 He won't be as quick as I was.

15 CROSS-EXAMINATION

16 BY MR. BICE:

17 Q Let's just clarify a couple of points, if we might,
18 about the Judge's questions.

19 You'd indicated -- the Judge had asked you who had
20 access to the shared drives. Do you recall her asking you
21 that?

22 A I recall that question.

23 Q And you had indicated that the IT personnel and Mr.
24 Kostrinsky; right?

25 A That's correct.

1 Q All right. But, to be fair, you only looked for
2 drives that Mr. Kostrinsky had access to; correct?

3 A That would be correct.

4 Q So you never looked -- despite the fact that you
5 were the designated 30(b)(6) deponent, you actually never
6 looked to determine whether or not all those emails or other
7 data from Macau was stored on other drives that other people
8 had access to; correct?

9 A In the context of what I had been prepared for and
10 what information I had -- was my understanding was relevant I
11 did attempt to make a search of locations for other
12 information, and I -- as indicated in my deposition, I did
13 find a few locations.

14 Q Okay. But in terms of for -- you searched -- when
15 you ran your records to determine who had access to this data,
16 you only searched on the drives that Mr. Kostrinsky had
17 previously had access to; correct?

18 A That would be a correct statement.

19 Q Okay. You didn't search any drives that only, for
20 example, Mr. Rubenstein had access to; correct?

21 A Well, that would assume that Mr. Rubenstein would
22 have different access, which I do not know if that's a valid
23 statement.

24 Q Okay. Well, Mr. Rubenstein might have access to
25 documents that Mr. Kostrinsky didn't have access to; correct?

1 A It's possible.

2 Q Okay. And the same would be true for Ms. Hyman;
3 correct?

4 A It might be possible.

5 Q And the same would also be true for the current
6 general counsel, Mr. Raphaelson; correct?

7 A It could be.

8 Q All right. And you have not searched -- despite you
9 being the designated 30(b)(6) witness, you did not search to
10 determine who else in the company would have had access to all
11 of these documents; correct? Potentially had access to them.

12 A Again, that would presume that those documents exist
13 in another location other than the ones that I had identified.

14 Q Okay. And if they do, you don't know it?

15 A That would be correct.

16 Q Okay. Because you couldn't determine -- as I
17 recall, at your deposition you couldn't determine whether or
18 not all of those emails or the Macau data was stored on other
19 drives that people had access to; correct?

20 A That is correct.

21 Q All right. You'd also indicated to Her Honor when
22 she asked you about the transfer of electronic data between
23 Las Vegas and Macau -- did I understand you correctly to tell
24 Her Honor -- and if I misunderstood, you will correct me or
25 Her Honor will correct me -- that the policy today is the same

1 as it was when you started at the company.

2 A I'm not aware that a policy exists.

3 Q Okay. You're not aware that a policy exists; is
4 that right?

5 A That's what I said.

6 Q And are you -- and you're unaware that there was
7 ever any change in the transfer of data between Las Vegas and
8 Macau?

9 A Again, I'd have to ask you for some clarification.
10 I don't want -- don't know what you mean by change.

11 Q Okay. Well, do you recall at your deposition
12 telling me that in April of 2011 there was a change?

13 A Again, are we talking specifically to what I was
14 referencing during the deposition?

15 Q Okay. It's a simple question. Do you recall
16 telling us at your deposition that there was a change in the
17 -- what sort of data could be transferred or could be access
18 in Macau?

19 A Yes, there was a change in the access of certain
20 information in Macau.

21 Q Okay. Prior to -- and that was in April of 2011;
22 correct?

23 A It would be became aware of an issue around April-
24 May.

25 Q Okay.

1 A To be clear, subsequent to my deposition when I took
2 a look back to determine date, time frame of when access was
3 removed it was more around the July time frame.

4 Q Okay. But you -- so you're saying access was
5 removed in the July of 2011 time frame?

6 A That there was action taken in Macau in July 2011 in
7 order to make sure that there was compliance with our current
8 understanding of the data privacy issue.

9 Q Do you recall telling me that what prompted this
10 decision was a Securities and Exchange Commission subpoena
11 that had been issued to Las Vegas Sands Corp.?

12 A I recall mentioning I wasn't quite clear on what the
13 exact trigger was, that it could have been the SEC.

14 Q Okay. And do you recall telling us that it was your
15 understanding that the time frame in which the change in
16 policy and the discussion was occurring was when you overheard
17 discussions within the company about the Securities and
18 Exchange commission subpoenaing records?

19 A Again, I would want to correct that I would not
20 characterize it as a change in policy, because there was no
21 policy.

22 Q All right. Well, let's go to --

23 MR. BICE: Your Honor, may I publish --

24 THE COURT: Already started the process.

25 MR. BICE: Thank you.

1 THE COURT: Hold on a second.

2 Sir, here's your original deposition transcript.
3 Counsel will refer you to a page. Please feel free to read
4 before or after to give yourself context.

5 THE WITNESS: Thank you, Your Honor.

6 BY MR. BICE:

7 Q If you would, please, Mr. Singh, let's turn to
8 page 122 of your deposition.

9 THE COURT: 122?

10 MR. BICE: Yes..

11 THE COURT: Thank you.

12 BY MR. BICE:

13 Q Actually, let's start on the bottom of page 121 -- I
14 apologize.

15 MR. PISANELLI: See if Her Honor wants a copy.

16 THE COURT: No, thank you.

17 MR. PISANELLI: No, thank you?

18 THE COURT: No, thank you.

19 MR. BICE: I'm disappointed.

20 THE COURT: Sorry.

21 BY MR. BICE:

22 Q All right. I'll start on the bottom, and I'll read
23 along. Make sure -- you make sure I'm reading correctly for
24 the record. Line 23 is a question to you.

25 "Did you see written documents?"

1 And your answer was, "There was information
2 exchanged around the fact that the SEC subpoena came
3 in April of 2011, and that was what really started
4 the conversation around access to Macau data."
5 Question, "So it was in direct response -- is it
6 fair to say that this change in policy was prompted
7 by the SEC subpoena?"

8 Your answer was, "Again, I can't answer the
9 question. The time frame is all I can provide you
10 with."

11 My next question, "All right. But the time frame of
12 the change in policy and the discussions that you
13 overheard about it were in direct reaction to the
14 SEC subpoena?"

15 And your answer was, "That would be a valid
16 statement."

17 Correct?

18 A The best of my knowledge at the time, yes.

19 Q Okay. And my point was I'd asked you specifically
20 about a change in policy, right, and there was a change in
21 policy, was there not?

22 A Well, again, I wouldn't characterize it as a policy,
23 and perhaps I should have clarified that during my deposition.
24 But I would not characterize it as a policy.

25 Q All right. It was a change in access?

1 A Yes.

2 Q Okay. Do you recall testifying that there were two
3 changes that occurred? If you'd go to page 118. Actually,
4 let's start on page 117 so that we have the context of the
5 questions and answers. And I'll read it, and you follow along
6 with me again.

7 Line 9, question, "Were there any restriction -- or
8 restraints," I apologize, "as far as you know upon
9 the physical ability from an executive here in Las
10 Vegas to access any records -- any records at
11 Macau?"

12 Answer, "Not that I'm aware of."

13 Question, "The only restrictions would be
14 restrictions that might be on access levels by the
15 person's rank; is that fair?"

16 Answer, "Are we talking electronically, or
17 physically?"

18 Question, "Electronically."

19 Answer, "Electronically, yes."

20 Question, "And then -- and that then changed, you
21 said, in April of 2011; correct?"

22 Or the answer you gave was, "Correct."

23 And the next question was, "Okay. Do you know, did
24 it change after Sands was asked to respond to a
25 subpoena by the Securities and Exchange Commission,

1 or did the change occur before Sands was asked to
2 respond to the Securities and Exchange Commission?"
3 Answer, "I don't know the answer to that."
4 Question, "So describe for me what the change was
5 that occurred."
6 Okay? You're following me along?

7 A Yes.

8 Q Okay. So now, if you would, read to the Court what
9 your answer was to that question.

10 A I indicated there were two changes, one was a
11 clarification that no data in Macau should be accessed unless
12 approval was granted explicitly by Macau. There was access
13 that some individuals had to some systems in Macau that were
14 removed.

15 Q Okay. So now, prior to April of 2011 and prior to
16 this Securities and Exchange Commission subpoena being issued
17 Las Vegas Sands had a network-to-network connection with
18 Macau; correct?

19 A Correct.

20 Q And that connection, does it still exist today?

21 A Yes, it does.

22 Q But restrictions have now been imposed upon it;
23 correct?

24 A That is correct.

25 Q And those restrictions were not imposed by the

1 government of Macau, but they were imposed by Las Vegas Sands;
2 correct?

3 A Well, the action -- excuse me. The steps to
4 restrict access was taken by us in Macau.

5 Q Okay. And those were -- and that access restriction
6 occurred at the direction of executives here in Las Vegas, did
7 it not?

8 A I don't believe that that's an accurate statement.

9 Q Okay. You believe that it was at the direction of
10 executives in Macau?

11 A That is my understanding.

12 Q And where did you acquire that understanding?

13 A I would assume that it occurred that way because
14 there were discussions with my group or the folks in Macau
15 that indicated in their conversations with other executives in
16 Macau that the determination was that some steps need to be
17 taken.

18 Q Okay. Because if steps weren't taken, documents
19 were going to have to be supplied to the Securities and
20 Exchange Commission, weren't they?

21 A I would not have knowledge about whether or not that
22 was their context.

23 Q All right. But the time frame in which this
24 restriction, this turning off of the data flow occurred at
25 exactly -- from your understanding, at exactly the same time

1 the discussion accrued about responding to the Securities and
2 Exchange Commission?

3 A Well, again, I can only provide you with the context
4 that I recall, and that is the context in which I recall the
5 discussions taking place.

6 Q All right. Now, you say that you recall the
7 discussions in Macau. Do you recall attending a meet -- let's
8 clarify for the Court what your role in the company is. Can
9 you tell Her Honor what your title is.

10 A Sure. I'm the chief information officer.

11 Q And the chief information officer for whom?

12 A Las Vegas Sands Corporation.

13 Q All right. Chief information officer, what does
14 that mean to us lawyers?

15 A I provide the strategy and overall direction, if you
16 will, for the information technology groups.

17 Q All right. And the -- each property then has it's
18 own information technology officer?

19 A Correct.

20 Q All right. And they all report to you, except for
21 one or two of them; right?

22 A The leaders in Singapore and Macau do not report
23 directly to me, nor does --

24 Q I apologize.

25 A Nor does the leader in Pennsylvania.

1 Q Okay. The leader in Macau indirectly reports to
2 you; correct?

3 A You could make that statement.

4 Q Well, do you recall that you made that statement in
5 your deposition?

6 A Yeah.

7 Q Okay. I just wanted to make sure. And it's an
8 indirect report, as you'd indicated at your deposition,
9 because it's a publicly traded company; correct?

10 A That's my understanding.

11 Q Okay. But you are still overall responsible for the
12 IT oversight of all of the properties, both in the United
13 States and worldwide; correct?

14 A And if I could clarify --

15 Q Okay.

16 A -- I don't know what you mean by the term of
17 "oversight." For me it's strategic direction.

18 Q Okay.

19 A And guidance on say day-to-day issues.

20 Q All right. And you provide that also to the
21 properties in Macau; correct?

22 A In a more limited capacity.

23 Q All right. But you provide it also to the
24 properties in Singapore?

25 A Again, more limited capacity.

1 Q All right. And also here in Las Vegas?

2 A Yes.

3 Q Okay. So while those -- the information technology
4 officers onsite in Macau and Singapore don't report directly
5 to you, you do have -- they indirectly report to you, and you
6 provide them oversight concerning the IT operations for those
7 properties; is that true?

8 A That would be correct.

9 Q Now, do you recall -- going back a little bit now
10 that we sort of understand what your role is, do you recall
11 being summoned to a meeting in the spring of 2011 concerning
12 the reduction, or however one wants to use the word --
13 actually, let me strike that, use this.

14 You were present for the testimony of Ms. Glaser.
15 Do you recall that?

16 A Yes.

17 Q Okay. Do you recall there being some questions
18 about her and she had used the word "stone wall." Do you
19 recall that?

20 A I do recall that.

21 Q That a stone wall was erected. Do you recall that?

22 A I do.

23 Q Okay. And that stone wall was erected in the spring
24 of 2011; correct?

25 A I believe that was her testimony.

1 Q Okay. And that stone wall was erected by Las Vegas
2 Sands; correct?

3 A I don't recall whether she mentioned that that was
4 done by Las Vegas or Sands China.

5 Q Well, when you were summoned to a meeting to discuss
6 this data flow or what Ms. Glaser called the stone wall, that
7 occurred here in Las Vegas; correct?

8 A That meeting did take place in Las Vegas.

9 Q All right. And there were lawyers there from the
10 O'Melveny & Myers law firm, were there not?

11 A There were.

12 Q Okay. And Mr. Kaye, the Las Vegas Sands chief
13 financial officer, was also present, was he not?

14 A I believe that he was.

15 Q Okay. And Mr. Adelson even came into that meeting
16 for a period of time, did he not?

17 A I believe he came in at the end of that meeting.

18 Q All right. And Mr. Leven, the company's chief
19 executive or CEO, I'm not sure actually. Maybe he's COO. I
20 always get those acronyms a little confused. COO I think is
21 his title. He was not present; is that right?

22 A I don't recall completely whether or not he was
23 present or he was not. He may have attended, you know, when
24 Mr. Adelson joined, but I can't recall specifically.

25 Q All right. Now, is it fair to say that when this

1 stone wall was erected it was erected because the United
2 States had asked for information?

3 A Again, I don't know what the context was for why we
4 were having the discussion.

5 Q All right. But you knew that that was the timing of
6 it; correct?

7 A It was around that time frame.

8 Q Okay. So let's deal with prior to the United States
9 asking for information. Prior to that -- I think you've
10 already -- we read from your deposition testimony, and if I
11 think I'm wrong, you'll correct me -- there was a free flow of
12 data in this network-to-network system that existed between
13 Macau and Las Vegas; correct?

14 A I wouldn't characterize it necessarily as free flow.
15 I mean, information was exchanged. The nature of that
16 information I'm not specifically aware of.

17 Q Okay. Well, as I recall asking at your deposition,
18 and if I'm wrong you'll have to correct me, I recall asking
19 you whether there were any restrictions on the types of data
20 that could flow between the properties. Do you recall that?

21 A I do recall the question.

22 Q All right. And you were designated as the company's
23 representative to tell us what the restrictions were; correct?

24 A Correct.

25 Q Okay. And you were prepared by the lawyers

1 representing these defendants; correct?

2 A Correct.

3 Q And do you recall telling me that you as the
4 company's representative were unaware of any restrictions on
5 data flow prior to the spring of 2011?

6 A And I did make that comment --

7 Q All right.

8 A -- or I did make that statement, rather, and if I
9 can -- if I can explain or clarify it, there was -- my
10 intention in answering the question was there was no
11 documented restrictions on that.

12 Q All right. What happened was there were some people
13 of a certain rank in the company that could access certain
14 data, and others couldn't; right?

15 A Well, that is normally the case.

16 Q Right. That's true. But -- and that's true here in
17 Las Vegas; right?

18 A That's correct.

19 Q Okay. And so the types of data that could be
20 accessed in Macau from Las Vegas or even sent over to Las
21 Vegas was really controlled by the rank of the person either
22 accessing it or requesting it or sending it; right?

23 A Or a party who created that data and chose whether
24 or not to give access to various individuals.

25 Q Understood. And so -- but there were no physical

1 restrictions other than -- I don't know the terminology that
2 people in your industry use. An old person like me would use
3 the term "bandwidth," but that's clearly not valid anymore, or
4 I assume it's not. Were there any physical restrictions in
5 the amount of data that could be moved between Las Vegas and
6 Macau?

7 A Well, I would say bandwidth was an issue.

8 Q Okay.

9 A It's not a very fast connection.

10 Q Got it.

11 A Which would have caused some limitations, if that's
12 what you meant by physical limitations.

13 Q Okay. And were there any physical limitations,
14 though, on the types of data that could be moved between Las
15 Vegas and Macau?

16 A --- To the best of my knowledge, no.

17 Q And so prior to -- let's deal with the August 2010
18 transfer of a hard drive from Macau to Las Vegas involving the
19 Jacobs case, okay. Do you follow me?

20 A (No audible response)

21 Q All right. There was -- you understand that there
22 was a drive that was shipped over from Macau that contained on
23 it a ghost image; correct?

24 A Correct.

25 Q And that ghost image was of Mr. -- purported to be

1 of Mr. Jacobs's desktop machine; correct?

2 A And that was one of the images that was on the hard
3 drive.

4 Q All right.

5 A There were multiple images.

6 Q Okay. Tell the Court what else was on that original
7 drive.

8 A There were some images of two laptop systems, as
9 well, and then emails from Mr. Jacobs.

10 Q All right. So there -- and the emails were
11 separated from the ghost image of the desktop machine?

12 A I do not know. I've not seen or -- I've not seen
13 the exact contents of that hard drive.

14 Q Right. Do you recall what the -- how were the
15 emails stored on that drive?

16 A My recollection is that they were stored as a .pst
17 file.

18 Q All right. Can you tell us what sort of file that
19 is.

20 A Sure. That's normally an email repository used by
21 Microsoft Outlook.

22 Q Okay. And so this image that was created, the ghost
23 image of the desktop and of the two -- did you say two
24 laptops?

25 A Two laptops is my --

1 Q All right. Those images, would they also contain
2 the emails in addition to the .pst files?

3 A I'm not sure I understand the question.

4 Q You know what, I'm not sure I do, either. That's
5 why I'm sort of walking around on this subject matter like a
6 blind person. So you're going to have to bear with me just a
7 little bit.

8 When a ghost image is created -- why don't we do
9 this. And Her Honor actually knows more about this than I do,
10 but I want the record to be clear.

11 When a ghost image is created, tell us what that is.

12 A A ghost image is basically a replica of the layout
13 of the hard drive, including all the files that were on it at
14 the time the image was taken, which would include your normal
15 documents, any applications on it, your deleted items folder,
16 those kinds of -- those kinds of items.

17 Q All right. Would it contain your emails?

18 A Yes.

19 Q Okay. Would it -- on a ghost image does the ghost
20 image -- can you access the ghost image and determine what had
21 been deleted from the original media source prior to the
22 creation of the ghost image?

23 A Only to the extent that those documents were in its
24 recycled folder or deleted folder.

25 Q Okay. If they -- however, if they were deleted from

1 the original and then deleted from the recycled folder, the
2 ghost image will have no trace of them; is that true?

3 A That would be correct.

4 Q And so someone could go into that -- prior to the
5 creation of the ghost image could go onto the machine and
6 could delete information from it, and so then the ghost image
7 -- it would appear from the ghost image as though it never
8 existed; is that fair?

9 A Well, again, the ghost image is a snapshot in time
10 whenever that image was taken. So anything that occurred
11 prior to that would naturally not be caught by that ghost
12 image.

13 Q Understood. That is different than a forensic
14 image; is that right?

15 A Forensic image is a lower level of catcher which
16 might contain leftover, for want of a better word, bits.

17 Q Okay.

18 A That could be reassembled.

19 Q All right. What about -- have you ever heard the
20 term "mirror image"?

21 A I have.

22 Q Is it -- is that not a term that you would use?

23 A Normally not, no.

24 Q Okay. Are there different ways in which to copy
25 drives, in other words, the original media source? Other than

1 a ghost image and the forensic image that we've talked about,
2 are there other ways in which to copy it?

3 A There are other tools that would essentially do the
4 same thing as a ghost image would.

5 Q Okay. With respect to the ghost images for those
6 three, the desktop machine and two laptops, do you know when
7 they were created?

8 A I -- from my recollection, they were created in the
9 July 2010 time frame. But I might not be recalling that
10 correctly.

11 Q All right. Do you know who had access -- let's deal
12 with the two laptops. Do you know who had access to them
13 prior to the creation of the ghost image?

14 A Well, I believe that they were laptops that were
15 provided to Mr. Jacobs.

16 Q I'm sorry. Used by Mr. Jacobs?

17 A Yes. That's my understanding.

18 Q Understood. And you got that understanding from
19 counsel?

20 A I got that understanding from counsel, plus I also
21 got that understanding from talking to some of the Macau IT
22 folks.

23 Q Understood. Let's deal, then, with the laptops. Do
24 you know who had access to them prior -- in addition to Mr.
25 Jacobs prior to the creation of the ghost image?

1 A Well, I would imagine that the IT teams would
2 normally have access to those systems, as well.

3 Q Okay. Anyone else?

4 A Not that I'm necessarily aware of.

5 Q All right. Were you made aware if any other
6 personnel, executives in the company, for example, either Las
7 Vegas Sands or Sands China, were able to access or were
8 permitted to access those -- we're just dealing with the
9 laptops right now -- were permitted to access them prior to
10 the creation of the ghost image?

11 A I have no knowledge about that.

12 Q All right. Do you know what happened to or do you
13 know where the originals are of the two laptops?

14 A I'm trying to recollect whether or not that
15 information was provided to me, and I don't recall
16 specifically.

17 Q All right. Well, at your deposition I think there
18 were -- and I could be wrong -- I think there were four
19 different computers that had been identified that Mr. Jacobs
20 might have had access to. Do you recall that?

21 A I do recall that, yes.

22 Q All right. And do you recall telling me -- and if
23 your memory's different, we'll sort it out. Do you recall
24 telling me that you had only been able to locate one of the
25 originals from the four different computers that he could --

1 that he used?

2 A I vaguely do recall that, yes.

3 Q So there was one out of four that you currently
4 have?

5 A Yes.

6 Q Okay.

7 A Of the actual systems themselves. May I clarify?

8 Q Sure.

9 A I did recently become aware that another system was
10 located in the May 2011 time period --

11 Q Okay.

12 A -- that was also provided to I believe it was either
13 FTI or Stroz Friedberg to be imaged.

14 Q All right. And so that was in May 2011 an
15 additional -- and this was one of the other original media
16 sources?

17 A I believe it was one of those computers that Mr.
18 Jacobs had access to.

19 Q Okay. So you think that two out of the four of the
20 originals have been found?

21 A Again, that's my understanding from what I can
22 recall at this point.

23 Q All right. Do you know which two were found?

24 A Well, clearly the one I just mentioned, which was
25 apparently a desktop that Mr. Jacobs had used previously. The

1 others I -- the other I don't recall specifically whether that
2 was one of the laptops or desktops. Actually, I believe there
3 is a reference that the desktop computer was not -- was not
4 kept and that that was an item of concern. So clearly it was
5 not that other desktop.

6 Q It was not the desktop that had been located?

7 A Yeah.

8 Q Do you know what happened to the original desktop
9 machine from which the ghost image was created?

10 A Again, I believe that that was being searched for.
11 I can't specifically recollect as to whether or not they
12 managed to find it or not.

13 Q What is the policy of when a computer -- when an
14 employee leaves and the computer is then recycled back into
15 the population? What happens to the -- is the computer first
16 scrubbed before it is recycled?

17 A That is the normal procedure that we would follow.

18 Q So in this particular case if normal procedure was
19 followed and that desktop machine that Mr. Jacobs had used was
20 to be put back into circulation, it would be scrubbed;
21 correct?

22 A That's my understanding, yes.

23 Q And when it would be scrubbed, tell us -- tell Her
24 Honor what happens as a result of that scrubbing.

25 A Essentially all the information on that computer

1 would have been deleted and a new operating system or a new
2 version of the operating system would be placed on that
3 computer in preparation for another employee's use.

4 Q All right. When you say it would be deleted, how is
5 it deleted?

6 A I don't know the specifics.

7 Q What is the -- what is the general -- I didn't mean
8 to cut you off. Were you done?

9 A I was.

10 Q Okay. What is the general methodology -- I
11 understand you don't know the specifics, but in terms of your
12 general -- the company's general policy how is it deleted?

13 A Well, again, I think the teams use different
14 mechanisms and different locations, so I'm not aware of the
15 exact procedures that they use.

16 Q Is it your understanding, however, that as a result
17 of that scrubbing process all of original media or all
18 original data on that media source is lost?

19 A It would be deleted.

20 Q All right.

21 A Whether or not it's lost, I would -- it depends
22 would have to be the answer, I'm afraid.

23 Q Okay. You'd have to find the -- you'd have to find
24 the device; right?

25 A Correct.

1 Q And then you'd have to examine it and see what sort
2 of scrubbing had been done to it?

3 A That would be a correct statement.

4 Q And then you would be able to determine whether or
5 not all of the original media is gone?

6 A That would be correct.

7 Q All right. And in this particular case it's your
8 understanding that as for the desktop machine that Mr. Jacobs
9 had used in Macau the original media source is gone?

10 A Again, I can't specifically recall whether or not it
11 was located. I know that there was an effort made.

12 Q All right. Now, what you're saying -- if I
13 understand it, you're saying some -- one -- some sort of a
14 device was found, you said, in May of 2011?

15 A That was -- is my understanding, yes.

16 Q All right. And a -- who was allowed to copy that?

17 A It was either Stroz Friedberg or FTI.

18 Q Okay. And do you know who Stroz Friedberg is?

19 A Well, Stroz Friedberg and FTI are both the forensic
20 firms that were engaged, is my understanding.

21 Q Okay. And do you know what they did with -- they
22 were allowed to copy it; correct?

23 A My understanding is they took an image of it, yes.

24 Q Where did they copy it at?

25 A In Macau.

1 Q Okay. And where did they take it?

2 A I believe they didn't take it anywhere. They left
3 it in Macau.

4 Q All right. So they -- whatever they created they
5 just left there?

6 A Yes.

7 Q Okay. And it's in storage somewhere?

8 A I don't know the answer to that.

9 Q Do you know whether or not anyone has searched it?

10 A I do not know that, either.

11 Q And in your preparation as a 30(b)(6) deponent no
12 one had informed you whether or not it had been searched?

13 A That's correct.

14 Q Now, let's back up. An additional bit of
15 information that has come to light that you testified about
16 was it was your belief that Mr. Kostrinsky was given a foil
17 envelope in Macau during one of his trips regarding the Jacobs
18 case; correct?

19 A That was my understanding.

20 Q All right. And it is your belief based upon your
21 investigation that such an envelope did exist and was brought
22 back to the United States?

23 A There are references that I have been made aware of
24 to that foil envelope. I did ask whether or not anybody on
25 the Macau IT side recalls an envelope, not necessarily a foil

1 envelope, and there was mention made that they believed Mr.
2 Dillon provided -- or handed something to Mr. Kostrinsky.

3 Q And who is Mr. Dillon?

4 A Mr. Dillon was the IT leader in Macau at the time.

5 Q Okay. And when did he cease being IT director in
6 Macau?

7 A Earlier this year.

8 Q Okay. And what were the circumstances of his
9 departure as IT director in Macau?

10 MR. MCCREA: Objection, Your Honor.

11 THE COURT: Sustained. It's not relevant to my
12 hearing, Mr. Bice.

13 MR. BICE: Well --

14 THE COURT: And it might have some privacy issues
15 related to it, too.

16 MR. BICE: Well, Your Honor, I understand. I don't
17 want to argue with you. I think our point is it may have some
18 bearing on what happened to evidence and why he was terminated
19 might have some bearing on what happened to evidence. And I
20 understand your ruling, so I will --

21 THE COURT: Thank you.

22 MR. BICE: -- move on.

23 BY MR. BICE:

24 Q All right. So you were informed that -- and who was
25 it that informed you that Mr. Dillon had provided such an

1 envelope?

2 A Mr. Ashley Gilson.

3 Q And I apologize?

4 A Mr. Ashley Gilson.

5 Q Mr. Gilson. All right. And can you tell the Court
6 who Mr. Gilson is.

7 A Mr. Gilson is a director of IT operations for the
8 Venetian Macau.

9 Q All right. Did he replace Mr. Dillon?

10 A He did not.

11 Q He did not?

12 A No.

13 Q All right. Who did replace Mr. Dillon?

14 A There's a gentleman that was recently hired as Mr.
15 Dillon's replacement.

16 Q All right. Mr. Dillon, how long had he been at the
17 property in Macau?

18 A Before my time. The exact time frame I would be
19 hard pressed to identify.

20 Q Okay.

21 THE COURT: How long do you have before I can take a
22 break, Mr. Bice?

23 MR. BICE: We can take a break whenever Her Honor
24 would prefer.

25 THE COURT: That would be lovely. I'll see you guys

1 at 1:30.

2 MR. BICE: Thank you, Your Honor.

3 (Court recessed at 11:56 a.m., until 1:25 p.m.)

4 THE COURT: Mr. Singh, if you could come back up.
5 We're going to resume your testimony, at least until they tell
6 me I need to go back next door.

7 And, counsel, I again want to apologize. There was
8 a bit of a hiccup in a deliberating jury case next door. I've
9 given the attorneys and the clerk an assignment that they are
10 doing without my presence on the record, and in about
11 30 minutes they'll be done with that and come get me.

12 You are still under oath.

13 THE WITNESS: Yes.

14 MR. BICE: May I proceed, Your Honor?

15 THE COURT: Yes.

16 MR. BICE: Thank you, Your Honor.

17 CROSS-EXAMINATION (Continued)

18 BY MR. BICE:

19 Q Mr. Singh, one of the things I wanted to just make
20 sure that we sort of closed out was this issue about the foil
21 envelope, when by my memory we had not. So if I'm repeating
22 myself a little bit, I apologize. The foil envelope that Mr.
23 Kostrinsky, or to your belief that Mr. Kostrinsky brought back
24 with him, have you been able to ascertain its contents?

25 A I have not.

1 Q All right. You have -- did you hear the testimony,
2 however, today from Mr. Jones?

3 A I did.

4 Q Okay. And it sounded like it was something that was
5 in a foil envelope, then wrapped in bubble wrap.

6 A That's how he described it.

7 Q All right. And in your experience as an IT person,
8 would that suggest to you some sort of a drive had been put
9 into such an envelope?

10 A It would suggest something that needed to be
11 shielded from electromagnetics.

12 Q Okay.

13 A That could be a hard drive or a thumb drive or other
14 type of device.

15 Q All right. And when you say shielded from
16 electromagnetics, is that what the -- is that what the foil
17 envelope does? Because even I know bubble wrap won't do that,
18 but is that the purpose of the foil?

19 A That is the purpose of the foil, yes.

20 Q Got it. All right. Now, so it's your understanding
21 that such a device came over; correct?

22 A Based upon what we heard, yes.

23 Q Okay. Well, and based upon your own -- what -- what
24 you are prepared in terms of the company's representative on
25 this, you were informed that as far as the company knows such

1 a device did come over; is that right?

2 A Yes.

3 Q Okay. And can you tell us what you have been able,
4 or tell Her Honor what you have been able to ascertain as of
5 the status of it?

6 A I have been unable to ascertain anything about it.
7 None of the current Las Vegas IT staff are aware of anything
8 that was brought over, nor have any items been located that
9 would fit this description.

10 Q All right. And the normal procedure for the
11 handling of these things is when such a drive would come over
12 it would be placed with whom, IT?

13 A It depends. If it was a device that was relevant in
14 a legal proceeding, it should have been -- it should have
15 followed a proper chain of custody.

16 Q Okay.

17 A If it was just something that was brought over, it
18 would be given to anybody.

19 Q All right. Tell -- tell Her Honor, if you would, in
20 the -- what the company's proper chain of -- or proper chain
21 of custody is in a legal proceeding.

22 A Well, there's a document that we have within the IT
23 department that is required to be signed off by the person
24 providing an item to -- to the IT department that we
25 acknowledge receipt of and what we've done with it.

1 Q All right. And those -- there is no such document
2 for this -- or whatever was in that foil envelope?

3 A That's correct.

4 Q Okay. And you would have been unable to ascertain
5 what happened to it, assuming that it made its way into the
6 United States?

7 A Correct.

8 Q I want to back up just a little bit about the data
9 flow between Macau and the United States on this deal prior to
10 April of 2011. Prior to April of 2011 are you aware that the
11 executives here in Las Vegas, let's just deal with Mr. Adelson
12 as being one, would receive what is called a daily report via
13 email from Macau?

14 A I am aware of that.

15 Q All right. And tell Her Honor what would be in that
16 daily report.

17 A To be honest, I can't fully describe it. I've never
18 seen one. My information is it's financial -- financial
19 information is my understanding.

20 Q All right. Does it -- prior to April of '11, did it
21 include -- well, strike that. Even today does he still
22 receive a daily report?

23 A My belief is yes.

24 Q Okay. And including a daily report that contains
25 Macau data; correct?

1 A That's my understanding.
2 Q All right. And those are -- and that data is sent
3 from Macau to Las Vegas on a daily basis?
4 A I believe so.
5 Q And it's processed by Mr. Adelson's assistant?
6 A I'm not aware of.
7 Q All right. But in any event, your understanding is
8 it's sent here every day?
9 A Correct.
10 Q And then it is disseminated to other people inside
11 the company?
12 A Correct.
13 Q Okay. And is it disseminated to more than just Mr.
14 Adelson?
15 A I believe it is.
16 Q Do you believe it's disseminated to Mr. Kaye?
17 A Yes.
18 Q Mr. Leven?
19 A I believe so.
20 Q Okay. Now, prior to April of '11, do you know
21 whether or not that data that was that daily -- what was the
22 -- I apologize.
23 MR. JACOBS: Flash report, DOR and flash report.
24 BY MR. BICE:
25 Q Daily operating report, DOR, okay, and the flash

1 report, did that contain the names of high, what I guess we
2 would call high level customers?

3 A Again, unfortunately, I've never seen this report --

4 Q Okay.

5 A -- either before or after, so I can't comment on
6 that.

7 Q All right. So you don't -- as of today you don't
8 know what sort of information it contained?

9 A That's correct.

10 Q And you still don't know what sort of information it
11 contains today?

12 A Correct.

13 Q Do you know whether or not the restrictions on data
14 that were imposed after April or around April of 2011, did
15 that impact the information that was contained in the daily
16 operating report that Las Vegas Sands executives received?

17 A Unfortunately, I do not have any knowledge about
18 that.

19 Q All right. Let's go back a little bit now to the
20 data that you do know was here in Las Vegas concerning Mr.
21 Jacobs. You had identified that there were three ghost images
22 and a file that contained PFTs?

23 A PSTs.

24 Q PSTs. I apologize. That information, was it ever
25 placed on those four -- I'll call them the four data sources.

1 Were those four sources ever placed on a server here in Las
2 Vegas?

3 A The emails were on a server. There are some archive
4 files, but they do not appear to necessarily come from that --
5 from those ghost images.

6 Q Okay.

7 A And from what I was able to determine, the images
8 themselves were not placed on the file server.

9 Q All right. The -- the ghost -- the three ghost
10 images that we've referenced?

11 A That's correct.

12 Q All right. But the emails were placed on a server
13 here in Las Vegas?

14 A That's correct.

15 Q Have you been able to ascertain for Her Honor when
16 they were placed on a server here in Las Vegas?

17 A My understanding is it was in late August that that
18 was done.

19 Q Late August of 2010; correct?

20 A Yes.

21 Q So it would be accurate to say that since August of
22 2010, Mr. Jacobs's emails that had been brought over from
23 Macau have been on the server of the Las Vegas Sands here in
24 Las Vegas since then?

25 A That would be correct.

1 Q And they have been accessible by anyone who had
2 their rights to access them since that point in time; correct?
3 A That would be correct. and my understanding is that
4 was limited to Mr. Kostrinsky.
5 Q Okay. But you don't know, just so that we're clear,
6 you don't know when and under what circumstances those same --
7 that same data source -- well, strike that. Let's break it
8 down so that Her Honor can -- I can keep it clear in my head.
9 When you did your search, you looked only at files that Mr.
10 Kostrinsky had access to. We've already talked about that;
11 correct?
12 A That is correct.
13 Q Okay. And in doing so you found, and I will mess up
14 these names so you will correct me, you found some of the data
15 involving Mr. Jacobs on something called DAV05; am I right?
16 A Yes. My ----
17 Q That's D --
18 A -- recollection is that's correct.
19 Q All right. D-A-V-0-5; correct?
20 A Correct.
21 Q Okay. And DAV05 is a shared -- is it a share drive
22 on the server?
23 A It is a -- it is a file server.
24 Q File server. Okay. And on that -- and that file
25 server Mr. Kostrinsky had access to; correct?

1 A That's right.

2 Q Okay. Were there any other people other than the IT

3 department that had access to that DAV05 server?

4 A Yes, the DAV05 is a -- is a general file server --

5 Q Okay.

6 A -- that many people use.

7 Q Okay. But what about the data set -- now, was the

8 -- was the Macau -- the Jacobs data, we'll call it, was that

9 in a subfolder on that data server?

10 A It was.

11 Q All right. And was that called the M data?

12 A Correct.

13 Q And the M data meaning Macau data?

14 A Macau data.

15 Q Okay. And you had indicated that at least with

16 respect to that set of data, that version of it on that drive

17 -- no, not drive, file share, Mr. Kostrinsky could access it;

18 correct?

19 A That's correct.

20 Q IT people could access it?

21 A Correct.

22 Q Ms. Hyman could access it?

23 A No, she did not have permission to.

24 Q Okay. Was there anyone other than Mr. Kostrinsky

25 who had access to the -- to the M data?

1 A Outside of the IT department, no.
2 Q All right. But at some point did you not learn that
3 there was some form of VPN access?
4 A Yes, I did.
5 Q Okay. And what was the VPN access to?
6 A That I do not know.
7 Q Okay. So you haven't been able to determine that as
8 of yet?
9 A I have not.
10 Q All right. Is it fair to say -- do you recall when
11 your deposition was taken, sir?
12 A Yes.
13 Q Okay. August 14th. You can look at the -- you can
14 look at the front page just like me. All right. Is it --
15 isn't it true that you only learned about the VPN access about
16 a half an hour before your deposition started?
17 A That is correct.
18 Q Okay. And that's because Mr. Peek informed you that
19 his firm had it; correct?
20 A That's correct.
21 Q Okay. And did he -- and he also informed you that
22 Glaser Weil had it; is that right?
23 A He mentioned that he believed they might.
24 Q Okay. And so since that point in time, since you
25 learned that, have you conducted any further investigation to

1 determine how that VPN access was used and what could be
2 accessed through it?

3 A I have.

4 Q Okay. And when did you do that?

5 A Approximately two to three weeks ago.

6 Q Okay. And what did you find?

7 A Well, if I may describe specifically my request
8 to --

9 Q Okay

10 A -- to the IT department --

11 Q You may.

12 A -- was to determine if the access had indeed been
13 set up, who had requested that access, and whether or not we
14 had any log files to indicate time/date of the access and to
15 what it was that they were given access to. There is a
16 recollection that VPN was set up for Glaser Weil, it was set
17 up for Holland & Hart. There are no log files, unfortunately,
18 from that time period that I could refer to, and the IT group
19 did not know what specifically they were given access to. Mr.
20 Kostrinsky was the one who had set that up.

21 Q Is it normal that there would be no log files for
22 that sort of access?

23 A As I had mentioned in my deposition, we -- we
24 routinely do change log files as they outgrow and need to be
25 culled. We do do that on a routine basis.

1 Q Okay. And that was done here?
2 A That was done.
3 Q All right. So no one had turned off the override on
4 the log files?
5 A Correct.
6 Q Okay. So you have no way now of going back and
7 ascertaining who was accessing what and when; correct?
8 A There's the --
9 Q Via that VPN network?
10 A There is the potential for us to revert back to our
11 backup tapes to determine whether or not we have valid backups
12 and whether or not data could be restored from that time
13 period.
14 Q Okay. But in fairness to you and to Her Honor, I
15 think you testified at your deposition that you also know that
16 the company's backup system has not -- had not been working
17 for a number of months.
18 A That is correct.
19 Q And so there are -- in many -- in many respects
20 there are no backup tapes is your belief; correct?
21 A I wouldn't -- I wouldn't characterize it that way.
22 There are backup tapes. What we do not know is how many of
23 those are valid versus are not valid and, therefore, do not
24 have data that can be retrieved.
25 Q All right. And when did the company learn -- well

1 strike that. Tell Her Honor how long the backup system has
2 not been working for Las Vegas Sands.

3 A My understanding is it's been some time that the
4 backup system hasn't been working as we had expected to -- to
5 work.

6 Q All right. When you say some time, is it prior to
7 October of 2010?

8 A I don't know that specifically.

9 Q Okay. When did the backup system -- have you
10 corrected the backup system now?

11 A We have.

12 Q All right. When was it corrected?

13 A Approximately three months ago.

14 Q Okay. So being September --

15 A Actually, sorry, probably closer to two months.

16 Q Okay. So July 1st of this year?

17 A To the best of my recollection that sounds about
18 right.

19 Q All right. And so you know that the backups were
20 working concerning the casino system; is that right?

21 A That's right.

22 Q Okay. But the backups weren't working for the
23 general corporate matters?

24 A If I'm allowed, can I explain?

25 Q You are allowed.

1 A We have various multitudes of systems, each one of
2 which gets backed up or is supposed to be backed up on a
3 regular basis. Some of those systems themselves apparently
4 were not being successfully backed up, others were. What we
5 do know is that the casino system platform, specifically the
6 I-series platform, was being successfully backed up.

7 Q Can you tell Her Honor what wasn't being
8 successfully backed up?

9 A I can't provide a complete list, but basically some
10 of the -- the surrounding corporate systems, including file
11 shares, were the ones that were not being successfully backed
12 up.

13 Q All right. And that files shares would include
14 things like DAV05; correct?

15 A Potentially. Again, to be clear, I have done no --
16 no analysis to determine what we have backups of and what we
17 do not.

18 Q As part of your search did you also find a file on
19 the DAV05 file share that was entitled Jacobs SEC?

20 A I have a recollection of that. I don't recall
21 specifically what was on the DAV05 server, but it did appear
22 on what I -- I had discovered.

23 Q All right. And you discovered it because it was
24 part of the files that Mr. Kostrinsky had access to; right?
25 That's how you uncovered it?

1 A Through that mechanism.

2 Q Okay. And was it your recollection that once you --

3 you found that file, you tried to determine who had access to

4 it; correct?

5 A Yes, that is my recollection.

6 Q All right. Now, let's go back to the DAV05 for a

7 minute, or the M data, strike that, which is on DAV05. On the

8 M data that's on DAV05, the file still reflected that Mr.

9 Kostrinsky had access to it; correct?

10 A That's correct.

11 Q Okay. Even though Mr. Kostrinsky had not worked at

12 the company for nearly eight months?

13 A Right.

14 Q Okay. So nobody -- nobody had removed him from that

15 file?

16 A That's right.

17 Q You also found this Jacobs SEC file when you were

18 looking for files that Mr. Kostrinsky had access to and you

19 found one; correct?

20 A Right.

21 Q And that file, however, both Mr. Kostrinsky and Ms.

22 Hyman had been removed from it; correct?

23 A I don't have that recollection that I would have

24 known that they were removed from it.

25 Q Okay. But they no longer had access to it.

1 A They did not show up as having had access to it.

2 Q Okay. Well, am I wrong -- maybe I'm wrong, and if
3 you -- I am -- I'll let you correct me, but the only -- the
4 way in which you found it was it was a file that Mr.
5 Kostrinsky had had access to because that's how you were
6 searching.

7 Q Well, again, to clarify, I was searching all of the
8 systems that Mr. Kostrinsky had access to looking for pieces
9 of information. That did not necessarily imply that Mr.
10 Kostrinsky had specific access to that file at any point in
11 time.

12 Q Okay. In any event, you looked at the amount of
13 data that was in that file; correct?

14 A I recall doing so.

15 Q All right. And I think you testified to us that
16 there was very little data in that file.

17 A I seem to recall that, yes.

18 Q And I asked -- do you recall me asking you whether
19 or not you could verify whether anyone had removed any data
20 from it? Do you recall that?

21 A I have that recollection.

22 Q And do you recall telling me that there was no way
23 in which you could determine whether data had been removed?

24 A I believe I mentioned I have no way of determining
25 whether data was removed without reverting back to the backup

1 files to understand what was actually on there. I could only
2 provide an accurate reflection of what today exists.

3 Q Okay. And you don't -- and, again, this is one of
4 those areas where -- this is one of the areas where the
5 backups generally were not working; correct?

6 A Again, I did not do that investigation to determine
7 if that is a valid statement.

8 Q Okay. You would have to do that yet?

9 A Correct.

10 Q Now, in addition to the VPN access, did any of the
11 lawyers have log-ins where they could come into, let's say,
12 onto the Las Vegas Sands property and log in through the
13 computer system?

14 A I would believe that they would have been given an
15 account to access the network because they were tied in with
16 the VPN accounts.

17 Q All right. And do you recall in your research
18 finding Mr. Peek as being one of the persons who could log
19 into the system.

20 A Yes.

21 Q Okay. And do you recall Mr. -- or an individual
22 named A. Sedlock also having the ability to log into the
23 system directly?

24 A I recall he showed up on -- on one of the file
25 directory listings. I did not specifically find out whether

1 or not he had VPN access.

2 Q Okay. What was the purpose of having them on the
3 directory listings? What does it show?

4 A That they would have permission to access that area.

5 Q And do you recall which areas you found that they
6 had access to, let's say with Mr. Peek?

7 A Off-hand I do not, no.

8 Q And the same would be true for Mr. Sedlock?

9 A Correct.

10 Q Now, is it also fair to say that as part of your
11 preparation to serve as the company's representative on this,
12 you did not have time to determine whether or not the
13 documents that were the M data -- and maybe -- maybe this is a
14 better way to go about it, so let me back up. In the M data,
15 which is listed as the Macau data on DAV05; correct?

16 A Uh-huh.

17 Q All right. That data, do you recall what it
18 consisted of?

19 A From what I recall they were Outlook files.

20 Q Outlook files?

21 A Yeah.

22 Q So it was emails?

23 A Yes.

24 Q Okay. Was there any of the data from the ghost
25 images in the Macau data?

1 A To be honest, I would have to refresh my
2 recollection. I'm not sure.

3 Q Okay.

4 A I do recall that somewhere there were these archive
5 files, zip files that had some information, but I don't
6 specifically recall if that was on that M data drive or not.

7 Q All right. Well, as part of your investigation into
8 this, could you tell Your Honor -- tell Her Honor how much
9 data, in other words size, was in this Macau data that had
10 been sitting on the Las Vegas Sands server?

11 A Okay. Now, I don't recall specifically, but I
12 believe it was around 50 to 60 gigabytes worth of data. But I
13 don't recall specifically.

14 Q 50 to 60 gigabytes?

15 A Yeah.

16 Q Okay. And it's your belief that those were emails?

17 A Yes.

18 Q And did you examine any of them?

19 A I did not.

20 Q And is it also fair to say that you don't know where
21 else that same data set might exist on the company servers
22 that other people might have access to?

23 A Other than the areas that I did my investigation
24 over, that would be a fair statement.

25 Q All right. And just so I make sure I understand

1 your question -- or your statement is the only areas that you
2 did investigation over were the areas that Mr. Kostrinsky
3 could have had access?

4 A Mr. Kostrinsky or there might have been a reference
5 that I picked up in one other document that might have caused
6 me to look at a different file share.

7 Q All right. But you didn't look at, for example, you
8 didn't look at any -- you didn't search for the same data set
9 or even a subset of this data set on things that Mr. Leven
10 would have had access to?

11 A I don't know how to answer that question, because
12 honestly I do not know what Mr. Leven has access to.

13 Q Fair enough. And the same would be true for Mr.
14 Adelson; correct?

15 A Correct. I do not know what they have access to.

16 Q Same would be true for Mr. Raphaelson?

17 A Correct.

18 Q Okay. And Ms. Hyman?

19 A Correct.

20 Q All right. Thank you. When you were told to find
21 the data -- or the data, where it was on Las Vegas Sands
22 server, these emails from Mr. Jacobs, how long did it take you
23 to find them when you wanted -- when you wanted to find them,
24 how long did it take you?

25 A A few days.

1 Q It wasn't an arduous process, is that fair?

2 A Actually, it -- it could have been. Part of the
3 reason why I was limiting the investigation scope based upon
4 what Mr. Kostrinsky had access to other information that I had
5 was because otherwise there would be a significant number of
6 systems and files that would need to be searched, which would
7 have taken considerably more time.

8 Q Right. So if you had not limited your search to
9 just the areas where Mr. Kostrinsky could have entered, it
10 would take you more time; is that right?

11 A It would take more time.

12 Q Okay. But since you knew Mr. Kostrinsky had access
13 to these emails, that was an easy place to look?

14 A Correct.

15 Q All right. Did you send out any emails, since you
16 were going to be the company's designee, did you sent out an
17 email to other executives asking them whether or not they had
18 access to this information?

19 A I did not.

20 Q And other than talking to some of the IT personnel,
21 you did not interview any of the company's other executives to
22 determine whether or not they had access to this data?

23 A I did have a conversation with Gayle Hyman before
24 the deposition, and subsequent to the deposition I have had
25 some conversations with others.

1 Q Okay. Well, let's -- let's talk about your
2 conversation with Ms. Hyman. She had access to the data?
3 A Not directly, no.
4 Q Okay. How did she -- she had it indirectly?
5 A She indicated that she was -- you know, she would be
6 in Mr. Kostrinsky's office if she was accessing anything.
7 Q All right. Did she indicate that she had accessed
8 it?
9 A She did not, no.
10 Q I'm sorry?
11 A She did not.
12 Q She did not. Did she say she did not, or did she
13 just not indicate?
14 A She did not recall.
15 Q Okay. Do you -- do you know whether or not any hard
16 copies of that data was ever printed off?
17 A Again, other than what's already been testified to
18 or is in various transcripts, I am not aware of anything.
19 Q All right. You said subsequent to your deposition
20 you have spoken to others?
21 A I have.
22 Q And who have you spoken to?
23 A I have talked to Rob Rubenstein.
24 Q All right.
25 A I have talked to Mike Leven.

1 Q All right. So you spoke to Rob Rubenstein?
2 A Yes.
3 Q And you spoke to Mr. Leven?
4 A Correct.
5 Q All right. And what did Mr. Rubenstein tell you?
6 A Mr. Rubenstein indicated he does not recall ever
7 having accessed any of the data or information.
8 Q Okay. Did he know where it was at?
9 A He understood Mr. Kostrinsky to have access to it.
10 Q All right. And did -- and so Mr. Rubenstein had
11 indicated to you that there was no -- he had no source of
12 access to it?
13 A Correct.
14 Q And then you said you spoke to Mr. Leven?
15 A Correct.
16 Q And Mr. Leven told you he similarly didn't have any
17 access to it?
18 A That would be correct.
19 Q And that's the extent of any additional
20 investigation you've done since your deposition?
21 A For the question around who had access to the
22 emails, yes.
23 Q You were also aware, are you not, that the data was
24 accessed by the O'Melveny & Myer law firm?
25 A That is my understanding.

1 Q Okay. And when did they access it?
2 A I cannot recall that.
3 Q And do you know what they did with it?
4 A I do not.
5 Q Do you know whether or not they ever produced it to
6 any governmental agency?
7 A I do not know the answer to that.
8 Q Do you know whether anyone has ever produced that
9 data to any governmental agency?
10 A I do not know the answer to that.
11 Q And I take it that despite you were the company's
12 representative, you didn't do any investigation to determine
13 that?
14 A Correct.
15 MR. BICE: Bear with me one moment, Your Honor.
16 THE COURT: Sure.
17 MR. BICE: I have nothing further at this time, Your
18 Honor.
19 THE COURT: Does anybody have any additional
20 questions they would like to inquire of Mr. Singh at this
21 time?
22 MR. OWENS: A brief moment, Your Honor, to confer?
23 THE COURT: Absolutely.
24 MR. OWENS: Nothing, Your Honor. Thank you very
25 much.

1 THE COURT: Mr. Singh, thank you very much for your
2 time. You may step down. You're welcome to stay in the
3 courtroom if you want, or go back to work.

4 THE WITNESS: Leave this?

5 THE COURT: Yeah, that's fine. Leave it there.

6 All right. Would the next item of business of those
7 items and witness I have identified be the playing of the
8 video deposition of Mr. Kostrinsky?

9 MR. PISANELLI: Very well, Your Honor. And so
10 you --

11 THE COURT: No, I'm just asking. That was a
12 question. There was a question mark at the end.

13 MR. BICE: Yes.

14 MR. PISANELLI: Yes.

15 THE COURT: Okay.

16 Can you go check next door and see if they're ready
17 for me before I start this?

18 THE MARSHAL: Yes, Judge.

19 THE COURT: Other than this, are you going to
20 suggest any other witnesses you want me to hear from? I know
21 Mr. Bice had previously mentioned Mr. Weissman. Are there any
22 others so that I can have other people thinking about the
23 issues as we are watching the video?

24 MR. BICE: It will depend upon what Mr. Weissman
25 says, but I don't think so.

1 THE COURT: Okay. All right. So then I would
2 request that you guys, which is team defendant, think about
3 how you will respond when I ask formally for that, additional
4 witnesses, and then depending upon what I rule, then we'll
5 see. If I decline to permit Mr. Weissman to be examined, are
6 there additional witnesses that the Sands entities, and I'm
7 using a group for convenience, not for any other reason, would
8 intend to call for purposes of this hearing? And this can be
9 a caucus moment while I walk next door and see how they're
10 doing.

11 (Court recessed at 2:05 p.m., until 2:16 p.m.)

12 THE COURT: Okay. Did you come up with an answer
13 for me?

14 MR. BRIAN: I think Mr. Lionel is going to address
15 the Court, Your Honor.

16 MR. MCCREA: Not on --

17 MR. BRIAN: Oh. As to whether we're calling anyone.
18 No, we're not, Your Honor.

19 THE COURT: Okay.

20 MR. BRIAN: I would say the only issue that I was
21 tempted to was the issue that I proffered to go into with Mr.
22 Peek, which Your Honor does not want to hear about. I was
23 going to address that briefly in closing, but those documents
24 are in the record, and if Your Honor thinks it's
25 inappropriate, you can admonish me then. But I don't think

1 there's a need to offer it. We've already put the documents
2 in the record.

3 THE COURT: Okay. So are we ready to play?

4 MR. PISANELLI: Yes, we are, Your Honor. And so you
5 know, this is a combined designation on both sides.

6 THE COURT: Lovely. I love it when people actually
7 communicate with each other and work things out.

8 MR. BICE: Your Honor.

9 THE COURT: Mr. Bice.

10 MR. BICE: Will you be offended --

11 THE COURT: No, I won't --

12 MR. BICE: -- if while this is playing --

13 THE COURT: -- be offended.

14 MR. BICE: -- I go out into the hall --

15 THE COURT: Goodbye.

16 MR. BICE: -- to attend to another matter? Thank
17 you.

18 THE COURT: And if you want to go straighten out the
19 people who are next door, they would love to have help.

20 MR. BICE: I am quite sure they would not want to
21 see me.

22 MR. BRIAN: What happened to the shared suffering we
23 talked about yesterday?

24 THE COURT: See, part of my life is I'm also the
25 presiding judge in the civil division. So when there is a

1 problem in another department, I am supposed to assist.
2 MR. BRIAN: No, I was talking about sharing the
3 suffering of watching the video, Your Honor.
4 THE COURT: Oh.
5 MR. PISANELLI: Can I go supervise him out there?
6 THE COURT: No, one of you -- well, Ms. Spinelli is
7 here. Ms. Spinelli is low man on the totem pole.
8 Can someone please hit play so we can watch the
9 designated portions of the videotape deposition of Mr.
10 Kostrinsky.
11 (Video Deposition of MICHAEL KOSTRINSKY played,
12 not transcribed)
13 THE COURT: Can we push "Stop" for a minute, or for
14 10 minutes.
15 (Court recessed at 2:53 p.m., until 3:16 p.m.)
16 THE COURT: Is anyone looking for some Steven Jacobs
17 transcripts?
18 THE COURT RECORDER: Me.
19 THE COURT: They were delivered to me in
20 Department 10.
21 Okay. Ready to push "Play" again?
22 (Playing of MICHAEL KOSTRINSKY deposition continued,
23 not transcribed)
24 THE COURT: Does that conclude the playing of the
25 agreed portions of the videotaped deposition of Mr.

1 Kostrinsky?

2 MR. PISANELLI: Yes, Your Honor.

3 THE COURT: Is there any additional evidence that
4 Mr. Jacobs would like the Court to consider?

5 MR. BICE: Yes, Your Honor. As we'd indicated
6 yesterday, we would like to call Mr. Weissman.

7 THE COURT: Okay. Can you tell me on what basis you
8 believe Mr. Weissman's testimony would be of assistance to the
9 Court in making a determination as to whether there have been
10 misrepresentations that would be of a sanctionable nature made
11 to the Court that have so multiplied these proceedings that I
12 should sanction him or his client?

13 MR. BICE: As for sanctioning him, I don't believe
14 so. But as for sanctioning his client, yes. And I believe --

15 THE COURT: And what do you think that is?

16 MR. BICE: And I believe that the evidence is Mr.
17 Weissman I believe was present in the court when the
18 representations were made about the emails and the documents
19 from Mr. Jacobs not being on any servers at the Las Vegas
20 Sands.

21 THE COURT: And you're referring to the hearing on
22 May 24th?

23 MR. BICE: I am referring to that hearing.

24 THE COURT: Just wanted to make sure I was clear.

25 MR. BICE: I believe that -- and only Mr. Weissman

1 can tell us whether or not he knew that that wasn't true at
2 the time it was made and whether he on behalf of Sands China
3 chose not to speak up; because I think it is beyond question
4 at this point, I guess that's my view, anyway, it's beyond
5 question that it was untruthful and it was designed to mislead
6 the Court and it was designed to try and get the Court to hold
7 an evidentiary hearing so that the defendants would never have
8 to produce this evidence.

9 Additionally, I believe that Mr. Weissman was also
10 present in the court on the 28th of June when the Court made
11 statements confirming the fact that no one had ever disclosed
12 this to the Court. And the fact is that no one said at that
13 point in time, contrary to the defense that's now being
14 offered, oh, wait, Your Honor, we really did disclose this to
15 you, you've just forgotten.

16 Those are the bases -- we also believe that Mr.
17 Weissman also has knowledge, Your Honor, about the
18 communications with the Macau Government that they are now
19 claiming that they were relying upon in their decision not to
20 disclose to the Court. We believe that that is also relevant.
21 Because you will recall, Your Honor, from their brief what
22 they have told you is they had a discussion with the Macau
23 Government on I believe it was either the 28th or the 29th of
24 May, and they suddenly, quote, to use their words, "got
25 comfortable" that they could disclose the existence of this

1 evidence in the United States.

2 Our belief, Your Honor, is that they, quote,
3 unquote, "got comfortable" because that's the first time the
4 ever told the Macau government that documents were already
5 over here and in their possession and had been for two years.
6 And they have advanced this defense to you and the story to
7 you that we believe is not accurate, it's not being candid
8 with the Court. And we have tried to subpoena multiple
9 witnesses to be here, and they have objected to that.

10 THE COURT: And I've sustained almost all of their
11 objections because of the limited nature of the hearing that
12 I've scheduled.

13 MR. BICE: I understand. And that is the basis by
14 which we believe that Mr. Weissman possesses knowledge of
15 those facts.

16 THE COURT: Okay. Does anyone want to respond?

17 MR. LIONEL: I will, Your Honor.

18 THE COURT: Mr. Lionel.

19 MR. LIONEL: I feel like a potted plant.

20 MR. BICE: I'll get out of your way, Mr. Lionel.

21 MR. LIONEL: Thank you.

22 As Your Honor said, this is an unusual proceeding.
23 And it really is. It's certainly unusual to have attorneys
24 testify, and particularly ask an attorney, well, were you
25 present and you heard something and you didn't get up later

1 and tell the Judge that that was not accurate or proper. I
2 think Club Vista, Your Honor, is really pertinent here. It
3 couldn't be more pertinent. Club Vista --

4 THE COURT: With respect to Mr. Weissman?

5 MR. LIONEL: By Mr. Weissman, yes, Your Honor.

6 THE COURT: Okay.

7 MR. LIONEL: Club Vista says you do not -- we should
8 not have attorneys come and testify. And it says in there
9 that unless they can demonstrate, prove the Shelton framework,
10 that they should not be permitted to testify. And the Shelton
11 framework says, number one, there must be no other means
12 existing to bring the evidence in, to show that evidence. We
13 think clearly that is not true here. They say it must be
14 crucial to preparation of the case. Now, I don't think it's
15 crucial to preparation of the case to say that Mr. Weissman
16 was present when something was said and they didn't tell that
17 to Your Honor. This matter now is whether or not there's been
18 a lack of candor and a waste of time, and all the evidence was
19 for that purpose. It's not in connection with the substantive
20 portion of the case, certainly not Mr. Weissman's testimony,
21 as has been proffered here.

22 Now, Club Vista is a very interesting case, and it
23 says a number of things, Your Honor, that I think are
24 significant here and relevant. The case points out that
25 courts must protect an attorney's work product as mental

1 impressions, conclusions, opinions, and legal theories of
2 counsel concerning litigation. Those matters, the court says,
3 are not discoverable.

4 Now, there's little doubt in my mind that if Mr.
5 Weissman testifies, that you'll hear from Mr. McCrea. Maybe
6 late in the day, but you will hear from him repeatedly, Your
7 Honor, because all these matters deal with privilege. And
8 part of the Shelton case, Your Honor, is that it should not be
9 privileged material.

10 Now, it's true, Your Honor may say, well, in that
11 we're talking a particular fact and I may permit that and I
12 may say it may not come within the privilege. In that case --
13 and it's very interesting that in the Vista case, in Club
14 Vista it say, "Such depositions could provide a back-door
15 method for attorneys to glean privileged information about an
16 opponent's legal strategy from the opposing attorney's
17 awareness of various documents." There's also that danger, and
18 that is another reason why attorneys and Mr. Weissman should
19 not be called as a witness.

20 Now, we're blindsided, Your Honor. Up until I
21 believe it was yesterday we did not hear -- or it may have
22 been the afternoon before, they want to take Mr. Weissman's
23 deposition. We didn't have the remotest idea that that would
24 be -- that he would be asked to testify. Your Honor indicated
25 initially that you wanted to hear from those people who had

1 made representations from you and that you would -- you would
2 question these people, you say, directly and to a point. Mr.
3 Weissman was clearly not included in that. So there was no
4 prior notice and no proffer was made until a few moments
5 asked. You asked counsel -- you said to counsel the other
6 day, if you're going to call Mr. Weissman I expect a proffer.
7 And here we get a proffer at the last minute. Therefore,
8 we've had no way -- if a lawyer's going to testify, he needs
9 to be prepared, he needs preparation. It has not happened
10 here. We have really been blindsided. We feel, Your Honor,
11 Mr. Weissman should not be called to testify.

12 THE COURT: Thank you, Mr. Lionel.

13 Anything else, Mr. Bice?

14 MR. LIONEL: Thank you, Your Honor.

15 MR. BICE: Yes, Your Honor. I really don't want to
16 know and I don't think we've asked anybody for their mental
17 impressions, and we certainly don't intend to ask Mr. Weissman
18 about his mental impressions. We sent a letter -- and perhaps
19 Mr. Lionel wasn't aware of it. We had sent a letter prior to
20 this hearing outlining the attorneys that we believed needed
21 to be present in the courtroom, just like we did on Mr. Ma,
22 Ms. Glaser, Mr. Jones, et cetera, et cetera, and we had told
23 them that included Mr. Weissman. So, contrary to the claim,
24 we've always taken this position.

25 You know, Your Honor, I've already shown this slide

1 once, and that was on the May 24 hearing. It was Mr. Peek and
2 Mr. Weissman who were present. And, as Your Honor can recall,
3 there were --

4 THE COURT: They said they didn't have any Jacobs
5 stuff on the server.

6 MR. BICE: That is exactly what they said.

7 THE COURT: I know. I read it.

8 MR. BICE: All right. And Mr. Weissman was in this
9 courtroom. And not only that, he then made comments to the
10 Court, says in terms of process about how they were going to
11 go through this very elaborate, lengthy, and costly process to
12 review, the very process that we've been now going through,
13 because they decided to not tell the truth.

14 So the question is did Mr. Weissman know that those
15 documents were all on the Las Vegas Sands server and when did
16 he know that, when he was taking the position with me in
17 2.34 conferences and taking the position with the Court that
18 they didn't have to produce them because they were over in
19 Macau. That's what we want to know, just like we want to know
20 whether or not Mr. Weissman himself had direct communications
21 with the Macau Government.

22 They've now offered affidavits to you, so they
23 obviously don't think this is privileged. They submitted an
24 affidavit from Mr. Fleming. Interestingly, he had no personal
25 knowledge on virtually anything he said, because he admits he

1 wasn't there, and then they also in their brief -- they're the
2 ones who have put this out.

3 Yeah. If you would like to see the email where we
4 identified the list of attorneys --

5 THE COURT: I'm not very worried about that.

6 MR. BICE: Your Honor, they're the ones who
7 submitted the brief to this Court telling you all about this
8 Macau excuse that they offered up and how they only got
9 comfortable, supposedly on May the 28th or 29th, and we
10 believe that Mr. Weissman has personal, firsthand knowledge of
11 those facts. If he gets up on the stand and he says he
12 doesn't, well, then that's obviously a wholly different issue.

13 The same is true for this other issue, Your Honor,
14 because we've got a footnote in their brief, Footnote Number 8
15 it is, where they reveal something, and again that they reveal
16 only the things that they want to reveal, where they say that
17 they were informed that after July 19 O'Melveny produced to
18 the United States Government additional documents. Are these
19 the same documents they were telling this Court that they
20 couldn't tell you about? We would like to know that. If they
21 would like to offer up some of their witnesses -- some of
22 their executives with actual knowledge about that, today was
23 the time to do that. And they didn't.

24 THE COURT: I haven't asked them for their witnesses
25 yet. They may still tell me somebody.

1 MR. BICE: Okay. But that's the reason why we
2 believe that Mr. Weissman should have to answer those
3 questions, Your Honor.

4 THE COURT: Okay. I do not think having Mr.
5 Weissman testify will help to assist me in getting to the
6 point that I need to get, which is whether representations or
7 misrepresentations were made to the Court that so multiplied
8 the proceedings that it would be sanctionable under EDCR 7.60.
9 So for that reason Mr. Weissman will not testify today.

10 That does not mean that at some point in time upon
11 appropriate motion practice I might not consider that, Mr.
12 Bice. But at this point, for purposes of this proceeding, I'm
13 not going to permit it.

14 So are there any other pieces of information that
15 the plaintiff would like me to consider as part of this
16 hearing?

17 MR. BICE: No.

18 THE COURT: Okay. Now, does the defense team have
19 any pieces of information or witnesses that you would like me
20 to consider? Are you a lawyer today, or a witness, Mr. Peek?

21 MR. PEEK: Well, Your Honor, I'd like to step back
22 into -- I think I'm still the lawyer, but I guess I should let
23 Mr. Lionel [inaudible].

24 THE COURT: Okay. Anything else?

25 MR. BRIAN: The only piece of information, Your

1 Honor, is -- I think that we referenced it in the brief -- the
2 company in Macau received a letter on August 14th from the
3 Macau authorities which was originally in Portuguese. We
4 understood originally it was confidential. Our client had a
5 conversation, was able to persuade them to make it not
6 confidential for the purpose of giving it to the Court. We've
7 got a translation into English. It's not -- we don't have the
8 -- we don't have the actual certification for the translation.
9 I don't know if Your Honor wants to see it. If it goes to the
10 point of whether this is a legit Act, which we obviously think
11 it is, we can offer it to Your Honor for whatever purpose you
12 want, or we can give it to you later when we get to briefing
13 the Macau statute. I would defer to the Court.

14 THE COURT: Have you provided a copy of the
15 translated communication to the plaintiffs?

16 MR. BRIAN: Not yet, Your Honor.

17 THE COURT: Okay. Then I don't want it.

18 All right. Is there any other information the
19 defendants would like me to consider for purposes of this
20 hearing?

21 MR. BRIAN: No, Your Honor.

22 THE COURT: All right. Would anyone like to make an
23 argument? Because I'm not going to argue. I'm the fact
24 finder. I was just trying to get information out of people.

25 MR. BICE: It is Your Honor's hearing. I will take

1 instructions from Her Honor about who you would like to hear
2 from first. Since we have been accused of hijack Your Honor's
3 hearing, I will let Your Honor decide who it is that you'd
4 like --

5 THE COURT: I'd rather have you go first.

6 MR. BICE: All right.

7 THE COURT: But you don't get to go twice. You only
8 get to go once. That means Sands gets to wrap up.

9 MR. BICE: Understood, Your Honor.

10 THE COURT: Okay.

11 MR. PEEK: Your Honor, are we going to go past 5:00
12 today or not?

13 THE COURT: I sure hope not. It's 4:28.

14 MR. PEEK: I was just wondering whether --

15 THE COURT: But then I don't know. Mr. Bice and Mr.
16 Pisanelli have been able to go for 45 minutes on unopposed
17 motions before.

18 MR. PEEK: I remember you saying that once or twice
19 Your Honor, so I just was wondering whether we're going to be
20 heard today.

21 THE COURT: I'm going to stop at 5:00, because I'm a
22 responsible public official who tries very hard not to incur
23 overtime.

24 MR. PEEK: Thank you, Your Honor.

25 MR. BICE: Your Honor, I will try and use 15

1 minutes, and they can have the same amount of time I will
2 have.

3 Your Honor, despite what I think is the defendants'
4 apparent belief, we're actually not happy to be here today. I
5 don't like to have to ask attorneys questions on the stand, I
6 don't like to have to have attorneys sworn, and to have to
7 cross-examine them. We did not want to have this proceeding.
8 This is a making of the conduct of the defendants and their
9 attorneys. It's not only the conduct that was occurring we
10 now know throughout 2010 or the end of 2010 and all of 2011
11 and most of this year, it's that which has gone up right and
12 through this very proceeding. It is this strategy of simply
13 deny, deny, deny.

14 I had hoped -- and I was wrong. I had hoped that
15 when it finally came out that we were just going to get --
16 someone was just going to step up to the Court and say, we
17 were wrong, we shouldn't have done this, you're right, we were
18 not telling you the truth. But that's not what they decided
19 to do. There is an old adage, Your Honor, that when you're in
20 a hole sometimes you should stop digging. For whatever
21 reason, I don't know what the strategy is, but whatever the
22 reason is, the Sands and Sands China, along with their
23 counsel, went and purchased a backhoe and brought it into the
24 court and started digging at an even greater pace than they
25 were before.

1 I don't want this to sound -- and I'm struggling
2 with my words a little bit, Your Honor, because this really is
3 -- I actually am -- I'm angry. I'm angry at Mr. Peek for
4 several things. I'm angry at what he tried to do to my
5 client, I'm angered at what he tried to do to me by lying to
6 me. But I'm really angry at him that he's put us through this
7 process. I'm angry his clients are putting us through this
8 process. They know exactly what they were doing, and they
9 knew exactly why they were doing it.

10 I was here in front of you about a year ago on what
11 some people considered to be a really rather silly case. And
12 it was kind of silly in some regards. If you'll recall, I was
13 in front of you --

14 THE COURT: It wasn't a year ago, it was about
15 10 months ago.

16 MR. BICE: I was in front of you on a -- you know
17 what, Your Honor, I think maybe it was, and that was a year
18 ago, an election case. Remember that silly case involving one
19 vote?

20 THE COURT: It wasn't silly, Mr. Bice.

21 MR. BICE: Your Honor, you're right. I know -- and
22 I use that terminology because that's how it was viewed by
23 some people. But it wasn't silly, because what was going on
24 in that case, in my view -- and, as you know, Your Honor, I
25 was never going to get paid on that case unless you awarded me

1 fees, and you declined to do that because of the statute. But
2 the principle in that case was very, very important, because
3 the very process by which we function, by which our rights --
4 in that case it was the rights of a voter were being decided,
5 were being manipulated. The process was under attack, and
6 someone had to do something about it. And, yes, it was a
7 small municipal election, but the public's rights were being
8 cheated by the conduct that was occurring in that case.

9 And, unfortunately, Your Honor, the integrity of the
10 judicial process is under assault in this case, and it is
11 under assault by the conduct that occurred in this case. It
12 is just as offensive --

13 (Pause in the proceedings)

14 THE COURT: You may continue, Mr. Bice.

15 MR. BICE: Thank you, Your Honor.

16 The process by which our -- when I say "our," the
17 public's rights are decided, the legal process, is being
18 defied here by what was going on and what was going on in this
19 case. I've heard my colleague Mr. Brian try and characterize
20 this as poor judgment, as a lawyer making a bad judgment call
21 perhaps. That is, of course, unless one wants to assume one
22 of their defenses, and that is, well, we really told the Court
23 and we really told you, just you and the Court weren't smart
24 enough to recognize what we were telling you.

25 But set that issue aside for a moment. I recognize,

1 just like you recognize and every lawyer in this room
2 recognizes, that every day lawyers make judgment calls, every
3 one of us. I made a judgment call the other day that you
4 didn't like, and you told me so in terms of my questioning of
5 Mr. Peek. We all make judgment calls, Your Honor. What was
6 going on in this case was not a judgment call, and, quite
7 frankly, it's an insult to the Court to suggest that it was a
8 judgment call. Telling the Court things that counsel knew
9 were untruthful so as to try and better their position in the
10 case is not a judgment call. It never is. And the day that
11 the courts start recognizing it and characterizing it as a
12 judgment call the legitimacy of this process is over with.

13 I'd like you to think for a moment, Your Honor, if
14 you would, about the message. I take no glee whatsoever,
15 despite my years of -- and Mr. Peek and I have had cases where
16 we have been at each other's throats. I take absolutely no
17 pleasure in being here on this despite his feelings otherwise
18 perhaps. But what went on here is unacceptable, and he knew
19 it. He knew it from the beginning it was unacceptable. When
20 he was looking through those emails he didn't want to possess
21 those emails, because he didn't want to have his fingerprints
22 on them. He left them in Mr. Kostrinsky's office. He didn't
23 think that the Macau Data Privacy Act allowed him to review
24 them, allowed him to print them, allowed him unquestionably to
25 take notes about them, but as long as he didn't possess a

1 physical copy he was A-okay. He knew better than that.

2 And despite his many, many years of successful
3 practice and that of his colleagues and that of Ms. Glaser, as
4 well, we should all be so lucky to be so successful as they
5 are. But I ask this Court to think about what are the
6 consequences if the Court either accepts this behavior, finds
7 some way to look the other way about it, finds some way to
8 rationalize it under our laws and under our rules. There are
9 really three constituents here I would like the Court to think
10 about.

11 The first is the public at large. What is the
12 message that you are telling the people who have in our system
13 here in Nevada voted for you, put you in this position to
14 safeguard the rule of law? What is the message that they've
15 gotten? That this is the way that the system operates? This
16 is what they can expect in their judicial process under the
17 rule of law? That's what the defendants would have you do, is
18 to tell everyone, this is okay, this is how the system works,
19 don't you rubes just understand it, don't you little people
20 understand that when the billionaires of the world want to do
21 things they get to do them.

22 I ask the Court to consider what's the message that
23 you send to litigants themselves, whether it's Mr. Jacobs or
24 the defendants. The message that you send to litigants are
25 you can't get a fair resolution, your only option is to cheat

1 and rise -- not rise, lower yourself to the level of your
2 opponent because if you don't you're going to get run over.
3 And we all know where that spirals down to, Your Honor.
4 That's exactly what happens when this conduct is permitted.
5 It encourages litigants themselves to recognize, I can get a
6 legitimate resolution if I comply with the law, if I do the
7 right thing, because my opponent won't, and when my opponent
8 gets caught the judicial for whatever reason looks the other
9 way about it.

10 And then lastly, Your Honor, I would ask you to
11 think about what is the message to us, to lawyers. The
12 message is, if this conduct is permitted, well, that's how you
13 get clients because that's the only way you can win, if you're
14 not going to lower yourself to that level, if you're not going
15 to do these sorts of things, if you're not going to employ
16 these sorts of devices, you're not serving your clients'
17 interests because this is what big-time litigators do, this is
18 how they behave and so if you don't behave that way you're not
19 doing your client's job, you're not representing your client
20 appropriately. That is exactly the message that is going to
21 be sent if this Court does not deal with this and deal with it
22 decisively and appropriately.

23 I would ask the Court to also consider the defense
24 itself that has been put forward here in both the briefs and
25 the presentation to the Court by the defendants.

1 THE COURT: You have five minutes.

2 MR. BICE: I would tell -- I would submit to Your
3 Honor the defense itself is a lack of candor. They have come
4 into the court with the story, and asked you to believe it,
5 that, well, we really thought we told you about this, Your
6 Honor, we're sorry, we searched through the haystack and we
7 found the needle and that needle was on June 9. And you're
8 supposed to believe that that's what happened here.

9 Your Honor, if that is candor for the Court, and if
10 that is what has become of our system, then we need to scrap
11 it, and we need to have a new one, because it will not work.
12 Litigants will not accept it, they will not accept the
13 legitimacy of the Court's rulings if those -- if that is the
14 conduct that's going to be tolerated. The public won't accept
15 it. The public will never have any respect for judicial
16 resolutions if that's the sort of conduct that is allowed to
17 occur as part of a judicial resolution of a case.

18 Much has been made -- not much. I should take that
19 back. Some has been made, the Court's even made a comment
20 about it, that we haven't filed a motion to compel. That's
21 right, we haven't. And I didn't on purpose. A motion to
22 compel would have become the excuse du jour for the defendants
23 to try and characterize this as an ordinary discovery dispute.
24 It is not an ordinary discovery dispute. This was outright
25 lying to the Court and lying to us about these documents, and

1 they know it. And to come into the Court and to ask you to
2 just look the other way or accept some argument I think
3 reinforces the fact of the defendants' attitude in this case.
4 They don't get it, and the Court's got to let them know how to
5 get it and how to figure it out.

6 I don't want to spend any time really arguing about
7 the law. We have briefed the law to you about an attorney's
8 duty of candor, as well as that of the litigant; because it's
9 rather obvious that the litigant was directing this activity.
10 Even though they don't -- the litigant doesn't want to admit
11 it, we do know, for example, even by Mr. Peek's own account,
12 the litigant had concealed from him multiple data sources that
13 had been brought into the States.

14 And in that regard, Your Honor, I ask you simply to
15 consider -- you had raised the prospect of an adverse
16 inference, and the defendants make note of the Nevada statute
17 that says that adverse inferences can't be drawn from the
18 proper invocation of attorney-client privileges. I tend to
19 agree with Your Honor, since I did argue the Francis-Wynn
20 case, that this is more akin to a Fifth Amendment invocation
21 of the privilege. But -- of a Fifth Amendment privilege.
22 Nonetheless, I really think that the proper legal analysis for
23 the adverse inference question is the presumptions that are
24 imposed under 47.250(3) and (4). As Your Honor knows, we gave
25 them every opportunity, we in fact tried to bring their

1 executives into the courtroom, and I think Mr. Brian confirmed
2 this fact for us. Because you'll recall yesterday he stood up
3 in front of you and he said, a lot of this information isn't
4 privileged, Your Honor, they're just not asking the right
5 people. They're not offering -- you know, we can provide all
6 these facts by way of interrogatory answer, I think is what he
7 said. Well, it doesn't shock Your Honor, I'm sure, that I'm
8 not interested in the defendants' spin from themselves or
9 their counsel by way of now documents that they would file
10 with the Court, whether they're interrogatory answers or more
11 briefs characterizing -- you'd used the word "spin," I
12 actually think what's going on in this proceeding is an insult
13 to people that do spin.

14 If you look at the statute, they are telling you
15 they have this evidence, but they have declined to offer it to
16 you. And under the law it's an actual presumption, not an
17 inference under Nevada law, it's a presumption that the
18 evidence is adverse to them. It's a presumption that evidence
19 wilfully withheld is adverse to them. It is a presumption
20 under Nevada law that evidence that is superior to inferior
21 evidence is presumed adverse to you. Those two presumptions
22 in operation together in light of the defendants' refusal to
23 provide information that they claim exists in a nonprivileged
24 format and instead have elected to bring only lawyers and then
25 invoke the privilege so as to avoid the truth coming out has

1 consequences for them. That evidence is within their
2 possession, custody, and control. They opposed every effort
3 by us to use discovery means to obtain it. The Court has to
4 presume that it is adverse to them. The Court has to presume
5 that they were concealing these facts from us.

6 Your Honor, we just briefly cited to you also the
7 law about what is the sanction that should be appropriate.
8 They have submitted a brief to you that I will characterize as
9 they ask you for a slap on the wrist. If the Court were to
10 accept their premise, the only thing that will happen is Mr.
11 Adelson and his company will get a gigantic grin on their
12 face. Mr. Adelson could write a check for tens of millions of
13 dollars, and it isn't even going to be a blip on his radar
14 screen. It's the suggestion that you ought to just impose a
15 small fine here, tell everybody, hey, good job. That's a big
16 round of applause. It'll be congratulations time. We ask the
17 Court not to do that.

18 I've taken up my 15 minutes. Thank you, Your Honor.

19 THE COURT: Thank you.

20 Mr. Lionel, you may.

21 MR. LIONEL: Your Honor, I'm going to be quite
22 brief, and I'm not going to argue. I'm behind the third on
23 this case, and I assure Your Honor since I got into it about
24 nine days ago or so I've spent a lot of time. But, as I say,
25 I won't argue, but Mr. Brian will make a formal argument, Your

1 Honor. But I will be brief.

2 The lawyers in this case, and I did not know any of
3 the California lawyers in this case except for Patty, they do
4 take this matter seriously. They really do, Your Honor. They
5 have worked hours at my office or at night. And, of course, I
6 know Patty, and I spoke to her a number of times, and she does
7 take it very seriously.

8 As Your Honor said, this is a small community.
9 That's true. And publicity about this case has not been good.
10 And if Your Honor would find against our clients, against the
11 defendants and any of the lawyers, that would be devastating,
12 Your Honor. You take someone like Mr. Peek -- and I have
13 litigated against him -- and he's been practicing he said for
14 40 years.

15 THE COURT: Not quite as long as you, Mr. Lionel.

16 MR. LIONEL: Not as long as --

17 THE COURT: Not quite as long as you.

18 MR. LIONEL: Not as long as me. And I don't know
19 exactly how many years Patty has, but I remember the winter of
20 1980 when she and I were in New York representing Mr.
21 Kerkorian in an antitrust case and taking double track
22 depositions, so assume that's more than 40 years, but less
23 than me. And it would be devastating, Your Honor, I really
24 mean that.

25 Now, Mr. McCrea has made objections on privilege.

1 And, of course, he has a right to do that. And we must not
2 forget that there is an SEC investigation, there's a
3 Department of Justice investigation, there's a Gaming
4 investigation, and there's a Macau investigation because of
5 problems which --

6 THE COURT: And a Hong Kong Securities
7 investigation.

8 MR. LIONEL: And there we are, Your Honor. And you
9 can understand why privilege has been repeatedly taken in this
10 case. And I think the record in this case shows the
11 legitimacy of concerns about the Macau Data Privacy Act. It
12 is an Act that apparently has been difficult to get arms
13 around, but it is the reason why we are in court today. If
14 there was no Macau Data Privacy Act, I don't believe we would
15 be in court today.

16 And the delay that Your Honor was concerned about
17 is, of course, as a result of that Act. If there wasn't that
18 Act, there would not have been the delay, though I will say
19 from a legal standpoint to the extent that they were caused by
20 the delay, they are not the vexatious cause or unreasonable
21 cause that are referred to in District Court Rule 7.60 under
22 which this proceeding was brought.

23 And one of the final things I want to say, Your
24 Honor, in my view -- and I'm saying it as my thought and I
25 don't intend it as an argument, but what I had seen and

1 knowing the people involved, that there was -- that the
2 lawyers here do not make knowingly false statements. They had
3 no reason to do it. They're honorable lawyers, and they did
4 what they felt they had to do legally and properly. If the
5 Court does disagree, we have filed a brief with respect to
6 penalties or sanctions which Your Honor had requested. And
7 even though Counsel says it's a slap on the wrist, we think it
8 is a well-done brief for the Court.

9 Thank you very much, Your Honor, for your
10 indulgence.

11 THE COURT: Thank you, Mr. Lionel.
12 Mr. Brian.

13 MR. PEEK: Your Honor, I want to say something.

14 THE COURT: Want to let Mr. Brian go first, or do
15 you want to go now?

16 MR. PEEK: I want to go now, Your Honor.

17 THE COURT: Okay. Mr. Brian, why don't you sit
18 down. We'll let Mr. Peek talk for a minute.

19 MR. PEEK: Your Honor, this has been a very painful
20 proceeding for me. I know from the Court's remarks that I've
21 disappointed you, and for that I'm sorry. This has been an
22 embarrassment to me. I'm sure even an embarrassment to the
23 Court to have to do this, and for that I'm sorry. My
24 reputation and my credibility are more important to me than
25 anything other than my own children. I've worked hard to

1 maintain that reputation in a very long career that now seems
2 to have been placed in jeopardy by this Court's proceeding.

3 As I said to you from the witness stand under oath,
4 and to Mr. Bice in my cross-examination, that I went as far as
5 I thought I could go to meet my obligations to this Court and
6 to balance those obligations to the Court to protect the
7 interests of my client under the Macau Data Privacy Act. That
8 Act is -- was and is real. The administrative body that
9 administers that Act, the Office of Personal Data Protection,
10 is real. If I made a mistake in that balance, I'm sorry. I
11 hope to continue, as I have for many years, appearing in front
12 of this Court on a regular basis. I'd certainly never done so
13 as a witness, and I hope never again to do so as a witness.

14 I've known Your Honor for over 20 years. Yes, I
15 have practiced 40 years, longer than anybody else here, but
16 certainly not as long as Mr. Lionel. But I've known you as a
17 colleague in the bar and as a judge, and I respect this Court
18 very much. And I'm sorry.

19 THE COURT: Thank you, Mr. Peek.

20 Mr. Brian.

21 MR. BRIAN: I had prepared some longer remarks which
22 I won't give, Your Honor.

23 I guess I want to start by responding to your
24 comment this morning that you don't think I've understood the
25 seriousness of this. The Court doesn't know me. I haven't

1 been here long enough. I hope I'll earn your trust and your
2 respect so that you will understand how seriously I take this
3 proceeding, the ethical standards of lawyers, and the court
4 proceedings. Judge before whom I practice regularly I think
5 would tell you that, while I'm a forceful advocate, I take
6 those obligations very, very seriously.

7 I don't have time to go through everything. Mr.
8 Peek actually stole a little bit of what I was going to say,
9 because I think what happened here is the lawyers and the
10 clients were put in a dilemma. When Mr. Jacobs said he was
11 going to file a lawsuit in the summer of 2010 Mr. Kostrinsky
12 and the Las Vegas Sands took steps to transfer his electronic
13 data to the United States in anticipation of the lawsuit. The
14 following few months later there's an SEC subpoena, and there
15 are steps taken to gather documents in response to that.

16 The world changes in the time period between April,
17 May, and June before the hearings, the key hearings in front
18 of Your Honor on June 9th and July 19th. Now, they have --
19 and I will use the word -- they have a different spin, we have
20 a different interpretation of what happened, which was
21 lightbulbs went off and people understood that this is a real
22 statute in Macau that has to be dealt with. That put Mr.
23 Peek, Ms. Glaser, Mr. Jones, and the other lawyers and the
24 clients in a dilemma. That's no excuse for lying, Your Honor.
25 We get that. We get that. But that's the test. And I think

1 the test -- it's not just a question of whether there was bad
2 judgment or other mistakes were made, but the question here is
3 -- it's almost as if this is a perjury case -- did people
4 knowingly, wilfully lie to Your Honor. That's the question.
5 And so when I stand here and I'm asked by my client to put
6 forth a defense, it's not because we don't get it, it's
7 because we do get it. We do get it. The mere proceeding
8 itself has caused incredible stigma and impact on Mr. Peek and
9 some of the other individuals and I would say the clients, as
10 well. Yes, Mr. Adelson is a wealthy man. Yes, the companies
11 do well. But this proceeding -- and I'm not faulting Your
12 Honor for having it. I'm not. But it's an extraordinary
13 proceeding to have lawyers testify under oath. That itself is
14 a sanction.

15 And so when Mr. Peek -- you asked the question, it
16 was -- you asked the very question that I had written down to
17 ask Mr. Peek, what did you mean when you said, I went as far
18 as I could go. And his testimony I thought was forthright, it
19 was honest. He was trying to balance his obligation to his
20 client under the Macau law to his obligation to the court
21 system and Your Honor, and he struck the balance as best he
22 could.

23 Ms. Glaser, on the hearing when she made comments
24 about the documents, when you look at those comments, there is
25 a line that I think Your Honor has to measure, did she step

1 over the line or did she go up to what was -- something that
2 was literally true and therefore would not constitute in
3 effect perjury because of the bind she was in. Lawyers had
4 reviewed documents in May. Mr. Jones told you that he had
5 stopped reviewing them because of the bind that they were in.
6 And what happened was, and maybe it was the unfortunate
7 conflation of the stay and the meet and confer process and the
8 Rule 16 hadn't completed, the process that would normally have
9 ensued hadn't done it.

10 Now, none of that, none of that I guess explains
11 away Your Honor's reaction. I understand the impression Your
12 Honor got. I understand that. But the question is is -- now
13 is what to do about it. And I would suggest, Your Honor, that
14 the defendants and the lawyers have fully understood what Your
15 Honor's concerns are. This is a tough, tough statute. The
16 company is under investigation as a result of having disclosed
17 that. I guess we maybe should put that slide up, if we could,
18 Mr. Nichols. Both companies -- maybe the second one. Both
19 companies, Your Honor, have had to publicly disclose the
20 investigation resulting from this, so you had two questions,
21 actually, had the Court wasted its time -- and I think the
22 answer to that is no, the statute is a real, real statute, and
23 we're going to have to deal with it. And you've asked for
24 briefing, and when we're done with this I'm going to speak
25 with Mr. Bice and Mr. Pisanelli and Ms. Spinelli and talk

1 about setting up that schedule, because it's going to have to
2 be briefed for Your Honor.

3 I would just ask Your Honor to take into account the
4 situation that everybody was in in assessing what you think is
5 appropriate. I would argue, and I mean this not as a spin,
6 but as a defense, and not that they didn't step over the line,
7 it wasn't perfect, and, Your Honor, it may have been bad
8 judgment, and Your Honor's impression may have been
9 understandable. I'm not quarrelling with that. But should
10 they be convicted, if you will, of knowingly and wilfully
11 saying something false? And given the information they had
12 and the dilemma they had and the binds they had in their
13 ethical obligations to their own clients, I would respectfully
14 submit that this proceeding itself has stigmatized them, and I
15 would ask for the Court's understanding going forth.

16 THE COURT: Thank you.

17 I will issue a written decision, and you will have
18 it by the beginning of next week.

19 Anything else? Have a nice day.

20 THE PROCEEDINGS CONCLUDED AT 5:01 P.M.

21 * * * * *

22

23

24

25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>THE COURT'S WITNESSES</u>				
Michael Kostrinsky (Video Depo Played, not transcribed)	150		3	4
Justin Jones	9	13		
Manjit Singh	85	94		

* * *

CERTIFICATION

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

AFFIRMATION

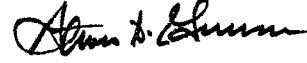
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

9/13/12

DATE



CLERK OF THE COURT

1 FFCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 STEVEN JACOBS,

6)
7) Plaintiff(s),

8 vs

9 LAS VEGAS SANDS CORP, ET AL,

10)
11) Defendants.

Case No. 10 A 627691

Dept. No. XI

Date of Hearing: 09/10-12/12

12 **DECISION AND ORDER**

13 This matter having come on for an evidentiary hearing before the Honorable Elizabeth
14 Gonzalez beginning on September 10, 2012 and continuing day to day, based upon the
15 availability of the Court and Counsel, until its completion on September 12, 2012; Plaintiff
16 Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of
17 record, James Pisanelli, Esq., Todd Bice, Esq., and Debra Spinelli, Esq. of the law firm of
18 Pisanelli Bice; Defendant Las Vegas Sands appearing by and through its counsel J. Stephen
19 Peek, Esq. of the law firm of Holland & Hart and counsel for purposes of this proceeding,
20 Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins;
21 Defendant Sands China appearing by and through its counsel J. Stephen Peek, Esq. of the law
22 firm of Holland & Hart, Brad D. Brian, Esq., Henry Weissman, Esq., and John B. Owens, Esq.
23 of the law firm of Munger Tolles & Olson and counsel for purposes of this proceeding, Samuel
24 Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; the Court
25 having read and considered the pleadings filed by the parties and the transcripts of prior
26 hearings; having reviewed the evidence admitted during the trial; and having heard and
27 carefully considered the testimony of the witnesses called to testify; the Court having
28 considered the oral and written arguments of counsel, and with the intent of deciding the
limited issues before the Court related to lack of candor and nondisclosure of information to

1 the Court and appropriate sanctions pursuant to EDCR 7.60. The Court makes the following
2 findings of fact and conclusions of law:

3
4 **I.**
PROCEDURAL POSTURE

5 On August 26, 2011, the Nevada Supreme Court issued a stay of proceedings in this
6 matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues
7 related to Sands China. The Court granted Jacobs request to conduct jurisdictional discovery
8 prior to the evidentiary hearing. The order granting the jurisdictional discovery was ultimately
9 entered on March 8, 2012.

10
11 **II.**
FINDINGS OF FACT¹

12 1. Prior to litigation, in approximately August 2010, a ghost image of hard drives
13 of computers used by Steve Jacobs in Macau² and copies of his outlook emails were transferred
14 by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq.,
15 Deputy General Counsel of Las Vegas Sands.³

16
17
18
19 ¹ Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the
20 questions asked of the counsel who testified during the evidentiary hearing. Almost all of those
21 objections were sustained. While numerous directions not to answer on the basis of attorney client
22 privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the
23 Court, and followed by the witnesses, sufficient information was presented through pleadings already in
24 the record and testimony of witnesses without the necessity of the Court drawing inferences related to
25 the assertion of those privileges. See generally, Francis v. Wynn, 127 NAO 60 (2011). The Court also
26 rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the
27 failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any
28 presumptions which might arguably be applicable under NRS Chapter 47.

² There is an issue that has been raised regarding the current location of those computers and hard
drives from which the ghost image was made. The Court does not in this Order address any issues
related to those items.

³ According to a status report filed by Las Vegas Sands on July 6, 2012, there were other transfers of
electronically stored data. Based upon testimony elicited during the evidentiary hearing, counsel was
unaware of those transfers prior to the preparation and filing of the status report.

1 2. Kostrinsky requested this information in anticipation of litigation with Jacobs
2 after learning of receipt of a letter by then general counsel for Las Vegas Sands from Don
3 Campbell.

4 3. This transferred data was placed on a server at Las Vegas Sands and was
5 initially reviewed by Kostrinsky.

6 4. The attorneys for Sands China at the Glaser Weil firm were aware of the
7 existence of the transferred data on Kostrinsky's computer from shortly after their retention in
8 November 2010.

9 5. The transferred data was reviewed in Kostrinsky's office by attorneys from
10 Holland & Hart.

11 6. On April 22, 2011, in house counsel for Sands China, Anne Salt, participated in
12 the Rule 16 conference by videoconference and responded to inquiry by the Court related to
13 electronically stored information and confirmed preservation of the data.

14 7. At no time during the Rule 16 conference did Ms. Salt or anyone on behalf of
15 Sands China advise the Court of the potential impact of the Macau Personal Data Privacy Act
16 (MDPA) upon discovery in this litigation.

17 8. Following the Rule 16 conference with the Court, the parties filed a Joint Status
18 Report on April 22, 2011, in which they agreed that the initial disclosure of documents
19 pursuant to NRCP 16.1 would be made by Sands China and Las Vegas Sands prior to July 1,
20 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting
21 discovery in this litigation.

22 9. Following the Rule 16 conference, no production or other identification of the
23 information from the transferred data was made.

24 10. Beginning with the motion filed May 17, 2011, Sands China and Las Vegas
25 Sands raised the MDPA as a potential impediment (if not a bar) to production of certain
26 documents.
27
28

1 11. At a hearing on June 9, 2012, counsel for Sands China represented to the Court
2 that the documents subject to production were in Macau; were not allowed to leave Macau;
3 and, had to be reviewed by counsel for Sands China in Macau prior to requesting the Office of
4 Personal Data Protection in Macau for permission to release those documents for discovery
5 purposes in the United States.

6 12. At the time of the representation made on June 9, 2012, the transferred data had
7 already been copied; the copy removed from Macau; and reviewed in Las Vegas by
8 representatives of Las Vegas Sands.

9 13. The transferred data was stored on a Las Vegas Sands shared drive totaling 50 –
10 60 gigabytes of information.

11 14. Prior to July 2011, Las Vegas Sands had full and complete access to documents
12 in the possession of Sands China in Macau through a network to network connection.

13 15. Beginning in approximately July 2011, Las Vegas Sands access to Sands China
14 data changed as a result of corporate decision making.

15 16. Prior to the access change, significant amounts of data from Macau related to
16 Jacobs was transported to the United States and reviewed by in house counsel for Las Vegas
17 Sands and outside counsel, and placed on shared drives at Las Vegas Sands.

18 17. At no time did Las Vegas Sands or Sands China disclose the existence of this
19 data to the Court.⁴

20 18. At no time did Las Vegas Sands or Sands China provide a privilege log
21 identifying documents which it contended were protected by the MDPA which was discussed
22 by the Court on June 9, 2011.
23
24
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26

27 ⁴ While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with
28 other actions and statements made to the Court including the June 27, 2012 status report, the June 28,
2012 hearing and the July 6, 2012 status report.

1 19. For the first time on June 27, 2012, in a written status report, Las Vegas Sands
2 and Sands China advised the Court that Las Vegas Sands was in possession of over 100,000
3 emails and other ESI that had been transferred "in error".

4 20. In the June 27, 2012 status report, Las Vegas Sands admits that it did not
5 disclose the existence of the transferred data because it wanted to review the Jacobs ESI.⁵

6 21. Any finding of fact stated hereinabove that is more appropriately deemed a
7 conclusion of law shall be so deemed.

8
9 **III.**
CONCLUSIONS OF LAW

10 22. The MDPA and its impact upon production of documents related to discovery
11 has been an issue of serious contention between the parties in motion practice before this Court
12 since May 2011.

13 23. The MDPA has been an issue with regards to documents, which are the subject
14 of the jurisdictional discovery.

15 24. At no time prior to June 28, 2012, was the Court informed that a significant
16 amount of the ESI in the form of a ghost image relevant to this litigation had actually been
17 taken out of Macau in July or August of 2010 by way of a portable electronic device.

18 25. EDCR Rule 7.60 provides in pertinent part:

19 * * *

20
21 (b) The court may, after notice and an opportunity to be heard, impose upon an
22 attorney or a party any and all sanctions which may, under the facts of the case, be reasonable,
23 including the imposition of fines, costs or attorney's fees when an attorney or a party without
24 just cause:

25 * * *

26 (3) So multiplies the proceedings in a case as to increase costs unreasonably
27 and vexatiously.

28 ⁵ The Court notes that there have also been significant issues with the production of information from
Jacobs. On appropriate motion the Court will deal with those issues.

1 26. As a result of the failure to disclose the existence of the transferred data, the
2 Court conducted needless hearings on the following dates which involved (at least in part) the
3 MDPA issues:

4 May 26, 2011

5 June 9, 2011

6 July 19, 2011

7 September 20, 2011⁶

8 October 4, 2011⁷

9 October 13, 2011

10 January 3, 2012

11 March 8, 2012

12 May 24, 2012

13 27. The Court concludes after hearing the testimony of witnesses that the 100,000
14 emails and other ESI were not transferred in error, but was purposefully brought into the
15 United States after a request by Las Vegas Sands for preservation purposes.

16 28. The transferred data is relevant to the evidentiary hearing related to jurisdiction,
17 which the Court intends to conduct.

18 29. The change in corporate policy regarding Las Vegas Sands access to Sands
19 China data made during the course of this ongoing litigation was made with an intent to
20 prevent the disclosure of the transferred data as well as other data.⁸

21 30. The Defendants concealed the existence of the transferred data from this Court.
22
23
24

25 ⁶ This hearing was conducted in a related case, A648484.

26 ⁷ This hearing was conducted in a related case, A648484.

27 ⁸ While the Court recognizes that several other legal proceedings related to certain allegations made by
28 Jacobs were commenced during the course of this litigation including subpoenas from the SEC and DOJ,
this does not excuse the failure to disclose the existence of the transferred data; the failure to identify the
transferred data on a privilege log, or the failure produce of the transferred data in this matter.

1 31. As the transferred data had already been reviewed by counsel, the failure to
2 disclose the existence of this transferred data to the Court caused repeated and unnecessary
3 motion practice before this Court.

4 32. The lack of disclosure appears to the Court to be an attempt by Defendants to
5 stall the discovery, and in particular, the jurisdictional discovery in these proceedings.

6 33. Given the number of occasions the MDPA and the production of ESI by
7 Defendants was discussed there can be no other conclusions than that the conduct was
8 repetitive and abusive.

9 34. The conduct however does not rise to the level of striking pleadings as exhibited
10 in the Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v.
11 Bahena, 235 P.3d 592 (Nev. 2010) cases.⁹

12 35. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990), the Court
13 finds:

14 a. There are varying degrees of willfulness demonstrated by the
15 Defendants and their agents in failing to disclose the transferred data to Plaintiff ranging from
16 careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent the
17 Plaintiff access to information discoverable for the jurisdictional proceedings;¹⁰

18 b. There are varying degrees of willfulness demonstrated by the
19 Defendants and their agents ranging from careless nondisclosure to knowing, willful and
20 intentional conduct in concealing the existence of the transferred data and failing to disclose
21 the transferred data to the Court with an intent to prevent the Court ruling on the
22 discoverability for purposes of the jurisdictional proceedings;
23
24
25

26
27 ⁹ The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct
28 in violation of EDCR 7.60, but utilizes cases interpreting Rule 37 violations as instructive.

¹⁰ As a result of the stay, the court does not address the discoverability of the transferred data and the
effect of the conduct related to the entire case.

1 c. The repeated nature of Defendants and Defendants' agents conduct in
2 making inaccurate representations over a several month period is further evidence of the
3 intention to deceive the Court;

4 d. Based upon the evidence currently before the Court it does not appear
5 that any evidence has been irreparably lost;¹¹

6 e. There is a public policy to prevent further abuses and deter litigants from
7 concealing discoverable information and intentionally deceiving the Court in an attempt to
8 advance its claims; and

9 f. The delay and prejudice to the Plaintiff in preparing his case is
10 significant, however, a sanction less severe than striking claims, defenses or pleadings can be
11 fashioned to ameliorate the prejudice.

12 36. The Court after evaluation of the evidence and testimony, weighing the factors
13 and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an
14 alternative less severe sanction to address the conduct that has occurred in this matter.

15 37. Any conclusion of law stated hereinabove that is more appropriately deemed a
16 finding of fact shall be so deemed.

17 IV.

18 ORDER

19 Therefore the Court makes the following order:

20 a. For purposes of jurisdictional discovery and the evidentiary hearing related to
21 jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MDPA as an
22 objection or as a defense to admission, disclosure or production of any documents.¹²

23
24
25
26 ¹¹ There is an issue that has been raised regarding the current location of those computers and hard drives
27 from which the ghost image was made. The Court does not in this Order address any issues related to
28 those items.

¹² This does not prevent the Defendants from raising any other appropriate objection or privilege.

1 b. For purposes of jurisdictional discovery and the evidentiary hearing related to
2 jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs ESI
3 (approx. 40 gigabytes) is not rightfully in his possession.¹³
4

5 c. Defendants will make a contribution of \$25,000 to the Legal Aid Center of
6 Southern Nevada.

7 d. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an
8 appropriate motion for those fees incurred in conjunction with those portions of the hearings
9 related to the MDPA identified in paragraph 26.
10

11 Dated this 14th day of September, 2012

12
13 
14 ELIZABETH GONZALEZ
District Court Judge

15 **Certificate of Service**


16 I hereby certify that on or about the date filed, this document was copied through e-
17 mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed
18 to the proper person as follows:
19

20 J. Stephen Peek, Esq. (Holland & Hart)

21 Samuel Lionel, Esq. (Lionel Sawyer & Collins)

22 Brad D. Brian Esq. (Munger Tolles & Olson)

23 James J. Pisanelli, Esq. (Pisanelli Bice)

24
25 
26 Dan Kutinac

27
28 ¹³ This does not prevent the Defendants from raising any other appropriate objection or privilege.

Alan D. Quinn

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR PROTECTIVE ORDER

THURSDAY, DECEMBER 6, 2012

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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DEC 11 2012

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 6, 2012, 8:32 A.M.

2 (Court was called to order)

3 THE COURT: Now if I could go to Sands-Jacobs, who
4 for some reason some of you thought you were coming at 8:20.

5 MR. PEEK: Your Honor, I think you did, actually,
6 when we just had the one singular motion say 8:20 for just
7 that one singular motion. I think that's where the confusion
8 arose. But everything else got set at 8:30.

9 THE COURT: And I'm happy to have you at 8:20, but
10 that means you all have to come at 8:20.

11 MR. PEEK: Everything else got set at 8:30, so I --

12 THE COURT: I know it did. That's what I thought
13 until I was told that Sands-Jacobs thought they were going
14 now, they were all sitting at the front tables. And then I
15 came in.

16 Mr. Jones. Both Mr. Joneses.

17 MR. MARK JONES: Your Honor, good morning.

18 MR. RANDALL JONES: Since we had the first motion, I
19 was wondering if we would be -- if it would be appropriate if
20 we addressed the Court first.

21 THE COURT: If you'd like.

22 MR. RANDALL JONES: I would like if the Court would
23 like.

24 THE COURT: Okay.

25 MR. RANDALL JONES: Thank you. Your Honor, as you

1 know, I have not been before you on this case as of yet. And
2 while I'm a protracted -- and I think the Court can relate to
3 this -- what seemed to be an interminable trial in front of
4 Judge Johnson --

5 THE COURT: Yeah, but I'm worse.

6 MR. RANDALL JONES: I will defer to the Court.

7 -- I thought it was important that I appear today
8 and talk about this. I think there are some important issues.
9 Well, I guess I want to say a couple of things first to the
10 Court, since this is my first appearance in this case.

11 THE COURT: You know there's been a history.

12 MR. RANDALL JONES: I do. And that's actually what
13 I want to address. I want to assure this Court -- and this is
14 an important point that I really want to make -- our clients,
15 respective clients, the two defendants, heard the Court, and I
16 want to make sure the Court is aware that we have -- we
17 believe we have taken very decisive action to make sure that
18 we are addressing the Court's concerns that were raised in
19 September and even before, and that we are doing what we
20 believe we can to make sure that we accomplish what I
21 understand to be your goal, to make sure we get this
22 evidentiary hearing done, the jurisdictional hearing done as
23 soon as possible. And we are, as I said, taking a number of
24 different actions to do that. And since it's been my
25 understanding that the Court hasn't been made aware of some of

1 these things, I want to just briefly describe a few of the
2 things that have happened since -- well, actually even a bit
3 before we got involved. But the clients have now, since June,
4 produced over 148,000 pages of documents at a cost of about
5 \$2.3 million. That's through the present time. Within weeks
6 of that September hearing new counsel was retained to address
7 these concerns, the Court's concerns, not just my firm and my
8 brother Mark's firm, but also Mayor Brown, within weeks of
9 that happening -- and I would have gone, as well, but I was
10 tied up in my trial -- Mike Lackey of Mayor Brown and Mark
11 Jones flew to Macau to meet with the government officials and
12 try to make sure we addressed their concerns so we could get
13 moving on that document production or make sure that we could
14 even get that document production.

15 And also the other I think piece of that puzzle as I
16 understand it was make sure that the depositions that the
17 Court had allowed, the four depositions, to take place. And I
18 know there's some issues related to that that are going to be
19 heard this morning, the scope of those depositions, but three
20 of those four depositions have occurred, and the last one is
21 scheduled for the 18th of this month.

22 And so I just want to make that comment up front
23 that we -- our firm is committed, as I know is Mr. Peek and
24 Mayor Brown, to getting this case in a place that you want it
25 to be so we can get this done.

1 THE COURT: Well, I've got an order from the Nevada
2 Supreme Court dated August 26, 2011, where they told me to do
3 something. I'm trying really hard to do it.

4 MR. RANDALL JONES: And I know this Court has a lot
5 of other things on its plate, and so we're committed, and I
6 just want to tell you that here, that we are committed to
7 trying to make sure that we do what you want us to do.

8 The concern that I have -- and I want to just
9 mention this briefly, and then I'm going to turn this over to
10 Mr. Peek, because he's going to argue the details of the first
11 motion for protective order. But there have been problems.
12 It's not all one sided, and I want the Court to be aware of
13 that.

14 THE COURT: Well, I know. Because I got two phone
15 calls earlier in the week.

16 MR. RANDALL JONES: Well, and had to put things on
17 on shortened time. And that's --

18 THE COURT: That's okay, though. That's what I'm
19 supposed to do. I'm supposed to help.

20 MR. RANDALL JONES: Sure. And that's what I want to
21 make sure you know. We want your help, and we need your help.
22 We believe that essentially what's happening here is that the
23 plaintiff is essentially trying to pile on from the hearing in
24 September, and now they're asking to relitigate issues or
25 reconsider improperly issues that have been decided by this

1 Court instead of moving this forward, that they are not
2 following the proper discovery procedures. So in a sense
3 they're trying to distract this Court from their own discovery
4 lapses, if you will, by trying to focus on something -- on
5 past history. And the Court's addressed that. And we need
6 your help, and we're here today as part of that process to ask
7 your help to make sure this process is balanced, that it's
8 fair to both sides, that both sides are afforded procedural
9 due process so that when we have the jurisdictional hearing
10 that it's fair to both sides.

11 And so we need your help in doing that, but I just
12 want to reiterate we are committed to making sure that we get
13 this process done. But in the meantime we need this Court to
14 stop what we believe to be the overly broad and essentially
15 harassing discovery that the plaintiff is trying to accomplish
16 here, and make sure that, as I said, it's fair to both sides.

17 So with that I will turn this over to Mr. Peek. And
18 I appreciate you allowing me to address the Court, since this
19 is my first opportunity to do that.

20 THE COURT: Sure.

21 MR. RANDALL JONES: Thank you.

22 THE COURT: Mr. --

23 MR. BICE: Your Honor --

24 THE COURT: Yes, Mr. Bice.

25 MR. BICE: Is this an argument on the motion, or --

1 because I'm going to respond to these assertions when people
2 just get up and address the Court. So I --
3 THE COURT: You can go after me Peek.
4 MR. BICE: Okay. That's fine. Thank you.
5 THE COURT: And you can respond to both of them at
6 the same time.
7 MR. BICE: I will. Thank you.
8 THE COURT: Okay. Mr. Peek.
9 MR. PEEK: Thank you, Your Honor.
10 MS. SPINELLI: Can you let us know which motion.
11 Sorry.
12 THE COURT: I'm on the motion for protective order
13 related to the four witnesses that I said could go. And then
14 later I'm going to do the motion on the administrative
15 proceeding, and then I'm going to do your motion, which is can
16 we do some more discovery on the sanctions issue and set an
17 evidentiary hearing on December 27th.
18 MS. SPINELLI: Thank you, Your Honor.
19 THE COURT: How's that for a plan?
20 MR. BICE: Thank you.
21 MR. PEEK: I didn't know we were actually going to
22 set an evidentiary hearing on the 27th, but --
23 THE COURT: No. That's what they asked. That's the
24 motion.
25 MR. PEEK: Your Honor, this is Las Vegas Sands and

1 Sands China Limited's motion for protective order with respect
2 to the scope of the discovery. And I'm not trying to
3 relitigate, as plaintiff suggests, issues related to general
4 or transient jurisdiction. I'm here more to talk about the
5 perception of the plaintiffs of the scope of jurisdictional
6 discovery that the Court allowed and the defendants'
7 perception of the scope of the discovery that has been
8 allowed.

9 THE COURT: And, for the record, we're talking
10 about the four witnesses that I specifically identified in my
11 March 8th, 2012, where I gave what I believed was fairly clear
12 instructions on what the breadth of those depositions were
13 given the stay that is in place on the jurisdictional --

14 MR. PEEK: And I agree, Your Honor. We certainly
15 have had --

16 THE COURT: That's where we are.

17 MR. PEEK: That's what -- that's what we're here to
18 discuss.

19 THE COURT: So let's turn to page 2 of that order
20 and talk about what it really means.

21 MR. PEEK: Okay.

22 THE COURT: Or you could give me your argument, Mr.
23 Peek.

24 MR. PEEK: I'd like to make my argument, Your Honor.
25 And I'm happy to turn to page 2, if you'd like.

1 THE COURT: It's okay.

2 MR. PEEK: You've told us on a number of occasions
3 that the scope of discovery should be narrowly confined to
4 jurisdiction and shouldn't go into the merits, and you've
5 reiterated what the Supreme Court order has said. The issue
6 that we have here is where do we draw that line. And we had
7 some discussions on Tuesday as to where do we draw that line.
8 We know that the plaintiff has --

9 THE COURT: And I drew it short of the substance of
10 why he was terminated.

11 MR. PEEK: That is correct. Your Honor. But there
12 are other issues related to not just short of why he was
13 terminated, but also all of the things he did during the
14 course of his employment that don't go to the who, the where,
15 and the what.

16 The plaintiff has three theories, as we know. We
17 know he had transient jurisdiction, we know he has specific
18 jurisdiction, and we know he has general jurisdiction.
19 Transient jurisdiction, I don't think we need discovery on
20 that, because that's just an issue of the services of the
21 summons and complaint upon Mr. Leven when he was here in the
22 United States and what role he was. And they've taken Mr.
23 Leven's deposition.

24 Certainly you know we've argued about specific
25 jurisdiction, we argued again earlier this week. I get the